



# Finance Act 1998

## 1998 CHAPTER 36

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance. [31st July 1998]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### EXCISE DUTIES

##### *Alcoholic liquor duties*

#### **1 Rate of duty on beer.**

- (1) In section 36(1) of the <sup>M1</sup>Alcoholic Liquor Duties Act 1979 (rate of duty on beer), for "£11.14" there shall be substituted "£11.50".
- (2) This section shall come into force on 1st January 1999.

#### **Marginal Citations**

**M1** 1979 c. 4.

*Status:* Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 2 Adjustment of rates of duty on sparkling liquors.

- (1) The <sup>M2</sup>Alcoholic Liquor Duties Act 1979 shall be amended as follows.
- (2) In Part I of the Table of rates of duty in Schedule 1, in column 2 of the fourth entry (rate of duty per hectolitre on sparkling wine or made-wine of a strength exceeding 5.5 per cent. but less than 8.5 per cent.), for “201.50” there shall be substituted “ 161.20 ”.
- (3) In section 62(1A)(a) (rate of duty per hectolitre on sparkling cider of a strength exceeding 5.5 per cent.), for “£37.54” there shall be substituted “ £45.05 ”.
- (4) This section shall be deemed to have come into force at 6 o’clock in the evening of 17th March 1998.

### Marginal Citations

M2 1979 c. 4.

## 3 Rates of duty on wine and made-wine.

- (1) For Part I of the Table of rates of duty in Schedule 1 to the <sup>M3</sup>Alcoholic Liquor Duties Act 1979 (wine and made-wine of a strength not exceeding 22 per cent.) there shall be substituted—

### “PART I

#### WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT.

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	£
Wine or made-wine of a strength not exceeding 4 per cent.	46.01
Wine or made-wine of a strength exceeding 4 per cent. but not exceeding 5.5 per cent.	63.26
Wine or made-wine of a strength exceeding 5.5 per cent. but not exceeding 15 per cent. and not being sparkling	149.28
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent. but less than 8.5 per cent.	161.20
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent. or of a strength exceeding 8.5 per cent. but not exceeding 15 per cent.	213.27
Wine or made-wine of a strength exceeding 15 per cent. but not exceeding 22 per cent.	199.03

- (2) This section shall come into force on 1st January 1999.”

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#### Marginal Citations

M3 1979 c. 4.

### 4 Rates of duty on cider.

(1) In section 62(1A) of the <sup>M4</sup>Alcoholic Liquor Duties Act 1979 (rates of duty on cider), for paragraphs (b) and (c) there shall be substituted the following paragraphs—

- “(b) £37.92 per hectolitre in the case of cider of a strength exceeding 7.5 per cent. which is not sparkling cider; and  
(c) £25.27 per hectolitre in any other case.”

(2) This section shall come into force on 1st January 1999.

#### Marginal Citations

M4 1979 c. 4.

### 5 Drawback of excise duty on beer.

(1) Section 42 of the <sup>M5</sup>Alcoholic Liquor Duties Act 1979 (drawback on exportation, shipment as stores etc.) shall cease to have effect.

(2) Subsection (1) above shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### Commencement Information

II S. 5 partly in force at 31.7.1998 see s. 5(2).

#### Marginal Citations

M5 1979 c. 4.

### *Hydrocarbon oil duties*

### 6 Charge on production without delivery.

(1) In section 6 of the <sup>M6</sup>Hydrocarbon Oil Duties Act 1979 (excise duty on imported hydrocarbon oil and on oil produced and delivered for home use), in subsection (1)—

- (a) for “subsections (2) and” there shall be substituted “ subsection ”; and  
(b) the words from “and delivered” to “above” shall be omitted.

(2) For subsection (2) of that section there shall be substituted the following subsections—

“(2) Where—

- (a) imported hydrocarbon oil is removed to relevant premises,  
(b) the oil undergoes a production process at those premises or any other relevant premises, and

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- (c) any duty charged on the importation of the oil has not become payable at any time before the production time,

the duty charged on importation shall not become payable at any time after the production time.

(2AA) In subsection (2) above—

“the production time” means the time at which the oil undergoes the production process; and

“relevant premises” means—

- (a) a refinery;
- (b) other premises used for the production of hydrocarbon oil; or
- (c) premises of such other description as may be specified in regulations made by the Commissioners.

(2AB) For the purposes of subsection (2) above, oil undergoes a production process if—

- (a) hydrocarbon oil of another description is obtained from it, or
- (b) it is subjected to any process of purification or blending.”

- (3) The preceding provisions of this section shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### Commencement Information

**I2** S. 6 partly in force at 31.7.1998 see s. 6(3).

#### Marginal Citations

**M6** 1979 c. 5.

## 7 Rates of duties and rebates.

(1) In section 6(1A) of the <sup>M7</sup>Hydrocarbon Oil Duties Act 1979 (rates of duty on hydrocarbon oil)—

- (a) in paragraph (a) (light oil), for “£0.4510” there shall be substituted “ £0.4926 ”;
- (b) in paragraph (b) (ultra low sulphur diesel), for “£0.3928” there shall be substituted “ £0.4299 ”; and
- (c) in paragraph (c) (heavy oil that is not ultra low sulphur diesel), for “£0.4028” there shall be substituted “ £0.4499 ”.

(2) In section 11(1) of that Act (rebate on heavy oil)—

- (a) in paragraph (a) (fuel oil), for “£0.0200” there shall be substituted “ £0.0218 ”; and
- (b) in each of paragraphs (b) and (ba) (gas oil which is not ultra low sulphur diesel and ultra low sulphur diesel), for “£0.0258” there shall be substituted “ £0.0282 ”.

(3) In section 13A(1A) of that Act (rebate on unleaded petrol)—

- (a) in paragraph (a) (higher octane unleaded petrol), for “£0.0150” there shall be substituted “ £0.0050 ”; and



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- (b) in paragraph (b) (other unleaded petrol), for “£0.0482” there shall be substituted “ £0.0527 ”.
- (4) In section 14(1) of that Act (rebate on light oil for use as furnace fuel), for “£0.0200” there shall be substituted “ £0.0218 ”.
- (5) This section shall be deemed to have come into force at 6 o’clock in the evening of 17th March 1998.

#### Marginal Citations

M7 1979 c. 5.

### 8 Ultra low sulphur diesel.

- (1) In section 1 of the <sup>M8</sup>Hydrocarbon Oil Duties Act 1979, for subsection (6) (meaning of “ultra low sulphur diesel”) there shall be substituted the following subsection—

“(6) “Ultra low sulphur diesel” means gas oil—

- (a) the sulphur content of which does not exceed 0.005 per cent. by weight or is nil;
- (b) the density of which does not exceed 835 kilograms per cubic metre at a temperature of 15° C; and
- (c) of which not less than 95 per cent. by volume distils at a temperature not exceeding 345° C.”

- (2) This section shall be deemed to have come into force at 6 o’clock in the evening of 17th March 1998.

#### Marginal Citations

M8 1979 c. 5.

### 9 Mixtures of heavy oils.

- (1) In section 20AAA of the <sup>M9</sup>Hydrocarbon Oil Duties Act 1979 (charge to duty on mixtures of oils), after subsection (2) there shall be inserted the following subsection—

“(2A) Where—

- (a) a mixture of heavy oils is produced in contravention of Part IIA of Schedule 2A to this Act, and
- (b) the mixture is not produced as a result of approved mixing,
- a duty of excise shall be charged on the mixture.”

- (2) In subsection (3) of that section, after “subsection (1)” there shall be inserted “ or (2A) ”.
- (3) In section 20AAB of that Act (supplementary provisions about mixing of oils), in subsection (1), after “section 20AAA(1)” there shall be inserted “ or (2A) ”.
- (4) In Schedule 2A to that Act (mixtures of oils to which duty applies), after paragraph 7 there shall be inserted the following—

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## “PART IIA

### UNREBATED HEAVY OIL

7A A mixture of heavy oils is produced in contravention of this paragraph if such a mixture is produced by mixing—

- (a) ultra low sulphur diesel in respect of which, on its delivery for home use, a declaration was made that it was intended for use as fuel for a road vehicle; and
- (b) heavy oil of any other description in respect of which, on its delivery for home use, such a declaration was made.”

(5) In paragraph 9 of that Schedule (rate of duty for mixtures of heavy oil), after sub-paragraph (1) there shall be inserted the following sub-paragraph—

“(1A) Subject to paragraph 10 below, duty charged under subsection (2A) of section 20AAA of this Act shall be charged at the rate for heavy oil in force at the time when the mixture is produced.”

(6) This section shall be deemed to have come into force at 6 o’clock in the evening of 17th March 1998.

#### Marginal Citations

M9 1979 c. 5.

### *Tobacco products duty*

#### 10 Rates of tobacco products duty.

(1) For the Table of rates of duty in Schedule 1 to the <sup>M10</sup>Tobacco Products Duty Act 1979 there shall be substituted—

#### “ TABLE

1. Cigarettes	An amount equal to 22 per cent. of the retail price plus £77.09 per thousand cigarettes.
2. Cigars	£114.79 per kilogram.
3. Hand-rolling tobacco	£87.74 per kilogram.
4. Other smoking tobacco and chewing tobacco	£50.47 per kilogram.”

(2) This section shall come into force on 1st December 1998.

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**Marginal Citations**

M10 1979 c. 7.

*Gaming duty*

**11 Rates of gaming duty.**

(1) For the Table in section 11(2) of the <sup>M11</sup>Finance Act 1997 (rates of gaming duty) there shall be substituted the following table—

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £450,000	2½ per cent.
The next £1,000,000	12½ per cent.
The next £1,000,000	20 per cent.
The next £1,750,000	30 per cent.
The remainder	40 per cent.”

(2) In section 11(3) of that Act (rate of duty for unregistered gaming), for “ 13 1/3 per cent.” there shall be substituted “ 40 per cent. ”

(3) This section has effect in relation to accounting periods beginning on or after 1st April 1998.

**Marginal Citations**

M11 1997 c. 16.

*Amusement machine licence duty*

**12 Rates of amusement machine licence duty.**

(1) In section 23 of the <sup>M12</sup>Betting and Gaming Duties Act 1981 (rates of amusement machine licence duty), for the Table in subsection (2) there shall be substituted the following Table—

“ TABLE

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Period (in months) for which licence granted</i>	<i>Machines that are not gaming machines</i>	<i>Gaming machines that are small-prize machines or are five-penny machines without</i>	<i>Other machines</i>

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		<i>being small-prize machines</i>	
	£	£	£
1	30	80	220
2	50	150	425
3	75	220	615
4	95	285	800
5	120	345	970
6	140	400	1,125
7	160	450	1,270
8	185	500	1,405
9	205	540	1,525
10	225	580	1,635
11	240	615	1,730
12	250	645	1,815”

- (2) This section shall apply in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise after 17th March 1998.

#### Marginal Citations

M12 1981 c. 63.

### 13 Further exception for thirty-five-penny machines.

- (1) In section 21(3A) of the <sup>M13</sup>Betting and Gaming Duties Act 1981 (excepted machines), for paragraphs (b) and (c) there shall be substituted the following paragraphs—

- “(b) a five-penny machine which is a small prize machine; or  
(c) a thirty-five-penny machine which is not a prize machine or which, if it is a prize machine, is not a gaming machine.”

- (2) This section has effect in relation to the provision of an amusement machine at any time on or after 1st April 1998.

#### Marginal Citations

M13 1981 c. 63.

### 14 Video machines.

- (1) In section 21(3A) of the <sup>M14</sup>Betting and Gaming Duties Act 1981 (excepted machines), after paragraph (c) there shall be inserted “; or

- (d) an excepted video machine.”

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(2) After subsection (3A) of that section there shall be inserted the following subsections—

“(3B) For the purposes of this section an amusement machine is an excepted video machine if—

- (a) it is a video machine which is not a prize machine;
- (b) it is a machine on which a game can be played solo;
- (c) the price for a solo game on the machine does not exceed 35p; and
- (d) the price to participate in a game on the machine for two or more players does not exceed 50p.

(3C) For the purposes of this section the price for a solo game on a machine does not exceed 35p if the denomination or aggregate denomination of the coin or coins that must be inserted into the machine to play the game solo does not or, where the machine provides differing numbers of games in different circumstances, cannot exceed 35p for each time the game is played.

(3D) For the purposes of this section the price to participate in a game on the machine for two or more players does not exceed 50p if the denomination or aggregate denomination of the coin or coins that must be inserted into the machine to play the game simultaneously with more than one player does not exceed or, where the machine provides differing numbers of games in different circumstances, cannot exceed 50p per player for each time the game is played.

(3E) For the purposes of this section a game is played solo if it is played by one person at a time (whether or not against a previous player).”

(3) Accordingly, in section 25 of that Act—

- (a) in subsection (4) (no account to be taken of the fact that a machine may be played by more than one person at a time), after “description” there shall be inserted “ other than an excepted video machine falling within section 21(3A)(d) above ”; and
- (b) in subsection (6) (excepted machine not to be treated as a number of machines), for the words “in the case of any machine” onwards there shall be substituted “ for the purpose of determining whether a machine is an excepted video machine falling within section 21(3A)(d) above, or in the case of a pinball machine or a machine that is an excepted machine ”.

(4) This section has effect in relation to the provision of an amusement machine at any time on or after the day on which this Act is passed.

**Marginal Citations**

M14 1981 c. 63.

*Air passenger duty*

**15 Fiscal representatives.**

(1) After section 34 of the <sup>M15</sup>Finance Act 1994 (fiscal representatives) there shall be inserted the following section—

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### **“34A Administrative representatives.**

- (1) Subject to the following provisions of this section, where—
- (a) the appointment of any person to be the fiscal representative of an aircraft operator contains a statement that the appointment is made for administrative purposes only,
  - (b) the operator has complied with any obligations for the provision of security imposed, in relation to appointments containing such statements, by any general directions given by the Commissioners, and
  - (c) the operator is not for the time being in contravention of any requirement to provide any security that he is required to provide under section 36 below,
- that appointment shall have effect in accordance with subsection (2) below.
- (2) Where the appointment of any person as a fiscal representative has effect in accordance with this subsection section 34(4)(b) and (c) above shall be taken, in the case of that person—
- (a) not to impose any requirement on the representative to secure the payment of amounts of duty which are or may become due from his principal, and
  - (b) not to make him personally liable either to pay any such amounts or in respect of any failure by his principal to pay them.
- (3) The security that may be required by general directions given by the Commissioners for the purposes of this section is any such security for the payment of amounts of duty which are or may become due from the person providing the security as may be determined in accordance with the directions.
- (4) The power of the Commissioners under section 36 below to require the provision of security shall not include any power to require a fiscal representative of an aircraft operator whose appointment has effect in accordance with subsection (2) above to provide any security for the payment of amounts of duty which are or may become due from his principal.
- (5) In this section references to an amount of duty include references to any penalty or interest that is recoverable as if it were an amount of duty, but only in so far as the penalty or interest is in respect of a failure by an aircraft operator to pay an amount of duty, or to pay such an amount before a certain time.”
- (2) In section 34(4) of that Act (effect of appointment of fiscal representative), after “subsection (5)” there shall be inserted “ and section 34A ”.

#### **Marginal Citations**

M15 1994 c. 9.

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## Vehicle excise duty

### 16 Rates of duty where pollution reduced.

Schedule 1 to this Act (which makes provision for reduced rates of vehicle excise duty to be applicable to certain vehicles adapted so as to reduce pollution) shall have effect.

### 17 Restriction of exemption for old vehicles.

In paragraph 1A(1) of Schedule 2 to the <sup>M16</sup>Vehicle Excise and Registration Act 1994 (exemption for vehicles more than 25 years old), for the words “more than 25 years before the beginning of the year in which that time falls” there shall be substituted “before 1st January 1973.”

#### Marginal Citations

M16 1994 c. 22.

### 18 Regulations relating to nil licences.

In section 22(2A) of the <sup>M17</sup>Vehicle Excise and Registration Act 1994 (provisions that may be made about nil licences), after paragraph (b) there shall be inserted the following paragraphs—

- “(c) make provision (including provision requiring the payment of a fee) for cases where a nil licence is or may be lost, stolen, destroyed or damaged or contains particulars which have become illegible or inaccurate,
- (d) require a person issued with a nil licence which ceases to be in force in circumstances prescribed by the regulations to furnish to the Secretary of State such particulars and make such declarations as may be so prescribed, and to do so at such times and in such manner as may be so prescribed.”

#### Marginal Citations

M17 1994 c. 22.

### 19 Failure to pay amount required in respect of void licence.

(1) In subsection (1) of section 35A of the <sup>M18</sup>Vehicle Excise and Registration Act 1994 (offence of failing to return void licence)—

- (a) in paragraph (a), for the words from “requires” to “the notice” there shall be substituted “contains a relevant requirement”; and
- (b) in paragraph (b), for “within that period” there shall be substituted “contained in the notice”.

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

- “(3) For the purposes of subsection (1)(a), a relevant requirement is—
  - (a) a requirement to deliver up the licence within such reasonable period as is specified in the notice; or

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- (b) a requirement to deliver up the licence within such reasonable period as is so specified and, on doing so, to pay the amount specified in subsection (4).
- (4) The amount referred to in subsection (3)(b) is an amount equal to one-twelfth of the appropriate annual rate of vehicle excise duty for each month, or part of a month, in the relevant period.
- (5) The reference in subsection (4) to the appropriate annual rate of vehicle excise duty is a reference to the annual rate which at the beginning of the relevant period—
  - (a) in the case of a vehicle licence, was applicable to a vehicle of the description specified in the application, or
  - (b) in the case of a trade licence, was applicable to a vehicle falling within paragraph 1 of Schedule 1 (or to a vehicle falling within subparagraph (1)(c) of paragraph 2 of that Schedule if the licence was to be used only for vehicles to which that paragraph applies).
- (6) For the purposes of subsection (4) the relevant period is the period—
  - (a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and
  - (b) ending with whichever is the earliest of the times specified in subsection (7).
- (7) In a case where the requirement is a requirement to deliver up a vehicle licence, those times are—
  - (a) the end of the month during which the licence was required to be delivered up,
  - (b) the end of the month during which the licence was actually delivered up,
  - (c) the date on which the licence was due to expire, and
  - (d) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question;
 and, in a case where the requirement is a requirement to deliver up a trade licence, those times are the times specified in paragraphs (a) to (c).”
- (3) In section 36 of that Act (additional liability to be imposed on persons convicted of offences under section 35A), for subsection (4) of that section there shall be substituted the following subsections—
  - “(4) For the purposes of this section the relevant period is the period—
    - (a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and
    - (b) ending with whichever is the earliest of the times specified in subsection (4A).
  - (4A) the case of a vehicle licence those times are—
    - (a) the end of the month in which the order is made,
    - (b) the date on which the licence was due to expire,
    - (c) the end of the month during which the licence was delivered up, and



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- (d) the end of the month preceding that in which there first had effect a new licence for the vehicle in question;  
and, in the case of a trade licence, those times are the times specified in paragraphs (a) to (c).”
- (4) After subsection (5) of that section there shall be inserted the following subsection—
- “(6) Where—
- (a) a person has been convicted of an offence under section 35A in relation to a vehicle licence or a trade licence, and
- (b) a requirement to pay an amount with respect to that licence has been imposed on that person by virtue of section 35A(3)(b),
- the order to pay an amount under this section shall have effect instead of that requirement and the amount to be paid under the order shall be reduced by any amount actually paid in pursuance of the requirement.”
- (5) The preceding provisions of this section apply to notices sent and orders made on or after the day on which this Act is passed.

#### Marginal Citations

M18 1994 c. 22.

### Assessments

#### 20 Assessments for excise duty purposes.

Schedule 2 to this Act (assessments for excise duty purposes) shall have effect.

## PART II

### VALUE ADDED TAX

#### 21 Deemed supplies.

- (1) Paragraph 5 of Schedule 4 to the <sup>M19</sup>Value Added Tax Act 1994 (disposal of business assets) shall be amended as follows.
- (2) In sub-paragraph (2)(a) (exception for gifts of small value), for “is” there shall be substituted “of acquiring or, as the case may be, producing the goods was”.
- (3) After sub-paragraph (2) there shall be inserted the following sub-paragraph—
- “(2A) For the purposes of determining the cost to the donor of acquiring or producing goods of which he has made a gift, where—
- (a) the acquisition by the donor of the goods, or anything comprised in the goods, was by means of a transfer of a business, or a part of a business, as a going concern,
- (b) the assets transferred by that transfer included those goods or that thing, and

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- (c) the transfer of those assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services,  
the donor and his predecessor or, as the case may be, all of his predecessors shall be treated as if they were the same person.”
- (4) In sub-paragraph (5) (transactions without consideration to be treated as supplies under paragraph 5 only where the supplier is a person entitled to credit for input tax), for “is” there shall be substituted “ or any of his predecessors is a person who (disregarding this paragraph) has or will become ”.
- (5) After that sub-paragraph there shall be inserted the following sub-paragraph—  
“(5A) In relation to any goods or anything comprised in any goods, a person is the predecessor of another for the purposes of this paragraph if—  
(a) that other person is a person to whom he has transferred assets of his business by a transfer of that business, or a part of it, as a going concern;  
(b) those assets consisted of or included those goods or that thing; and  
(c) the transfer of the assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services;  
and references in this paragraph to a person’s predecessors include references to the predecessors of his predecessors through any number of transfers.”
- (6) The preceding provisions of this section apply to any case where the time when the goods are transferred or disposed of or, as the case may be, put to use, used or made available for use is on or after 17th March 1998.

#### Marginal Citations

M19 1994 c. 23.

## 22 Changes of place of supply: transitional.

- (1) In the <sup>M20</sup>Value Added Tax Act 1994 the following section shall be inserted after section 97 (orders, rules and regulations)—

### “97A Place of supply orders: transitional provision.

- (1) This section shall have effect for the purpose of giving effect to any order made on or after 17th March 1998 under section 7(11), if—  
(a) the order provides for services of a description specified in the order to be treated as supplied in the United Kingdom;  
(b) the services would not have fallen to be so treated apart from the order;  
(c) the services are not services that would have fallen to be so treated under any provision re-enacted in the order; and  
(d) the order is expressed to come into force in relation to services supplied on or after a date specified in the order (“the commencement date”).

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- (2) Invoices and other documents provided to any person before the commencement date shall be disregarded in determining the time of the supply of any services which, if their time of supply were on or after the commencement date, would be treated by virtue of the order as supplied in the United Kingdom.
  - (3) If there is a payment in respect of any services of the specified description that was received by the supplier before the commencement date, so much (if any) of that payment as relates to times on or after that date shall be treated as if it were a payment received on the commencement date.
  - (4) If there is a payment in respect of services of the specified description that is or has been received by the supplier on or after the commencement date, so much (if any) of that payment as relates to times before that date shall be treated as if it were a payment received before that date.
  - (5) Subject to subsection (6) below, a payment in respect of any services shall be taken for the purposes of this section to relate to the time of the performance of those services.
  - (6) Where a payment is received in respect of any services the performance of which takes place over a period a part of which falls before the commencement date and a part of which does not—
    - (a) an apportionment shall be made, on a just and reasonable basis, of the extent to which the payment is attributable to so much of the performance of those services as took place before that date;
    - (b) the payment shall, to that extent, be taken for the purposes of this section to relate to a time before that date; and
    - (c) the remainder, if any, of the payment shall be taken for those purposes to relate to times on or after that date.”
- (2) In section 6 of the <sup>M21</sup>Value Added Tax Act 1994 (time of supply), after subsection (14) there shall be inserted the following subsection—
- “(14A) In relation to any services of a description specified in an order under section 7(11), this section and any regulations under this section or section 8(4) shall have effect subject to section 97A.”
- (3) This section shall be deemed to have come into force on 17th March 1998.

#### Marginal Citations

**M20** 1994 c. 23.

**M21** 1994 c. 23.

## 23 Bad debt relief.

- (1) In subsection (1)(a) of section 36 of the <sup>M22</sup>Value Added Tax Act 1994 (bad debts), the words “for a consideration in money” shall be omitted.
- (2) In subsection (3) of that section—
  - (a) in paragraph (a), for “payment by way” there shall be substituted “ part ”; and

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- (b) in paragraph (b), for “a payment or payments by way” there shall be substituted “ any part ” and for “the payment (or the aggregate of the payments)” there shall be substituted “ that part ”.
- (3) After that subsection there shall be inserted the following subsection—
- “(3A) For the purposes of this section, where the whole or any part of the consideration for the supply does not consist of money, the amount in money that shall be taken to represent any non-monetary part of the consideration shall be so much of the amount made up of—
- (a) the value of the supply, and
  - (b) the VAT charged on the supply,
- as is attributable to the non-monetary consideration in question.”
- (4) In subsection (5) of that section—
- (a) in paragraph (c), for “subsequent payments” there shall be substituted “ anything subsequently received ”; and
  - (b) in paragraph (e), for “payment (or further payment) by way” there shall be substituted “ part (or further part) ”.
- (5) In subsection (6) of that section, in paragraphs (b) and (c) for “a payment” there shall in each place be substituted “ anything received ”.
- (6) In subsection (7) of that section, for “part payment” there shall be substituted “ receipt of part of the consideration ”.
- (7) Subsections (1) to (3) above have effect in relation to claims made on or after the day on which this Act is passed.

**Marginal Citations**

**M22** 1994 c. 23.

**24 Long leases in Scotland.**

In section 96(1) of the <sup>M23</sup>Value Added Tax Act 1994, in paragraph (b) of the definition of “major interest” (land in Scotland not held on feudal tenure: lessee’s interest must be for a period exceeding 21 years), for “exceeding 21 years” there shall be substituted “ of not less than 20 years ”.

**Marginal Citations**

**M23** 1994 c. 23.

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## PART III

### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

#### CHAPTER I

##### INCOME TAX AND CORPORATION TAX

###### *Income tax charge, rates and reliefs*

#### **25 Charge and rates for 1998-99.**

Income tax shall be charged for the year 1998-99, and for that year—

- (a) the lower rate shall be 20 per cent.;
- (b) the basic rate shall be 23 per cent.; and
- (c) the higher rate shall be 40 per cent.

#### **26 Relief for a woman with a child and an incapacitated husband.**

- (1) In subsection (1)(c) of section 259 of the Taxes Act 1988 (additional relief for children in the case of a man with an incapacitated wife), for “man” and “wife” there shall be substituted, respectively, “individual” and “spouse”.
- (2) In subsection (4) of that section (woman not entitled to relief in a case where a child is resident with her only while she is married and living with her husband), after “relief under this section” there shall be inserted “by virtue of subsection (1)(a) above”.
- (3) In section 261A(3) of that Act (rule in the year of a separation for man who is entitled to relief by virtue of section 259(1)(c)), for “a man” there shall be substituted “an individual”.
- (4) This section has effect for the year 1998-99 and subsequent years of assessment and shall be deemed to have had effect for the year 1997-98.

#### **27 Married couple’s allowance etc. in and after 1999-00.**

- (1) The Taxes Act 1988 shall have effect for the year 1999-00 and subsequent years of assessment with the following amendments—
  - (a) in section 256(2)(a) of that Act (rate of reliefs given by way of income tax reduction under Chapter I of Part VII), for “15 per cent.” there shall be substituted “10 per cent.”; and
  - (b) in section 347B(5A)(a) of that Act (rate of relief for qualifying maintenance payments), for “the appropriate percentage” there shall be substituted “10 per cent.”.
- (2) For the purposes only of applying section 257C of the Taxes Act 1988 (indexation) for the year 1999-00, the amounts specified for the year 1998-99 in subsections (2) and (3) of section 257A of that Act (married couple’s allowance for persons of 65 or more) shall be taken to have been £4,965 and £5,025, respectively.

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### *Corporation tax charge and rates*

#### **28 Charge and rates for financial year 1998.**

- (1) Corporation tax shall be charged for the financial year 1998 at the rate of 31 per cent.
- (2) For that year—
  - (a) the small companies' rate shall be 21 per cent.; and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

#### **29 Charge and rates for financial year 1999.**

- (1) Corporation tax shall be charged for the financial year 1999 at the rate of 30 per cent.
- (2) For that year—
  - (a) the small companies' rate shall be 20 per cent.; and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

### *Corporation tax: periodic payments etc*

#### **30 Corporation tax: due and payable date.**

- (1) After section 59DA of the <sup>M24</sup>Taxes Management Act 1970 there shall be inserted—

##### **“59E Further provision as to when corporation tax is due and payable.**

- (1) The Treasury may by regulations make provision, in relation to companies of such descriptions as may be prescribed, for or in connection with treating amounts of corporation tax for an accounting period as becoming due and payable on dates which fall on or before the date on which corporation tax for that period would become due and payable apart from this section.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
  - (a) for or in connection with the determination of amounts of corporation tax which are treated as becoming due and payable under the regulations;
  - (b) for or in connection with the determination of the dates on which amounts of corporation tax are treated as becoming due and payable under the regulations;
  - (c) for or in connection with the making of payments to the Board in respect of amounts of corporation tax which are treated as becoming due and payable under the regulations;
  - (d) for or in connection with the determination of the amount of any such payments as are mentioned in paragraph (c) above;
  - (e) for or in connection with the determination of the dates on which any such payments as are mentioned in paragraph (c) above become due and payable;

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- (f) for or in connection with any assumptions which are to be made for any purposes of the regulations;
  - (g) for or in connection with the payment to the Board of interest on amounts of corporation tax which are treated as becoming due and payable under the regulations;
  - (h) for or in connection with the repayment of amounts paid under the regulations;
  - (i) for or in connection with the payment of interest by the Board on amounts paid or repaid under the regulations;
  - (j) with respect to the furnishing of information to the Board;
  - (k) with respect to the keeping, production or inspection of any books, documents or other records;
  - (l) for or in connection with the imposition of such requirements as the Treasury think necessary or expedient for any purposes of the regulations;
  - (m) for or in connection with appeals in relation to questions arising under the regulations.
- (3) Regulations under this section may make provision—
- (a) for amounts of corporation tax for an accounting period to be treated as becoming due and payable on dates which fall within the accounting period;
  - (b) for payments in respect of any such amounts of corporation tax for an accounting period as are mentioned in paragraph (a) above to become due and payable on dates which fall within the accounting period.
- (4) Where interest is charged by virtue of regulations under this section on any amounts of corporation tax for an accounting period which are treated as becoming due and payable under the regulations, the company shall, in such circumstances as may be prescribed, be liable to a penalty not exceeding twice the amount of that interest.
- (5) Regulations under this section—
- (a) may make such modifications of any provisions of the Taxes Acts, or
  - (b) may apply such provisions of the Taxes Acts,
- as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (6) Regulations under this section which apply any provisions of the Taxes Acts may apply those provisions either without modifications or with such modifications as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (7) Regulations under this section—
- (a) may make different provision for different purposes, cases or circumstances;
  - (b) may make different provision in relation to companies or accounting periods of different descriptions;
  - (c) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

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- (8) Subject to subsection (9) below, regulations under this section may make provision in relation to accounting periods beginning before (as well as accounting periods beginning on or after) the date on which the regulations are made.
- (9) Regulations under this section may not make provision in relation to accounting periods ending before the day appointed under section 199 of the <sup>M25</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).
- (10) In this section—  
“modifications” includes amendments, additions and omissions;  
“prescribed” means prescribed by regulations made under this section.
- (11) Any reference in this section to corporation tax includes a reference—  
(a) to any amount due from a company under section 419 of the principal Act (loans to participators etc) as if it were an amount of corporation tax chargeable on the company;  
(b) to any sum chargeable on a company under section 747(4)(a) of the principal Act (controlled foreign companies) as if it were an amount of corporation tax.”
- (2) The Treasury may by regulations make provision for or in connection with the payment to the Board of an amount or amounts determined by or under the regulations in any case where, on or after 25th November 1997 and before 30th June 2002, a company takes any action specified in the regulations which has the effect—  
(a) of delaying the application, or  
(b) of delaying or avoiding the full effect,  
in relation to the company of any regulations made under section 59E of the <sup>M26</sup>Taxes Management Act 1970.
- (3) Any amount determined by or under regulations under this section shall be computed as if it were interest on a sum determined by or under the regulations; and any amount so determined shall be treated for the purposes of the Tax Acts as if it were interest due to the Board.
- (4) The action which may be specified in regulations under this section includes—  
(a) a change by a company in the date or dates on which any of its accounting periods begin or end; or  
(b) a transfer by a company of any property, rights or liabilities to a company which belongs to the same group as that company.
- (5) In subsection (4) above “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.
- (6) Regulations under this section—  
(a) may make different provision in relation to different cases or in relation to companies of different descriptions;  
(b) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.



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#### Marginal Citations

M24 1970 c. 9.

M25 1994 c. 9.

M26 1970 c. 9.

### 31 Abolition of advance corporation tax.

- (1) No company resident in the United Kingdom shall be liable to pay advance corporation tax in respect of any qualifying distribution made on or after 6th April 1999.
- (2) For the purposes of the Tax Acts, no distribution made on or after 6th April 1999 shall be treated as giving rise to the making of a franked payment.
- (3) No franked investment income which is attributable to a distribution made on or after 6th April 1999 shall be used to frank any distributions of a company.
- (4) Section 238(3) of the Taxes Act 1988 shall apply for the purposes of subsection (3) above as it applies for the purposes of Chapter V of Part VI of that Act.
- (5) Schedule 3 to this Act (which makes provision for and in connection with the abolition of advance corporation tax) shall have effect.

### 32 Unrelieved surplus advance corporation tax.

- (1) The Treasury may by regulations make provision for or in connection with enabling unrelieved surplus advance corporation tax to be set against liability to corporation tax on profits charged to corporation tax for accounting periods ending on or after 6th April 1999 (and thus to discharge a corresponding amount of any such liability).
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
  - (a) for or in connection with imposing a limit or limits on the amount of unrelieved surplus advance corporation tax which may be set against liability to corporation tax on profits charged to corporation tax for an accounting period;
  - (b) for or in connection with the carrying forward of unrelieved surplus advance corporation tax from earlier accounting periods to later accounting periods;
  - (c) for or in connection with the recovery of corporation tax from companies in prescribed circumstances where any such liability as is mentioned in paragraph (a) above is or has been discharged by the set-off of unrelieved surplus advance corporation tax;
  - (d) for or in connection with the reduction or extinguishment of unrelieved surplus advance corporation tax;
  - (e) for or in connection with treating notional amounts of advance corporation tax ("shadow ACT") as paid by companies in respect of distributions made on or after 6th April 1999;
  - (f) for or in connection with the determination of amounts of shadow ACT which are treated as paid by companies in respect of distributions made on or after 6th April 1999;
  - (g) in relation to the treatment of shadow ACT;

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- (h) in relation to the treatment of companies which have prescribed relationships or connections with each other;
  - (i) in relation to the treatment of prescribed events, arrangements or transactions involving companies with unrelieved surplus advance corporation tax.
- (3) The provision which may be made by regulations under this section includes provision—
- (a) for or in connection with treating shadow ACT as reducing any limit or limits on the amount of unrelieved surplus advance corporation tax which may be set against any such liability as is mentioned in subsection (2)(a) above;
  - (b) for or in connection with the carrying forward of shadow ACT from earlier accounting periods to later accounting periods;
  - (c) for or in connection with the carrying back of shadow ACT from later accounting periods to earlier accounting periods;
  - (d) for or in connection with the transfer of shadow ACT between companies;
  - (e) for or in connection with the reduction or extinguishment of shadow ACT.
- (4) The provision which may be made by virtue of subsection (2)(c) above includes provision for or in connection with the recovery of corporation tax from a company which has a prescribed relationship or connection with a company whose liability to corporation tax is or has been discharged by the set-off of unrelieved surplus advance corporation tax.
- (5) The provision which may be made by regulations under this section includes provision for or in connection with enabling unrelieved surplus advance corporation tax to be set against liability to a sum chargeable under section 747(4)(a) of the Taxes Act 1988 (controlled foreign companies) as if it were an amount of corporation tax for an accounting period.
- (6) In this section “unrelieved surplus advance corporation tax” means the advance corporation tax (if any) which, apart from sub-paragraph (3) of [F1 paragraph 12] of Schedule 3 to this Act but otherwise in accordance with that paragraph, would be treated by virtue of section 239(4) of the Taxes Act 1988 as paid in respect of distributions made by a company in the first accounting period of the company to begin on or after 6th April 1999.
- (7) The reference in subsection (6) above to an accounting period beginning on or after 6th April 1999 includes a reference to a separate accounting period mentioned in section 245(2) of the Taxes Act 1988 which begins on 6th April 1999.
- (8) Regulations under this section—
- (a) may make such modifications of any provisions of the Tax Acts, or
  - (b) may apply such provisions of the Tax Acts,
- as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (9) Regulations under this section which apply any provisions of the Tax Acts may apply those provisions either without modifications or with such modifications as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (10) Regulations under this section—
- (a) may make different provision for different purposes, cases or circumstances;

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- (b) may make different provision in relation to companies or accounting periods of different descriptions;
  - (c) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (11) Regulations under this section may make provision in relation to accounting periods beginning before (as well as accounting periods beginning on or after) the date on which the regulations are made.
- (12) In this section—
- “modifications” includes amendments, additions and omissions;
  - “prescribed” means prescribed by regulations made under this section.

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#### Textual Amendments

**F1** Words in s. 32(6) substituted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 91(4)(6)

### 33 Relief for interest payable under the Tax Acts.

- (1) Section 90 of the <sup>M27</sup>Taxes Management Act 1970 (interest on overdue tax to be paid without deduction of income tax and not to be allowed as a deduction in computing income, profits or losses) shall be amended as follows.
- (2) At the beginning there shall be inserted “(1)” and in the subsection (1) so formed—
- (a) after “Interest payable under this Part of this Act” there shall be inserted “ (a) ”; and
  - (b) after “and” there shall be inserted “ (b) ”.
- (3) At the beginning of the paragraph (b) formed by subsection (2)(b) above (disallowance of relief for interest) there shall be inserted “subject to subsection (2) below,”.
- (4) At the end of the section there shall be added—
- “(2) Paragraph (b) of subsection (1) above does not apply in relation to interest under section 87 or 87A of this Act payable by a company within the charge to corporation tax.”
- (5) The amendments made by subsections (3) and (4) above have effect in relation to—
- (a) interest on corporation tax for accounting periods ending on or after the day appointed under section 199 of the <sup>M28</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment); and
  - (b) interest on tax assessable in accordance with Schedule 13 or 16 to the Taxes Act 1988 for return periods in accounting periods ending on or after that day.

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#### Marginal Citations

**M27** 1970 c. 9.

**M28** 1994 c. 9.

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### **34 Charge to tax on interest payable under the Tax Acts.**

- (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) shall be amended as follows.
- (2) In subsection (5) (interest on overpaid tax to be paid without deduction of income tax and not to be brought into account in computing profits or income)—
  - (a) after “Interest paid under this section” there shall be inserted “ (a) ”; and
  - (b) after “and” there shall be inserted “ (b) ”.
- (3) At the beginning of the paragraph (b) formed by subsection (2)(b) above (interest not to be brought into account in computing profits or income) there shall be inserted “subject to subsection (5A) below,”.
- (4) After subsection (5) there shall be inserted—
 

“(5A) Paragraph (b) of subsection (5) above does not apply in relation to interest payable to a company within the charge to corporation tax.”
- (5) The amendments made by subsections (3) and (4) above have effect in relation to interest payable by virtue of any paragraph of section 826(1) of the <sup>M29</sup>Taxes Act 1988 if the accounting period mentioned in that paragraph is one which ends on or after the day appointed under section 199 of the Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

#### **Marginal Citations**

M29 1994 c. 9.

### **35 Further provision about interest payable under the Tax Acts.**

Schedule 4 to this Act (which makes further amendments relating to interest payable under the Tax Acts by or to companies) shall have effect.

### **36 Arrangements with respect to payment of corporation tax.**

- (1) The Board may enter into arrangements with some or all of the members of a group of companies for one of those members to discharge any liability of each of those members to pay corporation tax for the accounting periods to which the arrangements relate.
- (2) Any such arrangements—
  - (a) may make provision in relation to cases where companies become or cease to be members of a group of companies;
  - (b) may make provision in relation to the discharge of liability to pay interest or penalties;
  - (c) may make provision in relation to the discharge of liability to pay any amount treated as corporation tax;
  - (d) may make provision for or in connection with the termination of the arrangements;
  - (e) may make such supplementary, incidental, consequential or transitional provision as is necessary or expedient for the purposes of the arrangements.

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- (3) Any such arrangements—
- (a) shall not affect the liability to corporation tax, or to pay corporation tax, of any company to which the arrangements relate; and
  - (b) shall not affect any other liability of any such company under the Tax Acts.
- (4) For the purposes of this section a company and all its 51 per cent. subsidiaries form a group of companies and, if any of those subsidiaries have 51 per cent. subsidiaries, the group of companies includes them and their 51 per cent. subsidiaries, and so on.
- (5) The reference in subsection (2)(c) above to any amount treated as corporation tax is a reference—
- (a) to any amount due from a company under section 419 of the Taxes Act 1988 (loans to participators etc) as if it were an amount of corporation tax chargeable on the company;
  - (b) to any sum chargeable on a company under section 747(4)(a) of the Taxes Act 1988 (controlled foreign companies) as if it were an amount of corporation tax.

#### *Gilt-edged securities*

### **37 Abolition of periodic accounting.**

- (1) Section 51B of the Taxes Act 1988 (which enables provision to be made requiring tax on interest on gilt-edged securities to be accounted for periodically) shall cease to have effect.
- (2) In consequence of subsection (1) above, in paragraph 3 of Schedule 19AB to that Act (repayment of excessive provisional payments made on self-assessment), in subparagraph (1C) (as inserted by Schedule 34 to the <sup>M30</sup>Finance Act 1996)—
- (a) the word “or” shall be inserted at the end of paragraph (a); and
  - (b) paragraph (c) and the word “or” immediately preceding it shall be omitted.
- (3) The preceding provisions of this section have effect in relation only to payments of interest falling due on or after such day as the Treasury may by order appoint.

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#### **Subordinate Legislation Made**

**P1** [S. 37\(3\)](#) power exercised (9.3.1999): 1.4.1999 appointed by [S.I. 1999/619](#), [art. 2](#)

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#### **Marginal Citations**

**M30** [1996 c. 8](#).

#### *Rents and other receipts from land*

### **38 Taxation of rents and other receipts from land.**

- (1) The provisions of Schedule 5 to this Act have effect with respect to tax on rents and other receipts from land.
- Part I contains amendments relating to the charge to tax under Schedule A or Case V of Schedule D on rents and other receipts from land.

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Part II contains amendments about relief for losses incurred in a Schedule A business or overseas property business, and the relationship between such relief and other reliefs.

Part III contains minor and consequential amendments.

- (2) So far as relating to income tax, the provisions of Parts I to III of that Schedule have effect for the year 1998-99 and subsequent years of assessment.
- (3) So far as relating to corporation tax, the provisions of Parts I to III of that Schedule come into force on 1st April 1998, subject to the transitional provisions in Part IV of the Schedule.

### **39 Land managed as one estate and maintenance funds for historic buildings.**

Sections 26 and 27 of the Taxes Act 1988 (deductions from rent: land managed as one estate and maintenance funds for historic buildings) shall cease to have effect—

- (a) for income tax purposes, on and after 6th April 2001;
- (b) for corporation tax purposes, for accounting periods beginning on or after 1st April 2001.

### **40 Treatment of premiums as rent.**

- (1) Section 34 of the Taxes Act 1988 (treatment of premiums, etc. as rent) is amended as follows.
- (2) In subsection (1) for “becoming entitled when the lease is granted to” substitute “receiving when the lease is granted”.
- (3) In subsection (4)—
  - (a) in paragraph (a), for the words from “in computing” to “in lieu of rent” substitute “in computing the profits of the Schedule A business of which the sum payable in lieu of rent is by virtue of this subsection to be treated as a receipt”; and
  - (b) in paragraph (b), for “deemed to become due” substitute “deemed to be received”.
- (4) In subsection (5)—
  - (a) in paragraph (a), for “tax chargeable by virtue of this subsection” substitute “the profits of the Schedule A business of which that sum is by virtue of this subsection to be treated as a receipt”; and
  - (b) in paragraph (b), for “deemed to become due” substitute “deemed to be received”.
- (5) The above amendments have effect in relation to amounts treated as received under section 34 of the Taxes Act 1988 on or after 17th March 1998.

### **41 Tied premises: receipts and expenses treated as those of trade.**

- (1) For section 98 of the Taxes Act 1988 (tied premises) substitute—

**“98 Tied premises: receipts and expenses treated as those of trade.**

- (1) This section applies where a person (“the trader”)—

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- (a) carries on a trade,
    - (b) in the course of the trade supplies, or is concerned in the supply of, goods sold or used on premises occupied by another person,
    - (c) has an estate or interest in those premises, and
    - (d) deals with that estate or interest as property employed for the purposes of the trade.
  - (2) Where this section applies the receipts and expenses in connection with the premises that would otherwise fall to be brought into account in computing the profits of a Schedule A business carried on by the trader shall instead be brought into account in computing the profits of the trade.
  - (3) Any necessary apportionment shall be made on a just and reasonable basis of receipts or expenses—
    - (a) which do not relate only to the premises concerned, or
    - (b) where the conditions in subsection (1) are met only in relation to part of the premises.
  - (4) This section applies to premises outside the United Kingdom as if the premises were in the United Kingdom.”.
- (2) In section 156 of the <sup>M31</sup>Taxation of Chargeable Gains Act 1992 (replacement of business assets: buildings and land), for subsection (4) substitute—
  - “(4) Where section 98 of the Taxes Act applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.”.
- (3) The above amendments have effect on and after 17th March 1998, subject to the following transitional provisions.
  - In those provisions—
    - “before commencement” and “after commencement” mean, respectively, before 17th March 1998 and on or after that date; and
    - “the new section 98” means the section as substituted by subsection (1) above.
  - (4) To the extent that receipts or expenses have been taken into account before commencement, they shall not be taken into account again under the new section 98 after commencement.
  - (5) To the extent that receipts or expenses would under the new section 98 have been brought into account before commencement, and were not so brought into account, they shall be brought into account immediately after commencement.
  - (6) If any estate, interest or rights in or over land is or are transferred from one person to another, the references in subsections (4) and (5) above to receipts or expenses being taken into account shall be construed as references to their being taken into account in relation to either of those persons.
  - (7) For the purposes of those subsections an amount is “taken into account” if—
    - (a) it is brought into account for tax purposes, or
    - (b) it would have been so brought into account if the person concerned were chargeable to tax.

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**Marginal Citations**

**M31** 1992 c. 12.

*Computation of profits of trade, profession or vocation*

**42 Computation of profits of trade, profession or vocation.**

- (1) For the purposes of Case I or II of Schedule D the profits of a trade, profession or vocation must be computed on an accounting basis which gives a true and fair view, subject to any adjustment required or authorised by law in computing profits for those purposes.
- (2) This does not—
  - (a) require a person to comply with the requirements of the <sup>M32</sup>Companies Act 1985 or the <sup>M33</sup>Companies (Northern Ireland) Order 1986 except as to the basis of computation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section applies to periods of account beginning after 6th April 1999.  
 A period of account beginning on or before 6th April 1999 which is still current on 7th April 2000 shall be treated for the purposes of this section as having ended on 6th April 1999 and a new period as having begun on 7th April 1999.
- (4) This section is subject to the exemption in section 43 below (barristers and advocates in early years of practice).
- (5) This section does not affect provisions of the Tax Acts relating to the computation of the profits of Lloyd’s underwriters or companies carrying on life insurance, or otherwise laying down special rules for the computation of the profits of a particular description of business.

**Marginal Citations**

**M32** 1985 c. 6.

**M33** S.I. 1986/1032 (N.I. 6).

**43 Barristers and advocates in early years of practice.**

- (1) The profits of a barrister or advocate in actual practice for a period of account ending not more than seven years after the commencement of such practice may be computed in accordance with this section.
- (2) For this purpose barristers and advocates are regarded as commencing in actual practice when they first hold themselves out as available for fee-earning work.
- (3) The profits of a barrister or advocate for a period of account to which this section applies may be computed—
  - (a) on a cash basis, or
  - (b) by reference to fees earned whose amount has been agreed or in respect of which a fee note has been delivered.



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Once a particular basis has been adopted it must be applied consistently.

- (4) The exemption given by this section ceases if for any period of account an accounting basis is adopted that complies with section 42 above.

In that case, that section applies to all subsequent periods of account.

#### **44 Change of accounting basis.**

- (1) The provisions of Schedule 6 to this Act apply where there is a change, from one period of account to the next of a trade, profession or vocation, of the accounting basis on which profits are computed for tax purposes.
- (2) The Schedule only applies if the old basis accords with the law and practice applicable immediately before the change and the new basis accords with the law and practice applicable immediately after the change.
- (3) The provisions of the Schedule replace section 104(4) of the Taxes Act 1988 and any rule of law as to the adjustments necessary for tax purposes in those circumstances.
- (4) They apply to any change of accounting basis taking effect on or after 6th April 1999.

#### **45 Meaning of “period of account”.**

In sections 42 to 44 above a “period of account” means any period for which accounts of the trade, profession or vocation are drawn up.

#### **46 Minor and consequential provisions about computations.**

- (1) In provisions of the Tax Acts relating to the computation of the profits of a trade, profession or vocation references to receipts and expenses are (except where otherwise expressly provided) to any items brought into account as credits or debits in computing such profits.

There is no implication that an amount has been actually received or expended.

- (2) Except where otherwise expressly provided, the same rules apply in computing losses of a trade, profession or vocation for any purpose of the Tax Acts as apply in computing profits.
- (3) In the provisions of the Tax Acts which refer to the subject of the charge under Case I or II of Schedule D as “profits or gains” or “profits and gains” of a trade, profession or vocation—
- (a) for “profits or gains” or “profits and gains”, wherever occurring, substitute “profits”, and
  - (b) for “arising or accruing”, in reference to such profits or gains, substitute “arising”.

The provisions affected are listed in Schedule 7 to this Act.

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### *Gifts to charities*

#### **47 Gifts in kind for relief in poor countries.**

- (1) This section applies where—
- (a) any article falling within subsection (2) below is given to a charity at any time in the period beginning with the first designation date and ending with 31st December 2000;
  - (b) the person making the gift (“the donor”) is a person carrying on a trade, profession or vocation; and
  - (c) that gift is made for the purpose of enabling the article to be used in a designated country or territory either for medical purposes or by an educational establishment in that country or territory.
- (2) An article falls within this subsection if—
- (a) it is an article manufactured, or of a class or description sold, by the donor in the course of his trade; or
  - (b) it is an article used by the donor in the course of his trade, profession or vocation which for the purposes of Part II of the <sup>M34</sup>Capital Allowances Act 1990 constitutes machinery or plant used by him wholly or partly in the course of that trade, profession or vocation.
- (3) Subject to subsections (4) and (5) below, where this section applies in the case of the gift of any article—
- (a) no amount shall be required, in consequence of the donor’s disposal of that article from trading stock, to be brought into account for the purposes of the Tax Acts as a trading receipt of the donor; and
  - (b) subsection (6) of section 24 of the <sup>M35</sup>Capital Allowances Act 1990 shall not require the donor to bring into account any disposal value in respect of the article for the purposes of that section.
- (4) In any case where—
- (a) relief is given under subsection (3) above in respect of the gift of an article, and
  - (b) any benefit received in any chargeable period by the donor or any person connected with him is in any way attributable to the making of that gift,
- the donor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.
- (5) Subsection (3) above shall not apply unless the donor makes a claim for relief under this section; and such a claim—
- (a) must be made within the required period; and
  - (b) must specify the article given and the name of the charity to which it is given.
- (6) In subsection (5)(a) above “the required period” means—
- (a) in the case of a claim with respect to income tax, the period ending with the first anniversary of the 31st January next following the year of assessment in whose basis period the gift is made; and
  - (b) in the case of a claim with respect to corporation tax, the period of two years beginning at the end of the accounting period in which the gift is made.

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- (7) In paragraph (a) of subsection (6) above “basis period” means—
- (a) in relation to a year of assessment for which a basis period is given by sections 60 to 63 of the Taxes Act 1988, that basis period; and
  - (b) in relation to a year of assessment for which no basis period is given by those sections, the year of assessment.
- (8) A country or territory is a designated country or territory for the purposes of this section if—
- (a) it is designated as such by an order made for those purposes by the Treasury; or
  - (b) it is of a description specified in an order so made;
- and a description specified in such an order may be expressed by reference to the opinion of any person so specified or by reference to the contents from time to time of a document prepared by a person so specified.
- (9) In this section—
- “charity” has the same meaning as in section 506 of the Taxes Act 1988;
  - “the first designation date” means the date on which the Treasury first makes an order under subsection (8) above; and
  - “medical purposes” includes medical research and the promotion of health.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this section.

#### Marginal Citations

M34 1990 c. 1.

M35 1990 c. 1.

## 48 Gifts of money for relief in poor countries.

- (1) This section applies to any gift of a sum of money by an individual to a charity that has given the required notification to the Board if that gift is made—
- (a) in the period beginning with the first designation date and ending with 31st December 2000; and
  - (b) in circumstances giving rise to a reasonable expectation that the sum given will be applied for, or in connection with, one or both of the purposes specified in subsection (2) below.
- (2) Those purposes are—
- (a) the relief of poverty in any one or more designated countries or territories, and
  - (b) the advancement of education in any one or more designated countries or territories.
- (3) Subject to the following provisions of this section, subsection (2)(g) of section 25 of the <sup>M36</sup>Finance Act 1990 (minimum payment for which relief given on gift by an individual) shall have effect in relation to any gift to which this section applies as if for “£250” there were substituted “ £100 ”.
- (4) Where—
- (a) a relevant gift of less than £100 is made by an individual to a charity that has given the required notification to the Board,

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- (b) the aggregate of that gift and any one or more subsequent relevant gifts made by that individual to that charity is £100 or more,
- (c) that individual gives an appropriate certificate in relation to that aggregate to that charity, and
- (d) the condition specified in paragraph (e) of subsection (2) of section 25 of the <sup>M37</sup>Finance Act 1990 (limit on benefit for the donor) would be satisfied if the aggregated gifts constituted a single gift by that individual to that charity made at the time of the making of the last of them to be made,

the aggregated gifts shall be treated for the purposes of that section [<sup>F2</sup>(but subject to subsection (4A) below)] as if they together constituted a single qualifying donation made by that individual to that charity at that time.

[<sup>F3</sup>(4A) Subsection (10) of section 25 of the <sup>M38</sup>Finance Act 1990 (receipts of gifts by a charity to be treated as payments of grossed-up amounts after deduction of basic rate income tax) shall have effect where—

- (a) any aggregated gifts are treated under this section as a single qualifying donation made to a charity, and
- (b) the aggregated gifts include gifts made in different years of assessment,

as if that single qualifying donation had been received by the charity in the year of assessment in which the first of the aggregated gifts was made and as if that were the relevant year of assessment for the purposes of that subsection.]

- (5) The gifts aggregated for the purposes of subsection (4) above must not include either—
  - (a) a relevant gift of £250 or more; or
  - (b) more than one relevant gift of £100 or more.

- (6) The reference in paragraph (c) of subsection (4) above to an appropriate certificate is a reference to a certificate which states—

- (a) that each of the gifts being aggregated qualifies as a relevant gift for the purposes of this section;
- (b) that if those gifts are treated in accordance with this section as a single qualifying donation made at the time specified in subsection (4) above, the single donation will satisfy the taxation condition; and
- (c) that the condition in paragraph (d) of that subsection is satisfied in the case of those gifts taken together.

- (7) For the purposes of subsection (6) above the taxation condition in the case of any relevant gift is that, either directly or by deduction from profits or gains brought into charge to tax in the relevant year of assessment, the individual making the gift has paid or will pay to the Board income tax of an amount equal to income tax at the basic rate for the relevant year of assessment on the grossed up amount of that gift.

- (8) In this section—

“the first designation date” means the date on which the Treasury first makes an order under subsection (9) below;

“relevant gift” means a gift to which this section applies which is either—

- (a) a gift which satisfies the requirements of subsection (2) of section 25 of the <sup>M39</sup>Finance Act 1990; or
- (b) a gift of less than £100 which would satisfy those requirements if paragraph (g) of that subsection, or that paragraph together with paragraph (e), were disregarded;

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- and
- “required notification”, in relation to a charity, means a notification (including one given before the passing of this Act) which—
- (i) is in such form, and contains such information, as may have been required by the Board, and
  - (ii) contains a statement to the effect that the charity proposes to accept gifts to which this section applies.
- (9) A country or territory is a designated country or territory for the purposes of this section if—
- (a) it is designated as such by an order made for those purposes by the Treasury; or
  - (b) it is of a description specified in an order so made;
- and a description specified in such an order may be expressed by reference to the opinion of any person so specified or by reference to the contents from time to time of a document prepared by a person so specified.
- (10) Expressions used in this section and in section 25 of the <sup>M40</sup>Finance Act 1990 have the same meanings in this section as in that section.

#### Textual Amendments

**F2** Words in s. 48(4) inserted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 57(1)(2)

**F3** S. 48(4A) inserted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 57(1)(3)

#### Marginal Citations

**M36** 1990 c. 29.

**M37** 1990 c. 29.

**M38** 1990 c.29.

**M39** 1990 c. 29.

**M40** 1990 c. 29.

### *Employee share incentives*

#### **49 Employee share options.**

- (1) In section 135 of the Taxes Act 1988, in each of subsections (2) and (5) (in accordance with which there is a charge to tax when an employee obtains a share option that is exercisable more than seven years after being obtained), for “seven” there shall be substituted “ten”.
- (2) Subsection (1) above has effect in relation to rights obtained on or after 6th April 1998.

#### **50 Conditional acquisition of shares.**

- (1) After section 140 of the Taxes Act 1988 there shall be inserted the following sections—

##### **“140A Conditional acquisition of shares.**

- (1) This section applies where—

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- (a) a beneficial interest in any shares in a company (“the employee’s interest”) is acquired by any person (“the employee”) as a director or employee of that or another company; and
  - (b) the employee acquires that interest on terms that make his interest in the shares only conditional.
- (2) If the terms on which the employee acquires the employee’s interest are such that his interest in the shares in question will or might continue to be only conditional until a time more than five years after his acquisition of the interest, tax shall be chargeable under Schedule E in respect of that interest on the basis that it is emoluments of the office or employment concerned.
- (3) In any other case, there shall (subject to the following provisions of this section) be no tax chargeable on the employee under Schedule E in respect of his acquisition of the interest except any tax which is so chargeable by virtue only of section 135 or 162.
- (4) If, in a case falling within subsection (2) or (3) above—
- (a) the shares cease, without the employee ceasing to have a beneficial interest in them, to be shares in which the employee’s interest is only conditional, or
  - (b) the employee, not having become chargeable by virtue of this subsection in relation to the shares, sells or otherwise disposes of the employee’s interest or any other beneficial interest in them,
- he shall, for the year of assessment in which they so cease, or in which the sale or other disposal takes place, be chargeable to tax under Schedule E on the amount specified in subsection (5) below.
- (5) That amount is the amount (if any) by which the sum of the deductible amounts is exceeded by the market value of the employee’s interest immediately after that interest ceases to be only conditional or, as the case may be, at the time of the sale or other disposal.
- (6) For the purposes of subsection (5) above the market value of the employee’s interest at any time is the amount that might reasonably be expected to be obtained from a sale of that interest in the open market at that time.
- (7) For those purposes the deductible amounts are—
- (a) the amount or value of the consideration given for the employee’s interest;
  - (b) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of the employee’s interest;
  - (c) any amounts on which the employee has, by reference to an event occurring not later than the time of the event by virtue of which a charge arises under this section, become chargeable to tax in respect of the shares under section 78 or 79 of the <sup>M41</sup>Finance Act 1988 (unapproved employee share schemes).
- (8) Where the employee dies holding the employee’s interest this section shall have effect—
- (a) as if he had disposed of that interest immediately before his death; and

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- (b) as if the market value of the interest at the time of that disposal were to be determined for the purposes of subsection (5) above on the basis—
    - (i) that it is known that the disposal is being made immediately before the employee's death; and
    - (ii) that any restriction on disposal subject to which the employee holds the shares is to be disregarded in so far as it is a restriction terminating on his death.
- (9) Any reference in this section or section 140B or 140C to shares in a company includes a reference to securities issued by a company; and the references in subsection (7)(c) above to an event include references to the expiry of a period.

#### **140B Consideration for shares conditionally acquired.**

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140A(7)(a).
- (2) Subject to the following provisions of this section, that consideration is any given by—
  - (a) the employee; or
  - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,in respect of the acquisition of an interest in the shares.
- (3) The amount or value of the consideration given by any person for an interest in the shares shall include—
  - (a) the amount or value of any consideration given for a right to acquire those shares; and
  - (b) the amount or value of any consideration given for anything by virtue of which the employee's interest in the shares ceases to be only conditional.
- (4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.
- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the interest in the shares in question has been acquired by a person as a director or employee of a company.
- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3)(a) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.

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### **140C Cases where interest to be treated as only conditional.**

- (1) For the purposes of sections 140A and 140B (but subject to the following provisions of this section) a beneficial interest in shares is only conditional for so long as the terms on which the person with that interest is entitled to it—
  - (a) provide that, if certain circumstances arise, or do not arise, there will be a transfer, reversion or forfeiture as a result of which that person will cease to be entitled to any beneficial interest in the shares; and
  - (b) are not such that, on the transfer, reversion or forfeiture, that person will be entitled in respect of his interest to receive an amount equal to or more than the amount that might reasonably be expected (if there were no provision for transfer, reversion or forfeiture) to be obtained from a sale of that interest in the open market at that time.
- (2) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any shares, to have an interest which is only conditional by reason only that, in a case where there is no restriction on the meeting of calls by that person, the shares—
  - (a) are unpaid or partly paid; and
  - (b) may be forfeited for non-payment of calls.
- (3) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any shares in a company, to have an interest which is only conditional by reason only that the articles of association of the company require him to offer the shares for sale if he ceases to be an officer or, as the case may be, employee of the company.
- (4) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any security, to have an interest which is only conditional by reason only that the security may be redeemed on payment of any amount.
- (5) In subsection (1) above the references, in relation to the terms of a person's entitlement, to circumstances arising include references—
  - (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
  - (b) to the exercise by any person of any power conferred on him by or under those terms."
- (2) In section 77(1) of the <sup>M42</sup>Finance Act 1988 (application of Chapter about unapproved employee share schemes), after "Subject to" there shall be inserted " section 140A of the Taxes Act 1988 and "
- (3) After subsection (6) of section 79 of that Act (charge for shares in dependent subsidiaries) there shall be inserted the following subsection—
 

“(6A) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140A(4) of the Taxes Act 1988 (employee's interest in shares ceasing to be only conditional) on any amount (“the charged amount”) in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount.”



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- (4) The preceding provisions of this section apply in relation to interests acquired on or after 17th March 1998.

**Marginal Citations**

- M41** 1988 c. 39.  
**M42** 1988 c. 39.

**51 Convertible shares provided to directors and employees.**

- (1) After the section 140C of the Taxes Act 1988 inserted by section 50 above there shall be inserted the following sections—

**“140D Convertible shares.**

- (1) This section applies where a person (“the employee”) has acquired convertible shares in a company as a director or employee of that or another company.
- (2) For the purposes of this section shares are convertible wherever they—
- (a) confer on the holder an immediate or conditional entitlement to convert them into shares of a different class; or
  - (b) are held on terms that authorise or require the grant of such an entitlement to the holder if certain circumstances arise, or do not arise.
- (3) The employee shall be chargeable to tax under Schedule E if, at a time when he has a beneficial interest in them, the shares are converted into shares of a different class in pursuance of any entitlement to convert them that has been conferred on the holder.
- (4) A charge by virtue of this section shall be a charge for the year of assessment in which the conversion occurs on the amount of the gain from the conversion.
- (5) The amount of the gain from the conversion is the amount (if any) by which the market value at the time of the conversion of the shares into which the convertible shares are converted exceeds the sum of the deductible amounts.
- (6) The deductible amounts are—
- (a) the amount or value of any consideration given for the convertible shares;
  - (b) the amount or value of any consideration given for the conversion in question;
  - (c) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of those shares;
  - (d) any amounts on which the employee has, by reference to an event occurring not later than the time of the conversion, become chargeable to tax in respect of the shares under section 78 or 79 of the <sup>M43</sup>Finance Act 1988 (unapproved employee share schemes);
  - (e) if the convertible shares were acquired through a series of conversions each of which was a taxable conversion, the amount of the gain from each conversion, so far as not falling within paragraph (c) above.

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- (7) In subsection (6) above the reference to a taxable conversion is a reference to any conversion which—
- (a) gave rise to a gain on which the employee was chargeable to tax by virtue of this section, or
  - (b) would have given rise to such a gain but for the fact that the market value of the shares at the time of the conversion did not exceed the sum of the deductible amounts.
- (8) Tax shall not be chargeable by virtue of this section if—
- (a) the conversion is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);
  - (b) all shares of the original class are converted into shares of the new class; and
  - (c) one of the conditions in subsection (9) below is fulfilled.
- (9) The conditions referred to in subsection (8) above are—
- (a) that immediately before the conversion the majority of the company’s shares of the original class are held otherwise than by or for the benefit of—
    - (i) directors or employees of the company;
    - (ii) an associated company of the company; or
    - (iii) directors or employees of such an associated company;
 and
  - (b) that immediately before the conversion the company is employee-controlled by virtue of holdings of shares of the original class.
- (10) Tax shall not be chargeable by virtue of this section where the interest which the employee acquires in the shares into which the convertible shares are converted is an interest which (within the meaning given for the purposes of section 140A by section 140C) is only conditional.

#### **140E Consideration for convertible shares.**

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140D(6)(a) or (b).
- (2) Subject to the following provisions of this section, the consideration referred to in section 140D(6)(a) is any consideration given by—
  - (a) the employee; or
  - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,
 in respect of the acquisition of the shares.
- (3) The amount or value of the consideration given by any person for any shares shall include the amount or value of any consideration given for a right to acquire those shares.
- (4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.

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- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the shares in question have been acquired by a person as a director or employee of a company.
- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.

#### **140F Supplemental provision with respect to convertible shares.**

- (1) Where—
  - (a) a person has an interest in any convertible shares at the time of his death,
  - (b) those shares are converted into shares of a different class either on his death or within the following twelve months, and
  - (c) the conversion takes place wholly or partly as a consequence of his death,section 140D shall have effect as if the conversion had taken place immediately before his death and had been in pursuance of an entitlement to convert conferred on the deceased.
- (2) In section 140D(2) the references, in relation to the terms of a person's entitlement, to circumstances arising include references—
  - (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
  - (b) to the exercise by any person of any power conferred on him by or under those terms.
- (3) For the purposes of section 140D, the market value of any shares at any time is the amount that might reasonably be expected to be obtained from a sale of the shares in the open market at that time.
- (4) In this section and section 140D “associated company” has the same meaning as it has for the purposes of Part XI by virtue of section 416.
- (5) For the purposes of section 140D a company is employee-controlled by virtue of holdings of shares of a class if—
  - (a) the majority of the company's shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees or directors of the company or a company controlled by the company; and
  - (b) those directors and employees are together able as holders of the shares to control the company.
- (6) The provisions of sections 140D and 140E and this section apply in relation to an interest in shares as they apply in relation to shares.

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- (7) Section 840 (control) applies for the purposes of this section.”
- (2) Before subsection (7) of section 79 of the <sup>M44</sup>Finance Act 1988 (charge for shares in dependent subsidiaries) there shall be inserted the following subsection—
- “(6B) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140D(3) of the Taxes Act 1988 (charge on conversion of convertible shares) on any amount (“the charged amount”) in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount.”
- (3) The preceding provisions of this section apply in relation to shares acquired on or after 17th March 1998.

**Marginal Citations**

**M43** 1988 c. 39.

**M44** 1988 c. 39.

**52 Information powers.**

- (1) After the section 140F of the Taxes Act 1988 inserted by section 51 above there shall be inserted the following section—

**“140G Information for the purposes of sections 140A to 140F.**

- (1) Where—
- (a) any person provides any individual with an interest in shares which is only conditional, and
  - (b) the circumstances are such that—
    - (i) the acquisition of that interest by that individual,
    - (ii) its subsequently ceasing to be only conditional,
    - (iii) its subsequent disposal, or
    - (iv) the death of the individual,
 gives rise or may give rise to a charge under section 140A on that individual,
- each of the relevant persons shall deliver to an officer of the Board particulars in writing of the interest and its provision.
- (2) Where—
- (a) a person has an interest in any shares which is only conditional,
  - (b) those shares cease to be shares in which that person’s interest is only conditional or are disposed of or that person dies, and
  - (c) that event gives rise to a charge under section 140A(4),
- each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and the event.
- (3) Where—

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- (a) any person has provided any individual with any convertible shares in a company,
- (b) those shares are subsequently converted into shares of a different class, and
- (c) the circumstances are such that the conversion gives rise or may give rise to a charge under section 140D on that individual,

each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and their conversion.

- (4) For the purposes of this section the relevant persons are—
  - (a) the person who is providing, or who provided, the shares in question; and
  - (b) the person under or with whom the office or employment is or was held by reference to which the charge may arise or has arisen.
- (5) Particulars required to be delivered under this section must be delivered no later than thirty days after the end of the year of assessment in which the interest is provided, the event occurs or the conversion takes place.
- (6) Expressions used in this section and in section 140A or 140D above have the same meanings in this section as in section 140A or, as the case may be, section 140D.”

- (2) In the second column of the Table in section 98 of the <sup>M45</sup>Taxes Management Act 1970 (penalties for failure to furnish information), after the entry relating to section 136(6) of the Taxes Act 1988 there shall be inserted the following entry—

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“section 140G;”.

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**Marginal Citations**  
M45 1970 c. 9.

### 53 Provision supplemental to sections 50 to 52.

After the section 140G of the Taxes Act 1988 inserted by section 52 above there shall be inserted the following section—

#### “140H Construction of sections 140A to 140G.

- (1) For the purposes of sections 140A to 140G and this section, a person acquires any shares or securities as a director or employee of a company if—
  - (a) he acquires them in pursuance of a right conferred on him, or an opportunity offered to him, by reason of his office or employment as a director or employee of the company; or
  - (b) the shares or securities are, or a right or opportunity in pursuance of which he acquires them is, assigned to him after being acquired by, conferred on or, as the case may be, offered to some other person by reason of the assignee’s office or employment as a director or employee of the company.

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- (2) Subject to subsection (3) below, the references in subsection (1) above to a right or opportunity conferred or offered by reason of a person's office or employment shall be taken to include—
- (a) a reference to one so conferred or offered after he has ceased to hold it; and
  - (b) a reference to one that arises from the fact that any shares which a person acquires as a director or employee (or is treated as so acquiring by virtue of this paragraph) are convertible for the purposes of section 140D.
- (3) For the purposes of this section—
- (a) the references in subsections (1) and (2) above to a person's office or employment are references only to an office or employment in respect of which he is chargeable to tax under Case I of Schedule E; but
  - (b) subsection (2)(a) above shall not apply where a right or opportunity conferred or offered in the last chargeable period in which the office or employment was held by the person in question would not have fallen to be taken into account for the purposes of subsection (1)(a) above.
- (4) Without prejudice to subsection (2)(b) above where—
- (a) a person has acquired an interest in any shares or securities which is only conditional or has acquired any convertible shares,
  - (b) he acquired that interest or those shares as a director or employee of a company, or is treated by virtue of this subsection as having done so, and
  - (c) as a result of any two or more transactions—
    - (i) he ceases to be entitled to that interest or those shares, and
    - (ii) he or a connected person becomes entitled to any interest in any shares or securities which is only conditional or to any convertible shares,
 he shall be treated for the purposes of sections 140A to 140G as if the interest or shares to which he becomes entitled were also acquired by him as a director or employee of the company in question.
- (5) Sections 140C and 140D(2) have effect for the purposes of subsection (4) above as they have effect for the purposes of sections 140A and 140B and section 140D respectively.
- (6) References in sections 140A to 140G or this section to the terms on which a person is entitled to an interest in shares or securities include references to any terms imposed by any contract or arrangement or in any other way.
- (7) References in this section to shares or to securities include references to an interest in shares or, as the case may be, securities.
- (8) Subsection (5) of section 136 applies for the purposes of sections 140A to 140G and this section as it applies for the purposes of that section but as if—
- (a) references to a body corporate were references to a company;
  - (b) at the end of paragraph (d) there were inserted "or any other interest of a member of a company"; and
  - (c) the words after paragraph (d) were omitted.

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(9) Section 839 applies for the purposes of this section.”

#### 54 Amendments consequential on sections 50 to 53.

- (1) The <sup>M46</sup>Taxation of Chargeable Gains Act 1992 shall be amended as follows.
- (2) After subsection (5) of section 120 (increase of expenditure by reference to tax charged in relation to shares) there shall be inserted the following subsections—
  - “(5A) Where an amount is chargeable to tax under section 140A of the Taxes Act in respect of—
    - (a) the acquisition or disposal of any interest in shares, or
    - (b) any interest in shares ceasing to be only conditional,the relevant amount is a sum equal to the amount so chargeable.
  - (5B) Where an amount is chargeable to tax under section 140D of the Taxes Act in respect of the conversion of shares, the relevant amount is a sum equal to the amount so chargeable.”
- (3) In subsection (7) of that section—
  - (a) after “(5),” there shall be inserted “, (5A), (5B) ”; and
  - (b) after “138” there shall be inserted “, 140A, 140D ”.
- (4) After that subsection there shall be inserted the following subsection—
  - “(8) For the purposes of subsection (5A) above this section shall have effect as if references in this section to shares included anything referred to as shares in section 140A of the Taxes Act.”
- (5) After section 149A there shall be inserted the following section—

##### “149B Employee incentive schemes: conditional interests in shares.

- (1) Where—
  - (a) an individual has acquired an interest in any shares or securities which is only conditional,
  - (b) that interest is one which for the purposes of section 140A of the Taxes Act is taken to have been acquired by him as a director or employee of a company, and
  - (c) by virtue of section 17(1)(b) the acquisition of that interest would, apart from this section, be an acquisition for a consideration equal to the market value of the interest,section 17 shall not apply for calculating the consideration.
- (2) Instead, the consideration for the acquisition shall be taken (subject to section 120) to be equal to the actual amount or value of the consideration given for that interest as computed in accordance with section 140B of the Taxes Act.
- (3) This section shall apply in relation only to the individual making the acquisition and, accordingly, shall be disregarded in calculating the consideration received by the person from whom the interest is acquired.

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- (4) Expressions used in this section and in section 140A of the Taxes Act have the same meanings in this section as in that section.”
- (6) This section has effect in relation to disposals on or after 17th March 1998 of interests and shares acquired on or after that date.

#### Marginal Citations

M46 1992 c. 12.

### *Construction industry workers*

#### **55 Construction workers supplied by agencies.**

- (1) In section 134 of the Taxes Act 1988, subsection (5)(c) (which excepts from charge by virtue of that section the remuneration of construction workers who are sub-contractors supplied by agencies) shall cease to have effect.
- (2) In section 559 of the Taxes Act 1988 (deductions on account of tax etc. from payments to certain sub-contractors), in subsection (1), for “subsection (2) below” there shall be substituted “ the following provisions of this section ”; and after subsection (1) there shall be inserted the following subsection—
- “(1A) Subsection (1) above shall not apply to any payment made under the contract in question that is chargeable to income tax under Schedule E by virtue of section 134(1).”
- (3) Subsections (1) and (2) above have effect in relation to—
- (a) any payments made on or after 6th April 1998 other than any made in respect of services rendered before that date; and
  - (b) any payments made before 6th April 1998 in respect of services to be rendered on or after that date.

#### **56 Transitional provisions in connection with section 55.**

- (1) Subject to subsection (6) below, subsection (2) below applies if—
- (a) a construction trade is being carried on by a person (“the sub-contractor”) at the end of the year 1997-98; and
  - (b) there are receipts of that trade which, but for section 134(5)(c) of the Taxes Act 1988, would have fallen to be treated for the year 1997-98 as the emoluments of an office or employment.
- (2) Where this subsection applies, then, subject to subsections (4) and (5) below—
- (a) the trade shall be deemed to have been permanently discontinued at the end of the year 1997-98; and
  - (b) to the extent (if any) that the trade includes activities in addition to the rendering of services falling by virtue of section 55 to be treated as the duties of an office or employment, a new trade shall be deemed to have been set up and commenced on 6th April 1998.
- (3) Subsection (4) below applies if—



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- (a) a construction trade (“the old trade”) is deemed by virtue of subsection (2)(a) above to have been permanently discontinued; and
  - (b) a construction trade (“the new trade”)—
    - (i) is deemed by virtue of subsection (2)(b) above to have been set up and commenced; or
    - (ii) (where sub-paragraph (i) above does not apply) is actually set up and commenced in the year 1998-99.
- (4) Where this subsection applies then, notwithstanding the deemed discontinuance, the old trade and the new trade shall be treated as the same for the purposes of section 385 of the Taxes Act 1988 (carry-forward of losses against subsequent profits).
- (5) An officer of the Board shall not become entitled by virtue of anything in this section to give a direction under paragraph 3(2) of Schedule 20 to the <sup>M47</sup>Finance Act 1994 (power to revise assessment so that made on the actual basis) in the case of a person whose trade is deemed under subsection (2) above to cease on 5th April 1998.
- (6) Subsection (2) above does not apply if the sub-contractor by notice to an officer of the Board otherwise elects.
- (7) An election under subsection (6) above—
- (a) if it relates to a trade carried on by an individual, must be included in a return under section 8 of the <sup>M48</sup>Taxes Management Act 1970 which is made and delivered in that individual’s case on or before the day on which it is required to be made and delivered under that section; and
  - (b) if it relates to a trade carried on by persons in partnership, must be included in a return under section 12AA of that Act which is made and delivered in the partners’ case, or in the case of any one or more of them, on or before the day specified in relation to that return under subsection (2) or (3) of that section.
- (8) In this section “construction trade” means a trade consisting in or including the rendering of services under contracts relating to construction operations (within the meaning of Chapter IV of Part XIII of the Taxes Act 1988).
- (9) Where at any time on or after 17th March 1998 and before the day on which this Act is passed any election corresponding to an election under subsection (6) above has been made under a resolution of the House of Commons having effect in accordance with the provisions of the <sup>M49</sup>Provisional Collection of Taxes Act 1968, this section has effect, on and after the day on which this Act is passed, as if that election were an election under subsection (6) above.

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**Marginal Citations**

**M47** 1994 c. 9.

**M48** 1970 c. 9.

**M49** 1968 c. 2.

**57 Sub-contractors in the construction industry.**

Schedule 8 to this Act (which makes provision in relation to sub-contractors in the construction industry) shall have effect.

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*Payments and other benefits in connection with termination of employment etc.*

## **58 Payments and other benefits in connection with termination of employment, etc.**

- (1) For section 148 of the Taxes Act 1988 (payments on retirement or removal from office or employment) substitute—

### **“148 Payments and other benefits in connection with termination of employment, etc.**

- (1) Payments and other benefits not otherwise chargeable to tax which are received in connection with—
- (a) the termination of a person’s employment, or
  - (b) any change in the duties of or emoluments from a person’s employment,
- are chargeable to tax under this section if and to the extent that their amount exceeds £30,000.
- (2) For the purposes of this section a “benefit” includes anything which, if received for performance of the duties of the employment—
- (a) would be an emolument of the employment, or
  - (b) would be chargeable to tax as an emolument of the employment,
- or which would be such an emolument, or so chargeable, apart from any exemption.
- (3) An amount chargeable to tax under this section is income chargeable under Schedule E for the year of assessment in which the payment or other benefit is received.
- The right to receive the payments or other benefits is not itself regarded as a benefit for this purpose.
- (4) For the purposes of this section—
- (a) a cash benefit is treated as received—
    - (i) when payment is made of or on account of the benefit, or
    - (ii) when the recipient becomes entitled to require payment of or on account of the benefit; and
  - (b) a non-cash benefit is treated as received when it is used or enjoyed.
- (5) This section applies—
- (a) whether the payment or other benefit is provided by the employer or former employer or by another person, and
  - (b) whether or not the payment or other benefit is provided in pursuance of a legal obligation.
- (6) This section has effect subject to Schedule 11, which contains provisions extending, restricting and otherwise supplementing the provisions of this section.
- (7) In this section and that Schedule “employment” includes an office and related expressions have a corresponding meaning.”.

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- (2) In the Taxes Act 1988, for Schedule 11 (relief as respects tax on payments on retirement or removal from office or employment) substitute the Schedule set out in Part I of Schedule 9 to this Act.
- (3) The enactments mentioned in Part II of Schedule 9 to this Act have effect with the amendments specified there which are consequential on this section.
- (4) This section applies to payments or other benefits received (within the meaning of section 148 of the Taxes Act 1988 as substituted by subsection (1) above) on or after 6th April 1998, except where the payment or other benefit or the right to receive it has been brought into charge to tax before that date.

*Benefits in kind*

**59 Car fuel.**

- (1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

“ TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£1,010
More than 1,400 but not more than 2,000	£1,280
More than 2,000	£1,890

TABLE AB

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
2,000 or less	£1,280
More than 2,000	£1,890

TABLE B

<i>Description of car</i>	<i>Cash equivalent</i>
Any car	£1,890”

- (2) This section shall have effect for the year 1998-99 and subsequent years of assessment.

**60 Reductions for road fuel gas cars.**

- (1) In subsection (1) of section 168A of the Taxes Act 1988 (price of a car as regards year), for the words “sections 168B to 168G” there shall be substituted the words “sections 168AB to 168G”.

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(2) In subsection (11) of that section, after the words “section 168AA” there shall be inserted the words “ or 168AB(1) ”.

(3) After section 168AA of that Act there shall be inserted the following section—

**“168AB Equipment etc. to enable car to run on road fuel gas.**

(1) Equipment by means of which the car is capable of running on road fuel gas shall not be regarded as an accessory for the purposes of section 168A.

(2) Where the car is manufactured in such way as to be capable of running on road fuel gas, the price of the car as regards each relevant year shall be treated as the price given by section 168A, reduced by so much of that price as it is reasonable to attribute to the car’s being manufactured in that way rather than in such a way as to be capable of running only on petrol.

(3) In this section “road fuel gas” means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles.”

(4) In subsection (2) of section 168B of that Act (accessories not included in list price), for the words “section 168A” there shall be substituted the words “ sections 168A and 168AB ”.

(5) In subsection (2) of section 168C of that Act (accessories available after car first made available), for the words “sections 168A and 168B” there shall be substituted the words “ sections 168A to 168B ”.

(6) This section has effect for the year 1998-99 and subsequent years of assessment.

## **61 Travelling expenses.**

(1) For subsections (1) to (1B) of section 198 of the Taxes Act 1988 (relief for necessary expenses) substitute—

“(1) If the holder of an office or employment is obliged to incur and defray out of the emoluments of the office or employment—

- (a) qualifying travelling expenses, or
- (b) any amount (other than qualifying travelling expenses) expended wholly, exclusively and necessarily in the performance of the duties of the office or employment,

there may be deducted from the emoluments to be assessed the amount so incurred and defrayed.

(1A) “Qualifying travelling expenses” means—

- (a) amounts necessarily expended on travelling in the performance of the duties of the office or employment, or
- (b) other expenses of travelling which—
  - (i) are attributable to the necessary attendance at any place of the holder of the office or employment in the performance of the duties of the office or employment, and
  - (ii) are not expenses of ordinary commuting or private travel.

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What is ordinary commuting or private travel for this purpose is defined in Schedule 12A.

(1B) Expenses of travel by the holder of an office or employment between two places at which he performs duties of different offices or employments under or with companies in the same group are treated as necessarily expended in the performance of the duties which he is to perform at his destination.

For this purpose companies are taken to be members of the same group if, and only if, one is a 51 per cent. subsidiary of the other or both are 51 per cent. subsidiaries of a third company.”.

- (2) In the Taxes Act 1988 insert as Schedule 12A the Schedule set out in Schedule 10 to this Act.
- (3) This section has effect for the year 1998-99 and subsequent years of assessment.

#### *Profit-related pay*

### **62 Provision preventing manipulation of profit periods.**

Schedule 11 to this Act (which makes provision to prevent the manipulation of profit periods in relation to the phasing out of relief for profit-related pay) shall have effect.

#### *Foreign earnings deduction*

### **63 Withdrawal except in relation to seafarers.**

- (1) Section 193(1) of the Taxes Act 1988 (Schedule E foreign earnings deduction) shall cease to have effect.
- (2) Before that section insert—

#### **“192A Foreign earnings deduction for seafarers.**

- (1) Where in any year of assessment—
- (a) the duties of an employment as a seafarer are performed wholly or partly outside the United Kingdom, and
  - (b) any of those duties are performed in the course of a qualifying period (within the meaning of Schedule 12) which falls wholly or partly in that year and consists of at least 365 days,

then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.

- (2) In subsection (1) employment “as a seafarer” means an employment consisting of the performance of duties on a ship (or of such duties and others incidental to them).
- (3) For the purposes of this section a “ship” does not include—
- (a) any offshore installation within the meaning of the <sup>M50</sup>Mineral Workings (Offshore Installations) Act 1971, or

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- (b) what would be such an installation if the references in that Act to controlled waters were to any waters.
- (4) Schedule 12 has effect for the purpose of supplementing this section.”
- (3) The references in the Taxes Act 1988 to section 193(1) are amended as follows—
- (a) in section 19(1), in Case I of Schedule E, omit the words from “and to section 193(1)” to the end;
  - (b) in paragraph 10 of Schedule 11, after “193(1)” insert “ or 192A ”;
  - (c) in section 132(3) and paragraphs 1, 1A, 2(1), 3(1) and (3), 5 and 6 of Schedule 12, for “193(1)” substitute “ 192A ”.
- (4) In Schedule 12 to that Act—
- (a) in paragraph 3(2) (qualifying periods)—
    - (i) in paragraph (a) for “62” substitute “ 183 ”, and
    - (ii) in paragraph (b) for “one-sixth” substitute “ one-half ”;
  - (b) in paragraph 5 (duties treated as performed outside the United Kingdom)—
    - (i) for “vessel or aircraft” substitute “ ship (within the meaning of section 192A) ”, and
    - (ii) in paragraphs (a) and (b) for “voyage or journey” substitute “ voyage ”.
- (5) Subsections (1) to (4) above have effect in relation to—
- (a) emoluments attributable to qualifying periods beginning on or after 17th March 1998, and
  - (b) emoluments attributable to qualifying periods beginning before 17th March 1998 which are received on or after that date.
- (6) Nothing in those subsections affects the question what deduction (if any) falls to be made under section 193(1) of the Taxes Act 1988 in the case of emoluments attributable to a qualifying period beginning before 17th March 1998 and received before that date.
- (7) For the purposes of subsections (5) and (6) above the question whether emoluments are attributable to a qualifying period beginning before 17th March 1998 shall be determined without reference to any arrangements entered into on or after that date.

**Marginal Citations**

**M50** 1971 c. 61.

*PAYE: non-cash benefits etc.*

**64 Transitory provision relating to tradeable assets.**

- (1) In relation to any asset provided on or after 2nd July 1997 and before 6th April 1998, section 203F of the Taxes Act 1988 (application of PAYE where payment is in the form of the provision of a tradeable asset) shall have effect with the following two modifications.
- (2) The first modification is the insertion in subsection (2), before the word “and” at the end of paragraph (b), of the following paragraph—

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- “(ba) an asset not falling within paragraph (a) or (b) above which consists in the rights of an assignee, or any other rights, in respect of a trade debt that is or may become due to the employer;”.
- (3) The second modification is the insertion in subsection (3), before the word “and” at the end of paragraph (a), of the following paragraph—
- “(aa) in the case of an asset falling within subsection (2)(ba) above, the amount of the debt;”.
- (4) The preceding provisions of this section shall be deemed, in accordance with subsections (5) and (6) below, to have come into force on 2nd July 1997.
- (5) Subject to subsection (6) below, this section shall not be taken to have changed—
- (a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before 17th March 1998; or
- (b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before 5th April 1998.
- (6) Where, by virtue of this section, any employer would (but for subsection (5) above) be treated as having been under an obligation at any time on or before 17th March 1998 to make deductions from payments made by the employer of, or on account of, an employee’s assessable income—
- (a) sections 203 and 203J of the Taxes Act 1988, and
- (b) the provisions of any regulations under section 203 of that Act,
- shall have effect, and be deemed to have had effect, as if the employer had been obliged (subject to section 203J(3) of that Act) to make those deductions from any payments that were so made on or after 24th March 1998 and before 6th April 1998.
- (7) Expressions used in subsection (6) above and in section 203J of the Taxes Act 1988 have the same meanings in that subsection as in that section.

#### Commencement Information

**I3** S. 64 partly in force at 2.7.1997 see s. 64(4).

### 65 Payment in the form of a readily convertible asset.

- (1) Section 203F of the Taxes Act 1988 (tradeable assets) shall be amended as follows.
- (2) In subsection (1) (provision of tradeable asset to be treated as payment), for “a tradeable asset” there shall be substituted “a readily convertible asset”.
- (3) For subsections (2) and (3) (meaning of “tradeable asset” and amount of deemed payment) there shall be substituted the following subsections—
- “(2) In this section “readily convertible asset” means—
- (a) an asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the <sup>M51</sup>Financial Services Act 1986) or on the London Bullion Market;
- (b) an asset capable of being sold or otherwise realised on a market for the time being specified in PAYE regulations;

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- (c) an asset consisting in the rights of an assignee, or any other rights, in respect of a money debt that is or may become due to the employer or any other person;
  - (d) an asset consisting in, or in any right in respect of, any property that is subject to a fiscal warehousing regime;
  - (e) an asset consisting in anything that is likely (without anything being done by the employee) to give rise to, or to become, a right enabling a person to obtain an amount or total amount of money which is likely to be similar to the expense incurred in the provision of the asset;
  - (f) an asset for which trading arrangements of this section trading arrangements for any asset provided to any person exist whenever there exist any arrangements the effect of which in relation to that asset is to enable that person, or a member of his family or household, to obtain an amount or total amount of money that is, or is likely to be, similar to the expense incurred in the provision of that asset.
  - (g) an asset for which trading arrangements are likely to come into existence in accordance with any arrangements of another description existing when the asset is provided or with any understanding existing at that time.
- (3) The amount referred to is the amount which, on the basis of the best estimate that can be reasonably be made, is the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset.
- (3A) For the purposes of this section trading arrangements for any asset provided to any person exist whenever there exist any arrangements the effect of which in relation to that asset is to enable that person, or a member of his family or household, to obtain an amount or total amount of money that is, or is likely to be, similar to the expense incurred in the provision of that asset.
- (3B) References in this section to enabling a person to obtain an amount of money shall be construed—
- (a) as references to enabling an amount to be obtained by that person by any means at all, including, in particular—
    - (i) by using any asset or other property as security for a loan or advance, or
    - (ii) by using any rights comprised in or attached to any asset or other property to obtain any asset for which trading arrangements exist;
- and
- (b) as including references to cases where a person is enabled to obtain an amount as a member of a class or description of persons, as well as where he is so enabled in his own right.
- (3C) For the purposes of this section an amount is similar to the expense incurred in the provision of any asset if it is, or is an amount of money equivalent to—
- (a) the amount of the expense so incurred; or
  - (b) a greater amount; or
  - (c) an amount that is less than that amount but not substantially so.”
- (4) In subsections (4) and (5) (meaning of “asset”), for the words “subsection (2) above”, in each place where they occur, there shall be substituted “ this section ”.



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

“(6) In this section—

“EEA State” means a State which is a Contracting Party to 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;

“family or household” has the same meaning as it has, by virtue of section 168(4), in Chapter II of this Part;

“fiscal warehousing regime” means—

(a) a warehousing regime or fiscal warehousing regime (within the meaning of sections 18 to 18F of the <sup>M52</sup>Value Added Tax Act 1994); or

(b) any corresponding arrangements in an EEA State other than the United Kingdom;

“money” includes money expressed in a currency other than sterling or in the European currency unit (as for the time being defined in Council Regulation No. 3180/78/EEC or any Community instrument replacing it); and

“money debt” means any obligation which falls to be, or may be, settled—

(a) by the payment of money, or

(b) by the transfer of a right to settlement under an obligation which is itself a money debt.”

(6) The preceding provisions of this section have effect in relation to any asset provided on or after 6th April 1998 and shall be deemed, in accordance with subsection (7) below, to have come into force on that date.

(7) This section shall not be taken to have changed—

(a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before the day on which this Act is passed; or

(b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before the fifth of the month following that in which this Act is passed;

but, the amounts which (but for this subsection) would have been deductible, or would have been amounts for which any person should have accounted, shall be deducted or accounted for in accordance with any such provision as may be made by regulations under section 203 of the Taxes Act 1988.

#### Marginal Citations

M51 1986 c. 60.

M52 1994 c. 23.

## 66 Enhancing the value of an asset.

(1) After section 203F of the Taxes Act 1988 there shall be inserted the following section—

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**“203FA PAYE: enhancing the value of an asset.**

(1) Where—

- (a) any assessable income of an employee is provided in the form of anything enhancing the value of an asset in which the employee or a member of his family or household already has an interest, and
- (b) that asset, with its value enhanced, would be treated as a readily convertible asset for the purposes of section 203F if assessable income were provided to the employee in the form of that asset at the time of the enhancement,

that section shall have effect (subject to subsection (2) below) as if the employee had been provided, at that time, with assessable income in the form of the asset (with its value enhanced), instead of with whatever enhanced its value.

(2) Where section 203F has effect in accordance with subsection (1) above, subsection (3) of that section shall apply as if the reference in subsection (3) of that section to the provision of the asset were a reference to the enhancement of its value.

(3) Subject to subsection (4) below, any reference in this section to enhancing the value of an asset is a reference to—

- (a) the provision of any services by which that asset or any right or interest in it is improved or otherwise made more valuable,
- (b) the provision of any property the addition of which to the asset in question improves it or otherwise increases its value, or
- (c) the provision of any other enhancement by the application of money or property to the improvement of the asset in question or to securing an increase in its value or in the value of any right or interest in it.

(4) PAYE regulations may make provision excluding such matters as may be described in the regulations from the scope of what constitutes enhancing the value of an asset for the purposes of this section.

(5) Expressions used in this section and in section 203F have the same meanings in this section as in that section.”

(2) The preceding provisions of this section have effect in relation to any assessable income provided on or after 6th April 1998 and shall be deemed, in accordance with subsection (3) below, to have come into force on that date.

(3) This section shall not be taken to have changed—

- (a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before the day on which this Act is passed; or
- (b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before the fifth of the month following that in which this Act is passed;

but, the amounts which (but for this subsection) would have been deductible, or would have been amounts for which any person should have accounted, shall be deducted or accounted for in accordance with any such provision as may be made by regulations under section 203 of the Taxes Act 1988.

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## 67 Gains from share options etc.

- (1) After the section 203FA of the Taxes Act 1988 that is inserted by section 66 above there shall be inserted the following section—

### “203FB PAYE: gains from share options etc.

- (1) This section applies where an event occurs by virtue of which an amount is assessable on any person (“the relevant person”) by virtue of section 135, 140A(4) or 140D.
- (2) If that event is the exercise of a right to acquire shares, section 203F shall have effect, subject to subsection (7) below, as if the relevant person were being provided—
- (a) at the time he acquires the shares in exercise of that right, and
  - (b) in respect of the office or employment by reason of which he was granted the right,
- with assessable income in the form of those shares.
- (3) If that event is the assignment or release of a right to acquire shares, sections 203 to 203F shall have effect, subject to subsection (7) below—
- (a) in so far as the consideration for the assignment or release takes the form of a payment, as if so much of that payment as does not exceed the amount assessable by virtue of section 135 were a payment of assessable income of the relevant person; and
  - (b) in so far as that consideration consists in the provision of an asset, as if the provision of that asset were the provision—
    - (i) to the relevant person, and
    - (ii) in respect of the office or employment by reason of which he was granted the right,of assessable income in the form of that asset.
- (4) If that event is an event falling within subsection (4)(a) or (b) of section 140A, sections 203 to 203F shall have effect, subject to subsection (7) below, as if—
- (a) the provision to the relevant person of the employee’s interest in the shares included the provision to him at the time of the event of a further interest in those shares; and
  - (b) the further interest were not subject to any terms by virtue of which it would fall for the purposes of section 140A to be treated as only conditional.
- (5) If that event is an event falling within subsection (3) of section 140D, sections 203 to 203F shall have effect, subject to subsection (7) below, as if the original provision to the relevant person of the convertible shares or securities included the provision to him at the time of the event of the shares or securities into which they are converted.
- (6) Subsection (5) above shall apply in a case where the convertible shares or securities were themselves acquired by means of a taxable conversion (as defined in section 140D(7)), or by a series of such conversions, as if the reference to the original provision of the convertible shares or securities were a reference to the provision of the shares or securities which were converted by the earlier or earliest conversion.

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- (7) Where section 203F has effect in accordance with any of the preceding provisions of this section, subsection (3) of section 203F shall apply as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable by virtue of section 135, 140A or 140D in respect of the event in question.
- (8) PAYE regulations may make provision for excluding payments from the scope of subsection (3)(a) above in such circumstances as may be specified in the regulations.
- (9) In this section “asset” means—
- (a) any asset within the meaning of section 203F; or
  - (b) any non-cash voucher, credit-token or cash voucher (as defined for the purposes of section 141, 142 or, as the case may be, 143).
- (10) Expressions used in this section and in any of sections 135 and 140A to 140H have the same meanings in this section as in that section, and any reference in this section to—
- (a) an event falling within subsection (4)(a) or (b) of section 140A, or
  - (b) an event falling within subsection (3) of section 140D,
- includes a reference to an event which is treated for the purposes of that section as such an event by virtue of section 140A(8) or 140F(1).”
- (2) The preceding provisions of this section have effect in relation to events occurring on or after 6th April 1998 and shall be deemed, in accordance with subsection (3) below, to have come into force on that date.
- (3) This section shall not be taken to have changed—
- (a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before the day on which this Act is passed; or
  - (b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before the fifth of the month following that in which this Act is passed;
- but, the amounts which (but for this subsection) would have been deductible, or would have been amounts for which any person should have accounted, shall be deducted or accounted for in accordance with any such provision as may be made by regulations under section 203 of the Taxes Act 1988.

#### **Commencement Information**

**I4** S. 67 partly in force at 6.4.1998 see s. 67(2).

## **68 Vouchers and credit-tokens.**

- (1) For subsections (3) and (4) of section 203G of the Taxes Act 1988 (conditions for the receipt of a non-cash voucher to be treated as a payment for PAYE purposes) there shall be substituted the following subsections—
- “(3) The first condition is fulfilled with respect to a non-cash voucher if it is capable of being exchanged for anything which, if provided to the employee

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at the time when the voucher is received, would fall to be regarded as a readily convertible asset for the purposes of section 203F.

- (4) The second condition is fulfilled with respect to a non-cash voucher if (but for section 203F(4)(b)) it would itself fall to be regarded as a readily convertible asset for the purposes of section 203F.
- (5) Subsection (5) of section 141 (time of receipt of voucher appropriated to employee) shall apply for the purposes of this section as it applies for the purposes of subsections (1) and (2) of that section.”
- (2) In subsection (1) of section 203H of that Act (use of credit tokens to be treated as payment for PAYE purposes), for paragraph (b) there shall be substituted—
  - “(b) anything which, if provided to the employee at the time when the credit-token is used, would fall to be regarded as a readily convertible asset for the purposes of section 203F,”; and subsection (2) of that section shall cease to have effect.
- (3) In section 203I of that Act (cash vouchers), after subsection (2) there shall be inserted the following subsection—
  - “(3) Subsection (2) of section 143 (time of receipt of voucher appropriated to employee) shall apply for the purposes of this section as it applies for the purposes of subsections (1) and (5) of that section.”
- (4) The preceding provisions of this section have effect—
  - (a) in relation to non-cash vouchers or cash vouchers received on or after 6th April 1998, and
  - (b) in relation to any use of a credit-token on or after that date,and shall be deemed, in accordance with subsection (5) below, to have come into force on that date.
- (5) This section shall not be taken to have changed—
  - (a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before the day on which this Act is passed; or
  - (b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before the fifth of the month following that in which this Act is passed;but, the amounts which (but for this subsection) would have been deductible, or would have been amounts for which any person should have accounted, shall be deducted or accounted for in accordance with any such provision as may be made by regulations under section 203 of the Taxes Act 1988.

## **69 Intermediaries, non-UK employers, agencies etc.**

- (1) In section 203C of the Taxes Act 1988 (application of PAYE to payments to employees of a non-UK employer working for another where payment made without deduction by the employer or his intermediary), in subsection (1)(b), (c) and (d), after “of the employer” there shall be inserted “ or of the relevant person ”.
- (2) In that section, the following subsections shall be inserted after subsection (3)—

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- “(3A) Where, by virtue of any of sections 203F to 203I, an employer would be treated for the purposes of PAYE regulations (if they applied to him) as making a payment of any amount to an employee, this section shall have effect—
- (a) as if the employer were also to be treated for the purposes of this section as making an actual payment of that amount; and
  - (b) as if paragraph (a) of subsection (3) above were omitted.
- (3B) References in this section to the making of any payment by an intermediary of the relevant person shall be construed in accordance with subsection (4) of section 203B as if references in that subsection to the employer were references to the relevant person.”
- (3) For subsections (1) and (2) of section 203L of that Act (interpretation) there shall be substituted the following subsections—
- “(1) Subject to subsections (1A) and (1B) below and section 203J(2)(b), in sections 203B to 203J—
- “employee” means a person who holds or has held any office or employment under or with another person; and
- “employer”—
- (a) in relation to an employee, means a person under or with whom that employee holds or has held an office or employment; and
  - (b) in relation to any assessable income of an employee, means the person who is the employer of that employee in relation to the office or employment in respect of which that income is or was provided or, as the case may be, by reference to which it falls to be regarded as assessable.
- (1A) Subject to subsection (1B) below, where the remuneration receivable by an individual under or in consequence of any contract falls to be treated under section 134 (agency workers) as the emoluments of an office or employment, sections 203B to 203K (except section 203E) shall have effect as if that person held that office or employment under or with the agency.
- (1B) Where—
- (a) the remuneration receivable by an individual under or in consequence of any contract falls to be so treated under section 134, and
  - (b) a payment of, or on account of, assessable income of that individual is made by a person acting on behalf of the client and at the expense of the client or a person connected with the client,
- section 203B and, in relation to any payment treated as made by the client under section 203B, section 203J shall have effect in relation to that payment as if the client and not the agency were the employer for the purposes of sections 203B to 203K.
- (1C) In subsections (1A) and (1B) above “the agency” and “the client” have the same meanings as in section 134; and section 839 applies for the purposes of those subsections.
- (2) In sections 203B to 203K and in this section “assessable” means assessable to income tax under Schedule E.”

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- (4) In section 144A(2) of that Act (payments etc. received free of tax), after “employer” there shall be inserted “, in relation to any provision of sections 203B to 203J, is a reference to the person taken to be the employer for the purposes of that provision and”.
- (5) The preceding provisions of this section have effect in relation to payments made, assets provided and vouchers received at any time on or after 6th April 1998 and in relation to any use of a credit-token on or after that date.
- (6) Nothing in this section shall be taken to have changed—
  - (a) the amounts which were deductible by any person under section 203 of the Taxes Act 1988 at any time on or before the day on which this Act is passed; or
  - (b) the amounts which should have been accounted for to the Board under section 203J(3) of that Act at any time on or before the fifth of the month following that in which this Act is passed;but, the amounts which (but for this subsection) would have been deductible, or would have been amounts for which any person should have accounted, shall be deducted or accounted for in accordance with any such provision as may be made by regulations under section 203 of the Taxes Act 1988.

#### *The enterprise investment scheme and venture capital trusts*

### **70 Qualifying trades for EIS and VCTs.**

- (1) Schedule 12 to this Act (which amends the definition of qualifying trade for the purposes of the enactments relating to the enterprise investment scheme and venture capital trusts) shall have effect.
- (2) In section 298(4) of the Taxes Act 1988 (power to amend sections 297 and 298), for “section 297” there shall be substituted “sections 293 and 297”.
- (3) In paragraph 12(a) of Schedule 28B to that Act (power to amend paragraphs 4 and 5 of that Schedule), for “4 and 5” there shall be substituted “3 to 5”.
- (4) The power conferred by subsection (2) above shall not be exercisable in relation to any shares issued before 17th March 1998.

### **71 Pre-arranged exits from EIS.**

- (1) After section 299A of the Taxes Act 1988 there shall be inserted the following section—

#### **“299B Pre-arranged exits.**

- (1) An individual is not eligible for relief in respect of any shares in a company if the relevant arrangements include—
  - (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the same company;
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;

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- (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 304A(1).
- (3) The arrangements referred to in subsection (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
  - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in subsection (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
  - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in subsection (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 in that section.
- (6) In this section “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and
  - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.
- (7) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”
- (2) In section 307(6)(a) of that Act (interest on overdue tax where relief withdrawn), after “289(6)” there shall be inserted “ or 299B(1) ”.
- (3) In section 310 of that Act (information powers), in subsection (5), after “293(8)” there shall be inserted “ , 299B(1) ”.
- (4) For subsection (6) of that section there shall be substituted the following subsection—
- “(6) For the purposes of subsection (5) above the persons who are persons concerned are—



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- (a) in relation to section 289(6), the claimant, the company and any person controlling the company;
- (b) in relation to section 291B(5), the claimant;
- (c) in relation to section 293(8) or 308(2)(e), the company and any person controlling the company; and
- (d) in relation to section 299B(1), the claimant, the company and any person connected with the company;

and for those purposes references in this subsection to the claimant include references to any person to whom the claimant appears to have made a transfer such as is mentioned in section 304(1) of any of the shares in question.”

- (5) The preceding provisions of this section apply in relation to shares issued on or after 2nd July 1997.

## 72 **Qualifying holdings for VCTs after 2nd July 1997.**

- (1) After paragraph 10 of Schedule 28B to the Taxes Act 1988 there shall be inserted the following paragraph—

### **Requirement that securities should not relate to a guaranteed loan**

“10A (1) The requirement of this paragraph is that there are no securities relating to a guaranteed loan in the relevant holding.

- (2) For the purposes of this paragraph a security relates to a guaranteed loan if (and only if) there are arrangements for the trust company to be or become entitled, in the event of a failure by any person to comply with—

- (a) the terms of the loan to which the security relates, or
- (b) the terms of the security,

to receive anything (whether directly or indirectly) from a third party.

- (3) For the purposes of sub-paragraph (2) above it shall be immaterial whether the arrangements apply in all cases of a failure to comply or only in certain such cases.

- (4) For the purposes of this paragraph “third party” means any person except—

- (a) the relevant company; and
- (b) if the relevant company is the parent company of a trading group for the purposes of paragraph 3 above, the subsidiaries of the relevant company.”

- (2) After the paragraph 10A inserted by subsection (1) above there shall be inserted the following paragraph—

### **“10B Requirement that a proportion of the holding in each company must be eligible shares**

- (1) The requirement of this paragraph is that eligible shares represent at least 10 per cent. by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the trust company.

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- (2) For the purposes of this paragraph the value at any time of any shares in or securities of a company shall be taken (subject to sub-paragraph (4) below) to be their value immediately after—
- (a) any relevant event occurring at that time; or
  - (b) where no relevant event occurs at that time, the last relevant event to occur before that time.
- (3) In sub-paragraph (2) above “relevant event”, in relation to any shares in or securities of the relevant company, means—
- (a) the acquisition by the trust company of those shares or securities;
  - (b) the acquisition by the trust company of any other shares in or securities of the relevant company which—
    - (i) are of the same description as those shares or securities, and
    - (ii) are acquired otherwise than by virtue of being allotted to the trust company without that company’s becoming liable to give any consideration;
- or
- (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the trust company as (by discharging that obligation) increases the value of any such shares or securities.
- (4) If at any time the value of any shares or securities held by the trust company is less than the amount of the consideration given by the trust company for those shares or securities, it shall be assumed for the purposes of this paragraph that the value of those shares or securities at that time is equal to the amount of that consideration.
- (5) In this paragraph “eligible shares” has the same meaning as in section 842AA.”
- (3) Subject to subsections (4) and (5) below, the preceding provisions of this section have effect in relation to accounting periods ending on or after 2nd July 1997.
- (4) Subsection (1) above shall not have effect for the purpose of determining whether any shares or securities acquired by a company by means of the investment of—
- (a) money raised by the issue before 2nd July 1997 of shares in or securities of the trust company, or
  - (b) money derived from the investment by that company of any such money,
- constitute qualifying holdings of the trust company at any time.
- (5) If at any time the requirement of paragraph 10B of Schedule 28B to the Taxes Act 1988—
- (a) would be satisfied in relation to a relevant holding and a company if none of the old investments were held by the trust company at that time, but
  - (b) would not otherwise be satisfied,
- that paragraph shall apply in relation to that holding as if the old investments were not held by the trust company at that time.
- (6) In subsection (5) above, “old investments” means shares in or securities of the relevant company acquired by means of the investment of—

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- (a) money raised by the issue before 2nd July 1997 of shares in or securities of the trust company; or
- (b) money derived from the investment of such money.

### 73 Other changes to requirements for VCTs.

- (1) In each of—
  - (a) subsection (14) of section 842AA of the Taxes Act 1988, and
  - (b) sub-paragraph (1) of paragraph 6 of Schedule 15B to that Act,(which define “eligible shares” for the purposes of enactments relating to VCTs), the word “preferential”, in the second place where it occurs in that subsection or sub-paragraph, shall be omitted.
- (2) In paragraph 10(3) of Schedule 28B to that Act (subsidiary to be qualifying subsidiary if it is a 90 per cent subsidiary), for “90”, wherever it occurs, there shall be substituted “75”.
- (3) In paragraph 3 of Schedule 28B to that Act, in sub-paragraph (3) (requirement in relation to qualifying trade of relevant company or qualifying subsidiary), for “qualifying subsidiary” there shall be substituted “relevant qualifying subsidiary”; and after paragraph (b) of that sub-paragraph there shall be inserted the following — “and for the purposes of this sub-paragraph a company is a relevant qualifying subsidiary of another company at any time when it would be a qualifying subsidiary of that company if “90” were substituted for “75” in every place where “75” occurs in paragraph 10(3) below.”
- (4) In paragraph 6 of Schedule 28B to that Act, in sub-paragraphs (1)(b), (2A)(c) and (2B) (requirement as to use of money raised), for “qualifying subsidiary”, wherever it occurs, there shall be substituted “relevant qualifying subsidiary”; and after sub-paragraph (4) of that paragraph there shall be inserted the following sub-paragraph—
  - “(5) For the purposes of this paragraph a company is a relevant qualifying subsidiary of another company at any time when it would be a qualifying subsidiary of that company if “90” were substituted for “75” in every place where “75” occurs in paragraph 10(3) below.”
- (5) In paragraph 8(1) of Schedule 28B to that Act (requirement as to capital of the relevant company), for “£10 million” and “£11 million” there shall be substituted, respectively, “£15 million” and “£16 million”.
- (6) Subsections (1) to (4) above have effect for the purpose of determining whether shares or securities are, as at any time on or after 6th April 1998, to be regarded as comprised in a company’s qualifying holdings; and subsection (5) above has effect in relation to relevant holdings issued on or after that date.

### 74 Other changes to EIS etc.

- (1) Schedule 13 to this Act, which amends the provisions mentioned in subsection (2) below, shall have effect.
- (2) The provisions are—
  - (a) Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief);
  - (b) sections 150A and 150B of the <sup>M53</sup>Taxation of Chargeable Gains Act 1992 (EIS relief in respect of chargeable gains);

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- (c) Schedule 5B to that Act (EIS deferral of chargeable gains); and
  - (d) that Chapter as it has effect in relation to shares issued before 1st January 1994 (BES income tax relief) and section 150 of that Act (BES relief in respect of chargeable gains).
- (3) Unless the contrary intention appears, the amendments made by that Schedule have effect in relation to shares issued on or after 6th April 1998.

#### Marginal Citations

M53 1992 c. 12.

*Individual savings accounts etc.*

### 75 Use of PEPs powers to provide for accounts.

- (1) After subsection (1) of section 333 of the Taxes Act 1988 (investment plans) there shall be inserted the following subsection—
- “(1A) The plans for which provision may be made by the regulations include, in particular, a plan in the form of an account the subscriptions to which are to be invested in one or more of the ways authorised by the regulations; and, accordingly, references in this section, or in any other enactment, to a plan manager include references to the manager of such an account.”
- (2) In subsection (3)(b) of that section (which allows for the imposition of limits in relation to a plan), the words “and minimum periods for which investments are to be held” shall be omitted.
- (3) In paragraph (b) of subsection (4) of that section (power to provide for persons to be liable to account for tax wrongly relieved)—
- (a) after “Board” there shall be inserted “either—
    - (i);
    - and
  - (b) after “it” there shall be inserted “or
    - (ii) for an amount determined in accordance with the regulations to be the amount which is to be taken to represent such tax;”.
- (4) In paragraph (c) of that subsection (adaptation and modification of enactments to secure tax accounted for), in sub-paragraph (iii) after “tax” there shall be inserted “and other amounts”.
- (5) After that paragraph there shall be inserted the following paragraphs—
- “(ca) adapting or modifying the provisions of Chapter II of Part XIII in relation to cases where—
    - (i) an investor ceases to be, and is treated as not having been, entitled to relief from tax in respect of investments; or
    - (ii) an investor who was not entitled to relief has been given relief on the basis that he was;

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- (cb) securing that plan managers (as well as investors) are liable to account for amounts becoming due from investors as a consequence of any regulations made by virtue of paragraph (ca) above;
  - (cc) that an investor under a plan or a plan manager is, in prescribed cases where relief has been given to which there was no entitlement, to be liable to a penalty of a prescribed amount, instead of to any obligation to account as mentioned in paragraph (b) or (cb) above;
  - (cd) that liabilities equivalent to any of those which, by virtue of any of the preceding paragraphs of this subsection, may be imposed in cases where relief has been given to which there was no entitlement are to arise (in place of the liabilities to tax otherwise arising) in other cases where, in relation to any plan—
    - (i) a prescribed contravention of, or failure to comply with, the regulations, or
    - (ii) the existence of such other circumstances as may be prescribed,would have the effect (subject to the provision made by virtue of this paragraph) of excluding or limiting an entitlement to relief.”
- (6) In section 151(2) of the <sup>M54</sup>Taxation of Chargeable Gains Act 1992 (application of subsections (2) to (5) of section 333 of the Taxes Act 1988 to relief from capital gains tax in respect of investments under plans), for “(2)” there shall be substituted “ (1A) ”.

**Marginal Citations**

**M54** 1992 c. 12.

**76 Tax credits for accounts and for PEPs.**

- (1) Section 30 of the <sup>M55</sup>Finance (No. 2) Act 1997 (which provides, in relation to distributions on or after 6th April 1999, for the excess of tax credit over income tax liability to cease to be payable under section 231(3) of the Taxes Act 1988 to persons who are not companies resident in the United Kingdom) shall have effect in accordance with subsection (2) below in relation to any distribution if—
- (a) it is a distribution made before 6th April 2004;
  - (b) it is received by an individual in respect of an investment made under a plan for which provision is made by regulations under section 333 of the Taxes Act 1988 (individual savings accounts and personal equity plans); and
  - (c) that investment is one in respect of which that individual is entitled to relief in accordance with such regulations.
- (2) That section of that Act of 1997 shall have effect in relation to such a distribution as if—
- (a) subsection (5) of that section did not make the substitution set out in paragraph (a) or the repeal set out in paragraph (b);
  - (b) subsections (6), (7) and (9) of that section were to be disregarded; and
  - (c) the words “Subject to section 231A,” in section 231(3) of the Taxes Act 1988 were omitted.
- (3) The Treasury may by regulations make provision for individuals who—
- (a) are not resident in the United Kingdom, but

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- (b) have made investments under plans for which provision is made by regulations under section 333 of the Taxes Act 1988, to be treated in relation to any such investments as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits.
- (4) Subsection (4) of section 231 of the Taxes Act 1988 (persons treated as in receipt of a tax credit) applies for the purposes of this section as it applies for the purposes of that section.
- (5) Schedule 8 to the <sup>M56</sup>Finance (No. 2) Act 1997 (repeals), so far as it relates to the repeal made by section 30(5)(b) of that Act, shall have effect subject to the preceding provisions of this section.

**Marginal Citations**

**M55** 1997 c. 58.

**M56** 1997 c. 58.

**77 The insurance element etc.**

- (1) In Chapter IV of Part VII of the Taxes Act 1988, after section 333A there shall be inserted the following section—

**“333B Involvement of insurance companies with plans and accounts.**

- (1) The Treasury may make regulations providing exemption from tax for income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company’s long term business fund as is referable to section 333 business.
- (2) The Treasury may by regulations modify the effect of section 30(4) of the <sup>M57</sup>Finance (No. 2) Act 1997 (which repeals section 231(2) of the Taxes Act 1988 with effect from 6th April 1999) in relation to distributions which—
- (a) are made before 6th April 2004; and
- (b) are received by an insurance company in respect of investments of so much of its long term business fund as is referable to section 333 business.
- (3) Regulations under this section may make provision for insurance companies that are not resident in the United Kingdom to be treated, in relation to investments of so much of their long term business funds as are referable to section 333 business—
- (a) as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits in respect of investments; and
- (b) as if such other conditions of any entitlement to, or to the payment of, tax credits were also satisfied.
- (4) Regulations under section 333 or this section may include provision which, in relation to insurance companies that are not resident in the United Kingdom—

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- (a) requires a person to be appointed to be responsible for securing the discharge of any duties to which such an insurance company is subject under the regulations; and
- (b) confers rights and powers, and imposes liabilities, on a person so appointed;

and, without prejudice to the generality of paragraphs (a) and (b) above, regulations made by virtue of this subsection may include any provision corresponding to any that, in relation to a European institution, may be made under section 333A.

- (5) Regulations under this section may provide that an insurance company—
  - (a) shall comply with any notice served on it by the Board which requires it, within a prescribed period, to make available for the Board's inspection documents (of a prescribed kind) relating to, or to matters connected with, its past or present section 333 business; and
  - (b) shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about its past or present section 333 business or any matters connected with it.
- (6) Any power of the Treasury under this section to make provision by regulations in relation to insurance companies shall include power by regulations to make such corresponding provision in relation to friendly societies as the Treasury think fit.
- (7) Regulations under this section may—
  - (a) for purposes connected with any exemption from tax conferred by virtue of subsection (1) above, apply or modify any provision made by or under the Tax Acts;
  - (b) make different provision for different cases;
  - (c) include such incidental, supplemental, consequential and transitional provision as the Treasury may consider appropriate.
- (8) Without prejudice to the generality of the powers conferred by subsection (7) above, the provision that may be made in connection with an exemption from tax conferred by virtue of subsection (1) above shall include provision for section 436 to apply (with any such modifications as may be prescribed) in relation to section 333 business as it applies in relation to pension business.
- (9) In this section—
  - “friendly society” has the same meaning as in Chapter II of Part XII;
  - “insurance company” means an insurance company within the meaning of the <sup>M58</sup>Insurance Companies Act 1982;
  - “long term business fund” has the same meaning as in Chapter I of Part XII;
  - “prescribed” means prescribed by regulations under this section;
  - “section 333 business”, in relation to an insurance company, means the business of the company that is attributable to the making of investments with that company under plans for which provision is made by regulations under section 333.”

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- (2) In each of the columns of the Table in section 98 of the <sup>M59</sup>Taxes Management Act 1970 (penalties for failure to comply with notice or to furnish information), after the entry relating to regulations under section 333 of the Taxes Act 1988 there shall be inserted the following entry—

“regulations under section 333B;”.

**Marginal Citations**

**M57** 1997 c. 58.

**M58** 1982 c. 50.

**M59** 1970 c. 9.

**78 Phasing out of TESSAs.**

In subsection (3) of section 326A of the Taxes Act 1988 (account must be opened on or after 1st January 1991), after “1991” there shall be inserted “ and before 6th April 1999 ”.

*Relief for interest and losses etc.*

**79 Relief for loan to acquire interest in a close company.**

- (1) At the end of subsection (3A) of section 360 of the Taxes Act 1988 (loan to buy interest in close company) there shall be inserted the words “ or makes a claim in respect of them under Schedule 5B to the 1992 Act ”.
- (2) This section has effect in relation to shares acquired on or after 6th April 1998.

**80 Relief for losses on unlisted shares in trading companies.**

- (1) At the beginning of subsection (1) of section 576 of the Taxes Act 1988 (provisions supplementary to sections 573 to 575) there shall be inserted the words “ Subject to subsections (1A) and (1B) below, ”.
- (2) After that subsection there shall be inserted the following subsections—
- “(1A) Subsection (1B) below applies where the holding mentioned in subsection (1) above comprises any of the following, namely—
- (a) shares issued before 1st January 1994 in respect of which relief has been given under Chapter III of Part VII and has not been withdrawn;
  - (b) shares issued on or after that date to which relief under that Chapter is attributable; and
  - (c) shares to which deferral relief (within the meaning of Schedule 5B to the 1992 Act) is attributable.
- (1B) Any such question as is mentioned in subsection (1) above shall not be determined as provided by that subsection, but shall be determined instead—



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- (a) in the case of shares issued before 1st January 1994, as provided by subsections (3) to (4C) of section 299 as it has effect in relation to such shares; and
- (b) in the case of shares issued on or after that date, as provided by subsections (6) to (6D) of that section as it has effect in relation to such shares.”

(3) For subsection (4) of that section there shall be substituted the following subsections—

“(4) For the purposes of sections 573 to 575 and this section a qualifying trading company is a company which at all times in the relevant period has been an unquoted company (within the meaning given by section 312) and which—

- (a) either—
  - (i) is an eligible trading company on the date of the disposal; or
  - (ii) has ceased to be an eligible trading company at a time which is not more than three years before that date and has not since that time been an excluded company, an investment company or a trading company that is not an eligible trading company; and
- (b) either—
  - (i) has been an eligible trading company for a continuous period of six years ending on that date or at that time; or
  - (ii) has been an eligible trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company that is not an eligible trading company; and
- (c) has carried on its business wholly or mainly in the United Kingdom throughout the relevant period.

(4A) A company is an eligible trading company for the purposes of subsection (4) above at any time when, or in any period throughout which, it would comply with the requirements of section 293 if—

- (a) the provisions mentioned in subsection (4B) below were omitted;
- (b) the references in subsection (6) of section 293 to dissolution were omitted and the condition in paragraph (b) of that subsection were a condition that the company continue to be a trading company within the meaning of subsection (5) below;
- (c) the reference in section 293(6A) to the eligible shares were a reference to the shares in respect of which relief is claimed under section 573 or 574;
- (d) any reference in section 293, 297 or 308 to the relevant period were a reference to the time that is relevant for the purposes of subsection (4) (a) above or, as the case may require, the continuous period that is relevant for the purposes of subsection (4)(b) above;
- (e) the reference in section 304A(1)(e)(i) to eligible shares were a reference to shares in respect of which relief is claimed under section 573 or 574;
- (f) references in section 304A(3) to an individual were references to a person;

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- (g) the reference in section 304A(4) to section 304 were a reference to section 574(3)(b); and
  - (h) the reference in section 304A(6) to the expressions “eligible shares” and “subscriber shares” were a reference to the expression “subscriber shares”.
- (4B) The provisions are—
- (a) in section 293, the words “Subject to section 294,” in subsection (1), the words “an unquoted company and be” in subsection (2), and subsections (8A) and (8B);
  - (b) sections 294 to 296;
  - (c) in section 298(5), the words “and section 312(1A)(b) shall apply to determine the relevant period for the purposes of that section”;
  - (d) in section 304A, subsections (1)(e)(ii) and (2)(b), in subsection (3), the words “to which relief becomes so attributable” and paragraphs (c) and (d), in subsection (4), the words “to which relief becomes so attributable” and paragraphs (c) and (d), and subsection (5); and
  - (e) section 308(5A).”
- (4) In subsection (5) of that section—
- (a) in the definition of “excluded company”, for the words “dealing in shares, securities, land, trades or commodity futures” there shall be substituted the words “ dealing in land, in commodities or futures or in shares, securities or other financial instruments, ”;
  - (b) in the definition of “relevant period”, for the words “subscribed for” there shall be substituted the word “ issued ”;
  - (c) for the definition of “shares” there shall be substituted the following definition—
    - ““shares”—
    - (a) except in subsections (1A) and (1B) above, includes stock; but
    - (b) except in the definition of “excluded company”, does not include shares or stock not forming part of a company’s ordinary share capital;”and
  - (d) in the definition of “trading group”, the words “or not resident in the United Kingdom” shall cease to have effect.
- (5) In this section—
- (a) subsections (1) and (2) have effect in relation to disposals made on or after 6th April 1998; and
  - (b) subsections (3) and (4) have effect in relation to shares issued on or after that date.

## **81 Group relief: special rules for consortium cases.**

- (1) Section 403C of the Taxes Act 1988 (which imposes limits, based on the former section 403(9), on the amounts which may be set off where the surrendering company or, as the case may be, the claimant company is a member of a consortium) shall be amended as follows.

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- (2) In subsection (1)(a) (case where the surrendering company is a member of the consortium) for “surrendering company” there shall be substituted “claimant company”.
- (3) In subsection (2)(a) (case where the claimant company is a member of the consortium) for “claimant company” there shall be substituted “surrendering company”.
- (4) In consequence of the amendments made by subsections (2) and (3) above, in subsection (3) (which defines “the relevant fraction” by reference to the member company’s share in the consortium)—
  - (a) in paragraph (a) (meaning in a case falling within subsection (1)) for “surrendering company’s” there shall be substituted “claimant company’s”; and
  - (b) in paragraph (b) (meaning in a case falling within subsection (2)) for “claimant company’s” there shall be substituted “surrendering company’s”.
- (5) Section 403C of the <sup>M60</sup>Taxes Act 1988 and Schedule 7 to the Finance (No. 2) Act 1997 (which, among other things, inserted that section into the Taxes Act 1988) shall have effect, and be deemed always to have had effect, as if that section had been originally enacted in that Schedule with the amendments made by this section.

**Marginal Citations**

**M60** 1997 c. 58.

**82 Carry forward of non-trading deficit on loan relationships.**

- (1) In section 83 of the <sup>M61</sup>Finance Act 1996 (non-trading deficit on loan relationships), for subsections (3) and (4) substitute—
  - “(3) So much of the deficit for the deficit period as is not the subject of a claim under subsection (2) above shall be carried forward and treated as a deficit for the next accounting period.
  - (4) An amount carried forward to an accounting period under subsection (3) above—
    - (a) may be the subject of a claim under paragraph (d) of subsection (2) above, but not under any other paragraph of that subsection, and
    - (b) shall be disregarded for the purposes of any claim under that subsection relating to a deficit arising in that period.”.
- (2) Section 797 (limits on credit: corporation tax) and section 797A (foreign tax on interest brought into account as a non-trading credit) of the Taxes Act 1988 are amended as follows—
  - (a) in section 797(3B)(b), omit “or in accordance with subsection (3) of that section”;
  - (b) in section 797A(5), at the end of paragraph (a) insert the word “ and ” and omit paragraph (c) and the word “and” preceding it;
  - (c) at the end of section 797A(5), insert—

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“An amount carried forward to the applicable accounting period under section 83(3) of that Act shall not be treated as a non-trading deficit for that period for the purposes of paragraphs (a) and (b).”;

- (d) in section 797A(6), for “specified in subsection (5)(c) above” substitute “carried forward to the applicable accounting period in pursuance of a claim under section 83(2)(d) of that Act”;
- (e) at the end of section 797A(7) insert—

“An amount carried forward to the applicable accounting period under section 83(3) of the <sup>M62</sup>Finance Act 1996 shall be disregarded for the purposes of paragraphs (a) and (b).”.

- (3) The following amendments of Schedule 28A to the Taxes Act 1988 (change in ownership of investment company: deductions) are consequential on the amendment in subsection (1) above—

- (a) in paragraph 6(da), after “period” insert “ (other than one within subparagraph (dc) below) ”;
- (b) in paragraph 6(db), omit “(dc) or”;
- (c) in paragraph 6(dc), for “debit given for that accounting period by” substitute “ deficit carried forward to that accounting period under ”;
- (d) in paragraph 7(1)(b), for “debit” substitute “ deficit ”;
- (e) in paragraph 11(2), omit paragraph (a);
- (f) in paragraph 13(1)(ea), after “period” insert “ (other than one within paragraph (ec) below) ”;
- (g) in paragraph 13(1)(eb), omit “(ec) or”;
- (h) in paragraph 13(1)(ec), for “debit given for that accounting period by” substitute “ deficit carried forward to that accounting period under ”;
- (i) in paragraph 16(1)(b), for “debit” substitute “ deficit ”.

- (4) The amendments made by this section shall be deemed always to have had effect.

#### **Marginal Citations**

**M61** 1996 c. 8.

**M62** 1996 c. 8.

### *Capital allowances*

#### **83 First-year allowances for investment in Northern Ireland.**

- (1) In section 22 of the <sup>M63</sup>Capital Allowances Act 1990 (first-year allowances), after subsection (3C) there shall be inserted the following subsections—

“(3CA) Subject to the provisions of this Part, this section applies to—

- (a) any expenditure incurred in the special relief period by a small company or a small business on the provision of machinery or plant for use primarily in Northern Ireland; and
- (b) any additional VAT liability incurred in respect of expenditure to which this section applies by virtue of paragraph (a) above.

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- (3CB) For the purposes of subsection (3CA) above expenditure is incurred in the special relief period if, disregarding any effect of section 83(2) on the time at which it is to be treated as incurred, it is incurred in the period beginning with 12th May 1998 and ending with 11th May 2002.
- (3CC) Expenditure is not expenditure to which this section applies by virtue of subsection (3CA) above in so far as it is—
- (a) expenditure to which Chapter IVA applies; or
  - (b) expenditure on the provision of an aircraft or hovercraft.”
- (2) After subsection (6C) of that section there shall be inserted the following subsections—
- “(6D) Expenditure incurred on the provision of machinery or plant shall not be taken to be expenditure to which this section applies by virtue of subsection (3CA) above if—
- (a) at the time when the expenditure is incurred, the person incurring it intends the machinery or plant to be used partly outside Northern Ireland; and
  - (b) the main benefit, or one of the main benefits, which could reasonably be expected to arise from the relevant arrangements is the obtaining of a first-year allowance, or a greater first-year allowance, in respect of the part of the expenditure that is attributable to the intended outside use.
- (6E) In subsection (6D) above—
- (a) “the relevant arrangements” means the transaction under which the expenditure is incurred and any scheme or arrangements of which that transaction forms part;
  - (b) “the intended outside use” means so much of the use of the machinery or plant as (at the time mentioned in paragraph (a) of that subsection) the person intends will be use outside Northern Ireland; and
  - (c) the reference to the part of the expenditure that is attributable to that use is a reference to so much of the expenditure in question as is so attributable on a just and reasonable basis.”
- (3) In subsection (10) of that section after “this section—” there shall be inserted—
- ““hovercraft” has the same meaning as in the <sup>M64</sup>Hovercraft Act 1968.”
- (4) After section 22A of that Act there shall be inserted the following section—

**“22B Withdrawal of first-year allowance on change of use.**

- (1) Where (but for this section) section 22 would apply to any expenditure by virtue of subsection (3CA) of that section, that section shall be deemed never to have so applied to that expenditure if, at any relevant time—
- (a) the primary use to which the machinery or plant is put is a use outside Northern Ireland; or
  - (b) the machinery or plant is held for use otherwise than primarily in Northern Ireland.

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- (2) In subsection (1) above “a relevant time”, in relation to any expenditure, means a time which—
- (a) falls in the period of two years beginning with the date of the incurring of that expenditure; and
  - (b) is a time when the machinery or plant belongs to the person who incurred the expenditure or to a person who (within the terms of section 839 of the principal Act) is, or at any time in that period has been, connected with the person who incurred the expenditure.
- (3) All such assessments and adjustments of assessments shall be made as may be necessary in consequence of this section.
- (4) Where a person who has made a return becomes aware that anything contained in that return has, after the making of the return, become incorrect by reason of the operation of this section, he shall, within three months of first becoming so aware, give notice to an officer of the Board of the amendments that are necessitated in his return in the light of the matter of which he has become aware.”
- (5) In the second column of the Table in section 98 of the <sup>M65</sup>Taxes Management Act 1970 (penalties in respect of certain information provisions), in the entry relating to provisions of the <sup>M66</sup>Capital Allowances Act 1990, after “Sections” there shall be inserted “ 22B(4), ”.
- (6) Subject to subsection (7) below, the preceding provisions of this section have effect in relation to every chargeable period ending on or after 12th May 1998.
- (7) No claim for an allowance falling to be made by virtue of subsection (1) above may be made at any time before such date as the Treasury may by order appoint; and where the period for making any such claim would (but for this subsection) have expired 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.

#### Subordinate Legislation Made

**P2** [S. 83\(7\)](#) power fully exercised (27.7.1999): 27.7.1999 appointed by [S.I. 1999/2119](#), [art. 2](#)

#### Marginal Citations

**M63** 1990 c. 1.

**M64** 1968 c. 59.

**M65** 1970 c. 9.

**M66** 1990 c. 1.

## 84 First-year allowances for small businesses etc.

- (1) In subsection (1) of section 22 of the <sup>M67</sup>Capital Allowances Act 1990 (which provides for first-year allowances at the rate, in the case of expenditure falling within subsection (3B), of 40 per cent.), after “(3B)” there shall be inserted “ or (3D) ”.
- (2) After the subsection (3CC) of that section inserted by section 83 above there shall be inserted the following subsection—

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“(3D) This section applies to the following expenditure except in so far as it is expenditure to which Chapter IVA applies, that is to say—

- (a) any expenditure which, disregarding any effect of section 83(2) on the time at which it is to be treated as incurred, is incurred by a small company or a small business in the period beginning with 2nd July 1998 and ending with 1st July 1999; and
- (b) any additional VAT liability incurred in respect of expenditure to which this section applies by virtue of paragraph (a) above.”

(3) The preceding provisions of this section have effect in relation to every chargeable period ending on or after 2nd July 1998.

**Marginal Citations**

M67 1990 c. 1.

**85 First-year allowances: consequential amendments etc.**

- (1) In each of subsections (4), (6B) and (6C) of section 22 of the <sup>M68</sup>Capital Allowances Act 1990 (first-year allowances), for “subsection (3C)” there shall be substituted “one or more of subsections (3C), (3CA) and (3D)”.
- (2) In section 22A of that Act (expenditure of a small company or small business)—
  - (a) in subsection (4), for the words “parent company”, wherever they occur, there shall be substituted “parent undertaking”; and
  - (b) in subsection (6), for ““parent company”” there shall be substituted ““parent undertaking””.
- (3) In subsection (8) of that section, after paragraph (b) there shall be inserted— “but for the purposes of this section each of those provisions shall be construed as if references, in relation to a group, to the parent company were references to the parent undertaking.”
- (4) In sections 23(6), 42(9) and 50(3) and (4A) of that Act (which contain provisions relating to the temporary first-year allowances under section 22(3B) and (3C) of that Act), for the words “subsection (3B) or (3C)”, in each place where they occur, there shall be substituted “one or more of subsections (3B), (3C), (3CA) and (3D)”.
- (5) In sections 44(5), 46(8) and 48(7) of that Act (which also contain provisions relating to the temporary first-year allowances under section 22(3B) and (3C) of that Act), for the words “or (3C)”, in each place where they occur, there shall be substituted “, (3C), (3CA) or (3D)”.
- (6) In section 39(2)(a) of that Act (definition of qualifying purpose), for “subsections (2) to (3C)” there shall be substituted “subsections (2) to (3D)”.
- (7) In section 43(5) of that Act (provisions relating to joint lessees in cases involving new expenditure), after “(3C)” there shall be inserted “, (3CA) or (3D)”.
- (8) In section 76 of that Act (which modifies the effect of section 75 in cases where machinery or plant has not been used before a sale)—
  - (a) subsection (3) shall cease to have effect; and
  - (b) in subsection (4), for “, (2B) and (3)” there shall be substituted “and (2B)”.

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- (9) Subsections (1) and (4) to (8) above have effect in relation to every chargeable period ending on or after 12th May 1998.
- (10) Subject to subsection (11) below, subsections (2) and (3) above have effect in relation to expenditure incurred on or after 12th May 1998.
- (11) Subsections (2) and (3) above do not have effect—
- (a) for the purpose of determining whether any expenditure is expenditure to which section 22 of that Act applies by virtue of subsection (3C) of that section; or
  - (b) for the purpose of determining whether any expenditure incurred in pursuance of a contract entered into before 12th May 1998 is expenditure to which that Act applies by virtue of subsection (3D) of that section.

**Marginal Citations**

**M68** 1990 c. 1.

*Insurance, insurance companies and friendly societies*

**86 Life policies etc.**

Schedule 14 to this Act (which makes provision in relation to the taxation of life policies etc under Chapter II of Part XIII of the Taxes Act 1988) shall have effect.

**87 Non-resident insurance companies: tax representatives.**

After section 552 of the Taxes Act 1988 (duty of insurers to provide certain information) there shall be inserted—

**“552A Tax representatives.**

- (1) This section has effect for the purpose of securing that, where it applies to an overseas insurer, another person is the overseas insurer’s tax representative.
- (2) In this section “overseas insurer” means a person who is not resident in the United Kingdom who carries on a business which consists of or includes the effecting and carrying out of—
  - (a) policies of life insurance;
  - (b) contracts for life annuities; or
  - (c) capital redemption policies.
- (3) This section applies to an overseas insurer—
  - (a) if the condition in subsection (4) below is satisfied on the designated day; or
  - (b) where that condition is not satisfied on that day, if it has subsequently become satisfied.
- (4) The condition mentioned in subsection (3) above is that—



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- (a) there are in force relevant insurances the obligations under which are obligations of the overseas insurer in question or of an overseas insurer connected with him; and
  - (b) the total amount or value of the gross premiums paid under those relevant insurances is £1 million or more.
- (5) In this section “relevant insurance” means any policy of life insurance, contract for a life annuity or capital redemption policy in relation to which this Chapter has effect and in the case of which—
  - (a) the holder is resident in the United Kingdom;
  - (b) the obligations of the insurer are obligations of a person not resident in the United Kingdom; and
  - (c) those obligations are not attributable to a branch or agency of that person’s in the United Kingdom.
- (6) Before the expiration of the period of three months following the day on which this section first applies to an overseas insurer, the overseas insurer must nominate to the Board a person to be his tax representative.
- (7) A person shall not be a tax representative unless—
  - (a) if he is an individual, he is resident in the United Kingdom and has a fixed place of residence there, or
  - (b) if he is not an individual, he has a business establishment in the United Kingdom,and, in either case, he satisfies such other requirements (if any) as are prescribed in regulations made for the purpose by the Board.
- (8) A person shall not be an overseas insurer’s tax representative unless—
  - (a) his nomination by the overseas insurer has been approved by the Board; or
  - (b) he has been appointed by the Board.
- (9) The Board may by regulations make provision supplementing this section; and the provision that may be made by any such regulations includes provision with respect to—
  - (a) the making of a nomination by an overseas insurer of a person to be his tax representative;
  - (b) the information which is to be provided in connection with such a nomination;
  - (c) the form in which such a nomination is to be made;
  - (d) the powers and duties of the Board in relation to such a nomination;
  - (e) the procedure for approving, or refusing to approve, such a nomination, and any time limits applicable to doing so;
  - (f) the termination, by the overseas insurer or the Board, of a person’s appointment as a tax representative;
  - (g) the appointment by the Board of a person as the tax representative of an overseas insurer (including the circumstances in which such an appointment may be made);
  - (h) the nomination by the overseas insurer, or the appointment by the Board, of a person to be the tax representative of an overseas insurer in place of a person ceasing to be his tax representative;

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- (j) circumstances in which an overseas insurer to whom this section applies may, with the Board's agreement, be released (subject to any conditions imposed by the Board) from the requirement that there must be a tax representative;
  - (k) appeals to the Special Commissioners against decisions of the Board under this section or regulations under it.
- (10) The provision that may be made by regulations under subsection (9) above also includes provision for or in connection with the making of other arrangements between the Board and an overseas insurer for the purpose of securing the discharge by or on behalf of the overseas insurer of the relevant duties, within the meaning of section 552B.
- (11) Section 839 (connected persons) applies for the purposes of this section.
- (12) In this section—
- “the designated day” means such day as the Board may specify for the purpose in regulations;
  - “tax representative” means a tax representative under this section.

#### **552B Duties of overseas insurers' tax representatives.**

- (1) It shall be the duty of an overseas insurer's tax representative to secure (where appropriate by acting on the overseas insurer's behalf) that the relevant duties are discharged by or on behalf of the overseas insurer.
- (2) For the purposes of this section “the relevant duties” are—
- (a) the duties imposed by section 552,
  - (b) any duties imposed by regulations made under subsection (4A)(a) of that section, and
  - (c) any duties imposed by regulations made under subsection (4A)(b) of that section by virtue of subsection (4B) of that section,
- so far as relating to relevant insurances under which the overseas insurer in question has any obligations.
- (3) An overseas insurer's tax representative shall be personally liable—
- (a) in respect of any failure to secure the discharge of the relevant duties, and
  - (b) in respect of anything done for purposes connected with acting on the overseas insurer's behalf,
- as if the relevant duties were imposed jointly and severally on the tax representative and the overseas insurer.
- (4) In the application of this section in relation to any particular tax representative, it is immaterial whether any particular relevant duty arose before or after his appointment.
- (5) This section has effect in relation to relevant duties relating to chargeable events happening on or after the day by which section 552A(6) requires the nomination of the overseas insurer's first tax representative to be made.
- (6) Expressions used in this section and in section 552A have the same meaning in this section as they have in that section.”

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## 88 Overseas life assurance business.

- (1) After section 553 of the Taxes Act 1988 (non-resident policies and off-shore capital redemption policies) there shall be inserted—

### “553A Overseas life assurance business: life policies.

- (1) A policy of life insurance which, immediately before the happening of a chargeable event or a relevant event—
- (a) is an overseas policy, but
  - (b) is not a new non-resident policy,
- shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new non-resident policy.
- (2) A policy of life insurance which, immediately before the happening of a relevant event—
- (a) is an overseas policy, and
  - (b) is a new non-resident policy,
- shall, in relation to that event, be taken for the purposes of this Chapter not to be a qualifying policy.
- (3) Where a chargeable event happens in relation to a new non-resident policy, section 553(7) shall not have effect in relation to the gain treated as arising in connection with the policy on the happening of the chargeable event.
- (4) In this section—
- “new non-resident policy” means a new non-resident policy as defined in paragraph 24 of Schedule 15 (and in subsections (2) and (3) above includes a policy treated as such by virtue of subsection (1) above);
  - “overseas policy” means a policy of life insurance which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company or friendly society;
  - “relevant event”, in relation to a policy of life insurance, means an event which would be a chargeable event in relation to that policy if the policy were assumed not to be a qualifying policy.
- (5) This section applies in relation to chargeable events and relevant events happening on or after 17th March 1998 in relation to policies of life insurance issued in respect of insurances made on or after that date.
- (6) A policy of life insurance issued in respect of an insurance made before 17th March 1998 shall be treated for the purposes of this section as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.”

- (2) After section 553A of the Taxes Act 1988 there shall be inserted—

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**“553B Overseas life assurance business: capital redemption policies.**

- (1) A capital redemption policy which immediately before the happening of a chargeable event—
  - (a) is an overseas policy, but
  - (b) is not a new offshore capital redemption policy,
 shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new offshore capital redemption policy.
  
- (2) In this section—
 

“new offshore capital redemption policy” has the same meaning as in section 553;

“overseas policy” means a capital redemption policy which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company.
  
- (3) This section applies in relation to capital redemption policies where the contract is made after the coming into force of the first regulations under section 458A in consequence of which capital redemption business forms part of the overseas life assurance business of an insurance company.”

**89 Personal portfolio bonds.**

In Chapter II of Part XIII of the Taxes Act 1988 (life policies, life annuities and capital redemption policies) after section 553B (which is inserted by section 88 above) there shall be inserted—

**“553C Personal portfolio bonds.**

- (1) The Treasury may by regulations make provision imposing a yearly charge to tax in relation to personal portfolio bonds (“yearly” being construed for this purpose by reference to years as defined in section 546(4)).
- (2) Subject to any provision to the contrary made by the regulations, any charge to tax under this section is in addition to any other charge to tax under this Chapter.
- (3) The regulations may make provision with respect to or in connection with all or any of the following—
  - (a) the method by which the charge to tax, or any relief, allowance or deduction against or in respect of the tax, is to be imposed or given effect;
  - (b) the person who is to be liable for the tax;
  - (c) the periods for or in respect of which the tax is to be charged;
  - (d) the amounts in respect of which, or by reference to which, the tax is to be charged;
  - (e) the period or periods by reference to which those amounts are to be determined;
  - (f) the rate or rates at which the tax is to be charged;
  - (g) any reliefs, allowances or deductions which are to be given or made against or in respect of the tax;

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- (h) the administration of the tax.
- (4) The provision that may be made by the regulations includes provision for imposing the charge to tax by a method which involves—
- (a) treating an event described in the regulations as if it were a chargeable event;
  - (b) treating an amount determined in accordance with the regulations as if it were a gain treated as arising on the happening of a chargeable event;
  - (c) deeming an amount determined in accordance with the regulations to be income of a person or body of persons (or to be part of the aggregate income of the estate of a deceased person); or
  - (d) applying section 740, with or without modification, in relation to an amount determined in accordance with the regulations.
- (5) The provision that may be made in the regulations includes provision for the amount or amounts in respect of which, or by reference to which, the tax is to be charged for periods beginning after the coming into force of the regulations to be determined in whole or in part by reference to periods beginning or ending, premiums paid, or events happening, before, on or after the day on which the Finance Act 1998 is passed.
- (6) The regulations may make provision excluding, or applying (with or without modification), other provisions of this Chapter in relation to policies or contracts which are also personal portfolio bonds.
- (7) In this section, “personal portfolio bond” means a policy of life insurance, contract for a life annuity or capital redemption policy under whose terms—
- (a) some or all of the benefits are determined by reference to the value of, or the income from, property of any description (whether or not specified in the policy or contract) or fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and
  - (b) some or all of the property, or such an index, may be selected by, or by a person acting on behalf of, the holder of the policy or contract or a person connected with him (or the holder of the policy or contract and a person connected with him);
- but a policy or contract is not a personal portfolio bond if the only property or index which may be so selected is of a description prescribed for this purpose in the regulations.
- (8) The regulations may prescribe additional conditions which must be satisfied if a policy or contract is to be a personal portfolio bond.
- (9) The regulations—
- (a) may make different provision for different cases, different circumstances or different periods; and
  - (b) may make incidental, consequential, supplemental or transitional provision.
- (10) In this section, “holder”, in the case of a policy or contract held by two or more persons, includes a reference to any of those persons.
- (11) Section 839 (connected persons) applies for the purposes of this section.”

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## 90 Distributions to friendly societies.

- (1) The repeal by section 30(4) of the <sup>M69</sup>Finance (No. 2) Act 1997 of section 231(2) of the Taxes Act 1988 (payment of tax credit to a company resident in the UK) shall not have effect in relation to any distribution made to a friendly society before 6th April 2004 which is—
  - (a) a distribution to a friendly society all of whose profits are exempt from corporation tax by virtue of section 460(1) of the Taxes Act 1988 (life or endowment business of friendly society); or
  - (b) a distribution not falling within paragraph (a) above in relation to which exemption is given under section 460(1) of that Act.
- (2) In relation to any distribution falling within paragraph (a) or (b) of subsection (1) above—
  - (a) paragraph 3 of Schedule 4 to the <sup>M70</sup>Finance (No. 2) Act 1997 (which, from 6th April 1999, repeals certain provisions about claims for tax credits for accounting periods to which self-assessment applies) shall have effect as if the reference in sub-paragraph (2) of that paragraph to 6th April 1999 were a reference to 6th April 2004; and
  - (b) paragraph 2 of that Schedule (which repeals certain provisions about claims for tax credits for earlier periods) shall have no effect.
- (3) In the case of any distribution falling within paragraph (b) of subsection (1) above, paragraph 12 of Schedule 3 to the <sup>M71</sup>Finance (No. 2) Act 1997 (which defers the coming into force of paragraphs 10 and 11 in relation to friendly societies) shall have effect as if the reference in sub-paragraph (2) of that paragraph to 6th April 1999 were a reference to 6th April 2004.
- (4) Schedule 8 to the <sup>M72</sup>Finance (No. 2) Act 1997 (repeals), so far as it relates to any repeal referred to in the preceding provisions of this section, shall have effect subject to those provisions.

### Marginal Citations

- M69** 1997 c. 58.  
**M70** 1997 c. 58.  
**M71** 1997 c. 58.  
**M72** 1997 c. 58.

## 91 Provisional repayments in connection with pension business.

- (1) In Schedule 19AB to the Taxes Act 1988 (provisional repayments with respect to pension business) in paragraph 3 (recovery of excessive repayments) after sub-paragraph (1) there shall be inserted—
 

“(1ZA) In its application by sub-paragraph (1) above, section 30 of the Management Act shall have effect as if, instead of the provision made by subsection (5), it provided that an assessment under that section by virtue of sub-paragraph (1) above is not out of time under section 34 of that Act if it is made no later than the end of the accounting period following that in which the assessment mentioned in paragraph (a) of that sub-paragraph is finally determined.”

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- (2) The amendment made by subsection (1) above has effect in relation to accounting periods beginning at any time after 1st October 1992 and ending before the day appointed under section 199 of the <sup>M73</sup>Finance Act 1994.

**Marginal Citations**

M73 1994 c. 9.

*Pensions*

**92 Approved retirement benefit schemes etc.**

Schedule 15 to this Act (which makes provision in relation to cases where a scheme has been approved for the purposes of Chapter I of Part XIV of the Taxes Act 1988 or an approval for those purposes has ceased to have effect) shall have effect.

**93 Benefits received under non-approved retirement benefits scheme.**

- (1) In section 596A(4) of the Taxes Act 1988 (charge to tax on benefits under non-approved schemes: amount charged to tax), for paragraph (b) substitute—

“(b) in the case of a non-cash benefit, whichever is the greater of—

- (i) the amount which would be chargeable to tax under section 19(1) if the benefit were taxable as an emolument of the employment under Case I of Schedule E, or
- (ii) the cash equivalent of the benefit determined in accordance with section 596B.”.

- (2) In section 596B(9) of that Act (supplementary provisions: person by whom expenditure incurred on improvement of living accommodation), for paragraph (b) substitute—

“(b) the employer or former employer; or

- (c) any person, other than the recipient, who is connected with a person falling within paragraph (a) or (b) above.”.

- (3) After section 596B of that Act insert—

**“596C Notional interest treated as paid if amount charged in respect of beneficial loan.**

- (1) This section applies where a person is chargeable to tax under section 596A in any year of assessment on an amount which consists of or includes an amount representing the cash equivalent of the benefit of a loan determined (by virtue of section 596B(1)(a)) in accordance with Part II of Schedule 7.
- (2) Where this section applies, the person chargeable is treated as having paid interest on the loan of the same amount as the cash equivalent so determined.
- (3) The interest is treated as paid for all the purposes of the Tax Acts (other than those relating to the charge under section 596A) but not so as to make it—
  - (a) income of the person making the loan, or

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- (b) relevant loan interest to which section 369 applies (mortgage interest payable under deduction of tax).
- (4) The interest is treated as accruing during and paid at the end of the year of assessment or, if different, the period in that year during which the loan is outstanding.”.
- (4) This section applies to benefits received in the year 1998-99 and subsequent years of assessment.

#### **94 Approval of personal pension schemes.**

- (1) After section 638 of the Taxes Act 1988 there shall be inserted the following section—

##### **“638A Power to prescribe restrictions on approval.**

- (1) The Board—
  - (a) may by regulations restrict their discretion to approve a personal pension scheme; and
  - (b) shall not approve any such scheme if to do so would be inconsistent with any regulations under this section.
- (2) The restrictions that may be imposed by regulations under this section may be imposed by reference to any one or more of the following, that is to say—
  - (a) the benefits for which the scheme provides;
  - (b) the investments held for the purposes of the scheme;
  - (c) the manner in which the scheme is administered;
  - (d) any other circumstances whatever.
- (3) The following provisions of this section apply where—
  - (a) any regulations are made under this section imposing a restriction (“the new restriction”) on the Board’s discretion to approve a personal pension scheme;
  - (b) the new restriction did not exist immediately before the making of the regulations; and
  - (c) that restriction is one imposed by reference to circumstances other than the benefits for which the scheme provides.
- (4) Subject to subsections (5) and (6) below, a personal pension scheme which is an approved scheme immediately before the day on which the regulations imposing the new restriction come into force shall cease to be approved at the end of the period of 36 months beginning with that day if, at the end of that period, the scheme—
  - (a) contains a provision of a prohibited description, or
  - (b) does not contain every provision which is a provision of a required description.
- (5) The Board may by regulations provide that subsection (4) above is not to apply in the case of the inclusion of such provisions of a prohibited description, or in the case of the omission of such provisions of a required description, as may be specified in the regulations.
- (6) For the purposes of subsection (4) above—



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- (a) a provision contained in a scheme shall not be treated as being of a prohibited description to the extent that it authorises the retention of an investment held immediately before the day of the making of the new regulations; and
  - (b) so much of any provision contained in a scheme as authorises the retention of an investment held immediately before that day shall be disregarded in determining if any provision of the scheme is of a required description.
- (7) In this section—
- (a) references to a provision of a prohibited description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which, if contained in a personal pension scheme, would prevent the Board from approving it; and
  - (b) references to a provision of a required description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which must be contained in a personal pension scheme before the Board may approve it.”
- (2) Accordingly, in section 631(2) of that Act (power to approve schemes), for “638” there shall be substituted “ 638A ”.

## 95 Personal pensions: charge on withdrawal of approval.

- (1) After section 650 of the Taxes Act 1988 (withdrawal of approval) there shall be inserted the following section—

### “650A Charge on withdrawal of approval from arrangements.

- (1) Where any personal pension arrangements cease to be approved arrangements by virtue of the exercise by the Board of their power under section 650(2), 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 (taking that value at the relevant time) of the appropriate part of the assets held at that time for the purposes of the relevant scheme.
- (3) In subsection (2) above—
  - “the appropriate part”, in relation to the value of any assets, is so much of those assets as is properly attributable, in accordance with the provisions of the scheme and any just and reasonable apportionment, to the arrangements in question; and
  - “the relevant time” means the time immediately before the date from which the Board’s approval is withdrawn.
- (4) Subject to subsection (5) below, the person liable for the tax charged under this section shall be the scheme administrator for the relevant scheme.
- (5) If, in any case where an amount of tax has been charged under this section and has not been paid—

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- (a) there is at any time no person who, as the scheme administrator for the relevant scheme, may be assessed to that amount of tax, or is liable to pay it,
  - (b) the scheme administrator for that scheme cannot for the time being be traced,
  - (c) there has been such a failure by the scheme administrator for that scheme to meet a liability to pay that amount as the Board consider to be a failure of a serious nature, or
  - (d) it appears to the Board that a liability of the scheme administrator for that scheme to pay that amount of tax is a liability that he will be, or (were there an assessment) would be, unable to meet out of assets held in accordance with the scheme for the purposes of those arrangements,
- the Board shall be entitled to assess the unpaid tax on the person who made the arrangements in question as if the tax charged under this section, to the extent that it is unpaid, were assessable under this section on that person, instead of on the scheme administrator.
- (6) An assessment to tax made by virtue of subsection (5)(c) above shall not be out of time if it is made within three years after the date on which the tax which the scheme administrator has failed to pay first became due from him.
  - (7) For the purposes of this section the value of an asset is, subject to subsection (8) below, its market value, construing “market value” in accordance with section 272 of the 1992 Act.
  - (8) 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 (9) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.
  - (9) Those persons are—
    - (a) the person who (whether or not before the making of the loan) made the arrangements in relation to which the Board’s approval has been withdrawn;
    - (b) any other person who has at any time (whether or not before the making of the loan) made contributions under those arrangements; and
    - (c) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (a) or (b) above.
  - (10) In this section “the relevant scheme”, in relation to any personal pension arrangements, means the scheme in accordance with which those arrangements were made.
  - (11) Section 839 shall apply for the purposes of this section.”
- (2) In section 650 of that Act (withdrawal of approval), the following subsection shall be inserted after subsection (5)—
- “(6) The power of the Board under this section to withdraw their approval in relation to any arrangements made under a personal pension scheme shall be exercisable for the purposes of section 650A notwithstanding that the time from which the approval is withdrawn is a time from which, by virtue

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of section 631(4) or 638A(4), the whole scheme ceases to be an approved scheme.”

- (3) After section 239A of the <sup>M74</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted—

“ *Personal pension schemes*

**239B Withdrawal of approval of approved arrangements.**

- (1) This section applies where tax is charged in accordance with section 650A of the Taxes Act (tax charged on the withdrawal of the Board’s approval in relation to approved personal pension arrangements).
- (2) For the purposes of this Act the appropriate part of the assets which at the relevant time are held for the purposes of the relevant scheme—
- (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 650A(2) of the Taxes Act; but
  - (b) shall not be deemed to be disposed of by any person at that time.
- (3) The person who shall be deemed in accordance with subsection (2)(a) above to have acquired the appropriate part of the assets shall be the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time.
- (4) In this section—
- “the appropriate part” and “the relevant time” have the meanings given by subsection (3) of section 650A of the Taxes Act for the purposes of subsection (2) of that section; and
  - “the relevant scheme” has the same meaning as in that section.”
- (4) This section has effect in relation to any case in which the date from which the Board’s approval is withdrawn is a date on or after 17th March 1998, except a case where the notice under section 650(2) of the Taxes Act 1988 was given before that date.

**Marginal Citations**

M74 1992 c. 12.

**96 Information relating to personal pension schemes etc.**

- (1) After section 651 of the Taxes Act 1988 there shall be inserted the following section—

“**651A Information powers.**

- (1) The Board may by regulations make any of the following provisions—
- (a) provision requiring prescribed persons to furnish to the Board, at prescribed times, information relating to any of the matters mentioned in subsection (2) below;

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- (b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;
  - (c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;
  - (d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;
  - (e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.
- (2) The matters referred to in subsection (1) above are—
- (a) any personal pension scheme which is or has been approved; and
  - (b) any personal pension arrangements which are or have been approved.
- (3) A person who fails to comply with regulations made under subsection (1)(e) above shall be liable to a penalty not exceeding £3,000.
- (4) Regulations under this section may make different provision for different descriptions of case.
- (5) In this section “prescribed” means prescribed by regulations made under this section.”
- (2) Section 652 of the Taxes Act 1988 (information about payments) shall cease to have effect.
- (3) In the Table in section 98 of the <sup>M75</sup>Taxes Management Act 1970 (penalties for failure to provide information etc.)—
- (a) in the first column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—
- 
- “regulations under section 651A(1)(b) to (d);”;
- 
- (b) in that column, the entry relating to section 652 of the Taxes Act 1988 shall be omitted; and
  - (c) in the second column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—
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- “regulations under section 651A(1)(a);”.
- 
- (4) Subsections (2) and (3)(b) above shall come into force on such day as the Treasury may by order appoint.

**Subordinate Legislation Made**

**P3** [S. 96\(4\)](#) power partly exercised: 1.10.2000 appointed for specified provisions by [S.I. 2000/2319](#), [art. 2](#)

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#### Commencement Information

**I5** S. 96 wholly in force; s. 96(1)(3)(a)(c)(4) in force at Royal Assent, see s. 96(4); s. 96(2)(3)(b) in force at 1.10.2000 by S.I. 2000/2319, art. 2

#### Marginal Citations

**M75** 1970 c. 9.

### 97 Notices to be given to scheme administrator.

(1) After section 653 of the Taxes Act 1988 there shall be inserted the following section—

#### “653A Notices to be given to scheme administrator.

(1) Where—

- (a) the Board, or any officer of the Board, is authorised or required by or in consequence of any provision of this Chapter to give a notice to the person who is the scheme administrator of a personal pension scheme, but
- (b) there is for the time being no scheme administrator for that scheme or the person who is the scheme administrator for that scheme cannot be traced,

that power or duty may be exercised or performed by giving that notice, instead, to the person specified in subsection (2) below.

(2) That person is—

- (a) the person who established the scheme; or
- (b) any person by whom that person has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

(3) The giving of a notice in accordance with this section shall have the same effect as the giving of that notice to the scheme administrator and, without prejudice to section 650A(5), shall not impose an additional obligation or liability on the person to whom the notice is actually given.”

(2) This section has effect in relation to the giving of notices at any time on or after the day on which this Act is passed.

### 98 Assessments on scheme administrators.

(1) Part XIV of the Taxes Act 1988 (pension schemes etc.) shall have effect, and shall be deemed always to have had effect, with the following section inserted as the first section of Chapter VI of that Part—

#### “658A Charges and assessments on administrators.

(1) Tax charged under Chapter I or IV of this Part on the administrator of a scheme—

- (a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but

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- (b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.
- (2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.
- (3) Where tax charged under Chapter I of this Part on the administrator of a scheme is assessable by virtue of section 606 or 606A on a person who is not a relevant person for the purposes of subsection (1) above, the assessment shall be made by the Board.
- (4) In this section “administrator”, in relation to a scheme, means the person who is—
- (a) the administrator of the scheme within the meaning given by section 611AA; or
  - (b) the scheme administrator, as defined in section 630.
- (5) This section is without prejudice to section 591D(4).”
- (2) In section 9 of the <sup>M76</sup>Taxes Management Act 1970 (self-assessment), in subsection (1), for “subsection (2)” there shall be substituted “ subsections (1A) and (2) ”; and after that subsection there shall be inserted the following subsection—
- “(1A) The tax to be assessed on a person by a self-assessment shall not include any tax which, under Chapter I or IV of Part XIV of the principal Act, is charged on the administrator of a scheme (within the meaning of section 658A of that Act) and is assessable by the Board in accordance with that section.”
- (3) Subsection (2) above shall have effect for the year 1998-99 and subsequent years of assessment and shall be deemed to have had effect for the years 1996-97 and 1997-98.

**Marginal Citations**

M76 1970 c. 9.

*Futures and options*

**99 Extension of provisions relating to guaranteed returns.**

- (1) In Schedule 5AA to the Taxes Act 1988 (guaranteed returns on transactions in futures and options), the following paragraph shall be inserted after paragraph 4—

**Futures running to delivery and options exercised**

- “4A (1) This paragraph applies where for the purposes of this Schedule—
- (a) there are or, apart from section 144(2) or (3) of the 1992 Act, would be two or more related transactions;
  - (b) one of those transactions is or would be the creation or acquisition (by the making or receiving of a grant or otherwise) of a future or option;

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- (c) the other transaction, or one of the other transactions, is or would be the running of the future to delivery or the exercise of the option; and
  - (d) the transaction mentioned in paragraph (c) above is not treated for those purposes as a disposal of a future or option.
- (2) This Schedule shall have effect in relation to the parties to the future or option as if the transaction specified in sub-paragraph (3) below—
  - (a) were a transaction for which the scheme or arrangements by reference to which the transactions are related transactions provided; and
  - (b) were a transaction which in fact takes place at the time (“the relevant time”) immediately before the future runs to delivery or, as the case may be, the option is exercised.
- (3) That transaction is a disposal of the future or option which—
  - (a) in the case of a person whose rights and entitlements under the future or option have a market value at the relevant time, consists in a disposal for a consideration equal to that market value; and
  - (b) in the case of any other party to the future or option, consists in a disposal which—
    - (i) is made for a nil consideration; and
    - (ii) involves that person in incurring costs equal to the amount specified in sub-paragraph (4) below.
- (4) That amount is the amount which that party to the future or option might reasonably have been expected to pay, in a transaction at arm’s length entered into at the relevant time, for the release of his obligations and liabilities under the future or option.
- (5) Where, in a case in which a transaction is deemed to take place by virtue of sub-paragraph (2)(b) above (“the deemed transaction”)—
  - (a) any profits or gains arising from the deemed transaction are chargeable to tax under Case VI of Schedule D in accordance with paragraph 1(1) above, or
  - (b) any loss arising in the deemed transaction is brought into account for the purposes of section 392 or 396 in accordance with paragraph 1(5) above,  
amounts taken into account or allowable as deductions in computing those profits or gains, or that loss, shall not be excluded by virtue of section 37 or 39 of the 1992 Act (exclusion of amounts taken into account or allowable for the purposes of the taxation of income and profits) from any computation made for the purposes of that Act, but paragraph 1(6) above shall be given effect to in relation to the 1992 Act in accordance with sub-paragraphs (6) to (10) below.
- (6) Where there are profits or gains arising to any person (“the taxpayer”) from the deemed transaction, an increase equal to the amount of those profits or gains shall be made in the amount that would otherwise be taken for the purposes of the 1992 Act to be—

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- (a) the amount of the consideration for the acquisition of any asset acquired by the taxpayer by means of the future running to delivery or, as the case may be, by the exercise of the option; or
- (b) the amount of the consideration for the acquisition by him of any asset disposed of by him by means of the future running to delivery or, as the case may be, in consequence of the exercise of the option;

but any increase made by virtue of paragraph (b) above in the amount of any consideration shall be disregarded in computing the amount of any indexation allowance.

(7) Where there is a loss for any person ("the taxpayer") in the deemed transaction—

- (a) a reduction equal to the smaller of the amount of the loss and the amount to be reduced shall be made in the amount that would otherwise be taken for the purposes of the 1992 Act to be the amount of the consideration mentioned in sub-paragraph (6)(a) or (b) above; and
- (b) the amount (if any) by which the amount of the loss exceeds the amount to be reduced shall be deemed to be a chargeable gain accruing to the taxpayer on the occasion specified in sub-paragraph (8) below.

(8) That occasion is—

- (a) in a case where the consideration mentioned in paragraph (a) of sub-paragraph (6) above has been reduced to nil, the first occasion after the acquisition mentioned in that paragraph when there is a disposal of the asset in question; and
- (b) in a case where it is the consideration mentioned in sub-paragraph (6)(b) above that has been reduced to nil, the occasion of the disposal made by the taxpayer by means of the future running to delivery or, as the case may be, in consequence of the exercise of the option.

(9) For the purposes of sub-paragraphs (6) and (7) above, where in any case there is a deemed disposal of an option by the person who granted it, any determination—

- (a) of the profits arising to the grantor of the option from that disposal, or
- (b) of the losses for the grantor in that disposal,

shall be made as if that disposal and the disposal by which the option was granted were a single transaction.

(10) In sub-paragraph (8) above—

- (a) the reference in paragraph (a) to a disposal of the asset in question includes a reference to anything that would be such a disposal but for the provisions of section 116(10) or 127 of the 1992 Act; and
- (b) the references in each of paragraphs (a) and (b) to a disposal include references to a disposal which, in accordance with the 1992 Act, would (apart from sub-paragraph (7)(b) above) be a disposal on which neither a gain nor a loss accrues.



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(11) In this paragraph—

“future” and “option” have the same meanings as in paragraph 4 above;

“market value” has the same meaning as in the 1992 Act;

“party”, in relation to a future or option, means one of the persons who has any right or entitlement comprised in or arising under the future or option or who is subject to any obligation or liability so comprised or arising;

and references in this paragraph to a future running to delivery are references to the discharge by performance of the obligations owed under the commodity or financial futures contract in question to the party to the future whose rights are in relation to its underlying subject matter.

(12) Sub-paragraph (3) of paragraph 3 above applies for the purposes of sub-paragraph (11) above as it applies for the purposes of that paragraph.”

(2) In paragraph 9 of that Schedule (insurance companies), for the words from the beginning to “this Schedule” there shall be substituted—

“9 (1) This paragraph applies where—

- (a) any determination falls to be made under section 432A of the category of business to which any income or losses is or are referable; and
- (b) that income or those losses would all be chargeable or relievable by virtue of this Schedule but for the exemptions from tax and exclusions from the provisions of this Schedule that are applicable in respect of the category of business to which it or they are determined to be referable.

(2) Section 432A shall have effect”.

(3) In that paragraph, after the sub-paragraph (2) created by virtue of subsection (2) above there shall be inserted the following sub-paragraphs—

“(3) Subject to sub-paragraphs (4) and (5) below, paragraph 4A above shall have effect as if the references in sub-paragraph (5) of that paragraph to—

- (a) profits or gains arising from the deemed transaction that are chargeable to tax under Case VI of Schedule D in accordance with paragraph 1(1) above, or
- (b) any loss arising in the deemed transaction that is brought into account for the purposes of section 392 or 396 in accordance with paragraph 1(5) above,

were references to all the income or losses in relation to which the determination mentioned in sub-paragraph (1) above falls to be made.

(4) Sub-paragraph (6) of paragraph 4A above shall not apply in relation to the amount of the consideration for the acquisition of any asset acquired by the taxpayer by means of the future running to delivery or, as the case may be, by the exercise of the option if—

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- (a) immediately before the time of the deemed transaction, the future or option is an asset within one of the categories set out in section 440(4); and
  - (b) immediately after its acquisition, the asset acquired is within another of those categories.
- (5) Sub-paragraph (6) of paragraph 4A above shall not apply in relation to the amount of the consideration for the acquisition of any asset disposed of by the taxpayer by means of the future running to delivery or, as the case may be, by the exercise of the option if—
- (a) immediately before the time of the deemed transaction, the future or option is an asset within one of the categories set out in section 440(4); and
  - (b) immediately before its disposal, the asset disposed of is within another of those categories.
- (6) Where any future or option would not fall (apart from this sub-paragraph) to be treated as an asset for the purposes of section 440, any question for the purposes of this paragraph whether it is an asset within any of the categories set out in subsection (4) of that section shall be determined as if it were an asset.
- (7) Expressions used in this paragraph and in paragraph 4A above have the same meanings in this paragraph as in that paragraph.”
- (4) In paragraph 4(6) of that Schedule, in the definition of “option”, after paragraph (b) there shall be inserted— “ and includes any liability or entitlement under an option. ”
- (5) This section applies where the transaction consisting in the future running to delivery or the exercise of the option takes place on or after 6th February 1998.

### *Securities*

#### **100 Accrued income scheme.**

- (1) In subsection (1) of section 1A of the Taxes Act 1988 (rate of income tax applicable to income from savings and distributions), for “and 686,” there shall be substituted “, 686 and 720(5), ”.
- (2) In subsection (2) of that section, after paragraph (a) there shall be inserted the following paragraph—
  - “(aa) any amount chargeable to tax under Case VI of Schedule D by virtue of section 714, 716 or 723;”
- (3) Subsections (1) and (2) above apply for the year 1998-99 and subsequent years of assessment.

#### **101 Dealers in securities etc.**

- (1) Section 471 of the Taxes Act 1988 (exchange of securities in connection with conversion operations, nationalisation etc.) shall cease to have effect.
- (2) Section 472 of that Act (distribution of securities issued in connection with nationalisation etc.) shall cease to have effect.

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- (3) Subsection (1) above applies in relation to exchanges made after the day on which this Act is passed.
- (4) Subsection (2) above applies in relation to issues of securities occurring after that day.

## 102 Manufactured dividends.

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions) in subsection (1), after “Subject to sections” there shall be inserted “231AA,” and after that section there shall be inserted—

### “231AA No tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement.

- (1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—
  - (a) he is the borrower under a stock lending arrangement or the interim holder under a repurchase agreement;
  - (b) the qualifying distribution is, or is a payment representative of, a distribution in respect of securities to which the arrangement or agreement relates; and
  - (c) a manufactured dividend representative of that distribution is paid by that person in respect of securities to which the arrangement or agreement relates.
- (2) In this section “stock lending arrangement” has the same meaning as in section 263B of the 1992 Act and, in relation to any such arrangement, any reference to the borrower, or the securities to which the arrangement relates, shall be construed accordingly.
- (3) For the purposes of this section the cases where there is a repurchase agreement are the following—
  - (a) any case falling within subsection (1) of section 730A; and
  - (b) any case which would fall within that subsection if the sale price and the repurchase price were different;and, in any such case, any reference to the interim holder, or the securities to which the agreement relates, shall be construed accordingly.
- (4) For the purposes of this section “manufactured dividend” has the same meaning as in paragraph 2 of Schedule 23A (and any reference to a manufactured dividend being paid accordingly includes a reference to a payment falling by virtue of section 736B(2) or 737A(5) to be treated for the purposes of Schedule 23A as if it were made).”

- (2) In section 231 of the Taxes Act 1988, in subsection (1), after “231AA,” there shall be inserted “231AB,” and after section 231AA of that Act there shall be inserted—

### “231AB No tax credit for original owner under repurchase agreement in respect of certain manufactured dividends.

- (1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—

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- (a) he is the original owner under a repurchase agreement;
  - (b) the qualifying distribution is a manufactured dividend paid to that person by the interim holder under the repurchase agreement in respect of securities to which the agreement relates; and
  - (c) the repurchase agreement is not such that the actual dividend which the manufactured dividend represents is receivable otherwise than by the original owner.
- (2) For the purposes of this section the cases where there is a repurchase agreement are the following—
- (a) any case falling within subsection (1) of section 730A; and
  - (b) any case which would fall within that subsection if the sale price and the repurchase price were different;
- and, in any such case, any reference to the original owner, the interim holder, or the securities to which the agreement relates, shall be construed accordingly.
- (3) Subsection (4) of section 231AA applies for the purposes of this section as it applies for the purposes of that section.”
- (3) In section 737D of the Taxes Act 1988 (power by regulations to provide for manufactured payments to be eligible for relief) in subsection (2) (which defines manufactured payment as any manufactured dividend etc) the words “manufactured dividend” shall cease to have effect.
- (4) Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) shall be amended in accordance with subsections (5) to (8) below.
- (5) In paragraph 2 (UK equities) for sub-paragraph (2) there shall be substituted—
- “(2) Where a manufactured dividend is paid by a dividend manufacturer who is a company resident in the United Kingdom, the Tax Acts shall have effect—
- (a) in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend on the UK equities in question; and
  - (b) in relation to the dividend manufacturer, as if the amount paid were a dividend of his.”
- (6) In paragraph 2(3) (manufactured dividends to which paragraph 2(2) does not apply) paragraph (a) (duty to account for notional ACT) shall cease to have effect.
- (7) In paragraph 2(6) (written statement in respect of certain manufactured dividends) in paragraph (a), after “a dividend manufacturer pays a manufactured dividend” there shall be inserted “to which sub-paragraph (3) above applies”.
- (8) In consequence of subsection (6) above, the following provisions shall also cease to have effect—
- (a) in paragraph 2, sub-paragraphs (4) and (5) and, in sub-paragraph (6), paragraph (b) and the word “and” immediately preceding it; and
  - (b) in paragraph 2A (deductibility of manufactured payment in the case of the manufacturer) in sub-paragraph (1), the words “together with an amount equal to the notional ACT” and sub-paragraph (3).

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- (9) Subsection (1) above has effect in relation to qualifying distributions made on or after 8th April 1998 if the manufactured dividend representative of the distribution is paid (or treated for the purposes of Schedule 23A to the Taxes Act 1988 as paid) on or after 6th April 1999.
- (10) Subsections (2) to (8) above have effect in relation to manufactured dividends paid (or treated for the purposes of Schedule 23A to the Taxes Act 1988 as paid) on or after 6th April 1999.

### *Double taxation relief*

## **103 Restriction of relief on certain interest and dividends.**

- (1) For section 798 of the Taxes Act 1988 there shall be substituted the following section—

### **“798 Restriction of relief on certain interest and dividends.**

- (1) This section applies where—
- (a) in any chargeable period the profits of a trade carried on by a qualifying taxpayer include an amount computed in accordance with section 795 in respect of foreign interest or foreign dividends;
  - (b) the taxpayer is entitled in accordance with this Chapter to credit for foreign tax on the foreign interest or foreign dividends; and
  - (c) in the case of foreign dividends, the foreign tax mentioned in paragraph (b) above is or includes underlying tax.
- (2) The amount of the credit for foreign tax referred to in subsection (1)(b) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax—
- (a) shall be limited by treating the amount of the foreign interest or foreign dividends (as increased or reduced under section 798A) as reduced (or further reduced) for the purposes of this Chapter by an amount equal to the taxpayer’s financial expenditure in relation to the interest or dividends (as determined in accordance with section 798B); and
  - (b) so far as the credit relates to foreign tax on interest or foreign tax on dividends which is not underlying tax, shall not exceed 15 per cent. of the interest or dividends, computed without regard to paragraph (a) above or to any increase or reduction under section 798A.
- (3) In this section and sections 798A and 798B—
- “interest”, in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan;
- “foreign dividends” means dividends payable out of or in respect of the stocks, funds, shares or securities of a body of persons not resident in the United Kingdom;

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“foreign interest” means interest payable by a person not resident in the United Kingdom or by a government or public or local authority in a country outside the United Kingdom.

- (4) In this section and section 798B “qualifying taxpayer” means, subject to subsection (5) below, a person carrying on a trade which includes the receipt of interest or dividends and is not an insurance business.
- (5) Where a company which is connected or associated with a qualifying taxpayer is acting in accordance with a scheme or arrangement the purpose, or one of the main purposes, of which is to prevent or restrict the application of this section to the taxpayer—
  - (a) the company shall be treated for the purposes of this section as a qualifying taxpayer; and
  - (b) any foreign interest or foreign dividends received in pursuance of the scheme or arrangement shall be treated for those purposes as profits of a trade carried on by the company.
- (6) For the purposes of this section and section 798B—
  - (a) section 839 applies; and
  - (b) subsection (10) of section 783 applies as it applies for the purposes of that section.”
- (2) This section and sections 104 and 105 do not have effect in relation to foreign interest or foreign dividends paid before 1st January 1999 in pursuance of arrangements which were entered into before, and are not altered on or after, 17th March 1998.
- (3) Subject to subsection (2) above, this section and sections 104 and 105 have effect in relation to foreign interest or foreign dividends paid on or after 17th March 1998.

#### **104 Adjustments of interest and dividends for spared tax etc.**

After section 798 of the Taxes Act 1988 there shall be inserted the following section—

##### **“798A Adjustments of interest and dividends for spared tax etc.**

- (1) In a case where section 798 applies—
  - (a) subsection (2) below applies if the foreign tax referred to in subsection (1)(b) of that section is or includes an amount of spared tax; and
  - (b) subsection (3) below applies if the foreign tax so referred to is or includes an amount of tax which is not spared tax.
- (2) For the purposes of income tax or corporation tax, the amount which apart from this subsection would be the amount of the foreign interest or foreign dividends shall be treated as increased by so much of the spared tax as does not exceed—
  - (a) the amount of the spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in section 798(1)(b); or
  - (b) if it is less, 15 per cent. of the interest or dividends, computed without regard to any increase under this subsection.
- (3) If the amount of tax which is not spared tax exceeds—

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- (a) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (2) of section 798), is allowed for that tax against income tax or corporation tax; or
- (b) if it is less in the case of tax on foreign interest, 15 per cent. of the interest, computed without regard to any increase or reduction under this section or that subsection,

then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign interest or foreign dividends shall be treated as reduced by a sum equal to the excess.

- (4) Subsection (2) above has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the <sup>M77</sup>Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).
- (5) Nothing in subsection (2) above prejudices the operation of section 795 in relation to foreign tax which is not spared tax.
- (6) In this section “spared tax” means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5).”

#### Marginal Citations

M77 1996 c. 8.

### 105 Meaning of “financial expenditure”.

After section 798A of the Taxes Act 1988 there shall be inserted the following section—

#### “798B Meaning of “financial expenditure”.

- (1) For the purposes of section 798 “financial expenditure”, in relation to a qualifying taxpayer and any interest or dividends is, subject to the provisions of this section, the aggregate of—
    - (a) so much of the financial expenses (consisting of interest, discounts or similar sums or qualifying losses) incurred by the taxpayer or a person connected or associated with him as—
      - (i) is properly attributable to the earning of the interest or dividends; and
      - (ii) falls to be taken into account in computing the taxpayer’s or person’s liability to income tax or corporation tax; and
    - (b) so much of any other sum paid by the taxpayer or a person connected or associated with him which—
      - (i) falls to be taken into account as mentioned in paragraph (a) above; and
      - (ii) would not, apart from this paragraph, be taken into account in determining the amount of the interest or dividends,
- as it is reasonable to regard as attributable to the earning of the interest or dividends (whether or not it would fall, in accordance with normal accountancy practice, to be so treated).

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- (2) There shall be deducted from the aggregate given by subsection (1) above so much of the qualifying gains and profits accruing to the qualifying taxpayer or a person connected or associated with him as—
- (a) is properly attributable to the earning of the interest or dividends; and
  - (b) falls to be taken into account in computing the taxpayer's or person's liability to income tax or corporation tax.
- (3) In a case where the amount of a qualifying taxpayer's financial expenditure in relation to the earning of the interest or dividends is not readily ascertainable—
- (a) that amount shall be taken, subject to subsection (4) below, to be such sum as it is just and reasonable to attribute to the earning of the interest or dividends; and
  - (b) in the case of interest, regard shall be had in particular to any market rates of interest by reference to which the rate of the interest is determined.
- (4) The Board may by regulations supplement subsection (3) above—
- (a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in paragraph (a); and
  - (b) by making provision with respect to the determination of market rates of interest for the purposes of paragraph (b);
- and any such regulations may make different provision for different cases.
- (5) In this section "qualifying losses" means—
- (a) losses falling to be brought into account for the purposes of Chapter II of Part II of the <sup>M78</sup>Finance Act 1993 (exchange gains and losses) in accordance with sections 125 to 127 of that Act; and
  - (b) losses falling to be brought into account for the purposes of Chapter II of Part IV of the <sup>M79</sup>Finance Act 1994 (interest rate and currency contracts) in accordance with sections 155 to 158 of that Act;
- and "qualifying gains" and "qualifying profits" shall be construed accordingly."

#### Marginal Citations

**M78** 1993 c. 34.

**M79** 1994 c. 9.

## 106 Underlying tax reflecting interest or dividends.

- (1) Section 803 of the Taxes Act 1988 (underlying tax reflecting interest on loans) shall be amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), after the words "a dividend" there shall be inserted the words " ("the overseas dividend") ";
  - (b) in paragraph (c), for the words "interest on a loan made" there shall be substituted the words " interest or dividends earned or received "; and
  - (c) for paragraph (d) there shall be substituted the following paragraph—



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- “(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, section 798 would apply in relation to that company.”
- (3) In subsection (3), for the words from “on so much” to the end there shall be substituted the words “ on so much of the interest or dividends as exceeds the amount of the company’s relevant expenditure which is properly attributable to the earning of the interest or dividends ”.
- (4) In subsection (4)—
- (a) in paragraph (a), for the words “section 798(2)” there shall be substituted the words “ section 798(3) ”;
- (b) for paragraph (b) there shall be substituted the following paragraph—
- “(b) “the company’s relevant expenditure” means the amount which, if the company referred to in subsection (1)(d) above were resident in the United Kingdom and were a qualifying taxpayer for the purposes of section 798, would be its financial expenditure in relation to the earning of the interest or dividends, as determined in accordance with section 798B.”
- (5) In subsection (5)—
- (a) for the words “the dividend”, in both places where they occur, there shall be substituted the words “ the overseas dividend ”; and
- (b) for the words “the interest” there shall be substituted the words “ the interest or dividends ”.
- (6) In subsection (6)—
- (a) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”; and
- (b) for the words “the permitted amount” there shall be substituted the following paragraphs—
- “(a) the amount of the spared tax which under any arrangements is to be taken into account for the purpose of allowing credit against corporation tax in respect of the overseas dividend; or
- (b) if it is less, 15 per cent. of the interest or dividends;”.
- (7) For subsection (7) there shall be substituted the following subsection—
- “(7) In this section “spared tax” has the same meaning as in section 798A.”
- (8) In subsection (8)—
- (a) after the words “amount of tax which” there shall be inserted the words “ is referable to interest and ”; and
- (b) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”.
- (9) In subsection (9)—
- (a) for the words “the interest”, in both places where they occur, there shall be substituted the words “ the interest or dividends ”; and
- (b) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”.

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(10) For subsections (10) and (11) there shall be substituted the following subsection—

“(10) In subsection (1) above “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and section 839 applies for the purposes of that subsection.”

(11) This section does not apply where the overseas dividend is paid before 1st January 1999 in pursuance of arrangements which were entered into before, and are not altered on or after, 17th March 1998.

(12) Subject to subsection (11) above, this section applies where the overseas dividend is paid on or after 17th March 1998.

### **107 Notification of foreign tax adjustment.**

(1) In section 806 of the Taxes Act 1988 (supplemental provision with respect to double taxation relief), after subsection (2) there shall be inserted the following subsections—

“(3) Subject to subsection (5) below, where—

- (a) any credit for foreign tax has been allowed to a person under any arrangements, and
- (b) the amount of that credit is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the credit excessive.

(4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.

(5) Subsections (3) and (4) above do not apply where the adjustment is one the consequences of which in relation to the credit fall to be given effect to in accordance with regulations made under—

- (a) section 182(1) of the <sup>M80</sup>Finance Act 1993 (regulations relating to individual members of Lloyd’s); or
- (b) section 229 of the <sup>M81</sup>Finance Act 1994 (regulations relating to corporate members of Lloyd’s).

(6) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed has been rendered excessive by reason of the adjustment.”

(2) This section shall be deemed to have come into force on 17th March 1998 in relation to adjustments made on or after that date.

#### **Marginal Citations**

**M80** 1993 c. 34.

**M81** 1994 c. 9.

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### *Transfer pricing, FOREX and financial instruments*

#### **108 New regime for transfer pricing etc.**

- (1) For sections 770 to 773 of the Taxes Act 1988 (transfer pricing provisions) there shall be substituted the following section—

##### **“770A Provision not at arm’s length.**

Schedule 28AA (which deals with provision made or imposed otherwise than at arm’s length) shall have effect.”

- (2) After Schedule 28A to that Act there shall be inserted, as Schedule 28AA to that Act, the Schedule set out in Schedule 16 to this Act.
- (3) In the <sup>M82</sup>Finance Act 1993—
- (a) in sections 136(7) and (8) and 136A(5) (application of arm’s length test in computing foreign exchange gains and losses), for the words “has been treated under section 770 of”, in each place where they occur, there shall be substituted “ falls to be treated in accordance with Schedule 28AA to ”; and
  - (b) in section 136A(6), for “has at any time in that accrual period been treated under section 770 of” there shall be substituted “ falls in relation to any time in that accrual period to be treated in accordance with Schedule 28AA to ”.
- (4) In the <sup>M83</sup>Finance Act 1996—
- (a) in section 100(3) (imputed interest on loan relationships), for the words from “which, in” to “of those sections” there shall be substituted “ which, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), falls to be treated ”; and
  - (b) in paragraph 16 of Schedule 9 (imputed interest)—
    - (i) in sub-paragraph (1), for the words from “sections 770” to “that Act” there shall be substituted “ Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) ”; and
    - (ii) in sub-paragraph (2), for “Those sections” there shall be substituted “ That Schedule ”.
- (5) Subject to subsection (6) below, this section and Schedule 16 to this Act have effect (in relation to provision made or imposed at any time)—
- (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M84</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
  - (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.
- (6) The Schedule 28AA to the Taxes Act 1988 that is inserted by subsection (2) above shall not, in the case of any potentially advantaged person, apply as respects the consequences at any time of the difference between the actual provision and the arm’s length provision if—
- (a) that time falls before 17th March 2001;
  - (b) the actual provision is a provision made or imposed by means of contractual arrangements entered into by that person before 17th March 1998;

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- (c) the requirements of paragraph 1(1)(b) of Schedule 28AA to that Act (control requirements) are satisfied in the case of the actual provision and that person by reference only to paragraph 4(2)(b) of that Schedule (joint ventures etc.);
  - (d) the rights and obligations of that person by virtue of the actual provision are not ones that have been varied or continued in pursuance of any transaction entered into by that person in the period between 17th March 1998 and that time; and
  - (e) that person is not a party, and has not been a party, to any transaction by virtue of which he could during that period have secured the variation or termination of those rights and obligations.
- (7) Expressions used in subsection (6) above and in Schedule 28AA to the Taxes Act 1988 have the same meanings in that subsection as in that Schedule.

**Marginal Citations**

- M82** 1993 c. 34.  
**M83** 1996 c. 8.  
**M84** 1994 c. 9.

**109 Abolition of requirements for direction.**

- (1) The following provisions of Chapter II of Part II of the <sup>M85</sup>Finance Act 1993 (exchange gains and losses) shall cease to have effect—
- (a) in section 135(1), paragraph (d) (which makes the giving of a direction a condition of disregarding an exchange loss where it is the main benefit), and the word “and” immediately preceding that paragraph;
  - (b) in section 136, the following provisions (which make the giving of a direction by the Board a condition of disregarding or reducing an exchange loss where there is a transaction that is not on arm’s length terms)—
    - (i) paragraph (d) of subsection (1) and the word “and” immediately preceding that paragraph; and
    - (ii) in each of subsections (5) and (9), the words after paragraph (b);
  - (c) in each of subsections (3) and (7) of section 136A, the words after paragraph (b) (which make the giving of a direction by the Board a condition of reducing an initial exchange loss where there is a transaction that is not on arm’s length terms); and
  - (d) in section 137(1), paragraph (d) (which makes the giving of a direction a condition of disregarding an exchange loss on a currency contract which is not on arm’s length terms), and the word “and” immediately preceding that paragraph.
- (2) Accordingly, the word “and” shall be inserted—
- (a) at the end of section 135(1)(b) of the <sup>M86</sup>Finance Act 1993;
  - (b) at the end of section 136(1)(b) of that Act; and
  - (c) at the end of section 137(1)(b) of that Act.
- (3) In section 167(2) of the <sup>M87</sup>Finance Act 1994, paragraph (b) (which makes the giving of a direction by the Board a condition of adjusting the amounts brought into account in respect of a relevant transaction which is not on arm’s length terms), and the word “and” immediately preceding that paragraph, shall cease to have effect.

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- (4) The preceding provisions of this section shall have effect (in relation to transactions entered into at any time) as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M88</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).
- (5) Where a direction given on or after 17th March 1998 under—
- (a) section 135(1)(d), 136(1)(d), (5) or (9), 136A(3) or (7) or 137(1)(d) of the <sup>M89</sup>Finance Act 1993, or
  - (b) section 167(2)(b) of the <sup>M90</sup>Finance Act 1994,
- relates to any accounting period ending before the day appointed as mentioned in subsection (4) above, all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to that direction.

#### Marginal Citations

- M85** 1993 c. 34.  
**M86** 1993 c. 34.  
**M87** 1994 c. 9.  
**M88** 1994 c. 9.  
**M89** 1993 c. 34.  
**M90** 1994 c. 9.

### 110 Determinations requiring the sanction of the Board.

- (1) This section has effect where a determination requiring the Board's sanction is made for any of the following purposes, that is to say—
- (a) the giving of a closure notice;
  - (b) the giving of a notice under section 30B(1) of the <sup>M91</sup>Taxes Management Act 1970 amending a partnership statement; or
  - (c) the making of a discovery assessment.
- (2) If the closure notice, the notice under section 30B(1) of the <sup>M92</sup>Taxes Management Act 1970 or, as the case may be, a notice of the discovery assessment is given to any person—
- (a) without the determination, so far as it is taken into account in the notice or assessment, having been approved by the Board, or
  - (b) without a copy of the Board's approval having been served on that person at or before the time of the giving of the notice,
- the closure notice, notice under section 30B(1) of that Act or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.
- (3) For the purposes of this section the Board's approval of a determination requiring their sanction—
- (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
  - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.

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- (4) In this section references to a determination requiring the Board's sanction are references (subject to subsection (5) below) to any of the following determinations, that is to say—
- (a) a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length);
  - (b) a determination of the amount of any adjustment falling to be made for tax purposes in respect of the disregarding or reduction, in accordance with section 135, 136, 136A or 137 of the <sup>M93</sup>Finance Act 1993 (main benefit and arm's length tests in relation to foreign exchange gains and losses), of any exchange loss, or of any exchange gain;
  - (c) a determination of the amount of any adjustment falling to be made for tax purposes in respect of any deduction from, or addition to, any amount in accordance with section 167 of the <sup>M94</sup>Finance Act 1994 (arm's length test in relation to financial instruments).
- (5) For the purposes of this section a determination shall be taken, in relation to a closure notice, a notice under section 30B(1) of the <sup>M95</sup>Taxes Management Act 1970 or a discovery assessment, not to be a determination requiring the Board's sanction if—
- (a) an agreement about the matters to which the determination relates has been made between an officer of the Board and the person in whose case it is made;
  - (b) that agreement is in force at the time of the giving of the notice or, as the case may be, of any notice of the assessment; and
  - (c) the matters to which the agreement relates include the amount determined.
- (6) For the purposes of subsection (5) above an agreement made between an officer of the Board and any person ("the taxpayer") in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
  - (b) that time is after the end of the period of thirty days beginning—
    - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
    - (ii) in any other case, with the day of the agreement's confirmation in writing;
- and
- (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (7) The references in subsection (6) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice in writing—
- (a) stating that the agreement has been made; and
  - (b) setting out the terms of the agreement.
- (8) The matters that may be questioned on so much of any appeal by virtue of any provision of the <sup>M96</sup>Taxes Management Act 1970 or Schedule 18 to this Act as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board's approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.

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(9) In this section—

“closure notice” means—

- (a) a notice under section 28A(5) or 28B(5) of the <sup>M97</sup>Taxes Management Act 1970 stating the conclusions of an officer of the Board in relation to any self-assessment, partnership statement, claim or election; or
- (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;

“discovery assessment” means—

- (a) an assessment under section 29 of the <sup>M98</sup>Taxes Management Act 1970; or
- (b) a discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including an assessment by virtue of paragraph 52 of that Schedule).

(10) This section has effect—

- (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M99</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
- (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.

**Marginal Citations**

M91 1970 c. 9.  
M92 1970 c. 9.  
M93 1993 c. 34.  
M94 1994 c. 9.  
M95 1970 c. 9.  
M96 1970 c. 9.  
M97 1970 c. 9.  
M98 1970 c. 9.  
M99 1994 c. 9.

**111 Notice to potential claimants.**

(1) Where—

- (a) a relevant notice is given to any person,
  - (b) that notice, or anything contained in it, takes account of a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), and
  - (c) it appears to an officer of the Board that there is a person who is or may be a disadvantaged person by reference to the subject-matter of that determination,
- the officer shall give a notice under this section to the person who so appears to him.

- (2) A notice under this section is a notice containing particulars of the determination by reference to which the person to whom the notice is given appears to an officer of the Board to be a person who is or may be a disadvantaged person.

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- (3) Where, in any case, there is a contravention of subsection (1) above or the notice required by that subsection is given after the giving of the relevant notice, the Board—
- (a) shall consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988 (claim for relief by party disadvantaged by transfer pricing adjustment), and
  - (b) may, if they think fit, treat the period for the making or amendment of such a claim in that case as extended by such further period as appears to them to be appropriate.
- (4) Where, in a case in which a relevant notice is given to any person, there is a contravention of this section, that contravention shall not affect the validity of that notice or of any determination to which that notice relates.
- (5) For the purposes of this section a person is a disadvantaged person by reference to the subject-matter of a determination such as is mentioned in subsection (1)(b) above if, and only if—
- (a) he is entitled, in consequence of the making of the determination, to make a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988;
  - (b) he is entitled, in consequence of the making of the determination, to amend such a claim; or
  - (c) he will be entitled, by virtue of paragraph 12(3) of that Schedule, to appear and be heard by the Special Commissioners in any proceedings on an appeal relating to that determination.
- (6) In this section “relevant notice” means any of the following, that is to say—
- (a) a notice under section 28A(5) or 28B(5) of the <sup>M100</sup>Taxes Management Act 1970 stating the conclusions of an officer of the Board in relation to any self-assessment, partnership statement, claim or election;
  - (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;
  - (c) a notice of assessment under section 29 of that Act of 1970;
  - (d) a notice of any discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including any notice of an assessment by virtue of paragraph 52 of that Schedule);
  - (e) a notice under section 30B(1) of that Act of 1970 amending a partnership statement.
- (7) This section applies to notices given at any time after the day appointed under section 199 of the <sup>M101</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

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

C1 S. 111 modified (27.7.1999) by 1999 c. 16, s. 87(5)

**Marginal Citations**

M100 1970 c. 9.

M101 1994 c. 9.



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### *Controlled foreign companies*

#### **112 Exempt activities.**

- (1) Part II of Schedule 25 to the Taxes Act 1988 (exempt activities) shall be amended as follows.
- (2) In paragraph 9 (activities which constitute investment business) for sub-paragraph (1A) (definition of “intellectual property”) there shall be substituted—  
“(1A) In sub-paragraph (1)(a) above “intellectual property” includes (in particular)  
—
  - (a) any industrial, commercial or scientific information, knowledge or expertise;
  - (b) any patent, trade mark, registered design, copyright or design right;
  - (c) any licence or other right in respect of intellectual property;
  - (d) any rights under the law of a country outside the United Kingdom which correspond or are similar to those falling within paragraph (b) or (c) above.”
- (3) In paragraph 11(1) (activities which constitute wholesale, distributive or financial business) for paragraph (c) (banking or any similar business involving the receipt of deposits, loans or both and the making of loans or investments) there shall be substituted—  
“(c) banking, deposit-taking, money-lending or debt-factoring, or any business similar to banking, deposit-taking, money-lending or debt-factoring;”.
- (4) In consequence of subsection (3) above—
  - (a) in paragraph 9(3), for “banking or any similar business” there shall be substituted “business”;
  - (b) in paragraph 11(3), for “banking or other business” there shall be substituted “business”.
- (5) This section has effect in relation to accounting periods of a controlled foreign company, within the meaning of Chapter IV of Part XVII of the Taxes Act 1988, beginning on or after 17th March 1998.

#### **113 Miscellaneous amendments.**

Schedule 17 to this Act (which makes provision in relation to controlled foreign companies) shall have effect.

### *Changes in company ownership*

#### **114 Postponed corporation tax.**

- (1) After section 767A of the Taxes Act 1988 there shall be inserted the following section—

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**“767AA Change in company ownership: postponed corporation tax.**

- (1) Where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the transferred company”),
  - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
  - (c) that tax remains unpaid at any time more than six months after it was assessed, and
  - (d) the condition set out in subsection (2) below is fulfilled,
 any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
  
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
  - (a) the terms of any transactions entered into in connection with the change, and
  - (b) the other circumstances of the change and of any such transactions,
 that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
  
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
  - (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
  - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,
 would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
  
- (4) The persons mentioned in subsection (1) above are—
  - (a) any person who at any time during the relevant period had control of the transferred company;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
  
- (5) In subsection (4) above, “the relevant period” means—
  - (a) the period of three years before the change in the ownership of the transferred company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
  
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—

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- (a) it is the transaction, or one of the transactions, by which that change is effected; or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
  - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
  - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
    - (i) would not have been entered into independently of the other or others; or
    - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
  - (b) is a company of which the transferred company has control; or
  - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.”
- (2) Subsection (1) above has effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

## 115 Information powers where ownership changes.

- (1) After section 767B of the Taxes Act 1988, there shall be inserted the following section—

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**“767C Change in company ownership: information.**

- (1) This section applies where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the subject company”); and
  - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
  - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
  - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—
  - (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
  - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
  - (a) subsection (4) of section 20B of the <sup>M102</sup>Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
  - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board; and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

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- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
  - (b) is a company of which the subject company has control; or
  - (c) is a company under the control of the same person or persons as the subject company.

(10) In this section “document” means anything in which information of any description is recorded.”

- (2) In the Table in section 98 of the <sup>M103</sup>Taxes Management Act 1970 (penalties in respect of certain information provisions), after the entry in the first column relating to section 765A of the Taxes Act 1988, there shall be inserted the following entry—

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“section 767C;”.

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- (3) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

**Marginal Citations**

M102 1970 c. 9.

M103 1970 c. 9.

## 116 Provisions supplemental to sections 114 and 115.

- (1) After subsection (1) of section 767B of the Taxes Act 1988 (supplementary provision about changes of company ownership), there shall be inserted the following subsection—

“(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).”

- (2) In subsection (2) of that section—
- (a) after “767A” there shall be inserted “ or 767AA ”; and
  - (b) at the end there shall be added “or the transferred company or associated company (as the case may be)”.
- (3) In subsection (4) of that section, for “section 767A” there shall be substituted “ sections 767A, 767AA and 767C ”.
- (4) In subsection (10) of that section, for “section 767A” there shall be substituted “ sections 767A and 767AA ”.
- (5) In section 769 of that Act (rules for ascertaining change in ownership of a company)—
- (a) in subsections (1) and (5), after “767A,” there shall be inserted “ 767AA, 767C, ”;

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- (b) in subsection (2)(d), after “767A,” there shall be inserted “ 767AA, ”; and
  - (c) in subsections (2A) and (9), after “767A” there shall be inserted “ , 767AA or 767C ”.
- (6) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

### *Corporation tax self-assessment*

#### **117 Company tax returns, assessments and related matters.**

- (1) The provisions of Schedule 18 to this Act have effect in place of—
- (a) the provisions of Parts II and IV of the <sup>M104</sup>Taxes Management Act 1970 (returns, assessment and claims), so far as they relate to corporation tax,
  - (b) certain related provisions of Part X of that Act (penalties),
  - (c) Schedule 17A to the Taxes Act 1988 (group relief: claims), and
  - (d) Schedule A1 to the <sup>M105</sup>Capital Allowances Act 1990 (corporation tax allowances: claims).
- (2) Schedule 18 to this Act, the <sup>M106</sup>Taxes Management Act 1970 and the Tax Acts shall be construed and have effect as if that Schedule were contained in that Act.
- (3) The enactments mentioned in Schedule 19 to this Act have effect with the amendments specified there, which are minor amendments and amendments consequential on Schedule 18.
- (4) Except as otherwise provided, the provisions of Schedules 18 and 19 to this Act have effect in relation to accounting periods ending on or after the self-assessment appointed day.
- (5) In this section “the self-assessment appointed day” means the day appointed by the Treasury under section 199 of the <sup>M107</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

#### **Marginal Citations**

**M104** 1970 c. 9.

**M105** 1990 c. 1.

**M106** 1970 c. 9.

**M107** 1994 c. 9.

### *Telephone claims etc.*

#### **118 Claims for income tax purposes.**

- (1) Subject to the following provisions of this section, the Board may, by publishing them in such manner as they think fit, give such general directions for the purposes of income tax as they consider appropriate with respect to—
- (a) the circumstances in which, and
  - (b) the conditions subject to which,

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- claims under the Tax Acts may be made by individuals by the use of a telecommunication system (within the meaning of the <sup>M108</sup>Telecommunications Act 1984) or otherwise without producing a claim in writing.
- (2) If directions of the Board under this section are for the time being in force with respect to the making to the Board or an officer of the Board of claims of any description, then, notwithstanding any enactment or subordinate legislation requiring claims of that description to be made in writing or by notice, claims of that description may be made to the Board or, as the case may be, an officer of the Board in any manner authorised by the directions.
  - (3) Where directions of the Board under this section are for the time being in force with respect to the making of claims of any description, claims of that description that are made without producing the claim in writing must be made in accordance with the directions.
  - (4) The power of the Board to give directions under this section—
    - (a) shall not be exercisable in relation to the making of any claim by an individual in his capacity as a trustee, partner or personal representative; but
    - (b) subject to that, shall be exercisable in relation to claims made by an individual through another person acting on his behalf.
  - (5) The Board shall not give directions under this section with respect to—
    - (a) the making of any claim to which Schedule 1B to the <sup>M109</sup>Taxes Management Act 1970 applies; or
    - (b) the making of any claim under any provision of the <sup>M110</sup>Capital Allowances Act 1990.
  - (6) Directions under this section—
    - (a) shall not be capable of modifying any requirement by or under any enactment as to the period within which any claim is to be made or as to the contents of any claim; but
    - (b) may include provision as to how any requirement as to the contents of a claim is to be fulfilled when the claim is not produced in writing.
  - (7) Different provision may be made by directions under this section with respect to the making of claims of different descriptions; and a direction under this section may revoke or vary any previous direction given under this section.
  - (8) References in the preceding provisions of this section to the making of a claim include references to any of the following—
    - (a) the making of an election,
    - (b) the giving of a notification or notice,
    - (c) the amendment of any return, claim, election, notification or notice,
    - (d) the withdrawal of any claim, election, notification or notice,and references in those provisions to a claim shall be construed accordingly.
  - (9) In this section—

“return” includes any statement or declaration under the Income Tax Acts;  
“subordinate legislation” has the same meaning as in the <sup>M111</sup>Interpretation Act 1978.

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- (10) In section 832(1) of the Taxes Act 1988 (interpretation), in the definition of “notice”, after “writing” there shall be inserted “ or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998 ”.

**Marginal Citations**

**M108** 1984 c. 12.

**M109** 1970 c. 9.

**M110** 1990 c. 1.

**M111** 1978 c. 30.

**119 Evidential provisions in PAYE regulations.**

In section 203 of the Taxes Act 1988 (PAYE regulations), after subsection (9) there shall be inserted the following subsection—

- “(10) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations under this section may include provision as to the manner of proving any of the matters for which the regulations provide and, in particular, of proving the contents or transmission of anything that, by virtue of the regulations, takes an electronic form or is transmitted to any person by electronic means.”

**CHAPTER II**

TAXATION OF CHARGEABLE GAINS

*Rate for trustees*

**120 Rate of CGT for trustees etc.**

- (1) In section 4 of the <sup>M112</sup>Taxation of Chargeable Gains Act 1992 (rates of capital gains tax), after subsection (1) there shall be inserted the following subsection—

“(1AA) The rate of capital gains tax in respect of gains accruing to—

(a) the trustees of a settlement, or

(b) the personal representatives of a deceased person,

in a year of assessment shall be equivalent to the rate which for that year is applicable to trusts under section 686(1) of the Taxes Act.”

- (2) Subsection (1) above applies for the year 1998-99 and subsequent years of assessment.

**Marginal Citations**

**M112** 1992 c. 12.



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*Taper relief and indexation allowance*

**121 Taper relief for CGT.**

- (1) The following section shall be inserted after section 2 of the <sup>M113</sup>Taxation of Chargeable Gains Act 1992—

**“2A Taper relief.**

- (1) This section applies where, for any year of assessment—
- (a) there is, in any person’s case, an excess of the total amount referred to in subsection (2) of section 2 over the amounts falling to be deducted from that amount in accordance with that subsection; and
  - (b) the excess is or includes an amount representing the whole or a part of any chargeable gain that is eligible for taper relief.
- (2) The amount on which capital gains tax is taken to be charged by virtue of section 2(2) shall be reduced to the amount computed by—
- (a) applying taper relief to so much of every chargeable gain eligible for that relief as is represented in the excess;
  - (b) aggregating the results; and
  - (c) adding to the aggregate of the results so much of every chargeable gain not eligible for taper relief as is represented in the excess.
- (3) Subject to the following provisions of this Act, a chargeable gain is eligible for taper relief if—
- (a) it is a gain on the disposal of a business asset with a qualifying holding period of at least one year; or
  - (b) it is a gain on the disposal of a non-business asset with a qualifying holding period of at least three years.
- (4) Where taper relief falls to be applied to the whole or any part of a gain on the disposal of a business or non-business asset, that relief shall be applied by multiplying the amount of that gain or part of a gain by the percentage given by the table in subsection (5) below for the number of whole years in the qualifying holding period of that asset.
- (5) That table is as follows—

<b>Gains on disposals of business assets</b>		<b>Gains on disposals of non-business assets</b>	
<b>Number of whole years in qualifying holding period</b>	<b>Percentage of gain chargeable</b>	<b>Number of whole years in qualifying holding period</b>	
	<b>Percentage of gain chargeable</b>		
1	92.5		
2	85		
3	77.5	3	95

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4	70	4	90
5	62.5	5	85
6	55	6	80
7	47.5	7	75
8	40	8	70
9	32.5	9	65
10 or more	25	10 or more	60

- (6) The extent to which the whole or any part of a gain on the disposal of a business or non-business asset is to be treated as represented in the excess mentioned in subsection (1) above shall be determined by treating deductions made in accordance with section 2(2)(a) and (b) as set against chargeable gains in such order as results in the largest reduction under this section of the amount charged to capital gains tax under section 2.
- (7) Schedule A1 shall have effect for the purposes of this section.
- (8) Subject to paragraph 2(4) of that Schedule, references in this section to the qualifying holding period of an asset are references—
- (a) except in the case of an asset falling within subsection (9) below, to the period after 5th April 1998 for which that asset had been held at the time of its disposal; and
  - (b) in the case of an asset falling within that subsection, to the period mentioned in paragraph (a) above plus one year.
- (9) An asset falls within this subsection if—
- (a) the time which, for the purposes of paragraph 2 of Schedule A1, is the time when the asset is taken to have been acquired by the person making the disposal is a time before 17th March 1998; and
  - (b) there is no period which in the case of that asset is a period which by virtue of paragraph 11 or 12 of that Schedule does not count for the purposes of taper relief.”
- (2) Before Schedule 1 to the <sup>M114</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted, as Schedule A1 to that Act, the Schedule set out in Schedule 20 to this Act.
- (3) Schedule 21 to this Act (which makes incidental and consequential provision in connection with the introduction of taper relief) shall have effect.
- (4) This section and those two Schedules have effect for the year 1998-99 and subsequent years of assessment.

#### Marginal Citations

M113 1992 c. 12.

M114 1992 c. 12.

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**Status:** Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.  
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## 122 Freezing of indexation allowance for CGT.

- (1) In section 53 of the <sup>M115</sup>Taxation of Chargeable Gains Act 1992 (indexation allowance), after subsection (1) there shall be inserted the following subsection—
  - “(1A) Indexation allowance in respect of changes shown by the retail prices indices for months after April 1998 shall be allowed only for the purposes of corporation tax.”
- (2) In subsection (1) of section 54 of that Act (calculation of indexation allowance), in the definition of “RD”, for “the month in which the disposal occurs” there shall be substituted “the relevant month”.
- (3) After that subsection there shall be inserted the following subsection—
  - “(1A) In subsection (1) above—
    - (a) the references to an item of relevant allowable expenditure shall not, except for the purposes of corporation tax, include any item of expenditure incurred on or after 1st April 1998; and
    - (b) the reference to the relevant month is a reference—
      - (i) where that subsection has effect for the purposes of capital gains tax, to April 1998; and
      - (ii) where that subsection has effect for the purposes of corporation tax, to the month in which the disposal occurs.”
- (4) In section 13 of that Act (attribution of gains to non-resident companies), the following subsection shall be inserted after subsection (11)—
  - “(11A) For the purposes of this section the amount of the gain or loss accruing at any time to a company that is not resident in the United Kingdom shall be computed (where it is not the case) as if that company were within the charge to corporation tax on capital gains.”
- (5) In section 145 of that Act (call options: indexation allowance), in subsection (1), after the word “applies”, in the first place where it occurs, there shall be inserted “(subject to subsection (1A) below)”; and after that subsection there shall be inserted the following subsection—
  - “(1A) In a case where the whole of the expenditure comprised in the option consideration was incurred on or after 1st April 1998, this section applies for the purposes of corporation tax only.”
- (6) Subject to subsection (7) below, the preceding provisions of this section have effect in relation to disposals on or after 6th April 1998.
- (7) This section does not affect the computation of the amount of so much of any gain as—
  - (a) is treated for the purposes of the taxation of chargeable gains as having accrued on a disposal on or after 6th April 1998; but
  - (b) is taken for those purposes to be equal to the whole or any part of a gain that—
    - (i) would (but for any enactment relating to the taxation of chargeable gains) have accrued on an actual disposal made before that date, or
    - (ii) would have accrued on a disposal assumed under any such enactment to have been made before that date.

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### Marginal Citations

M115 1992 c. 12.

### *Pooling and identification of shares etc.*

#### **123 Abolition of pooling for CGT.**

- (1) In subsection (2) of section 104 of the <sup>M116</sup>Taxation of Chargeable Gains Act 1992 (cases where share pooling does not apply), before the word “and” at the end of paragraph (a) there shall be inserted—
  - “(aa) does not apply, except for the purposes of corporation tax, to any securities acquired on or after 6th April 1998;”.
- (2) After that subsection there shall be inserted the following subsection—
 

“(2A) Subsection (2)(aa) above shall not prevent the application of subsection (1) above to any securities that would be treated as acquired on or after 6th April 1998 but for their falling by virtue of section 127 to be treated as the same as securities acquired before that date.”
- (3) In subsection (3) of that section (interpretation), for “ “a new holding” is” there shall be substituted “ “a section 104 holding” is ”.
- (4) For subsection (4) of that section there shall be substituted the following subsection—
 

“(4) For the purposes of this Chapter securities of a company which are held—

  - (a) by a person who acquired them as an employee of the company or of any other person, and
  - (b) on terms which for the time being restrict his right to dispose of them, shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any securities acquired by him otherwise than as an employee of the company or of any other person and also from any shares that are not held subject to restrictions, or the same restrictions, on disposal or in the case of which the restrictions are no longer in force.”
- (5) In the following enactments for the words “new holding”, wherever they occur, there shall be substituted “ section 104 holding ”, namely—
  - (a) in section 440A of the Taxes Act 1988 (securities held by insurance companies); and
  - (b) in sections 104(6), 107 and 110 of the <sup>M117</sup>Taxation of Chargeable Gains Act 1992.
- (6) The preceding provisions of this section have effect in relation to any disposal on or after 6th April 1998 of any securities (whenever acquired).
- (7) The powers of the Treasury to make provision by regulations under one or both of—
  - (a) section 333 of the Taxes Act 1988 (regulations providing for exemptions in respect of investment plans), and
  - (a) section 151 of the <sup>M118</sup>Taxation of Chargeable Gains Act 1992 (capital gains tax and investment plans),

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shall include power to provide, to such extent as appears to them to be appropriate for purposes connected with the enactment of this section and section 124 below, for any provision contained in any such regulations to have effect retrospectively in relation to such times falling on or after 17th March 1998 as may be specified in the regulations.

**Marginal Citations**

- M116 1992 c. 12.
- M117 1992 c. 12.
- M118 1992 c. 12.

**124 New identification rules for CGT.**

- (1) After section 106 of the <sup>M119</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

**“106A Identification of securities: general rules for capital gains tax.**

- (1) This section has effect for the purposes of capital gains tax (but not corporation tax) where any securities are disposed of by any person.
- (2) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been acquired by the person making the disposal.
- (3) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—
  - (a) by the disposal, or
  - (b) by a transfer or delivery giving effect to it;but where a person disposes of securities in one capacity, they shall not be identified under those provisions with any securities which he holds, or can dispose of, only in some other capacity.
- (4) Securities disposed of on an earlier date shall be identified before securities disposed of on a later date; and, accordingly, securities disposed of by a later disposal shall not be identified with securities already identified as disposed of by an earlier disposal.
- (5) Subject to subsection (4) above, if within the period of thirty days after the disposal the person making it acquires securities of the same class, the securities disposed of shall be identified—
  - (a) with securities acquired by him within that period, rather than with other securities; and
  - (b) with securities acquired at an earlier time within that period, rather than with securities acquired at a later time within that period.
- (6) Subject to subsections (4) and (5) above, securities disposed of shall be identified with securities acquired at a later time, rather than with securities acquired at an earlier time.

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- (7) Subsection (6) above shall not require securities to be identified with particular securities comprised in a section 104 holding or a 1982 holding.
- (8) Accordingly, that subsection shall have effect for determining whether, and to what extent, any securities should be identified with the whole or any part of a section 104 holding or a 1982 holding—
- (a) as if the time of the acquisition of a section 104 holding were the time when it first came into being; and
  - (b) as if 31st March 1982 were the time of the acquisition of a 1982 holding.
- (9) The identification rules set out in the preceding provisions of this section have effect subject to subsection (1) of section 105, and securities disposed of shall not be identified with securities acquired after the disposal except in accordance with that section or subsection (5) above.
- (10) In this section—
- “1982 holding” has the same meaning as in section 109;
- “securities” means any securities within the meaning of section 104 or any relevant securities within the meaning of section 108.
- (11) For the purposes of this section securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.”
- (2) In subsection (1) of section 105 of that Act (disposal and acquisition on the same day), for “The following provisions” there shall be substituted “ Paragraphs (a) and (b) below ”; and for subsection (2) of that section there shall be substituted the following subsection—
- “(2) Where the quantity of securities disposed of by any person exceeds the aggregate quantity of—
- (a) the securities (if any) which are required by subsection (1) above to be identified with securities acquired on the day of the disposal,
  - (b) the securities (if any) which are required by any of the provisions of section 106 or 106A(5) to be identified with securities acquired after the day of the disposal, and
  - (c) the securities (if any) which are required by any of the provisions of sections 104, 106, 106A or 107, or of Schedule 2, to be identified with securities acquired before the day of the disposal,
- the disposal shall be treated as diminishing a quantity of securities subsequently acquired, and as so diminishing any quantity so acquired at an earlier date, rather than one so acquired at a later date.”
- (3) In section 107 of that Act (general identification rules) for subsections (1) and (2) there shall be substituted the following subsections—
- “(1) This section has effect for the purposes of corporation tax where any securities are disposed of by a company.
- (1A) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been

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acquired by the company making the disposal and could be comprised in that disposal.

(2) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—

- (a) by the disposal, or
- (b) by a transfer or delivery giving effect to it;

but where a company disposes of securities in one capacity, they shall not be identified with securities which it holds, or can dispose of, only in some other capacity.”

(4) In section 108 of that Act (relevant securities), at the beginning there shall be inserted the following subsection—

“(A1) This section has effect for the purposes of corporation tax where any relevant securities are disposed of by a company.”

(5) In that section—

- (a) in subsections (2) and (7), for “person”, in each place where it occurs, there shall be substituted “ company ”; and
- (b) in subsection (2), for “him” and “he” there shall be substituted, respectively, “ the company ” and “ it ”.

(6) In each of section 151B(1) and (7) of that Act and paragraph 4(2) of Schedule 5C to that Act (disapplication of share pooling and identification rules in relation to shares in a VCT), for “107” there shall be substituted “ 106A ”.

(7) Subject to subsection (8) below, the preceding provisions of this section have effect in relation to any disposal on or after 6th April 1998.

(8) For the purposes of capital gains tax for the year 1997-98 (but not for the purposes of corporation tax), the following provisions have effect in relation to any disposal of securities made on or after 17th March 1998 and before 6th April 1998, that is to say—

- (a) the identification rule in subsection (5) of the section 106A of the <sup>M120</sup>Taxation of Chargeable Gains Act 1992 set out in subsection (1) above shall apply in accordance with subsections (3) and (4) of that section;
- (b) that rule shall have priority over any other rule, except the one in section 105(1) of that Act; and
- (c) section 104(1) of that Act shall not apply to any securities identified by virtue of this subsection with the securities disposed of.

(9) In subsection (8) above “securities” means any securities within the meaning of section 104 of the <sup>M121</sup>Taxation of Chargeable Gains Act 1992 or any relevant securities within the meaning of section 108 of that Act.

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#### Marginal Citations

M119 1992 c. 12.

M120 1992 c.12.

M121 1992 c. 12.

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## 125 Indexation and share pooling etc.

- (1) In subsection (1) of section 110 of the <sup>M122</sup>Taxation of Chargeable Gains Act 1992 (indexation allowance for section 104 holdings), for “This” there shall be substituted “For the purposes of corporation tax this”.
- (2) After that section there shall be inserted the following section—

### **“110A Indexation for section 104 holdings: capital gains tax.**

- (1) For the purposes of capital gains tax (but not corporation tax) where—
    - (a) there is a disposal on or after 6th April 1998 of a section 104 holding, and
    - (b) any of the relevant allowable expenditure was incurred before 6th April 1998,
 this section applies, in place of section 54 and subject to section 105, for computing the indexation allowance.
  - (2) There shall be an indexed pool of expenditure and subsection (2) or, as the case may be, subsection (3) of section 110 shall apply by reference to that pool in relation to the disposal as it would apply (by reference to the pool for which that section provides) for the purposes of corporation tax.
  - (3) The amount at any time of the indexed pool of expenditure shall be determined by—
    - (a) taking the amount which would, under section 110 and section 114, have been the amount of the indexed pool of expenditure for the purposes of a disposal of the whole of the holding at the end of 5th April 1998; and
    - (b) making any adjustments by way of increase or reduction that would be required to be made by virtue of subsection (8) of section 110 on the assumptions set out in subsection (4) below.
  - (4) Those assumptions are—
    - (a) that the indexed pool of expenditure is an indexed pool of expenditure for the purposes of section 110;
    - (b) that no increase or reduction is to be made except for an operative event on or after 6th April 1998; and
    - (c) that paragraph (a) of section 110(8) and section 114 are to be disregarded.
  - (5) For the purposes of making any adjustment in accordance with subsection (3) (b) above, subsection (9) of section 110 shall be assumed to provide only that, where the operative event is a disposal, the calculation of the indexation allowance under subsection (2) of that section, as applied by subsection (2) above, is to be made before the reduction under subsection (8)(c) of that section.”
- (3) In each of sections 53(4) and 104(3) and (5) of that Act (which refer to section 110), after “110” there shall be inserted “, 110A”.
  - (4) Subject to subsection (5) below, the preceding provisions of this section have effect in relation to disposals on or after 6th April 1998.



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- (5) This section does not affect the computation of the amount of so much of any gain as—
- (a) is treated for the purposes of the taxation of chargeable gains as having accrued on a disposal on or after 6th April 1998; but
  - (b) is taken for those purposes to be equal to the whole or any part of a gain that—
    - (i) would (but for any enactment relating to the taxation of chargeable gains) have accrued on an actual disposal made before that date, or
    - (ii) would have accrued on a disposal assumed under any such enactment to have been made before that date.

**Marginal Citations**

M122 1992 c. 12.

*Stock dividends*

**126 Capital gains on stock dividends.**

- (1) For sections 141 and 142 of the <sup>M123</sup>Taxation of Chargeable Gains Act 1992 (stock dividends) there shall be substituted the following section—

**“142 Capital gains on stock dividends.**

- (1) This section applies where any share capital to which section 249 of the Taxes Act applies is issued as mentioned in subsection (4), (5) or (6) of that section in respect of shares in the company held by any person.
  - (2) The case shall not constitute a reorganisation of the company’s share capital for the purposes of sections 126 to 128.
  - (3) The person who acquires the share capital by means of its issue shall (notwithstanding section 17(1)) be treated for the purposes of section 38(1)
    - (a) as having acquired that asset for a consideration equal to the appropriate amount in cash (within the meaning of section 251(2) to (4) of the Taxes Act).”
- (2) This section applies to any share capital issued on or after 6th April 1998.

**Marginal Citations**

M123 1992 c. 12.

*Non-residents etc.*

**127 Charge to CGT on temporary non-residents.**

- (1) After section 10 of the <sup>M124</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

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### **“10A Temporary non-residents.**

- (1) This section applies in the case of any individual (“the taxpayer”) if—
  - (a) he satisfies the residence requirements for any year of assessment (“the year of return”);
  - (b) he did not satisfy those requirements for one or more years of assessment immediately preceding the year of return but there are years of assessment before that year for which he did satisfy those requirements;
  - (c) there are fewer than five years of assessment falling between the year of departure and the year of return; and
  - (d) four out of the seven years of assessment immediately preceding the year of departure are also years of assessment for each of which he satisfied those requirements.
  
- (2) Subject to the following provisions of this section and section 86A, the taxpayer shall be chargeable to capital gains tax as if—
  - (a) all the chargeable gains and losses which (apart from this subsection) would have accrued to him in an intervening year,
  - (b) all the chargeable gains which under section 13 or 86 would be treated as having accrued to him in an intervening year if he had been resident in the United Kingdom throughout that intervening year, and
  - (c) any losses which by virtue of section 13(8) would have been allowable in his case in any intervening year if he had been resident in the United Kingdom throughout that intervening year,

were gains or, as the case may be, losses accruing to the taxpayer in the year of return.
  
- (3) Subject to subsection (4) below, the gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any gain or loss accruing on the disposal by the taxpayer of any asset if—
  - (a) that asset was acquired by the taxpayer at a time in the year of departure or any intervening year when he was neither resident nor ordinarily resident in the United Kingdom;
  - (b) that asset was so acquired otherwise than by means of a relevant disposal which by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued;
  - (c) that asset is not an interest created by or arising under a settlement; and
  - (d) the amount or value of the consideration for the acquisition of that asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).
  
- (4) Where—
  - (a) any chargeable gain that has accrued or would have accrued on the disposal of any asset (“the first asset”) is a gain falling (apart from this section) to be treated by virtue of section 116(10) or (11), 134 or

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- 154(2) or (4) as accruing on the disposal of the whole or any part of another asset, and
- (b) the other asset is an asset falling within paragraphs (a) to (d) of subsection (3) above but the first asset is not,
- subsection (3) above shall not exclude that gain from the gains which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return.
- (5) The gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any chargeable gain or allowable loss accruing to the taxpayer in an intervening year which, in the taxpayer's case, has fallen to be brought into account for that year by virtue of section 10 or 16(3).
- (6) The reference in subsection (2)(c) above to losses allowable in an individual's case in an intervening year is a reference to only so much of the aggregate of the losses that would have been available in accordance with subsection (8) of section 13 for reducing gains accruing by virtue of that section to that individual in that year as does not exceed the amount of the gains that would have accrued to him in that year if it had been a year throughout which he was resident in the United Kingdom.
- (7) Where this section applies in the case of any individual, nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made shall prevent any such assessment for the year of departure from being made in the taxpayer's case at any time before the end of two years after the 31st January next following the year of return.
- (8) In this section—
- “intervening year” means any year of assessment which, in a case where the conditions in paragraphs (a) to (d) of subsection (1) above are satisfied, falls between the year of departure and the year of return;
- “relevant disposal”, means a disposal of an asset acquired by the person making the disposal at a time when that person was resident or ordinarily resident in the United Kingdom; and
- “the year of departure” means the last year of assessment before the year of return for which the taxpayer satisfied the residence requirements.
- (9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment if that year of assessment is one during any part of which he is resident in the United Kingdom or during which he is ordinarily resident in the United Kingdom.
- (10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements.”
- (2) In section 9(3) of that Act (exclusion from charge of persons temporarily resident), for “section 10(1)” there shall be substituted “ sections 10(1) and 10A ”.
- (3) In section 96 of that Act (payments by and to companies), after subsection (9) there shall be inserted the following subsections—

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“(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment which in his case is an intervening year for the purposes of section 10A.

(9B) If—

- (a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and
- (b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,

nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).”

(4) This section has effect—

- (a) in any case in which the year of departure is the year 1998-99 or a subsequent year of assessment; and
- (b) in any case in which the year of departure is the year 1997-98 and the taxpayer was resident or ordinarily resident in the United Kingdom at a time in that year on or after 17th March 1998.

#### **Marginal Citations**

M124 1992 c. 12.

## **128 Disposal of interests in a settlement.**

(1) In section 76 of the <sup>M125</sup>Taxation of Chargeable Gains Act 1992 (disposal of interests in settled property)—

- (a) in subsection (1), at the beginning there shall be inserted “Subject to subsection (1A) below”;
- (b) after that subsection there shall be inserted the subsections set out in subsection (2) below; and
- (c) after subsection (2) there shall be inserted the subsection set out in subsection (3) below.

(2) The subsections inserted after subsection (1) are as follows—

“(1A) Subject to subsection (3) below, subsection (1) above does not apply if—

- (a) the settlement falls within subsection (1B) below; or
- (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.

(1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—

- (a) were not resident or ordinarily resident in the United Kingdom; or
- (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.”

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(3) The subsection inserted after subsection (2) is as follows—

“(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.”

(4) This section has effect in relation to any disposal on or after 6th March 1998.

**Marginal Citations**

M125 1992 c. 12.

**129 Attribution of gains to settlor in section 10A cases.**

(1) After section 86 of the <sup>M126</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

**“86A Attribution of gains to settlor in section 10A cases.**

(1) Subsection (2) below applies in the case of a person who is a settlor in relation to any settlement (“the relevant settlement”) where—

- (a) by virtue of section 10A, amounts falling within section 86(1)(e) for any intervening year or years would (apart from this section) be treated as accruing to the settlor in the year of return; and
- (b) there is an excess of the relevant chargeable amounts for the non-residence period over the amount of the section 87 pool at the end of the year of departure.

(2) Only so much (if any) of—

- (a) the amount falling within section 86(1)(e) for the intervening year, or
- (b) if there is more than one intervening year, the aggregate of the amounts falling within section 86(1)(e) for those years,

as exceeds the amount of the excess mentioned in subsection (1)(b) above shall fall in accordance with section 10A to be attributed to the settlor for the year of return.

(3) In subsection (1) above, the reference to the relevant chargeable amounts for the non-residence period is (subject to subsection (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax under section 87 or 89(2) for the intervening year or years in respect of any capital payments received by them.

(4) In subsection (1) above, the reference to the section 87 pool at the end of the year of departure is (subject to subsection (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of that section, fell in relation to the relevant settlement to be carried forward from the year of departure to be included in the amount of the trust gains for the year of assessment immediately following the year of departure.

(5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or amount carried forward in accordance with section 87(2)

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as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of subsections (3) and (4) above.

- (6) Where any reduction falls to be made by virtue of subsection (2) above in any amount to be attributed in accordance with section 10A to any settlor for any year of assessment, the reduction to be treated as made for that year in accordance with section 87(3) in the case of the settlement in question shall not be made until—
- (a) the reduction (if any) falling to be made by virtue of that subsection has been made in the case of every settlor to whom any amount is so attributed; and
  - (b) effect has been given to any reduction required to be made under subsection (7) below.
- (7) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with subsection (2) above) any amount or amounts falling in accordance with section 10A to be attributed for any year of assessment to settlors of the settlement, the amount or (as the case may be) aggregate amount falling in accordance with that section to be so attributed shall be applied in reducing the amount carried forward to that year in accordance with section 87(2).
- (8) Where an amount or aggregate amount has been applied, in accordance with subsection (7) above, in reducing the amount which in the case of any settlement is carried forward to any year in accordance with section 87(2), that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year for making the reduction under section 87(3) in the case of that settlement.
- (9) Expressions used in this section and section 10A have the same meanings in this section as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in subsection (5) above to property originating from the settlor as it applies for the purposes of that Schedule.”
- (2) In section 97(1) to (5), (7) and (8) of that Act (interpretation of sections 87 to 96), for the words “sections 87”, wherever occurring, there shall be substituted “ sections 86A ”.
- (3) This section has effect where the year of departure is the year 1997-98 or any subsequent year of assessment.

**Marginal Citations**

M126 1992 c. 12.

**130 Charge on beneficiaries of settlements with non-resident settlors.**

- (1) In subsection (1) of section 87 of the <sup>M127</sup>Taxation of Chargeable Gains Act 1992 (charge on beneficiaries of a non-resident settlement if the settlor is or has been domiciled and resident in the United Kingdom), the words from “if the settlor” to the end of the subsection shall be omitted.

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- (2) In subsection (1) of section 88 of that Act (charge on beneficiaries of a settlement treated as resident outside the United Kingdom if the settlor is or has been domiciled and resident in the United Kingdom)—
  - (a) the word “and” shall be inserted at the end of paragraph (a); and
  - (b) paragraph (c) and the word “and” immediately preceding it shall be omitted.
- (3) Subject to subsection (4) below, the preceding provisions of this section apply for the year 1998-99 and subsequent years of assessment and shall be deemed to have applied for the year 1997-98.
- (4) Where section 87 of that Act applies for any year of assessment in relation to any settlement in relation to which it would not have applied for that year but for subsection (1) or (2) above—
  - (a) gains and losses accruing to the trustees of the settlement before 17th March 1998, and
  - (b) capital payments received before that date, shall be disregarded for the purposes of that section.

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**Marginal Citations**

M127 1992 c. 12.

### 131 Charge on settlors of settlements for grandchildren.

- (1) In paragraph 2 of Schedule 5 to the <sup>M128</sup>Taxation of Chargeable Gains Act 1992 (test whether settlor has interest)—
  - (a) after sub-paragraph (3)(d) there shall be inserted the following paragraphs—
    - “(da) any grandchild of the settlor or of the settlor’s spouse;
    - “(db) the spouse of any such grandchild;”
  - (b) in sub-paragraph (3)(e), for “(d)” there shall be substituted “(db) ”.
- (2) For sub-paragraph (7) of that paragraph, there shall be substituted the following sub-paragraph—

“(7) In this paragraph—  
“child” includes a stepchild; and  
“grandchild” means a child of a child.”
- (3) Schedule 22 to this Act (which makes transitional provision and consequential amendments in connection with the provisions of this section) shall have effect.
- (4) The preceding provisions of this section and Schedule 22 to this Act apply for the year 1998-99 and subsequent years of assessment and shall be deemed to have applied for the year 1997-98.

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**Marginal Citations**

M128 1992 c. 12.

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### 132 Charge on settlors of pre-19th March 1991 settlements.

- (1) In paragraph 9 of Schedule 5 to the <sup>M129</sup>Taxation of Chargeable Gains Act 1992 (which sets out when a settlement is a qualifying settlement for the purposes of the attribution of gains to the settlor), after sub-paragraph (1) there shall be inserted the following sub-paragraphs—

“(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—

- (a) the year 1999-00, and
- (b) subsequent years of assessment.

(1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—

- (a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or
- (b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.”

- (2) Sub-paragraph (2) of that paragraph shall not have effect for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment.

- (3) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraph—

“(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.”

- (4) After sub-paragraph (10) of that paragraph there shall be inserted the following sub-paragraphs—

“(10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—

- (a) children of a settlor or of a spouse of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;
- (b) unborn children of a settlor, of a spouse of a settlor, or of a future spouse of a settlor;
- (c) future spouses of any children or future children of a settlor, a spouse of a settlor or any future spouse of a settlor;
- (d) a future spouse of a settlor;
- (e) persons outside the defined categories.

(10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.



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(10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—

- (a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
- (b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;
- (c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.

(10D) In sub-paragraph (10C) above—

“relevant property” means property originating from a settlor; and  
“relevant income” means income originating from a settlor.”

(5) In construing section 86(1)(e) of the <sup>M130</sup>Taxation of Chargeable Gains Act 1992 (which specifies the amount by reference to which a charge arises under that section) as regards a particular year of assessment and in relation to a settlement created before 19th March 1991 which—

- (a) is a qualifying settlement in the year 1999-00, but
- (b) was not a qualifying settlement in any earlier year of assessment,

no account shall be taken of disposals made before 6th April 1999 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).

(6) Schedule 23 (which makes transitional provision in connection with the coming into force of this section) shall have effect.

#### Marginal Citations

M129 1992 c. 12.

M130 1992 c. 12.

*Groups of companies etc.*

### 133 Transfer within group to investment trust.

(1) After section 101 of the <sup>M131</sup>Taxation of Chargeable Gains Act 1992, there shall be inserted the following section—

#### “101A Transfer within group to investment trust.

- (1) This section applies where—
  - (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not an investment trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.

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- (2) Those conditions are satisfied by the acquiring company if—
  - (a) it becomes an investment trust for an accounting period beginning not more than 6 years after the time of the disposal,
  - (b) at the beginning of that accounting period, it owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been an investment trust for any earlier accounting period beginning after the time of the disposal, and
  - (d) at the time at which it becomes an investment trust, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101C(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the end of the last accounting period to end before the beginning of the accounting period for which the acquiring company becomes an investment trust.
- (5) For the purposes of this section a chargeable gain is carried forward from an asset to other property on a replacement of business assets if—
  - (a) by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and
  - (b) as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.
- (6) For the purposes of this section an asset acquired by the acquiring company shall be treated as the same as an asset owned by it at a later time if the value of the second asset is derived in whole or in part from the first asset; and, in particular, assets shall be so treated where—
  - (a) the second asset is a freehold and the first asset was a leasehold; and
  - (b) the lessee has acquired the reversion.
- (7) Where under this section a company is to be treated as having disposed of and reacquired an asset—
  - (a) all such recomputations of liability in respect of other disposals, and
  - (b) all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax,
 as may be required in consequence of the provisions of this section shall be carried out.
- (8) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years after the end of the accounting period referred to in subsection (2)(a) above.”

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(2) In section 179 of that Act (company ceasing to be a member of a group), after subsection (2B) there shall be inserted the following subsection—

“(2C) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101A(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.”

(3) Subsections (1) and (2) above apply to any company which becomes an investment trust for an accounting period beginning on or after 17th March 1998.

**Marginal Citations**

M131 1992 c. 12.

**134 Transfer of company’s assets to venture capital trust.**

(1) In subsection (4) of section 139 of the <sup>M132</sup>Taxation of Chargeable Gains Act 1992 (reconstruction or amalgamation involving transfer of a business), after “investment trust” there shall be inserted “ or a venture capital trust. ”

(2) After the section 101A of that Act inserted by section 133 above there shall be inserted the following section—

**“101B Transfer of company’s assets to venture capital trust.**

(1) Where section 139 has applied on the transfer of a company’s business (in whole or in part) to a company which at the time of the transfer was not a venture capital trust, then if—

(a) at any time after the transfer the company becomes a venture capital trust by virtue of an approval for the purposes of section 842AA of the Taxes Act; and

(b) at the time as from which the approval has effect the company still owns any of the assets of the business transferred,

the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.

(2) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the time mentioned in subsection (1)(b) above.

(3) This section does not apply if at the time mentioned in subsection (1)(b) above there has been an event by virtue of which the company falls by virtue of section 101(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.

(4) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may,

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in a case in which the approval mentioned in subsection (1)(a) above has effect as from the beginning of an accounting period, be made at any time within 6 years after the end of that accounting period.

- (5) Where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.”
- (3) After subsection (1A) of section 101 of that Act there shall be inserted the following subsection—
- “(1B) This section does not apply if at the time at which the company becomes an investment trust there has been an event by virtue of which it falls by virtue of section 101B(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.”
- (4) Subsection (1) above applies to transfers made on or after 17th March 1998.
- (5) Subsections (2) and (3) above apply to a company in respect of which an approval for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) has effect as from a time falling on or after 17th March 1998.

#### Marginal Citations

M132 1992 c. 12.

### 135 Transfer within group to venture capital trust.

- (1) In section 171 of the <sup>M133</sup>Taxation of Chargeable Gains Act 1992 (transfers within a group), after the word “or” at the end of paragraph (c) of subsection (2) there shall be inserted the following paragraph—
- “(cc) a disposal by or to a venture capital trust; or”
- (2) After the section 101B of that Act inserted by section 134 above there shall be inserted the following section—

#### “101C Transfer within group to venture capital trust.

- (1) This section applies where—
- (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not a venture capital trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.
- (2) Those conditions are satisfied by the acquiring company if—
- (a) it becomes a venture capital trust by virtue of an approval having effect as from a time (the “time of approval”) not more than 6 years after the time of the disposal,

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- (b) at the time of approval the company owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been a venture capital trust at any earlier time since the time of the disposal, and
  - (d) at the time of approval, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101A(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the time of approval.
- (5) Subsections (5) to (7) of section 101A apply for the purposes of this section as they apply for the purposes of that section.
- (6) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the time of approval is the time at which an accounting period of the company begins, be made at any time within 6 years after the end of that accounting period.
- (7) Any reference in this section to an approval is a reference to an approval for the purposes of section 842AA of the Taxes Act.”
- (3) In section 179 of that Act (company ceasing to be a member of a group), after the subsection (2C) inserted by section 133 above there shall be inserted the following subsection—
- “(2D) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101C(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.”
- (4) Subsection (1) above applies to disposals made on or after 17th March 1998.
- (5) Subsections (2) and (3) above apply to a company in respect of which an approval for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) has effect as from a time falling on or after 17th March 1998.

**Marginal Citations**

M133 1992 c. 12.

*Status: Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.*

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### 136 Incorporated friendly societies.

- (1) In section 170(9) of the <sup>M134</sup>Taxation of Chargeable Gains Act 1992 (meaning of “company” in sections 170 to 181), after the word “and” at the end of paragraph (c) there shall be inserted the following paragraph—
  - “(cc) an incorporated friendly society within the meaning of the <sup>M135</sup>Friendly Societies Act 1992; and”.
- (2) In subsection (2) of section 171 of that Act (transfers within a group), after the word “or” at the end of the paragraph (cc) inserted by section 135 above there shall be inserted the following paragraph—
  - “(cd) a disposal by or to a qualifying friendly society; or”
- (3) After subsection (4) of that section there shall be inserted the following subsection—
  - “(5) In subsection (2)(cd) above “qualifying friendly society” means a company which is a qualifying society for the purposes of section 461B of the Taxes Act (incorporated friendly societies entitled to exemption from income tax and corporation tax on certain profits).”
- (4) Subsection (1) above applies for the purpose of determining, in relation to times on and after 17th March 1998, whether a friendly society is a company within the meaning of the provisions of sections 170 to 181 of the <sup>M136</sup>Taxation of Chargeable Gains Act 1992.
- (5) Subsections (2) and (3) above apply in relation to disposals made on or after 17th March 1998.

#### Marginal Citations

M134 1992 c. 12.

M135 1992 c. 40.

M136 1992 c. 12.

### 137 Pre-entry gains.

- (1) In the <sup>M137</sup>Taxation of Chargeable Gains Act 1992, after section 177A (pre-entry losses) there shall be inserted the following section—

*“ Pre-entry gains*

#### **177B Restrictions on setting losses against pre-entry gains.**

Schedule 7AA to this Act (which makes provision restricting the losses that may be set against the chargeable gains accruing to a company in the accounting period in which it joins a group of companies) shall have effect.”

- (2) After Schedule 7A to that Act there shall be inserted, as Schedule 7AA to that Act, the Schedule set out in Schedule 24 to this Act.
- (3) In subsection (3) of section 213 of that Act (carry back of losses in respect of deemed annual disposal by insurance companies)—

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- (a) at the beginning there shall be inserted “Subject to subsection (3A) below,”;  
and
  - (b) for the “and” at the end of paragraph (c) there shall be substituted—
    - “(ca) none of the intervening accounting periods is an accounting period in which the company joined a group of companies, and”.
- (4) After that subsection there shall be inserted the following subsections—
- “(3A) Subsection (3) above shall have effect where the company in question joins a group of companies in the later period as if a claim could not be made in respect of the net amount for that period except to the extent (if any) that the net amount is an amount which, assuming there to be gains accruing to the company immediately after the beginning of that period, would fall to be treated under paragraph 4 of Schedule 7AA as a qualifying loss in relation to those gains.
  - (3B) References in subsections (3) and (3A) above to a company joining a group of companies shall be construed in accordance with paragraph 1 of Schedule 7AA as if those references were contained in that Schedule.”
- (5) Subsections (1) and (2) above and Schedule 24 to this Act have effect in relation to any accounting period ending on or after 17th March 1998.
- (6) Subsection (3) above has effect in relation to any intervening period ending on or after 17th March 1998.
- (7) Subsection (4) above has effect in any case where the earlier accounting period is one ending on or after 17th March 1998.

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**Marginal Citations**

M137 1992 c. 12.

### 138 Pre-entry losses.

- (1) In paragraph 9(6) of Schedule 7A to the <sup>M138</sup>Taxation of Chargeable Gains Act 1992 (separate application of provisions relating to pre-entry losses in relation to different groups), for “for the purposes of this paragraph as the same group if” there shall be substituted “in relation to any company that is or has become a member of the second group (“the relevant company”) as the same group for the purposes of this paragraph if—
- (a) the time at which the relevant company became a member of the first group is a time in the same accounting period as that in which the principal company of the first group became a member of the second group; or
  - (b)”.
- (2) This section has effect in relation to any accounting period ending on or after 17th March 1998.



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**Marginal Citations**

M138 1992 c. 12.

**139 De-grouping charges.**

- (1) In section 179(2B) of the <sup>M139</sup>Taxation of Chargeable Gains Act 1992 (cases where there is a connection between groups successively left by a company)—
- (a) in paragraph (b), for the words from “company which” to “its” there shall be substituted “ person or persons who control the company mentioned in paragraph (a) above or who have had it under their ”;
  - (b) in paragraph (c), for the words from “company which has” to “its” there shall be substituted “ person or persons who have, at any time in that period, had under their ”; and
  - (c) in that paragraph, for “fallen”, wherever it occurs, there shall be substituted “ been a person falling ”.
- (2) Subsection (1) above 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 17th March 1998.

**Marginal Citations**

M139 1992 c. 12.

*Abolition of reliefs*

**140 Phasing out of retirement relief.**

- (1) In Schedule 6 to the <sup>M140</sup>Taxation of Chargeable Gains Act 1992 (retirement relief etc.), paragraph 13(1) (amount available for relief: basic rule) shall have effect, in relation to qualifying disposals in a year of assessment specified in the first column of the following Table, as if—
- (a) for the references to £250,000 there were substituted references to the amount specified in the second column of that Table; and
  - (b) for the reference to £1 million there were substituted a reference to the amount specified in the third column of that Table.

TABLE

<i>Year</i>	<i>£250,000</i>	<i>£1 million</i>
1999-00	£200,000	£800,000
2000-01	£150,000	£600,000
2001-02	£100,000	£400,000
2002-03	£50,000	£200,000



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- (2) The following provisions, namely—
- (a) section 163 of that Act (relief for disposals by individuals on retirement from family business),
  - (b) section 164 of that Act (other retirement relief), and
  - (c) Schedule 6 to that Act,
- shall cease to have effect in relation to disposals in the year 2003-04 and subsequent years of assessment.
- (3) In section 157 of that Act (trade carried on by family company), for the words “within the meaning of Schedule 6” there shall be substituted the words “that is to say, a company the voting rights in which are exercisable, as to not less than 5 per cent., by him”.
- (4) In subsection (8) of section 165 of that Act (relief for gifts of business assets), for paragraph (a) there shall be substituted the following paragraphs—
- “(a) “personal company”, in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;
  - (aa) “holding company”, “trading company” and “trading group” have the meanings given by paragraph 22 of Schedule A1; and”.
- (5) In the following provisions, namely—
- (a) subsection (8) of section 228 of that Act (conditions for roll-over relief: supplementary), and
  - (b) subsection (14)(b) of section 253 of that Act (relief for loans to traders),
- for the words “paragraph 1 of Schedule 6” there shall be substituted the words “paragraph 22 of Schedule A1”.
- (6) Subsections (3) to (5) above have effect in relation to the year 2003-04 and subsequent years of assessment.

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**Marginal Citations**

M140 1992 c. 12.

**141 Abolition of certain other CGT reliefs.**

- (1) The following provisions of the <sup>M141</sup>Taxation of Chargeable Gains Act 1992 shall cease to have effect, namely—
- (a) Chapter IA of Part V (roll-over relief on re-investment); and
  - (b) sections 254 and 255 (relief for debts on qualifying corporate bonds).
- (2) In subsection (1) above—
- (a) paragraph (a) has effect in relation to acquisitions made on or after 6th April 1998; and
  - (b) paragraph (b) has effect in relation to loans made on or after 17th March 1998.

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**Marginal Citations**

M141 1992 c. 12.

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## PART IV

### INHERITANCE TAX ETC.

#### 142 Property of historic interest etc.

Schedule 25 to this Act (which makes provision about the designation of property of historic interest, etc. and about undertakings in relation to such property) shall have effect.

#### 143 Removal of exemption for gifts for public benefit.

- (1) Section 26 of the <sup>M142</sup>Inheritance Tax Act 1984 (gifts for public benefit) shall not apply to any transfer of value made on or after 17th March 1998.
- (2) Accordingly, in that Act, in relation to any transfer of value made on or after 17th March 1998—
  - (a) in sections 23(5) and 29A(6) (gifts to charities and abatement of exemptions), for the words “25 or 26”, in each place where they occur, there shall be substituted “ or 25 ”; and
  - (b) in section 29(5) (exemptions in loan cases), for “to 26”, “25 or 26” and “25(2) and 26(7)” there shall be substituted, respectively, “ to 25 ”, “ or 25 ” and “ and 25(2) ”.
- (3) In relation to any property becoming the property of any person on or after 17th March 1998, in section 56(4) and (7) of that Act (exclusion of exemptions in relation to the acquisition of reversionary interests), for the words “to 26”, in each place where they occur, there shall be substituted “ to 25 ”.
- (4) In section 76 of that Act (tax not charged on property becoming property held for charitable purposes etc.)—
  - (a) paragraph (d) of subsection (1) and subsection (2) shall cease to have effect, and the word “or” shall be inserted at the end of paragraph (b) of subsection (1);
  - (b) in subsection (3), for “to (d)” there shall be substituted “ to (c) ”; and
  - (c) in subsections (6) and (8), for the words “(c) or (d)”, in each place where they occur, there shall be substituted “ or (c) ”.
- (5) Subsection (4) above has effect in relation to property which ceases to be relevant property, or to be property to which any of sections 70 to 74 of the <sup>M143</sup>Inheritance Tax Act 1984 or paragraph 8 of Schedule 4 to that Act applies, on or after 17th March 1998.
- (6) In relation to any property becoming the property of a body on a transfer of value made on or after 17th March 1998, in section 161(2)(b) of that Act (related property), for “25 or 26” there shall be substituted “ or 25 ”.
- (7) In relation to any disposal on or after 17th March 1998, in section 258(2) of the <sup>M144</sup>Taxation of Chargeable Gains Act 1992 (gains on disposal of works of art etc.), in paragraph (a), for “1984 Act” there shall be substituted “ Inheritance Tax Act 1984 (“the 1984 Act)” ”.

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**Marginal Citations**

M142 1984 c. 51.

M143 1984 c. 51.

M144 1992 c. 12.

**144 Maintenance funds for historic buildings, etc.**

- (1) In section 27 of the <sup>M145</sup>Inheritance Tax Act 1984 (exemption for transfers into maintenance funds for historic buildings etc.), at the beginning of subsection (1) there shall be inserted “ Subject to subsection (1A) below, ” and after that subsection there shall be inserted the following subsection—

“(1A) Subsection (1) above does not apply in the case of a direction given after the time of the transfer unless the claim for the direction (if it is not made before that time) is made no more than two years after the date of that transfer, or within such longer period as the Board may allow.”

- (2) This section has effect in relation to transfers of value made on or after 17th March 1998.

**Marginal Citations**

M145 1984 c. 51.

**145 Accounting for property accepted in satisfaction of tax.**

- (1) Section 10 of the <sup>M146</sup>Exchequer and Audit Departments Act 1866 shall have effect as if the accounts required to be rendered under that section to the Comptroller and Auditor General, in addition to containing information about payments to which that section applies, were required to contain such information about property accepted on or after 1st April 1998 in satisfaction of tax as may be specified in directions given by the Treasury.

- (2) In subsection (1) above the reference to property accepted in satisfaction of tax is a reference to property accepted by the Commissioners of Inland Revenue under any of the following provisions, that is to say—

- (a) section 230 of the <sup>M147</sup>Inheritance Tax Act 1984;
- (b) paragraph 17 of Schedule 4 to the <sup>M148</sup>Finance Act 1975;
- (c) section 56 of the <sup>M149</sup>Finance (1909-1910) Act 1910;
- (d) section 30 of the <sup>M150</sup>Finance Act 1953 and section 1 of the <sup>M151</sup>Finance (Miscellaneous Provisions) Act Northern Ireland) 1954;
- (e) section 34(1) of the <sup>M152</sup>Finance Act 1956, section 46 of the <sup>M153</sup>Finance Act 1973, Article 10 of the <sup>M154</sup>Finance (Northern Ireland) Order 1972 and Article 5 of the <sup>M155</sup>Finance (Miscellaneous Provisions) (Northern Ireland) Order 1973.

- (3) The preceding provisions of this section have effect in relation to accounts rendered on or after such date as the Treasury may by order made by statutory instrument appoint.

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#### Marginal Citations

- M146 1866 c. 39.
- M147 1984 c. 51.
- M148 1975 c. 7.
- M149 1910 c. 8.
- M150 1953 c. 34.
- M151 1954 c. 3 (N.I.).
- M152 1956 c. 54.
- M153 1973 c. 51.
- M154 S.I. 1972/1100 (N.I. 11).
- M155 S.I. 1973/1323 (N.I. 18).

## PART V

### OTHER TAXES

#### *Insurance premium tax*

#### 146 **Travel insurance: higher rate tax.**

- (1) Schedule 6A to the <sup>M156</sup>Finance Act 1994 (premiums liable to tax at the higher rate) shall be amended as follows.
- (2) For paragraph 4 (travel insurance) there shall be substituted—

“4 **Travel insurance**

- (1) A premium under a taxable insurance contract falls within this paragraph if it is in respect of the provision of cover against travel risks for a person travelling.
- (2) Where—
  - (a) a contract of insurance provides cover against both travel risks and risks other than travel risks,
  - (b) the premium attributable to the cover against travel risks does not exceed 10 per cent. of the total premium payable under the contract, and
  - (c) the contract does not provide cover for a person travelling against travel risks falling within two or more of the paragraphs of sub-paragraph (3) below,
 the premium, so far as attributable to the cover against travel risks, does not fall within this paragraph by virtue of sub-paragraph (1) above.
- (3) The travel risks mentioned in sub-paragraph (2)(c) above are—
  - (a) liability in respect of cancellation of travel or of accommodation arranged in connection with travel;
  - (b) delayed or missed departure;
  - (c) curtailment of travel or of the use of accommodation arranged in connection with travel;

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- (d) loss or delayed arrival of baggage;
    - (e) personal injury or illness or expenses of repatriation.
  - (4) A premium does not fall within this paragraph by virtue of sub-paragraph (1) above if it is payable under a taxable insurance contract relating to a motor vehicle and is attributable to cover of the kind generally known as—
    - (a) fully comprehensive,
    - (b) third party, fire and theft,
    - (c) third party, or
    - (d) roadside assistance,or if it is payable under a taxable insurance contract relating to a caravan, boat or aircraft and is attributable to cover of a description broadly corresponding to any of those set out in paragraphs (a) to (d) above (so far as applicable) provided in respect of the caravan, boat or aircraft for a period of at least one month for the person travelling.
  - (5) In this paragraph—
    - “person travelling” includes a person intending to travel;
    - “travel risks” means risks associated with, or related to, travel or intended travel—
      - (a) outside the United Kingdom,
      - (b) by air within the United Kingdom,
      - (c) within the United Kingdom in connection with travel falling within paragraph (a) or (b) above, or
      - (d) which involves absence from home for at least one night,or risks to which a person travelling may be exposed during, or at any place at which he may be in the course of, any such travel.”
  - (3) Except as provided by subsection (4) below, subsections (1) and (2) above have effect in relation to a premium which falls to be regarded for the purposes of Part III of the Finance Act 1994 as received under a taxable insurance contract by an insurer on or after 1st August 1998.
  - (4) Subsections (1) and (2) above do not have effect in relation to a premium if the premium—
    - (a) is in respect of a contract made before 1st August 1998; and
    - (b) falls, by virtue of regulations under section 68 of the <sup>M157</sup>Finance Act 1994 (special accounting scheme), to be regarded for the purposes of Part III of that Act as received under the contract by the insurer on a date before 1st February 1999.
  - (5) In the application of sections 67A to 67C of the <sup>M158</sup>Finance Act 1994 in relation to the increase in insurance premium tax effected by this section and the exception from that increase—
    - (a) the announcement relating to that increase, as described in section 67A(1), and to that exception, as described in section 67B(1), shall be taken to have been made on 17th March 1998;
    - (b) “the date of the change” is 1st August 1998; and
    - (c) “the concessionary date” is 1st February 1999.

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#### Marginal Citations

M156 1994 c. 9.

M157 1994 c. 9.

M158 1994 c. 9.

### 147 Taxable intermediaries.

- (1) Section 52A of the <sup>M159</sup>Finance Act 1994 (certain fees to be treated as premiums under higher rate contracts) shall be amended as follows.
- (2) In subsection (5) (which defines a “taxable intermediary” as a person falling within subsection (6) of that section etc) after “subsection (6)” there shall be inserted “ or (6A) ”.
- (3) For subsections (6) and (7) there shall be substituted—
  - “(6) A person falls within this subsection if the higher rate contract mentioned in subsection (1) above falls within paragraph 2 or 3 of Schedule 6A to this Act (motor cars or motor cycles, or relevant goods) and the person is—
    - (a) within the meaning of the paragraph in question, a supplier of motor cars or motor cycles or, as the case may be, of relevant goods; or
    - (b) a person connected with a person falling within paragraph (a) above; or
    - (c) a person who in the course of his business pays—
      - (i) the whole or any part of the premium received under that contract, or
      - (ii) a fee connected with the arranging of that contract, to a person falling within paragraph (a) or (b) above.
  - (6A) A person falls within this subsection if the higher rate contract mentioned in subsection (1) above falls within paragraph 4 of Schedule 6A to this Act (travel insurance) and the person is—
    - (a) the insurer under that contract; or
    - (b) a person through whom that contract is arranged in the course of his business; or
    - (c) a person connected with the insurer under that contract; or
    - (d) a person connected with a person falling within paragraph (b) above; or
    - (e) a person who in the course of his business pays—
      - (i) the whole or any part of the premium received under that contract, or
      - (ii) a fee connected with the arranging of that contract, to a person falling within any of paragraphs (a) to (d) above.”
- (4) In subsection (9) (definitions) the definition of “tour operator” and “travel agent” shall be omitted.
- (5) The amendments made by this section have effect in relation to payments in respect of fees charged on or after 1st August 1998.

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**Marginal Citations**

M159 1994 c. 9.

*Landfill tax*

**148 Provisional collection of landfill tax.**

(1) In section 1(1) of the <sup>M160</sup>Provisional Collection of Taxes Act 1968 (taxes in relation to which resolutions may have temporary statutory effect), after “insurance premium tax,” there shall be inserted “ landfill tax, ”.

(2) Where—

- (a) by virtue of a resolution having effect under the <sup>M161</sup>Provisional Collection of Taxes Act 1968 landfill tax has been paid at a rate specified in the resolution on a taxable disposal of material by reference to the weight of material disposed of, and
- (b) by virtue of section 1(6) or (7) or 5(3) of that Act any of that tax is repayable in consequence of the restoration in relation to the taxable disposal of a lower rate,

the amount repayable shall be the difference between the landfill tax paid on the taxable disposal at the rate specified in the resolution and the landfill tax that would have been payable on a taxable disposal of the same weight of material at the lower rate.

(3) Where—

- (a) by virtue of a resolution having effect under the <sup>M162</sup>Provisional Collection of Taxes Act 1968 landfill tax is chargeable at a rate specified in the resolution on a taxable disposal by reference to the weight of material disposed of, but
- (b) before the tax is paid it ceases to be chargeable at that rate in consequence of the restoration in relation to the taxable disposal of a lower rate,

the landfill tax chargeable at the lower rate shall be charged by reference to the same weight of material as that by reference to which landfill tax would have been chargeable at the rate specified in the resolution.

(4) Expressions used in this section and Part III of the <sup>M163</sup>Finance Act 1996 have the same meanings in this section as in that Part.

**Marginal Citations**

M160 1968 c. 2.

M161 1968 c. 2.

M162 1968 c. 2.

M163 1996 c. 8.

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### *Stamp duty*

#### **149 Stamp duty on conveyance or transfer on sale.**

- (1) Section 55 of the <sup>M164</sup>Finance Act 1963 and section 4 of the <sup>M165</sup>Finance Act Northern Ireland) 1963 (both of which provide for rates of stamp duty on conveyance or transfer on sale) shall each be amended as follows.
- (2) In subsection (1)(d) (rate of £1.50p for every £100 etc where consideration does not exceed £500,000 and the instrument is certified at that amount) for “£1.50p” there shall be substituted “ £2 ”.
- (3) In subsection (1)(e) (rate of £2 for every £100 etc) for “£2” there shall be substituted “ £3 ”.
- (4) This section shall apply to instruments executed on or after 24th March 1998, except where the instrument in question is executed in pursuance of a contract made on or before 17th March 1998.
- (5) This section shall be deemed to have come into force on 24th March 1998.

#### **Marginal Citations**

**M164** 1963 c. 25.

**M165** 1963 c. 22 (N.I.).

#### **150 Relief from double stamp duties etc.**

- (1) Where an instrument which is chargeable with stamp duty in Great Britain and in Northern Ireland has been stamped in either of those parts of the United Kingdom—
  - (a) the instrument shall, to the extent of the duty it bears, be deemed to be stamped in the other part of the United Kingdom, but
  - (b) if the stamp duty chargeable on the instrument in that other part of the United Kingdom exceeds the stamp duty chargeable on the instrument in the part of the United Kingdom in which it has been stamped, the instrument shall not be deemed to have been duly stamped in that other part of the United Kingdom unless and until stamped in accordance with the law which has effect in that part of the United Kingdom with a stamp denoting an amount equal to the excess.
- (2) An instrument which, by virtue of paragraph (b) of subsection (1) above, is not deemed to have been duly stamped in a part of the United Kingdom unless and until stamped with a stamp denoting an amount equal to the excess mentioned in that paragraph may, notwithstanding anything in section 15 of the <sup>M166</sup>Stamp Act 1891, be stamped with such a stamp without payment of any penalty at any time within 30 days after it has first been received in that part of the United Kingdom.
- (3) In section 22 of the <sup>M167</sup>Stamp Duties Management Act 1891 (discontinuance of dies) for the words from “London” to “Gazettes” there shall be substituted “ London, Edinburgh and Belfast Gazettes ”.
- (4) Section 29 of the <sup>M168</sup>Government of Ireland Act 1920 (the provisions of which are either spent or re-enacted with modifications in subsection (1) above) shall cease to have effect.



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- (5) The saving in Part I of Schedule 6 to the <sup>M169</sup>Northern Ireland Constitution Act 1973 (repeals) for orders made under section 69 of the <sup>M170</sup>Government of Ireland Act 1920 shall cease to have effect in relation to Part IV of the Government of Ireland (Adaptation of the <sup>M171</sup>Taxing Acts) Order 1922 (the provisions of which are either spent or re-enacted with modifications in subsections (2) and (3) above).

#### Marginal Citations

**M166** 1891 c. 39.  
**M167** 1891 c. 38.  
**M168** 1920 c. 67.  
**M169** 1973 c. 36.  
**M170** 1920 c. 67.  
**M171** S.R. & O. 1922/80.

### *Stamp duty reserve tax*

#### **151 Depository receipts and clearance services: exchanges of shares.**

- (1) In section 95 of the Finance Act 1986 (depository receipts; exceptions) in subsection (3) (exchanges) after paragraph (b) there shall be added— “ and the shares in company Y are held under a depository receipt scheme. ”
- (2) At the end of that section there shall be added—
- “(5) For the purposes of subsection (3) above, the cases where shares are held under a depository receipt scheme are those cases where, in pursuance of an arrangement,—
- (a) a depository receipt for chargeable securities has been, or is to be, issued by a person falling within section 93(2) above in respect of the shares in question or shares of the same kind and amount; and
- (b) the shares in question are held by that person, or by a person whose business is or includes holding chargeable securities as nominee or agent for that person, towards the eventual satisfaction of the entitlement of the receipt’s holder to receive chargeable securities.
- (6) Where an arrangement is entered into under which—
- (a) shares in a company (company X) are issued to persons in respect of their holdings of shares in another company (company Y), and
- (b) the shares in company Y are cancelled,
- the issue shall be treated for the purposes of subsection (3) above as an issue by company X in exchange for the shares in company Y.
- (7) In this section “depository receipt for chargeable securities” has the same meaning as in section 93 above (see section 94 above).”
- (3) In section 97 of the <sup>M172</sup>Finance Act 1986 (clearance services: exceptions) in subsection (4) (exchanges) after paragraph (b) there shall be added— “ and the shares in company Y are held under a clearance services scheme. ”
- (4) At the end of that section there shall be added—

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- “(6) For the purposes of subsection (4) above, the cases where shares are held under a clearance services scheme are those cases where—
- (a) an arrangement falling within paragraph (a) of subsection (1) of section 96 above has been entered into; and
  - (b) in pursuance of that arrangement, the shares are held by the person referred to in that paragraph as A or by a person whose business is or includes holding chargeable securities as nominee for that person.
- (7) Where an arrangement is entered into under which—
- (a) shares in a company (company X) are issued to persons in respect of their holdings of shares in another company (company Y), and
  - (b) the shares in company Y are cancelled,
- the issue shall be treated for the purposes of subsection (4) above as an issue by company X in exchange for the shares in company Y.”
- (5) In section 99(10) of the <sup>M173</sup>Finance Act 1986 (which makes provision in relation to the interpretation of “chargeable securities” in sections 93, 94, 96 and 97A)—
- (a) after “94,” there shall be inserted “ 95, ”; and
  - (b) after “96” there shall be inserted “ , 97 ”.
- (6) This section applies where the issue by company X referred to in section 95(3) or (6) or 97(4) or (7) of the <sup>M174</sup>Finance Act 1986 is an issue on or after 1st May 1998.

#### Marginal Citations

- M172** 1986 c. 41.  
**M173** 1986 c. 41.  
**M174** 1986 c. 41.

*Petroleum revenue tax etc.*

## 152 Gas valuation.

- (1) Paragraph 3A of Schedule 3 to the <sup>M175</sup>Oil Taxation Act 1975 (market value of light gases) shall have effect, and be deemed always to have had effect, with the insertion of the following sub-paragraph after sub-paragraph (3)—
- “(3A) The circumstances referred to in sub-paragraph (1) above include—
- (a) the timing of the making, and of any subsequent variations, of the actual contract or other arrangements under which the disposal or appropriation was made;
  - (b) the terms of that contract or, as the case may be, of those arrangements, and the terms of any such variations; and
  - (c) the extent to which the circumstances to which regard is to be had by virtue of paragraphs (a) and (b) above are circumstances that might reasonably have been expected to exist in the case of a contract satisfying the conditions specified in sub-paragraph (2) above.”

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- (2) Paragraph 12 of Schedule 2 to the <sup>M176</sup>Oil Taxation Act 1983 (purchase of oil at place of extraction) shall have effect and, in relation to light gases disposed of or appropriated at any time on or after 3rd May 1994, be deemed to have had effect—
- (a) with the substitution, for the words “paragraphs (a) to (c)” in subparagraph (2), of the words “paragraphs (a) to (cb)”; and
  - (b) with the substitution for the words from “2(5)(b)” to “length),” in subparagraph (5) of the words “2(5)(b) or (ca) of the principal Act (oil disposed of otherwise than in sales at arm’s length),”.
- (3) Section 493 of the Taxes Act 1988 (valuation of oil disposed of or appropriated in certain circumstances) shall have effect, and, in relation to light gases disposed of or appropriated at any time on or after 3rd May 1994, be deemed to have had effect, with the insertion after subsection (5) of the following subsection—
- “(6) In subsections (3) and (4) above the references to the market value of any oil in the calendar month in which a disposal of the oil was made or, as the case may be, in which it was appropriated shall each have effect in relation to light gases (within the meaning of the 1975 Act) as a reference to the amount which, if paragraph 3A of Schedule 3 to the 1975 Act applied, would be the market value of that oil in relation to the disposal or appropriation in question.”

**Marginal Citations**

M175 1975 c. 22.

M176 1983 c. 56.

*Gas levy*

**153 Reduction and abolition of gas levy.**

- (1) The rate of gas levy for the year 1997-98 shall be deemed to have been three pence per therm.
- (2) Gas levy shall not be payable for the year 1998-99 or any subsequent year.
- (3) Section 3 of the <sup>M177</sup>Gas Levy Act 1981 shall be deemed never to have required any person to deliver a return for the chargeable period ending with 30th June 1998.
- (4) Any repayment of gas levy falling to be made to any person by virtue of subsection (1) above shall be made by the Secretary of State out of the Consolidated Fund and shall carry interest at the prescribed rate from the end of July 1998 until payment.
- (5) In subsection (4) above “the prescribed rate” means the rate at which repayments of gas levy for the year 1997-98 carry interest if repaid under section 3(5) of the <sup>M178</sup>Gas Levy Act 1981.

**Marginal Citations**

M177 1981 c. 3.

M178 1981 c. 3.

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### *Dumping duties*

#### **154 Repeal of Customs Duties (Dumping and Subsidies) Act 1969.**

The <sup>M179</sup>Customs Duties (Dumping and Subsidies) Act 1969 (which confers powers on the Secretary of State, exercisable in accordance with section 6(5) of the <sup>M180</sup>Finance Act 1978, to charge duties in respect of dumping and to offset subsidies) shall cease to have effect.

#### **Marginal Citations**

**M179** 1969 c. 16.

**M180** 1978 c. 42.

## **PART VI**

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Fiscal stability*

#### **155 Code for fiscal stability.**

- (1) It shall be the duty of the Treasury to prepare and lay before Parliament a code for the application of the key principles to the formulation and implementation of—
  - (a) fiscal policy, and
  - (b) policy for the management of the National Debt.
- (2) The key principles are transparency, stability, responsibility, fairness and efficiency.
- (3) The code prepared under this section must set out, in particular—
  - (a) the Treasury’s understanding of what each of the key principles involves in relation to fiscal policy and policy for the management of the National Debt;
  - (b) the provision appearing to the Treasury to be necessary for the purposes of so much of section 156 below as refers to the code; and
  - (c) the methods and principles of accounting to be applied in the preparation of accounts, forecasts and other documents used for the purposes of the formulation and implementation of the policies mentioned in subsection (1) above.
- (4) Where any code has been laid before Parliament under subsection (1) above, the Treasury may from time to time modify that code; but, if they do so, they shall lay the modified code before Parliament.
- (5) A code (including a modified code) that has been laid before Parliament under this section shall not come into force until it has been approved by a resolution of the House of Commons.
- (6) It shall be the duty of the Treasury to publish, in such manner as they think fit, any code which has been laid before Parliament and approved by the House of Commons under this section.

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- (7) The first code to be laid before Parliament under this section shall be so laid before 31st December 1998.

## **156 Annual Budget documents.**

- (1) It shall be the duty of the Treasury, for each financial year, to prepare and lay before Parliament the following documents, that is to say—
- (a) a Financial Statement and Budget Report;
  - (b) an Economic and Fiscal Strategy Report; and
  - (c) a Debt Management Report.
- (2) The preparation and laying before Parliament of the Financial Statement and Budget Report for any financial year shall be preceded, in such cases and by such period as may be set out in the code for fiscal stability, by the preparation by the Treasury of a document to be known as the Pre-Budget Report.
- (3) The Treasury shall lay before Parliament any Pre-Budget Report prepared by them under subsection (2) above.
- (4) The contents of the documents which the Treasury are required to prepare and lay before Parliament under this section, and the occasions on which those documents are to be so laid, must conform to any provision about those matters made by the code for fiscal stability.
- (5) It shall be the duty of the Comptroller and Auditor General to examine and report to the House of Commons on such of the conventions and assumptions underlying the preparation by the Treasury of the documents prepared by them under this section as, in accordance with the code for fiscal stability, are submitted to him by the Treasury for his examination.
- (6) A report by the Comptroller and Auditor General under subsection (5) above must be made at the same time as, or as soon as reasonably practicable after, the laying before Parliament of the documents to which it is referable.
- (7) It shall be the duty of the Treasury to secure the publication in the manner required by the code for fiscal stability of any document which they have laid before Parliament under this section.
- (8) In this section “the code for fiscal stability” means the code for the time being in force under section 155 above.
- (9) The first financial year for which the documents mentioned in subsection (1) above are required to be prepared and laid before Parliament is the year beginning with 1st April 1999.

## **157 Supplementary powers of the Comptroller and Auditor General.**

- (1) The Comptroller and Auditor General—
- (a) shall have a right of access, at all reasonable times, to all such relevant Government documents as he may reasonably require for the purpose of carrying out any examination under section 156(5) above; and
  - (b) shall be entitled to require from any person holding or accountable for any relevant Government documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.

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- (2) In this section “relevant Government documents” means documents in the custody or under the control of the Government department primarily responsible for the adoption or formulation of the convention or assumption in question.

### *Government borrowing*

#### **158 Treasury’s position regarding their own securities.**

- (1) This section applies to securities issued by or on behalf of the Treasury, here referred to as Treasury securities.
- (2) Any powers which relate to Treasury securities and which are conferred on the Treasury in a capacity other than issuer may be exercised by them, and no rule of law preventing a person contracting with himself shall prevent them exercising the powers.
- (3) The powers referred to in subsection (2) above include powers to acquire, hold and transfer securities and to make agreements with regard to them.
- (4) If Treasury securities are acquired under powers conferred on the Treasury, until they are transferred or redeemed they shall be treated as held by the persons for the time being constituting the Treasury.

#### **159 Treasury bills.**

- (1) In section 8 of the <sup>M181</sup>Treasury Bills Act 1877 (mode of issue of Treasury bills) the following shall be substituted for paragraph (1)—
 

“(1) Treasury bills shall be issued by the Treasury (either directly or through such agent as the Treasury think fit).”
- (2) This section shall apply in relation to issues made on or after such day as the Treasury may appoint by order made by statutory instrument.

#### **Subordinate Legislation Made**

**P4** S. 159(2) power fully exercised (25.10.1999): 15.11.1999 appointed by S.I. 1999/2908, arts. 1(2), 2(1)

#### **Marginal Citations**

**M181** 1877 c. 2.

#### **160 National loans.**

Schedule 26 to this Act (national loans) shall have effect.

#### **161 Non-FOTRA securities.**

- (1) Subject to the following provisions of this section, any gilt-edged security issued before 6th April 1998 without FOTRA conditions shall be treated in relation to times on or after that date as if—
  - (a) it were a security issued with the post-1996 Act conditions; and

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- (b) those conditions had been authorised in relation to the issue of that security by virtue of section 22 of the <sup>M182</sup>Finance (No. 2) Act 1931.
- (2) Where a gilt-edged security falls to be treated as mentioned in subsection (1) above that treatment shall have effect—
- (a) for the purposes of sections 711 to 728 of the Taxes Act 1988 (accrued income scheme), in relation only to amounts which a person is treated under those sections as receiving on or after 6th April 1998;
  - (b) for the other purposes of the Tax Acts, in relation only to payments of interest falling due on or after that date; and
  - (c) for the purposes of the <sup>M183</sup>Inheritance Tax Act 1984, in relation only to a determination of whether property is excluded property at a time falling on or after that date.
- (3) No charge to tax shall be treated as arising under section 65 of the <sup>M184</sup>Inheritance Tax Act 1984 (property becoming excluded property) by reason only of the coming into force of this section.
- (4) In this section “FOTRA conditions” means any such conditions about exemption from taxation as are authorised in relation to the issue of a gilt-edged security by virtue of section 22 of the <sup>M185</sup>Finance (No. 2) Act 1931.
- (5) In this section “the post-1996 Act conditions” means the FOTRA conditions with which 7.25% Treasury Stock 2007 was first issued by virtue of section 22 of the <sup>M186</sup>Finance (No. 2) Act 1931.
- (6) In this section “gilt-edged securities” means any securities which are gilt-edged securities for the purposes of the <sup>M187</sup>Taxation of Chargeable Gains Act 1992.
- (7) This section does not apply to any 3½% War Loan 1952 Or After which was issued with a condition authorised by virtue of section 47 of the <sup>M188</sup>Finance (No. 2) Act 1915.

**Marginal Citations**

**M182** 1931 c. 49.  
**M183** 1984 c. 51.  
**M184** 1984 c. 51.  
**M185** 1931 c. 49.  
**M186** 1931 c. 49.  
**M187** 1992 c. 12.  
**M188** 1915 c. 89.

**162 Accounting statements relating to National Savings.**

- (1) Subject to subsection (2) below, in each of the following provisions (which provide for annual statements of account as respects years ending with 31st December to be prepared in relation to deposits with the National Savings Bank), that is to say—
- (a) section 19(1) of the <sup>M189</sup>National Savings Bank Act 1971 (ordinary deposits), and
  - (b) section 120(4) of the <sup>M190</sup>Finance Act 1980 (investment deposits),
- for “31st December” there shall be substituted “ 31st March ”.



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- (2) Each of the enactments mentioned in subsection (1) above shall have effect as if they required the first statement which, under each of those enactments, is to be prepared after the passing of this Act to be a statement as respects the period beginning with 1st January 1998 and ending with 31st March 1999.
- (3) In section 19(2) of the <sup>M191</sup>National Savings Bank Act 1971 (delivery of statement under section 19(1) to the Comptroller and Auditor General), for the words from “before the end of May” to “that year” there shall be substituted “before the end of August next following the end of any period for which a statement falls to be prepared under subsection (1) above, transmit the statement for that period”.
- (4) In section 20 of that Act (adjustment of balances)—
- (a) for “year ending with 31st December” there shall be substituted “period as respects which a statement falls to be prepared under section 19(1) of this Act”;
  - (b) for the words “the year”, in each place where they occur, there shall be substituted “that period”; and
  - (c) for “any such year” there shall be substituted “any such period”.
- (5) In section 120(5) of the <sup>M192</sup>Finance Act 1980 (delivery of statement under section 120(4) to the Comptroller and Auditor General), for the words from “each year” to “the year,” there shall be substituted “any period under subsection (4) above shall, before the end of August next following the end of that period,”.

**Marginal Citations**

**M189** 1971 c. 29.

**M190** 1980 c. 48.

**M191** 1971 c. 29.

**M192** 1980 c. 48.

*The European single currency*

**163 Adoption of single currency by other member States.**

- (1) The Treasury may, to such extent as appears to them appropriate in connection with any of the matters falling within subsection (2) below, by regulations modify the application and effect as respects—
- (a) transactions in a currency other than sterling,
  - (b) instruments denominated in such a currency, and
  - (c) the bringing into account of amounts expressed in, or by reference to, such a currency,
- of any enactment or subordinate legislation relating to any matter under the care and management of the Commissioners of Inland Revenue.
- (2) The matters falling within this subsection are—
- (a) the adoption or proposed adoption by other member States of the single currency; and
  - (b) any transitional measures or other arrangements applying or likely to apply in relation to the adoption of the single currency by other member States.



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- (3) Without prejudice to the generality of subsection (1) above, the power conferred by that subsection includes power by regulations to provide—
- (a) for liabilities to pay amounts to the Commissioners of Inland Revenue under any enactment or subordinate legislation relating to taxation to be capable of being discharged, in accordance with the regulations, by payments in the single currency;
  - (b) for elections made for the purposes of section 93(1)(b) or 94(2)(b) of the <sup>M193</sup>Finance Act 1993 (computation of a company's profits in a foreign currency) to have effect as modified in accordance with the regulations; and
  - (c) for such persons as may be described in the regulations to be treated as having made elections for any of those purposes in such terms as may be provided for in the regulations.
- (4) The power to make regulations under this section includes—
- (a) power to impose charges to taxation;
  - (b) power to amend or repeal any enactment; and
  - (c) power to make such incidental, supplemental, consequential and transitional provision as appears to the Treasury to be appropriate.
- (5) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section—
- “enactment” includes any enactment contained in this Act (other than this section) and any enactment passed after this Act;
  - “other member State” means a member State other than the United Kingdom;
  - “subordinate legislation” has the same meaning as in the <sup>M194</sup>Interpretation Act 1978.
- (7) References in this section to the adoption of the single currency are references to the adoption of the single currency in accordance with the Treaty establishing the European Community, and the reference in subsection (3)(a) above to that currency shall be construed accordingly.

**Marginal Citations**

**M193** 1993 c. 34.

**M194** 1978 c. 30.

*Supplemental*

**164 Interpretation.**

In this Act “the Taxes Act 1988” means the <sup>M195</sup>Income and Corporation Taxes Act 1988.

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**Marginal Citations**

M195 1988 c. 1.

**165 Repeals.**

- (1) The enactments mentioned in Schedule 27 to this Act (which include spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

**166 Short title.**

This Act may be cited as the Finance Act 1998.

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## SCHEDULES

### SCHEDULE 1

Section 16.

#### RATES OF DUTY WHERE POLLUTION REDUCED

##### *Meaning of “the 1994 Act”*

- 1 In this Schedule “the 1994 Act” means the <sup>M196</sup>Vehicle Excise and Registration Act 1994.

##### **Marginal Citations**

M196 1994 c. 22.

##### *Certificates as to reduced pollution*

- 2 The following section shall be inserted after section 61A of the 1994 Act—

##### **“61B Certificates as to reduced pollution.**

- (1) The Secretary of State may by regulations make provision—
- (a) for the making of an application to the Secretary of State for the issue in respect of an eligible vehicle of a reduced pollution certificate;
  - (b) for the manner in which any determination of whether to issue such a certificate on such an application is to be made;
  - (c) for the examination of an eligible vehicle, for the purposes of the determination mentioned in paragraph (b), by such persons, and in such manner, as may be prescribed;
  - (d) for a fee to be paid for such an examination;
  - (e) for a reduced pollution certificate to be issued in respect of an eligible vehicle if, and only if, it is found, on a prescribed examination, that the reduced pollution requirements are satisfied with respect to it;
  - (f) for the form and content of such a certificate;
  - (g) for such a certificate to be valid for such period as the Secretary of State may determine;
  - (h) for the revocation, cancellation or surrender of such a certificate before the end of any such period;
  - (i) for the Secretary of State to be entitled to require the return to him of such a certificate that has been revoked;
  - (j) for the fact that such a certificate is, or is not, in force in respect of a vehicle to be treated as having conclusive effect for the purposes of this Act as to such matters as may be prescribed;

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- (k) for the Secretary of State to be entitled, in prescribed cases, to require the production of such a certificate before making a determination for the purposes of section 7(5); and
  - (l) for appeals against any determination not to issue such a certificate.
- (2) For the purposes of this Act, the reduced pollution requirements are satisfied with respect to a vehicle at any time if, as a result of adaptations of the prescribed description having been made to the vehicle after the prescribed date, the prescribed requirements are satisfied at that time with respect to the rate and content of the vehicle's emissions.
- (3) Without prejudice to the generality of subsection (1), for the purpose of enabling the Secretary of State to determine whether the reduced pollution requirements are satisfied at any time with respect to a vehicle in respect of which a reduced pollution certificate is in force, regulations under this section—
- (a) may authorise such person as may be prescribed to require the vehicle to be re-examined in accordance with the regulations;
  - (b) may provide for a fee to be paid for such a re-examination;
  - (c) may provide for the refund of such a fee if it is found, on the prescribed re-examination, that the reduced pollution requirements are satisfied with respect to the vehicle.
- (4) In this section “eligible vehicle” means—
- (a) a bus, as defined in paragraph 3(2) of Schedule 1;
  - (b) a vehicle to which paragraph 6 of Schedule 1 applies;
  - (c) a haulage vehicle, as defined in paragraph 7(2) of Schedule 1, other than a showman's vehicle; or
  - (d) a goods vehicle, other than one falling within paragraph 9(2) or 11(2) of Schedule 1.
- (5) In this section “prescribed” means prescribed by regulations made by the Secretary of State.”

#### *Buses*

- 3 (1) In sub-paragraph (1) of paragraph 3 of Schedule 1 to the 1994 Act (annual rates of vehicle excise duty for buses), after “bus” there shall be inserted “ with respect to which the reduced pollution requirements are not satisfied ”.
- (2) After that sub-paragraph there shall be inserted the following sub-paragraph—
- “(1A) The annual rate of vehicle excise duty applicable to a bus with respect to which the reduced pollution requirements are satisfied is the general rate specified in paragraph 1(2).”
- (3) In sub-paragraph (6) of that paragraph, for “which falls” there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and
  - (b) falls”.

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**Changes to legislation:** Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

- 16** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Special vehicles*

- 4 In paragraph 4(7) of that Schedule (annual rates of vehicle excise duty for special vehicles), for “which falls” there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and
  - (b) falls”.

#### Commencement Information

- 17** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Recovery vehicles*

- 5 In paragraph 5(6) of that Schedule (annual rates of vehicle excise duty for recovery vehicles), for “which falls” there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and
  - (b) falls”.

#### Commencement Information

- 18** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Vehicles used for exceptional loads*

- 6 (1) In paragraph 6 of that Schedule (annual rates of vehicle excise duty for vehicles used for exceptional loads), in sub-paragraph (2), for “the heavy tractive unit rate” there shall be substituted “the rate specified in sub-paragraph (2A).”
- (2) After that sub-paragraph there shall be inserted the following sub-paragraph—
- “(2A) The rate referred to in sub-paragraph (2) is—
- (a) in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, £5,170; and
  - (b) in the case of a vehicle with respect to which those requirements are satisfied, £4,670.”
- (3) Sub-paragraph (3A) of that paragraph shall cease to have effect.

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#### Commencement Information

- I9** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Haulage vehicles*

- 7 (1) In paragraph 7 of that Schedule (annual rates of vehicle excise duty for haulage vehicles), in sub-paragraph (1)(b), for “the general haulage vehicle rate” there shall be substituted “ the rate specified in sub-paragraph (3A) ”.
- (2) In sub-paragraph (3) of that paragraph, for “which falls” there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and
  - (b) falls”.
- (3) After that sub-paragraph there shall be inserted the following sub-paragraph—
- “(3A) The rate referred to in sub-paragraph (1)(b) is—
- (a) in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, £350; and
  - (b) in the case of a vehicle with respect to which those requirements are satisfied, the general rate specified in paragraph 1(2).”
- (4) Sub-paragraphs (4), (5) and (6) of that paragraph shall cease to have effect.

#### Commencement Information

- I10** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Rigid goods vehicles*

- 8 (1) In sub-paragraph (1) of paragraph 9 of that Schedule (annual rates of vehicle excise duty for rigid goods vehicles), after “which” there shall be inserted “ is not a vehicle with respect to which the reduced pollution requirements are satisfied and which ”.
- (2) In sub-paragraph (3) of that paragraph, for the words from “which has” to the end of the sub-paragraph there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied,
  - (b) has a revenue weight exceeding 44,000 kilograms, and
  - (c) is not an island goods vehicle,
- shall be £5,170. ”
- (3) In sub-paragraph (4) of that paragraph, for “which falls” there shall be substituted “which—
- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and

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(b) falls”.

(4) Sub-paragraph (5) of that paragraph shall cease to have effect.

#### Commencement Information

**I11** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

9 After that paragraph there shall be inserted the following paragraphs—

“9A (1) This paragraph applies to a rigid goods vehicle which—

- (a) is a vehicle with respect to which the reduced pollution requirements are satisfied;
- (b) is not a vehicle for which the annual rate of vehicle excise duty is determined under paragraph 9(2); and
- (c) has a revenue weight exceeding 3,500 kilograms.

(2) Subject to sub-paragraph (3), the annual rate of vehicle excise duty applicable to a rigid goods vehicle to which this paragraph applies shall be determined in accordance with the table set out in paragraph 9B by reference to—

- (a) the revenue weight of the vehicle, and
- (b) the number of axles on the vehicle.

(3) The annual rate of vehicle excise duty applicable to a rigid goods vehicle to which this paragraph applies which has a revenue weight exceeding 44,000 kilograms shall be £4,670.

9B That table is as follows—

#### Commencement Information

**I12** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

10 In paragraph 10 of that Schedule (the trailer supplement), in sub-paragraph (1), for “paragraph 9” there shall be substituted “ paragraphs 9 and 9A ”.

#### Commencement Information

**I13** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

#### *Tractive units*

11 (1) In sub-paragraph (1) of paragraph 11 of that Schedule (annual rates of vehicle excise duty for tractive units), after “which” there shall be inserted “ is not a vehicle with respect to which the reduced pollution requirements are satisfied and which ”.

(2) In sub-paragraph (3) of that paragraph, for the words from “which has” to the end of the sub-paragraph there shall be substituted “which—

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- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied,
- (b) has a revenue weight exceeding 44,000 kilograms, and
- (c) is not an island goods vehicle,

shall be £5,170.”

(3) In sub-paragraph (4) of that paragraph, for “which falls” there shall be substituted “which—

- (a) is not a vehicle with respect to which the reduced pollution requirements are satisfied; and
- (b) falls”.

(4) Sub-paragraph (5) of that paragraph shall cease to have effect.

#### Commencement Information

**I14** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

12 After that paragraph there shall be inserted the following paragraphs—

“11A(1) This paragraph applies to a tractive unit which—

- (a) is a vehicle with respect to which the reduced pollution requirements are satisfied;
- (b) is not a vehicle for which the annual rate of vehicle excise duty is determined under paragraph 11(2); and
- (c) has a revenue weight exceeding 3,500 kilograms.

(2) Subject to sub-paragraph (3), the annual rate of vehicle excise duty applicable to a tractive unit to which this paragraph applies shall be determined, in accordance with the table set out in paragraph 11B, by reference to—

- (a) the revenue weight of the tractive unit,
- (b) the number of axles on the tractive unit, and
- (c) the types of semi-trailers, distinguished according to the number of their axles, which are to be drawn by it.

(3) The annual rate of vehicle excise duty applicable to a tractive unit to which this paragraph applies which has a revenue weight exceeding 44,000 kilograms shall be £4,670.”

“11B That table is as follows—

#### Commencement Information

**I15** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2



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### Other amendments

- 13 In section 15 of the 1994 Act (vehicles becoming chargeable to duty at higher rate), after subsection (2) there shall be inserted the following subsection—

“(2A) For the purposes of subsection (1) a vehicle is also used so as to subject it to a higher rate if—

- (a) the rate of vehicle excise duty paid on a vehicle licence taken out for the vehicle was the rate applicable to a vehicle of the same description with respect to which the reduced pollution requirements are satisfied, and
- (b) while the licence is in force, the vehicle is used at a time when those requirements are not satisfied with respect to it.”

#### Commencement Information

**I16** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

- 14 In section 16 of the 1994 Act (exceptions from charge at higher rate in case of tractive units), at the beginning of subsection (1) there shall be inserted “Subject to subsection (9)” and after subsection (7) there shall be inserted the following subsections—

“(8) This subsection applies to a tractive unit (“the relevant tractive unit”) in relation to which subsection (2), (4) or (6) applies if—

- (a) the rate of duty paid on taking out the licence for the relevant tractive unit is the rate applicable to a tractive unit of the appropriate description with respect to which the reduced pollution requirements are satisfied; and
- (b) while the licence is in force, the relevant tractive unit is used at a time when the reduced pollution requirements are not satisfied with respect to it.

(9) Where subsection (8) applies, subsection (1) does not prevent duty becoming payable under section 15 at the rate applicable to a tractive unit of the appropriate description with respect to which the reduced pollution requirements are not satisfied.

(10) In this section “the appropriate description” means the description mentioned in paragraph (b) of whichever of subsections (2), (4) and (6) applies in relation to the relevant tractive unit.”

#### Commencement Information

**I17** Sch. 1 partly in force; Sch. 1 paras. 1, 2, 15-17 in force at Royal Assent see Sch. 1 para. 17(2); Sch. 1 paras. 3-14 in force for specified purposes at 1.1.1999 by S.I. 1998/3092, art. 2

- 15 In section 45 of the 1994 Act (offences relating to false or misleading declarations and information), in subsections (3A) and (3B), after “section 61A” there shall be inserted “ or 61B ”.

- 16 (1) Paragraph 22 of Schedule 2 to that Act (exemption in relation to vehicle testing) shall be amended as follows.

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- (2) In sub-paragraph (1)—
- (a) in paragraph (a), for “or a vehicle weight test” there shall be substituted “, a vehicle weight test or a reduced pollution test”; and
  - (b) in paragraph (b), for “a compulsory test or a vehicle weight test” there shall be substituted “ any such test ”.
- (3) In sub-paragraph (2), after “vehicle weight test” there shall be inserted “, a reduced pollution test”.
- (4) In sub-paragraph (2A), after “compulsory test”, in each place it occurs, there shall be inserted “ or a reduced pollution test ”.
- (5) In sub-paragraph (3), after “compulsory test” there shall be inserted “, or a reduced pollution test, ”.
- (6) After sub-paragraph (6A) there shall be inserted the following sub-paragraph—
- “(6AA) In this paragraph “a reduced pollution test” means any examination of a vehicle for which provision is made by regulations under section 61B of this Act.”
- (7) In sub-paragraph (6B), for “or vehicle weight test” there shall be substituted “, a vehicle weight test or a reduced pollution test”.
- (8) In sub-paragraphs (8) and (9), the word “or” shall be inserted at the end of paragraphs (a) and (c) and after paragraph (c) there shall be inserted the following paragraph—
- “(d) a certificate issued by virtue of section 61B of this Act.”

#### Commencement

- 17 (1) Subject to sub-paragraph (2) below, the preceding provisions of this Schedule shall come into force in relation to licences issued on or after such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed under this sub-paragraph for different purposes.
- (2) Paragraphs 1, 2, 15 and 16 above come into force with the passing of this Act.

#### Subordinate Legislation Made

**P5** Sch. 1 para. 17(1) power partly exercised (9.12.1998): 1.1.1999 appointed for specified purposes by S.I. 1998/3092, art. 2

## SCHEDULE 2

Section 20.

### ASSESSMENTS FOR EXCISE DUTY PURPOSES

#### *Alcoholic Liquor Duties Act 1979 (c.4)*

- 1 In section 8 of the Alcoholic Liquor Duties Act 1979 (remission of duty in respect of spirits used for medical or scientific purposes) the following subsections shall be inserted after subsection (2)—

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- “(3) Subsection (4) below applies if—
- (a) spirits are received and delivered in accordance with subsection (1) above,
  - (b) they are not used as proposed, and
  - (c) it is not shown to the satisfaction of the Commissioners that they can be accounted for by natural waste or other legitimate cause.
- (4) In such a case the Commissioners—
- (a) may assess as being excise duty due from the person concerned an amount equal to the duty that would have been chargeable on the spirits if, at the time of delivery from warehouse, they had been delivered for home use and otherwise than in accordance with subsection (1) above, and
  - (b) may notify him or his representative accordingly.”
- 2 In section 10 of the Alcoholic Liquor Duties Act 1979 (remission of duty on spirits for use in art or manufacture) the following subsections shall be inserted after subsection (2)—
- “(3) Subsection (4) below applies if—
- (a) spirits are received and delivered in accordance with subsection (1) above,
  - (b) they are not used as proposed, and
  - (c) it is not shown to the satisfaction of the Commissioners that they can be accounted for by natural waste or other legitimate cause.
- (4) In such a case the Commissioners—
- (a) may assess as being excise duty due from the person concerned an amount equal to the duty that would have been chargeable on the spirits if, at the time of delivery from warehouse, they had been delivered for home use and otherwise than in accordance with subsection (1) above, and
  - (b) may notify him or his representative accordingly.”
- 3 (1) Section 11 of the Alcoholic Liquor Duties Act 1979 (relief from duty on imported goods not for human consumption containing spirits) shall be amended as follows.
- (2) At the beginning there shall be inserted “ (1) ”.
- (3) At the end there shall be inserted—
- “(2) Subsection (3) below applies if—
- (a) the Commissioners make a direction under subsection (1) above, but
  - (b) it turns out that the goods were for human consumption.
- (3) In such a case the Commissioners—
- (a) may assess as being excise duty due from the relevant person an amount equal to the duty that would have been chargeable on the goods if the direction had not been made, and
  - (b) may notify him or his representative accordingly.
- (4) The reference in subsection (3) above to the relevant person is to the importer or (if different) the person who sought the direction.”

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*Hydrocarbon Oil Duties Act 1979 (c.5)*

- 4 (1) Section 13AB of the Hydrocarbon Oil Duties Act 1979 (misuse of kerosene) shall be amended as follows.
- (2) For subsection (1)(a) there shall be substituted—
- “(a) in respect of the quantity of kerosene used the Commissioners may assess as being excise duty due from him an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the contravention, and they may notify him or his representative accordingly;”.
- (3) For subsection (2)(a) there shall be substituted—
- “(a) in respect of the quantity of kerosene taken into the fuel supply the Commissioners may assess as being excise duty due from him an amount equal to duty on the same quantity of gas oil at the rate for rebated gas oil which is in force at the time of the contravention, and they may notify him or his representative accordingly;”.

*Tobacco Products Duty Act 1979 (c.7)*

- 5 In section 8 of the Tobacco Products Duty Act 1979 (charge in cases of default) in subsection (2)—
- (a) for “require him to pay duty” there shall be substituted “ assess an amount as duty due from him ”;
- (b) at the end there shall be inserted , and they may notify him or his representative accordingly.

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*Finance (No. 2) Act 1992 (c.48)*

- 6 (1) Section 2 of the Finance (No. 2) Act 1992 (power to provide for drawback of excise duty) shall be amended as follows.
- (2) In subsection (3) (cancellation of drawback) paragraph (b) and the word “and” immediately preceding it shall be omitted.
- (3) After subsection (3) there shall be inserted—
- “(3A) If entitlement to drawback is cancelled under any provision contained in regulations by virtue of subsection (3) above the Commissioners—
- (a) may assess as being excise duty due from the prescribed person an amount equal to sums paid or credited to any person in respect of the drawback, and
- (b) may notify the prescribed person or his representative accordingly.
- (3B) The reference in subsection (3A) above to the prescribed person is to such person as may be prescribed for the purposes of the subsection by regulations under this section.”

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*Finance Act 1994 (c.9)*

- 7 In section 12 of the Finance Act 1994 (assessment to excise duty) after subsection (1) there shall be inserted—
- “(1A) Subject to subsection (4) below, where it appears to the Commissioners—
- (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
  - (b) that the amount due can be ascertained by the Commissioners, the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.”
- 8 (1) In section 12A of the Finance Act 1994 (other assessments relating to excise duty matters) subsection (3) (amount assessed deemed to be duty due) shall be amended as follows.
- (2) At the end of paragraph (b) the word “or” shall be omitted and after that paragraph there shall be inserted—
- “(bb) section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.”.
- (3) In paragraph (c) after “13,” there shall be inserted “ 13AB, ” and after that paragraph there shall be inserted—
- “(d) section 8 of the Tobacco Products Duty Act 1979, or
  - (e) section 2 of the Finance (No. 2) Act 1992.”.

**Commencement Information**

**I18** Sch. 2 para. 8 partly in force; Sch. 2 para. 8 not in force at Royal Assent see Sch. 2 para. 12; Sch. 2 para. 8(1)(2) in force and Sch. 2 para. 8(3) in force for specified purposes at 1.10.1998 by S.I. 1998/2243, art. 2(2)(b)

- 9 (1) In section 12B of the Finance Act 1994, subsection (2) (meaning of relevant time) shall be amended as follows.
- (2) After paragraph (e) there shall be inserted—
- “(ea) in the case of an assessment under section 8 or 10 of the Alcoholic Liquor Duties Act 1979, the time of delivery from warehouse;
  - (eb) in the case of an assessment under section 11 of that Act, the time when the direction was made;”.
- (3) In paragraph (f) after “13,” there shall be inserted “ 13AB, ”.
- (4) After paragraph (g) there shall be inserted—
- “(ga) in the case of an assessment under section 8 of the Tobacco Products Duty Act 1979, the time when the Commissioners are satisfied of a failure to prove as mentioned in subsection (2)(a) or (b) of that section;
  - (gb) in the case of an assessment under section 2 of the Finance (No. 2) Act 1992, the time when the sums were paid or credited in respect of the drawback;”.

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#### Commencement Information

**I19** Sch. 2 para. 9 partly in force; Sch. 2 para. 9 not in force at Royal Assent see Sch. 2 para. 12; Sch. 2 para. 9(1)-(3) in force and Sch. 2 para. 9(4) in force for specified purposes at 1.10.1998 by S.I. 1998/2243, art. 2(2)(b)

10 In section 14 of the Finance Act 1994 (requirement for review of a decision) in subsection (1)(ba)—

- (a) for “or” (occurring after “Management Act”) there shall be substituted “, section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979, ”;
- (b) after “13,” there shall be inserted “ 13AB, ”;
- (c) after “Hydrocarbon Oil Duties Act 1979,” there shall be inserted “ section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No. 2) Act 1992, ”.

#### Commencement Information

**I20** Sch. 2 para. 10 partly in force; Sch. 2 para. 10 not in force at Royal Assent see Sch. 2 para. 12; Sch. 2 para. 10(a)(b) in force and Sch. 2 para. 10(c) in force for specified purposes at 1.10.1998 by S.I. 1998/2243, art. 2(2)(b)

11 In section 16 of the Finance Act 1994 (appeals to a tribunal) there shall be inserted after subsection (3)—

- “(3A) Subsection (3) above shall not apply if the appeal arises out of an assessment under section 8, 10 or 11 of the Alcoholic Liquor Duties Act 1979.”

#### Commencement

12 This Schedule shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint; and different days may be appointed under this paragraph for different purposes.

#### Subordinate Legislation Made

**P6** Sch. 2 para. 12 power partly exercised (14.9.1998): 1.10.1998 appointed for specified provisions by S.I. 1998/2243, art. 2

### SCHEDULE 3

Section 31.

#### ADVANCE CORPORATION TAX

#### Section 1 of the Provisional Collection of Taxes Act 1968

1 (1) Section 1 of the <sup>M197</sup>Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions) shall be amended as follows.

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(2) In subsection (1) the words “(including advance corporation tax)” shall cease to have effect.

(3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

**Marginal Citations**

**M197** 1968 c. 2.

*Section 10 of the Taxes Management Act 1970*

2 (1) Section 10 of the <sup>M198</sup>Taxes Management Act 1970 (notice of liability to corporation tax) shall be amended as follows.

(2) Subsection (4) (which makes provision in relation to surplus ACT) shall cease to have effect.

(3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

**Marginal Citations**

**M198** 1970 c. 9.

*Section 87 of the Taxes Management Act 1970*

3 (1) Section 87 of the <sup>M199</sup>Taxes Management Act 1970 (interest on overdue ACT and income tax on company payments) shall be amended as follows.

(2) In subsection (1) (which contains a reference to Schedule 13) the words “13 or” shall cease to have effect.

(3) In subsection (2), paragraph (a) (which concerns ACT) shall cease to have effect.

(4) In subsection (6) (which contains a reference to Schedule 13) the words “13 or” shall cease to have effect.

(5) In subsection (7)—

(a) the words “advance corporation tax and” shall cease to have effect; and

(b) for “either of those Schedules” there shall be substituted “ the said Schedule 16 ”.

(6) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

**Marginal Citations**

**M199** 1970 c. 9.

**Status:** Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

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*Section 87A of the Taxes Management Act 1970*

- 4 (1) Section 87A of the <sup>M200</sup>Taxes Management Act 1970 (interest on overdue corporation tax etc) shall be amended as follows.
- (2) Subsection (4) (which makes provision in relation to surplus ACT) shall cease to have effect.
- (3) Subsections (4B) and (7) (which make further provision in relation to surplus ACT) shall cease to have effect.
- (4) Sub-paragraph (2) above has effect where the later period mentioned in subsection (4) of section 87A begins on or after 6th April 1999.
- (5) Sub-paragraph (3) above has effect where the earlier period mentioned in subsections (4B) and (7) of section 87A begins on or after 6th April 1999.

**Marginal Citations**

**M200** 1970 c. 9.

*Section 94 of the Taxes Management Act 1970*

- 5 (1) Section 94 of the <sup>M201</sup>Taxes Management Act 1970 (failure to make return for corporation tax) shall be amended as follows.
- (2) Subsection (8) (which makes provision in relation to surplus ACT) shall cease to have effect.
- (3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

**Marginal Citations**

**M201** 1970 c. 9.

*Section 109 of the Taxes Management Act 1970*

- 6 (1) Section 109 of the <sup>M202</sup>Taxes Management Act 1970 (corporation tax on close company in connection with loans to participators etc) shall be amended as follows.
- (2) In subsection (3A) (interest under section 87A on so much of tax under section 419 of Taxes Act 1988 as is referable to amount of loan or advance repaid shall not be payable in respect of any period after repayment made)—
- (a) after “If” there shall be inserted “ (a) ”;
- (b) after “principal Act,” there shall be inserted “or
- (b) there is such a release or writing off of the whole or any part of the debt in respect of a loan or advance as is referred to in that subsection,”;
- (c) after “amount repaid” there shall be inserted “ , released or written off”; and



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(d) after “the repayment was made” there shall be inserted “ or the release or writing off occurred ”.

(3) This paragraph has effect in relation to the release or writing off of the whole or part of a debt on or after 6th April 1999.

#### Marginal Citations

M202 1970 c. 9.

#### *Section 13 of the Taxes Act 1988*

7 (1) Section 13 of the Taxes Act 1988 (small companies’ relief) shall be amended as follows.

(2) In subsection (7) (exclusion of group income etc) for the words from “other than franked investment income” onwards there shall be substituted—

“other than franked investment income (if any) which the company (“the receiving company”) receives from a company resident in the United Kingdom which is—

(a) a 51 per cent. subsidiary of the receiving company or of a company resident in the United Kingdom of which the receiving company is a 51 per cent. subsidiary; or

(b) a trading or holding company which does not fall within section 247(1A) and which is owned by a consortium the members of which include the receiving company.”

(3) After subsection (8) there shall be inserted—

“(8AA) Subsections (8) to (9A) of section 247 shall apply for the purposes of subsection (7) above as they apply for the purposes of that section.

(8AB) The reference in subsection (7) above to franked investment income received by a company applies to any such income received by another person on behalf of or in trust for the company, but not to any such income received by the company on behalf of or in trust for another person.”

(4) This paragraph has effect in relation to distributions made on or after 6th April 1999.

#### *Section 14 of the Taxes Act 1988*

8 (1) Section 14 of the Taxes Act 1988 (ACT and qualifying distributions) shall be amended as follows.

(2) Subsections (1) and (3) to (5) (which make provision for and in connection with the imposition of ACT) shall cease to have effect.

(3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

#### *Section 75 of the Taxes Act 1988*

9 (1) Section 75 of the Taxes Act 1988 (expenses of management: investment companies) shall be amended as follows.

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- (2) In subsection (2) the words “group income” shall cease to have effect.
- (3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

*Section 116 of the Taxes Act 1988*

- 10 (1) Section 116 of the Taxes Act 1988 (arrangements for transferring relief) shall be amended as follows.
  - (2) In subsection (2), paragraph (d) (which makes provision in relation to section 239) shall cease to have effect.
  - (3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

*Section 238 of the Taxes Act 1988*

- 11 (1) Section 238 of the Taxes Act 1988 (interpretation of terms and collection of ACT) shall cease to have effect.
  - (2) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

*Section 239 of the Taxes Act 1988*

- 12 (1) Section 239 of the Taxes Act 1988 (set-off of ACT against liability to corporation tax) shall cease to have effect.
  - (2) Sub-paragraph (1) above has effect in relation to accounting periods beginning on or after 6th April 1999.
  - (3) No advance corporation tax shall, by virtue of section 239(4) of the Taxes Act 1988, be treated as if it were paid in respect of distributions made in accounting periods beginning on or after 6th April 1999.
  - (4) The limit under section 239(2) of the Taxes Act 1988 on the set-off of advance corporation tax for an accounting period of a company beginning before, and ending on or after, 6th April 1999 (a “straddling period”) shall be determined as if—
    - (a) the straddling period were an accounting period beginning at the beginning of the straddling period and ending on 5th April 1999 (“the notional period”); and
    - (b) there were apportioned to the notional period a proportionate amount of the profits of the company which, apart from this sub-paragraph, would be taken into account in determining the limit under section 239(2) of that Act.
  - (5) The references in sub-paragraphs (2) and (3) above to accounting periods beginning on or after 6th April 1999 include a reference to a separate accounting period mentioned in section 245(2) of the Taxes Act 1988 which begins on 6th April 1999.
  - (6) The reference in sub-paragraph (4) above to an accounting period beginning before, and ending on or after, 6th April 1999 includes a reference to a separate accounting period mentioned in section 245(2) of the Taxes Act 1988 which begins before, and ends on or after, that date.

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*Section 240 of the Taxes Act 1988*

- 13 (1) Section 240 of the Taxes Act 1988 (set-off of company's surplus ACT against subsidiary's liability to corporation tax) shall cease to have effect.
- (2) This paragraph has effect in relation to accounting periods of the surrendering company (as defined in section 240(1) of the Taxes Act 1988) beginning on or after 6th April 1999.

*Section 241 of the Taxes Act 1988*

- 14 (1) Section 241 of the Taxes Act 1988 (calculation of ACT where company receives franked investment income) shall cease to have effect.
- (2) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

*Section 245 of the Taxes Act 1988*

- 15 (1) Section 245 of the Taxes Act 1988 (calculation etc of ACT on change of ownership of company) shall cease to have effect.
- (2) This paragraph has effect in relation to changes in ownership (within the meaning of section 245 of that Act) occurring on or after 6th April 1999.

*Section 245A of the Taxes Act 1988*

- 16 (1) Section 245A of the Taxes Act 1988 (restriction on application of section 240 in certain circumstances) shall cease to have effect.
- (2) This paragraph has effect in relation to changes in ownership (within the meaning of section 245A of that Act) occurring on or after 6th April 1999.

*Section 245B of the Taxes Act 1988*

- 17 (1) Section 245B of the Taxes Act 1988 (restriction on set-off where asset transferred after change in ownership of company) shall cease to have effect.
- (2) Sub-paragraph (1) above has effect in relation to disposals on or after 6th April 1999.
- (3) In relation to an accounting period beginning before, and ending on or after, 6th April 1999, the reference in section 245B(4)(a) of the Taxes Act 1988 to the end of the relevant period shall be taken to be a reference to the end of a period which ends on 5th April 1999.

*Section 246 of the Taxes Act 1988*

- 18 (1) Section 246 of the Taxes Act 1988 (charge of ACT at previous rate until new rate fixed, and changes of rate) shall cease to have effect.
- (2) This paragraph has effect in relation to distributions made on or after 6th April 1999.

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### Section 247 of the Taxes Act 1988

- 19 (1) Section 247 of the Taxes Act 1988 (dividends etc paid by one member of a group to another) shall be amended as follows.
- (2) Subsections (1), (2) and (3) (which enable dividends paid by one member of a group to another to be excluded from sections 14(1) and 231 of the Taxes Act 1988 etc) shall cease to have effect.
- (3) In subsection (4), for paragraph (a) there shall be substituted—
- “(a) the payer company is—
- (i) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary, or
- (ii) a trading or holding company which does not fall within subsection (1A) above and which is owned by a consortium the members of which include the recipient company, or”.
- (4) In subsection (5)—
- (a) for “Subsections (1) to (4) above shall not apply to dividends or other payments” there shall be substituted “ Subsection (4) above shall not apply to payments ”; and
- (b) the words “and shall not apply to a dividend” onwards shall cease to have effect.
- (5) In subsection (6)—
- (a) paragraph (a),
- (b) the words “advance corporation tax ought to have been paid or”,
- (c) the words “as the case may be”,
- (d) the words “paying or”,
- (e) the words “receiving or”, and
- (f) the words “the advance corporation tax had been duly paid or”,
- shall cease to have effect.
- (6) In subsection (7) the words “paying or” and “receiving or” shall cease to have effect.
- (7) In subsection (10)—
- (a) the words “dividends or”, and
- (b) the words “and references to “group income” shall be construed accordingly”,
- shall cease to have effect.
- (8) This paragraph has effect in relation to distributions made on or after 6th April 1999.

### Section 248 of the Taxes Act 1988

- 20 (1) Section 248 of the Taxes Act 1988 (provisions supplemental to section 247) shall be amended as follows.
- (2) In subsections (2) and (3) the words “dividends or other” shall cease to have effect.
- (3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

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### *Section 252 of the Taxes Act 1988*

- 21 (1) Section 252 of the Taxes Act 1988 (rectification of excessive set-off of ACT or tax credit) shall be amended as follows.
- (2) In subsection (1), paragraph (a) (which concerns the set-off of ACT) shall cease to have effect.
- (3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

### *Section 253 of the Taxes Act 1988*

- 22 (1) Section 253 of the Taxes Act 1988 (power to modify or replace section 234(5) to (9) and Schedule 13) shall be amended as follows.
- (2) In subsection (1)—
- (a) paragraph (b), and
  - (b) the words “and to Schedule 13”,
- shall cease to have effect.
- (3) Subsection (2) (which concerns ACT) shall cease to have effect.
- (4) In subsection (3)(a) (which contains a reference to ACT) the words “advance corporation tax or” shall cease to have effect.
- (5) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

### *Section 255 of the Taxes Act 1988*

- 23 (1) Section 255 of the Taxes Act 1988 (“gross rate” and “gross amount” of distributions to include ACT) shall cease to have effect.
- (2) This paragraph has effect in relation to distributions made on or after 6th April 1999.

### *Section 419 of the Taxes Act 1988*

- 24 (1) Section 419 of the Taxes Act 1988 (loans to participators etc) shall be amended as follows.
- (2) In subsection (1) (charge at rate of ACT) for the words from “such proportion” onwards there shall be substituted “25 per cent. of the amount of the loan or advance”.
- (3) In subsection (4) (relief in case of repayment of loan or advance)—
- (a) after “subsection (1) above and” there shall be inserted “(a)”;
  - (b) after “is repaid to the company,” there shall be inserted “or
    - (b) the whole or part of the debt in respect of the loan or advance is released or written off;”;and
  - (c) after “the repayment is made” there shall be inserted “or the release or writing off occurs”.
- (4) In subsection (4A) (provision in relation to relief under subsection (4))—
- (a) after “Where” there shall be inserted “(a)”;

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- (b) after “that loan or advance,” there shall be inserted “or
  - (b) the release or writing off of the whole or any part of the debt in respect of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance;” and
- (c) after “repayment”, in the second and third places where it occurs, there shall be inserted “ , release or writing off ”.

(5) Sub-paragraph (2) above has effect in relation to loans or advances made on or after 6th April 1999.

(6) Sub-paragraphs (3) and (4) above have effect in relation to the release or writing off of the whole or part of a debt on or after 6th April 1999.

#### *Section 434 of the Taxes Act 1988*

- 25 (1) Section 434 of the Taxes Act 1988 (franked investment income etc) shall be amended as follows.
- (2) Subsection (3) (certain franked investment income not to be used to frank distributions) shall cease to have effect.
  - (3) Subsection (6) (which makes provision in relation to section 239) shall cease to have effect.
  - (4) Subsection (8) (which applies where subsection (3) or (6) of section 434 applies) shall cease to have effect.
  - (5) Sub-paragraph (2) above has effect in relation to franked investment income which is attributable to distributions made on or after 6th April 1999.
  - (6) Sub-paragraphs (3) and (4) above have effect in relation to accounting periods beginning on or after 6th April 1999.

#### *Section 434C of the Taxes Act 1988*

- 26 (1) Section 434C of the Taxes Act 1988 (interest on repayment of ACT) shall cease to have effect.
- (2) This paragraph has effect in relation to distributions made on or after 6th April 1999.

#### *Section 468Q of the Taxes Act 1988*

- 27 (1) Section 468Q of the Taxes Act 1988 (dividend distribution to corporate unit holder) shall be amended as follows.
- (2) In subsection (3) (as amended by paragraph 8(6)(b) of Schedule 6 to the <sup>M203</sup>Finance (No. 2) Act 1997)—
    - (a) for the definition of “C” there shall be substituted—
 

“C = such amount of the gross income as does not derive from franked investment income, as reduced by an amount equal to the trustees’ net liability to corporation tax in respect of the gross income;” and
    - (b) for the definition of “D” there shall be substituted—

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“D = the amount of the gross income, as reduced by an amount equal to the trustees’ net liability to corporation tax in respect of the gross income;”.

(3) After that subsection there shall be inserted—

“(3A) Any reference in this section to the trustees’ net liability to corporation tax in respect of the gross income is a reference to the amount of the liability of the trustees of the authorised unit trust to corporation tax in respect of that gross income less the amount (if any) of any reduction of that liability which is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1).”

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

“(5A) Where, in relation to a dividend distribution, any tax is deemed to have been deducted by virtue of the application of subsection (2)(b) above, the amount to which the unit holder is entitled by way of repayment of that tax shall not exceed the amount of the unit holder’s portion of the trustees’ net liability to corporation tax in respect of the gross income.

(5B) For the purposes of subsection (5A) above the unit holder’s portion shall be determined by reference to the proportions in which unit holders have rights in the authorised unit trust in the distribution period in question.

(5C) The trustees of the authorised unit trust shall in the appropriate statement sent to the unit holder under section 234A include a statement showing their net liability to corporation tax in respect of the gross income.”

(5) This paragraph has effect in relation to distribution periods beginning on or after 6th April 1999.

#### Marginal Citations

M203 1997 c. 58.

#### *Section 490 of the Taxes Act 1988*

28 (1) Section 490 of the Taxes Act 1988 (companies carrying on a mutual business or not carrying on a business) shall be amended as follows.

(2) In subsection (1) the words “(including group income)” shall cease to have effect.

(3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

#### *Section 497 of the Taxes Act 1988*

29 (1) Section 497 of the Taxes Act 1988 (restriction on setting ACT against income from oil extraction activities etc) shall cease to have effect.

(2) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

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*Section 498 of the Taxes Act 1988*

- 30 (1) Section 498 of the Taxes Act 1988 (limited right to carry back surrendered ACT) shall cease to have effect.
- (2) Sub-paragraph (1) above has effect in relation to accounting periods of the surrendering company (as defined in section 240(1) of the Taxes Act 1988) beginning on or after 6th April 1999.
- (3) The limit under section 498(5) of the Taxes Act 1988 for an accounting period of the surrendering company (as defined in section 240(1) of that Act) beginning before, and ending on or after, 6th April 1999 (a “straddling period”) shall be determined as if—
- (a) the straddling period were an accounting period beginning at the beginning of the straddling period and ending on 5th April 1999 (“the notional period”); and
  - (b) there were apportioned to the notional period a proportionate amount of the limit which, apart from this sub-paragraph, would apply for the purposes of section 498(5) of the Taxes Act 1988.

*Section 499 of the Taxes Act 1988*

- 31 (1) Section 499 of the Taxes Act 1988 (surrender of ACT where oil extraction company etc owned by a consortium) shall cease to have effect.
- (2) This paragraph has effect in relation to distributions made on or after 6th April 1999.

*Section 703 of the Taxes Act 1988*

- 32 (1) Section 703 of the Taxes Act 1988 (cancellation of tax advantage) shall be amended as follows.
- (2) After subsection (3) there shall be inserted—
- “(3A) The amount of income tax which may be specified in an assessment which is made under subsection (3) above to counteract a tax advantage—
- (a) obtained by a person in circumstances falling within paragraph D or paragraph E of section 704, and
  - (b) consisting of the avoidance of a charge to income tax,
- shall not exceed the amount of income tax for which that person would be liable in respect of the receipt, on the date on which the consideration mentioned in paragraph D or paragraph E of section 704 is received, of a qualifying distribution of an amount equal to the amount or value of that consideration.”
- (3) Subsections (4) to (6) (which make provision in relation to treating of amounts of ACT as paid) shall cease to have effect.
- (4) Sub-paragraph (2) above has effect in relation to assessments under section 703(3) of the Taxes Act 1988 made on or after 6th April 1999.
- (5) Sub-paragraph (3) above has effect for the year 1999-00 and subsequent years of assessment.



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*Section 704 of the Taxes Act 1988*

- 33 (1) Section 704 of the Taxes Act 1988 (the prescribed circumstances) shall be amended as follows.
- (2) In paragraph A, sub-paragraph (d) (which relates to ACT) shall cease to have effect.
- (3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

*Section 705 of the Taxes Act 1988*

- 34 (1) Section 705 of the Taxes Act 1988 (appeals against Board's notices under section 703) shall be amended as follows.
- (2) Subsections (6) to (8) (which make provision supplemental to section 703(5) and (6)) shall cease to have effect.
- (3) This paragraph has effect for the year 1999-00 and subsequent years of assessment.

*Section 797 of the Taxes Act 1988*

- 35 (1) Section 797 of the Taxes Act 1988 (limits on credit: corporation tax) shall be amended as follows.
- (2) Sub-paragraphs (4) and (5) (which make provision in relation to section 239) shall cease to have effect.
- (3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

*Section 802 of the Taxes Act 1988*

- 36 (1) Section 802 of the Taxes Act 1988 (UK insurance companies trading overseas) shall be amended as follows.
- (2) In subsection (2)(a) the words "and group income" shall cease to have effect.
- (3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

*Section 813 of the Taxes Act 1988*

- 37 (1) Section 813 of the Taxes Act 1988 (recovery of tax credits incorrectly paid) shall be amended as follows.
- (2) In subsection (6), paragraph (b) (which makes provision in relation to ACT) shall cease to have effect.
- (3) This paragraph has effect in relation to accounting periods beginning on or after 6th April 1999.

*Section 826 of the Taxes Act 1988*

- 38 (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) shall be amended as follows.
- (2) Subsection (2A) (material date for ACT) shall cease to have effect.

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- (3) Subsection (7) (which makes provision in relation to surplus ACT) shall cease to have effect.
- (4) Subsections (7AA) and (7CA) (which make further provision in relation to surplus ACT) shall cease to have effect.
- (5) Sub-paragraph (2) above has effect in relation to accounting periods beginning on or after 6th April 1999.
- (6) Sub-paragraph (3) above has effect where the later period mentioned in subsection (7) of section 826 begins on or after 6th April 1999.
- (7) Sub-paragraph (4) above has effect where the earlier period mentioned in subsections (7AA) and (7CA) of section 826 begins on or after 6th April 1999.

#### *Section 832 of the Taxes Act 1988*

- 39 (1) Section 832 of the Taxes Act 1988 (interpretation of the Tax Acts) shall be amended as follows.
- (2) In subsection (1) for the definition of “franked investment income” there shall be substituted—
- ““franked investment income” means income of a company resident in the United Kingdom which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);”.
- (3) In subsection (1) the definition of “franked payment” shall cease to have effect.
- (4) In subsection (1) the definition of “group income” shall cease to have effect.
- (5) In subsection (1) the definition of “the rate of advance corporation tax” shall cease to have effect.
- (6) In subsection (1) the definition of “surplus of franked investment income” shall cease to have effect.
- (7) After subsection (4) there shall be inserted—
- “(4A) Any reference in the Tax Acts to franked investment income received by a company apply to any such income received by another person on behalf of or in trust for the company, but not to any such income received by the company on behalf of or in trust for another person.”
- (8) Sub-paragraphs (2), (3), (6) and (7) above have effect in relation to accounting periods beginning on or after 6th April 1999.
- (9) Sub-paragraphs (4) and (5) above have effect in relation to distributions made on or after 6th April 1999.

#### *Section 835 of the Taxes Act 1988*

- 40 (1) Section 835 of the Taxes Act 1988 (“total income” in the Income Tax Acts) shall be amended as follows.

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- (2) In subsection (6), in paragraph (a) (which refers to an amount equal to a tax credit calculated by reference to the rate of ACT in force for any year) for the words from “amount” to “for any year” there shall be substituted “ amount which is equal to a tax credit calculated by reference to the tax credit fraction ”.
- (3) This paragraph has effect in relation to distributions made on or after 6th April 1999.

*Schedule 13 to the Taxes Act 1988*

- 41 (1) Schedule 13 to the Taxes Act 1988 (collection of ACT) shall cease to have effect.
- (2) This paragraph has effect—
  - (a) in relation to return periods beginning on or after 6th April 1999; and
  - (b) in relation to accounting periods beginning on or after that date.

*Schedule 13A to the Taxes Act 1988*

- 42 (1) Schedule 13A to the Taxes Act 1988 (surrenders of ACT) shall cease to have effect.
- (2) This paragraph has effect in relation to accounting periods of the surrendering company (as defined in section 240(1) of the Taxes Act 1988) beginning on or after 6th April 1999.

*Schedule 24 to the Taxes Act 1988*

- 43 (1) Schedule 24 to the Taxes Act 1988 (assumptions in relation to controlled foreign companies etc) shall be amended as follows.
- (2) In paragraph 6—
  - (a) in sub-paragraph (1), paragraph (a) (which makes provision in relation to section 247(1)) shall cease to have effect; and
  - (b) in sub-paragraph (2), the words “dividends or” shall cease to have effect.
- (3) Paragraph 7 (which makes provision in relation to section 240) shall cease to have effect.
- (4) This paragraph has effect in relation to accounting periods of companies resident outside the United Kingdom which begin on or after 6th April 1999.

*Schedule 26 to the Taxes Act 1988*

- 44 (1) Schedule 26 to the Taxes Act 1988 (controlled foreign companies: relief against liability for tax in respect of chargeable profits) shall be amended as follows.
- (2) Paragraph 2 (which makes provision in relation to ACT) shall cease to have effect.
- (3) Sub-paragraphs (1) and (2) above have effect in relation to accounting periods beginning on or after 6th April 1999.
- (4) The relevant maximum (as defined in paragraph 2(3) of Schedule 26 to the Taxes Act 1988) for an accounting period beginning before, and ending on or after, 6th April 1999 (a “straddling period”) shall be determined as if—

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- (a) the straddling period were an accounting period beginning at the beginning of the straddling period and ending on 5th April 1999 (“the notional period”); and
- (b) there were apportioned to the notional period a proportionate amount of the amounts mentioned in paragraph 2(3)(a) and (b) of Schedule 26 to the Taxes Act 1988.

*Paragraph 8 of Schedule 4 to the Finance (No. 2) Act 1997*

- 45 Paragraph 8 of Schedule 4 to the <sup>M204</sup>Finance (No. 2) Act 1997 (which prospectively amends section 238(1) of the Taxes Act 1988) shall not have effect.

**Marginal Citations**

M204 1997 c. 58.

*Paragraph 9 of Schedule 4 to the Finance (No. 2) Act 1997*

- 46 Paragraph 9 of Schedule 4 to the <sup>M205</sup>Finance (No. 2) Act 1997 (which prospectively amends section 241 of the Taxes Act 1988) shall not have effect.

**Marginal Citations**

M205 1997 c. 58.

*Paragraph 18 of Schedule 4 to the Finance (No. 2) Act 1997*

- 47 Paragraph 18 of Schedule 4 to the <sup>M206</sup>Finance (No. 2) Act 1997 (which prospectively amends section 703 of the Taxes Act 1988) shall not have effect.

**Marginal Citations**

M206 1997 c. 58.

*Paragraph 23 of Schedule 4 to the Finance (No. 2) Act 1997*

- 48 Paragraph 23 of Schedule 4 to the <sup>M207</sup>Finance (No. 2) Act 1997 (which prospectively amends Schedule 13 to the Taxes Act 1988) shall not have effect.

**Marginal Citations**

M207 1997 c. 58.

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## SCHEDULE 4

Section 35.

### INTEREST PAYABLE UNDER THE TAX ACTS BY OR TO COMPANIES

#### *Interest on overpaid or early paid corporation tax*

- 1 (1) In section 826(2) of the Taxes Act 1988 (which defines “the material date” for the purposes of interest on overpaid corporation tax) at the beginning there shall be inserted “ Subject to section 826A(2), ”.
- (2) After section 826 of the Taxes Act 1988 there shall be inserted—

#### **“826A Interest on payments in respect of corporation tax and meaning of “the material date”.**

- (1) The Treasury may by regulations make provision applying section 826, with such modifications as may be prescribed, for the purpose of conferring on companies of such descriptions as may be prescribed a right to interest—
- (a) on such payments made by them in respect of corporation tax as may be prescribed,
  - (b) at the rate applicable under section 178 of the <sup>M208</sup>Finance Act 1989, and
  - (c) for such period as may be prescribed,
- and for treating any such interest for the purposes, or prescribed purposes, of the Tax Acts as interest under section 826(1)(a) on a repayment of corporation tax.
- (2) The Treasury may by regulations make provision modifying section 826(2) in relation to companies of such description as may be prescribed.
- (3) Subsections (1) and (2) above do not apply in relation to companies in relation to which section 826(2) is modified or otherwise affected by regulations under section 59E of the Management Act (alteration of date on which corporation tax becomes due and payable) in relation to the accounting period to which the corporation tax in question relates.
- (4) Where the Treasury make regulations under subsection (2) above in relation to companies of any description, they may also make regulations modifying section 59DA(2) of the Management Act in relation to those companies, or any description of such companies, by varying the date before which the claim there mentioned may not be made.
- (5) Regulations under this section—
- (a) may make different provision in relation to different cases or circumstances or in relation to companies or accounting periods of different descriptions;
  - (b) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (6) Regulations under this section may not make provision in relation to accounting periods ending before the day appointed under section 199 of the

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<sup>M209</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

(7) In this section “prescribed” means prescribed by regulations made under this section.”

(3) In section 178 of the <sup>M210</sup>Finance Act 1989 (setting of rates of interest) in subsection (2)(m) (which lists the provisions of the Taxes Act 1988 to which the section applies) for “and 826” there shall be substituted “ 826 and 826A(1)(b) ”.

**Marginal Citations**

**M208** 1989 c. 26.

**M209** 1994 c. 9.

**M210** 1989 c. 26.

*The “material date” for interest on a repayment of income tax*

2 (1) In section 826 of the Taxes Act 1988 (interest on tax overpaid) in subsection (3) (date from which interest runs on a repayment of income tax, or a payment of tax credit, to a company) for the words from “the material date is” to “for the accounting period” there shall be substituted “ the material date is the day after the end of the accounting period ”.

(2) This paragraph has effect in relation to accounting periods ending on or after the day appointed under section 199 of the <sup>M211</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

**Marginal Citations**

**M211** 1994 c. 9.

*Recovery of interest overpaid under section 826(1)(a)*

3 (1) In section 826 of the Taxes Act 1988 (interest on tax overpaid) after subsection (8) there shall be inserted—

“(8A) Where—

- (a) interest has been paid to a company under subsection (1)(a) above,
- (b) there is a change in the company’s assessed liability to corporation tax, other than a change which in whole or in part corrects an error made by the Board or an officer of the Board, and
- (c) as a result only of that change (and, in particular, not as a result of any error in the calculation of the interest), it appears to an officer of the Board that the interest ought not to have been paid, either at all or to any extent,

the interest that ought not to have been paid may be recovered from the company as if it were interest charged under Part IX of the Management Act (interest on overdue tax).

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(8B) For the purposes of subsection (8A) above, the cases where there is a change in a company's assessed liability to corporation tax are those cases where—

- (a) an assessment, or an amendment of an assessment, of the amount of corporation tax payable by the company for the accounting period in question is made, or
- (b) a determination of that amount is made under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (which until superseded by a self-assessment under that Schedule has effect as if it were one),

whether or not any previous assessment or determination has been made.

(8C) In subsection (8A)(b) above “error” includes—

- (a) any computational error; and
- (b) the allowance of a claim or election which ought not to have been allowed.”

(2) In section 69 of the <sup>M212</sup>Taxes Management Act 1970 (which provides for the recovery of certain interest on tax etc as if it were tax due and payable etc)—

- (a) in the words preceding paragraph (a), after “interest charged under Part IX of this Act” there shall be inserted “ or recoverable under section 826(8A) of the principal Act as if it were interest so charged ”; and
- (b) in the words following paragraph (c), after “interest, on tax which is not in fact assessed,” there shall be inserted “ or if it is interest recoverable under section 826(8A) of the principal Act, ”.

(3) The amendments made by this paragraph have effect in relation to interest on repayments of corporation tax paid for accounting periods ending on or after the day appointed under section 199 of the <sup>M213</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

#### Marginal Citations

[M212 1970 c. 9.](#)

[M213 1994 c. 9.](#)

#### *Interest on underpaid tax where reliefs are carried back*

4 (1) Section 87A of the <sup>M214</sup>Taxes Management Act 1970 (interest on overdue corporation tax etc) shall be amended as follows.

(2) In each of subsections (4), (4A) and (6) (which refer to corporation tax becoming due and payable as mentioned in subsection (1) of that section) for the words “as mentioned in subsection (1) above” there shall be substituted “ as mentioned in subsection (8) below ”.

(3) After subsection (7) there shall be inserted—

“(8) In subsections (4), (4A) and (6) above, any reference to the date on which corporation tax for an accounting period became, or would have become, due and payable shall be construed on the basis that corporation tax for an accounting period becomes due and payable on the day following the expiry of nine months from the end of the accounting period.”

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(4) After subsection (8) there shall be inserted—

“(9) The power conferred by section 59E of this Act (alteration of date on which corporation tax becomes due and payable) does not include power to make provision in relation to subsection (4), (4A), (6) or (8) above the effect of which would be to change the meaning of references in subsection (4), (4A) or (6) above to the date on which corporation tax for an accounting period became, or would have become, due and payable (as mentioned in subsection (8) above).”

(5) The amendments made by this paragraph have effect where the accounting period whose due and payable date falls to be determined is an accounting period ending on or after the day appointed under section 199 of the <sup>M215</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

(6) In sub-paragraph (5) above “due and payable date”, in relation to an accounting period, means the date on which corporation tax for that period becomes, or (as the case may be) would become, due and payable.

#### Marginal Citations

M214 1970 c. 9.

M215 1994 c. 9.

#### *Interest on overpaid tax where reliefs are carried back*

5 (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) shall be amended as follows.

(2) In each of subsections (7), (7A), (7B) and (7C) (which refer to corporation tax becoming due and payable as mentioned in subsection (2) of that section) for the words “as mentioned in subsection (2) above” there shall be substituted “ as mentioned in subsection (7D) below ”.

(3) After subsection (7CA) there shall be inserted—

“(7D) In subsections (7), (7A), (7B) and (7C) above, any reference to the date on which corporation tax for an accounting period became, or would have become, due and payable shall be construed on the basis that corporation tax for an accounting period becomes due and payable on the day following the expiry of nine months from the end of the accounting period.”

(4) After subsection (7D) there shall be inserted—

“(7E) The power conferred by section 59E of the Management Act (alteration of date on which corporation tax becomes due and payable) does not include power to make provision in relation to subsection (7), (7A), (7B), (7C) or (7D) above the effect of which would be to change the meaning of references in subsection (7), (7A), (7B) or (7C) above to the date on which corporation tax for an accounting period became, or would have become, due and payable (as mentioned in subsection (7D) above).”

(5) The amendments made by this paragraph have effect where the accounting period whose due and payable date falls to be determined is an accounting period ending



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on or after the day appointed under section 199 of the <sup>M216</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

- (6) In sub-paragraph (5) above “due and payable date”, in relation to an accounting period, means the date on which corporation tax for that period becomes, or (as the case may be) would become, due and payable.

**Marginal Citations**

[M216 1994 c. 9.](#)

*Company liquidations*

- 6 (1) Section 342 of the Taxes Act 1988 (tax on company in liquidation) shall be amended as follows.
- (2) In subsection (2) (corporation tax charge on profits of final year etc) after “Subject to subsection (3)” there shall be inserted “ or (3A) ”.
- (3) After subsection (3) there shall be inserted—
- “(3A) If, in the case of the company’s final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.
- In this subsection “the company’s final accounting period” means the accounting period of the company which, in accordance with section 12(7), ends by reason of the completion of the winding up.”
- (4) This paragraph has effect in relation to final accounting periods ending on or after the day appointed under section 199 of the <sup>M217</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

**Marginal Citations**

[M217 1994 c. 9.](#)

*Loan relationships*

- 7 (1) Section 100 of the <sup>M218</sup>Finance Act 1996 (loan relationships: interest on judgments, imputed interest etc) shall be amended as follows.
- (2) In subsection (4) (resolution of questions whether debits or credits are to be brought into account under section 82(2) of that Act or treated as non-trading debits or credits) there shall be inserted at the beginning “ Except as provided by subsection (4A) below ”.
- (3) After subsection (4) there shall be inserted—
- “(4A) Any debits or credits which—
- (a) relate to interest payable under the Tax Acts, and

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(b) fall to be brought into account in accordance with this section in relation to any company,  
are to be treated as non-trading debits or non-trading credits.”

(4) This paragraph has effect in relation to accounting periods ending on or after the day appointed under section 199 of the <sup>M219</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

#### Marginal Citations

M218 1996 c. 8.

M219 1994 c. 9.

## SCHEDULE 5

Section 38(1).

### RENT AND OTHER RECEIPTS FROM LAND

#### PART I

#### MAIN CHARGING PROVISIONS

#### Commencement Information

I21 Sch. 5 Pts. I-III in force and has effect as mentioned in s. 38.

1 In section 15(1) of the Taxes Act 1988 (the Schedule A charge), for Schedule A substitute—

#### “SCHEDULE A

- 1 (1) Tax is charged under this Schedule on the annual profits arising from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom.
- (2) To the extent that any transaction is entered into for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom, it is taken to be entered into in the course of such a business.
- (3) All businesses and transactions carried on or entered into by a particular person or partnership, so far as they are businesses or transactions the profits of which are chargeable to tax under this Schedule, are treated for the purposes of this Schedule as, or as entered into in the course of carrying on, a single business.

There are qualifications to this rule in the case of—

- (a) companies not resident in the United Kingdom (see subsection (1A) below); and
- (b) insurance companies (see sections 432AA and 441B(2A)).

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- (4) The receipts referred to in the expression “as a source of rents or other receipts” include—
- (a) payments in respect of a licence to occupy or otherwise to use land or the exercise of any other right over land, and
  - (b) rentcharges, ground annuals and feu duties and other annual payments reserved in respect of, or charged on or issuing out of, the land.
- 2 (1) This Schedule does not apply to profits arising from the occupation of land.
- (2) This Schedule does not apply to—
- (a) profits charged to tax under Case I of Schedule D under—  
section 53(1) (farming and market gardening), or  
section 55 (mines, quarries and other concerns);
  - (b) receipts or expenses taken into account as trading receipts or expenses under section 98 (tied premises);
  - (c) rent charged to tax under Schedule D under—  
section 119 (rent, etc. payable in connection with mines, quarries and other concerns), or  
section 120(1) (certain rent, etc. payable in respect of electric line wayleaves).
- (3) The profits of a Schedule A business carried on by a company shall be computed without regard to items giving rise to—
- credits or debits within Chapter II of Part IV of the <sup>M220</sup>Finance Act 1996 (loan relationships), or
- exchange gains or losses within Chapter II of Part II of the <sup>M221</sup>Finance Act 1993 (foreign exchange gains and losses), or
- qualifying payments within Chapter II of Part IV of the <sup>M222</sup>Finance Act 1994 (interest rate and currency contracts).
- This Schedule does not affect the operation of those provisions.
- 3 (1) For the purposes of this Schedule a right to use a caravan or houseboat, where the use to which the caravan or houseboat may be put in pursuance of the right is confined to use at a single location in the United Kingdom, is treated as a right deriving from an estate or interest in land in the United Kingdom.
- (2) In sub-paragraph (1)—
- “caravan” has the meaning given by section 29(1) of the <sup>M223</sup>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.
- 4 (1) In the case of a furnished letting, any sum payable for the use of furniture shall be taken into account in computing the profits chargeable to tax under this Schedule in the same way as rent.
- Expenses in connection with the provision of furniture shall similarly be taken into account in the same way as expenses in connection with the premises.
- (2) A furnished letting means where—

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- (a) a sum is payable in respect of the use of premises, and
  - (b) the tenant or other person entitled to the use of the premises is also entitled, in connection with that use, to the use of furniture.
- (3) This paragraph does not apply if the receipts and expenses are taken into account in computing the profits of a trade consisting in, or involving, making furniture available for use in premises.
- (4) In this paragraph—
- (a) any reference to a sum includes the value of consideration other than money, and references to a sum being payable shall be construed accordingly; and
  - (b) “premises” includes a caravan or houseboat within the meaning of paragraph 3.”.

#### Marginal Citations

M220 1996 c.8.  
M221 1993 c.34.  
M222 1994 c.9.  
M223 1960 c.62.

- 2 In section 15 of the Taxes Act 1988 (the Schedule A charge), after subsection (1) insert—
- “(1A) In the case of a company which is not resident in the United Kingdom—
- (a) businesses carried on and transactions entered into by it the profits of which are within the charge to corporation tax under Schedule A, and
  - (b) businesses carried on and transactions entered into by it the profits of which are within the charge to income tax under Schedule A,
- are treated as separate Schedule A businesses.”.
- 3 For the heading to Part II of the Taxes Act 1988 substitute “ PROVISIONS RELATING TO THE SCHEDULE A CHARGE ”.
- 4 For section 21 of the Taxes Act 1988 (persons chargeable and computation of amounts chargeable) substitute—

#### “21 Persons chargeable and basis of assessment.

- (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 is charged on the full amount of the profits arising in the year of assessment.
- (3) This section does not apply for the purposes of corporation tax.

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## **21A Computation of amount chargeable.**

- (1) Except as otherwise expressly provided, the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D.
- (2) The following provisions apply in accordance with subsection (1)—
  - section 72 (apportionment);
  - the provisions of Chapter V of Part IV (computational provisions relating to the Schedule D charge), except as mentioned in subsection (4) below;
  - section 577 (business entertainment expenses);
  - section 577A (expenditure involving crime);
  - sections 579 and 580 (redundancy payments);
  - sections 588 and 589 (training courses for employees);
  - sections 589A and 589B (counselling services for employees);
  - section 73(2) of the <sup>M224</sup>Finance Act 1988 (consideration for restrictive undertakings);
  - section 43 of the <sup>M225</sup>Finance Act 1989 (deductions in respect of certain emoluments);
  - section 76 of that Act (expenses in connection with non-approved retirement benefit schemes);
  - sections 112 and 113 of that Act (expenditure in connection with provision of security asset or service);
  - sections 42 and 46(1) and (2) of the Finance Act 1998 (provisions as to computation of profits and losses).
- (3) Section 74(1)(d) of this Act (disallowance of provisions for future repairs) applies in relation to a Schedule A business as if the reference to premises occupied for the purposes of the trade were to premises held for the purposes of the Schedule A business.
- (4) The following provisions in Chapter V of Part IV of this Act do not apply, or are excepted from applying, in accordance with subsection (1)—
  - section 82 (interest paid to non-residents),
  - section 87 (treatment of premiums taxed as rent),
  - section 96 (farming and market gardening: relief for fluctuating profits), and
  - section 98 (tied premises: receipts and expenses treated as those of trade).

## **21B Application of other rules applicable to Case I of Schedule D.**

The following provisions apply for the purposes of Schedule A in relation to a Schedule A business as they apply for the purposes of Case I of Schedule D in relation to a trade—

- sections 103 to 106, 108, 109A and 110 (post-cessation receipts and expenses, etc.);
- section 113 (effect for income tax purposes of change in the persons engaged in carrying on trade);

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section 337(1) (effect of company beginning or ceasing to carry on trade);  
section 401(1) (pre-trading expenditure);  
section 44 of and Schedule 6 to the Finance Act 1998 (change of accounting basis).”.

**Marginal Citations**

- M224 1988 c. 39.
- M225 1989 c. 26.

5 After section 21B of the Taxes Act 1988 (inserted by paragraph 4 above) insert—

**“21C The Schedule A charge and mutual business.**

- (1) The following provisions have effect for the purpose of applying the charge to tax under Schedule A in relation to mutual business.
- (2) The transactions or relationships involved in mutual business are treated as if they were transactions or relationships between persons between whom no relationship of mutuality existed.
- (3) Any surplus arising from the business is regarded as a profit (and any deficit as a loss) if it would be so regarded if the business were not mutual.
- (4) The person—
  - (a) to whom the profit arises for corporation tax purposes, or
  - (b) who is regarded as receiving or entitled to the profit for income tax purposes,
 is the person who would satisfy that description if the business were not mutual business.
- (5) Nothing in this section affects the operation of section 488 (co-operative housing associations).”.

F46 .....

**Textual Amendments**

- F4 Sch. 5 para. 6 repealed (31.7.1998 with effect as mentioned in s. 39, Sch. 27 Pt. III(5)) by 1998 c. 36, s. 165, Sch. 27 Pt. III(5)

F57 .....

**Textual Amendments**

- F5 Sch. 5 para. 7 repealed (31.7.1998 with effect as mentioned in s. 39, Sch. 27 Pt. III(5), Note) by 1998 c. 36, s. 165, Sch. 27 Pt. III(5)

8 In section 27 of the Taxes Act 1988 (maintenance funds for historic buildings), for subsection (3) substitute—

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“(3) Where by virtue of this section an election has effect in relation to an estate part of which is comprised in a settlement—

(a) there may be treated as deductible from the receipts arising from that part—

(i) any disbursements or expenses of the trustees of the settlement which relate to the other part of the estate and which would be so deductible if that part were also comprised in the settlement, and

(ii) any disbursements or expenses of the owner of the other part of the estate to the extent to which they cannot be deducted by him in the chargeable period in which they are incurred because of an insufficiency of any receipts for that period from which they are deductible apart from this subparagraph;

(b) any relief available to the trustees by virtue of section 379A(2)(b) shall instead be available to the owner of the other part of the estate.

This subsection has effect subject to subsection (2A) of section 26.”.

9 Section 28 of the Taxes Act 1988 (deductions from receipts other than rent) shall cease to have effect.

10 Section 29 of the Taxes Act 1988 (sporting rights) shall cease to have effect.

11 In section 30(1) of the Taxes Act 1988 (expenditure on sea walls)—

(a) for “for the purposes of sections 25, 28 and 31” substitute “ for the purpose of computing the profits of any Schedule A business carried on in relation to those premises ”; and

(b) for “in respect of dilapidation attributable to the year” substitute “ as an expense of the business for that year ”.

12 Section 31 of the Taxes Act 1988 (provisions supplementary to sections 25 to 30) shall cease to have effect.

13 Section 33 of the Taxes Act 1988 (agricultural land: allowance for excess expenditure on management) shall cease to have effect.

14 Sections 33A and 33B of the Taxes Act 1988 (connected persons) shall cease to have effect.

15 (1) Section 34 of the Taxes Act 1988 (treatment of premiums, etc. as rent or Schedule D profits) is amended as follows.

(2) For the sidenote substitute “Treatment of premiums, etc. as rent.”.

(3) In subsection (3) for the words from “from the rent” onwards substitute “ as an expense of any Schedule A business carried on by the landlord ”.

(4) In subsection (6) for the words from “no charge” onwards substitute “ no amount shall fall under that subsection to be treated as a receipt of any Schedule A business carried on by the landlord; but that other person shall be taken to have received as income an amount equal to the amount which would otherwise fall to be treated as rent and to be chargeable to tax as if he had received it in consequence of having, on his own account, entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A. ”.

(5) After subsection (7) insert—

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- “(7A) An amount treated under this section as rent shall be taken into account in computing the profits of the Schedule A business in question for the chargeable period in which it is treated as received.”.
- (6) In subsection (8) for the words from “may, if that person satisfies the Board” to “at his option” substitute “ may, at his option, be paid ”.
- 16 (1) Section 35 of the Taxes Act 1988 (charge on assignment of lease granted at an undervalue) is amended as follows.
- (2) In the sidenote for “Schedule D charge” substitute “ Charge ”.
- (3) In subsection (2) for the words from “treated as profits or gains” onwards substitute “ deemed to have been received as income by the assignor and to have been received by him in consequence of his having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A. ”.
- (4) After that subsection insert—
- “(2A) An amount deemed under this section to have been received as income by the assignor—
- (a) is treated as received when the consideration mentioned in subsection (2) becomes payable, and
- (b) shall be taken into account in computing the profits of the Schedule A business in question for the chargeable period in which it is treated as received.”.
- 17 (1) Section 36 of the Taxes Act 1988 (charge on sale of land with right to reconveyance) is amended as follows.
- (2) In the sidenote for “Schedule D charge” substitute “ Charge ”.
- (3) In subsection (1)—
- (a) for “the vendor shall be chargeable to tax under Case VI of Schedule D on” substitute “ the following amount shall be deemed to have been received as income by the vendor and to have been received by him in consequence of his having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A, that is to say ”; and
- (b) for “on that excess” substitute “ the amount of the excess ”.
- (4) After subsection (4) insert—
- “(4A) An amount deemed under this section to have been received as income by the vendor—
- (a) is treated as received when the estate or interest is sold, and
- (b) shall be taken into account in computing the profits of the Schedule A business in question for the chargeable period in which it is treated as received.
- (4B) For the purposes of subsection (4A)(a) an estate or interest in land is treated as sold when any of the following occurs—
- (a) an unconditional contract for its sale is entered into,
- (b) a conditional contract for its sale becomes unconditional, or
- (c) an option or right of pre-emption is exercised requiring the vendor to enter into an unconditional contract for its sale.”.



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- 18 (1) Section 37 of the Taxes Act 1988 (deductions from premiums and rents received) is amended as follows.
- (2) In subsection (1) for paragraphs (a) and (b) substitute—
- “(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, or
  - (b) any amount would fall to be so treated but for the operation of subsection (2) or (3) below.”.
- (3) In subsection (2)—
- (a) in paragraph (b), for the words from “be” to “any amount” substitute “ be treated by virtue of section 34 or 35 as receiving any amount as income in the course of carrying on a Schedule A business ”; and
  - (b) in the closing words, for “on which he is so chargeable” substitute “ which he shall be treated as having so received ”.
- (4) In subsection (3)—
- (a) for “chargeable under section 34 or 35” substitute “ treated by virtue of section 34 or 35 as having received any amount as income in the course of carrying on a Schedule A business and falls to be so treated ”; and
  - (b) for “on which he is so chargeable” substitute “ which he shall be treated as having so received ”.
- (5) In subsection (4) for the words from “purposes” to “other premises” substitute “ purpose, in computing the profits of a Schedule A business, of making deductions in respect of the disbursements and expenses of that business ”.
- 19 For the heading before section 40 of the Taxes Act 1988 substitute “ *Supplementary provisions* ”.
- 20 (1) Section 40 of the Taxes Act 1988 (tax treatment of receipts and outgoings on sale of land) is amended as follows.
- (2) In subsection (1) for “become receivable or payable on his behalf” substitute “ been received or paid by him ”.
- (3) In subsection (3)(b), for the words from “had become receivable” to the end substitute “ had been received or paid directly by him immediately before the time to which the apportionment is made ”.
- (4) After subsection (4) insert—
- “(4A) An amount deemed under this section to have been received or paid shall be taken into account in computing the profits of the Schedule A business in question for the period in which it is treated as received or paid.”.
- (5) Omit subsection (5).
- 21 Section 41 of the Taxes Act 1988 (relief for rent not paid, etc.) shall cease to have effect.
- 22 In section 42A of the Taxes Act 1988 (non-residents and their representatives), omit subsection (8).
- 23 In section 65 of the Taxes Act 1988 (Case IV and V assessments: general)—
- (a) omit subsections (2A) and (2B), and

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- (b) in subsection (4), after “Subsections (1) to (3) above” insert “ and section 65A below ”.

24 For section 65A of the Taxes Act 1988 (Case V income from land overseas, etc.) substitute—

**“65A Case V income from land outside UK: income tax.**

- (1) This section applies where a person is chargeable to income tax under Case V of Schedule D in respect of income which—
  - (a) arises from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land outside the United Kingdom, and
  - (b) is not income to which section 65(3) applies (income immediately derived from carrying on a trade, profession or vocation).
- (2) The provisions of Schedule A apply to determine whether income falls within subsection (1)(a) above as they would apply to determine whether the income fell within paragraph 1(1) of that Schedule 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.
- (3) Any provision of the Taxes Acts which deems there to be a Schedule A business in the case of land in the United Kingdom applies where the corresponding circumstances arise with respect to land outside the United Kingdom so as to deem there to be a business within subsection (1)(a) above.
- (4) All businesses and transactions carried on or entered into by a particular person or partnership, so far as they are businesses or transactions the income from which is chargeable to tax under Case V of Schedule D in accordance with this section, are treated for the purposes of the charge to tax under Case V as, or as entered into in the course of carrying on, a single business (an “overseas property business”).
- (5) The income from an overseas property business shall be computed for the purposes of Case V of Schedule D in accordance with the rules applicable to the computation of the profits of a Schedule A business.
 

Those rules apply separately in relation to—

  - (a) an overseas property business, and
  - (b) any actual Schedule A business of the person chargeable,

as if each were the only Schedule A business carried on by that person.
- (6) Sections 80 and 81 (expenses in connection with foreign trades and travel between trades etc.) do not apply in relation to the computation of the profits of an overseas property business.
- (7) Sections 503 and 504 of this Act and section 29 of the 1990 Act (provisions relating to furnished holiday accommodation) do not apply to the profits or losses of an overseas property business.
- (8) Where under this section rules expressed by reference to domestic concepts of law apply in relation to land outside the United Kingdom, they shall be

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interpreted so as to produce the result that most closely corresponds with the result produced for Schedule A purposes in relation to land in the United Kingdom.”.

25 After section 70 of the Taxes Act 1988 (corporation tax: basis of assessment, etc.) insert—

**“70A Case V income from land outside UK: corporation tax.**

- (1) This section applies where a company is chargeable to corporation tax under Case V of Schedule D in respect of income which—
  - (a) arises from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land outside the United Kingdom, and
  - (b) is not income to which section 70(2) applies (income from a trade or vocation).
- (2) The provisions of Schedule A apply to determine whether income falls within subsection (1)(a) above as they would apply to determine whether the income fell within paragraph 1(1) of that Schedule 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.
- (3) Any provision of the Taxes Acts which deems there to be a Schedule A business in the case of land in the United Kingdom applies where the corresponding circumstances arise with respect to land outside the United Kingdom so as to deem there to be a business within subsection (1)(a) above.
- (4) All businesses and transactions carried on or entered into by a particular company or partnership, so far as they are businesses or transactions the income from which is chargeable to tax under Case V of Schedule D in accordance with this section, are treated for the purposes of the charge to tax under Case V as, or as entered into in the course of carrying on, a single business (an “overseas property business”).
- (5) The income from an overseas property business shall be computed for the purposes of Case V of Schedule D in accordance with the rules applicable to the computation of the profits of a Schedule A business.

Those rules apply separately in relation to—

  - (a) an overseas property business, and
  - (b) any actual Schedule A business of the company chargeable,

as if each were the only Schedule A business carried on by that company.
- (6) Sections 503 and 504 of this Act and section 29 of the 1990 Act (provisions relating to furnished holiday accommodation) do not apply to the profits or losses of an overseas property business.
- (7) Where under this section rules expressed by reference to domestic concepts of law apply in relation to land outside the United Kingdom, they shall be interpreted so as to produce the result that most closely corresponds with the

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result produced for Schedule A purposes in relation to land in the United Kingdom.”.

## PART II

### TREATMENT OF LOSSES

#### Commencement Information

**I22** Sch. 5 Pts. I-III in force and has effect as mentioned in s. 38.

26 In Chapter I of Part X of the Taxes Act 1988 (loss relief: income tax), for the heading before section 379A (Schedule A losses) substitute “*Losses from Schedule A business or overseas property business*”.

27 After that section insert—

#### “379B Losses from overseas property business.

The provisions of section 379A apply in relation to an overseas property business as they apply in relation to a Schedule A business.”.

28 In Chapter II of Part X of the Taxes Act 1988 (loss relief: corporation tax), before section 393 insert—

“*Losses from Schedule A business or overseas property business*

#### Schedule A losses.

392A(1) Where a company incurs a Schedule A loss in an accounting period, the loss shall be set off for the purposes of corporation tax against the company’s total profits for that period.

(2) To the extent that a company’s Schedule A loss cannot be set off under subsection (1), it shall, if the company continues to carry on the Schedule A business in the succeeding accounting period, be carried forward to that period and be treated for the purposes of this section as a Schedule A loss of that period.

(3) Where an investment company ceases to carry on a Schedule A business but continues to be an investment company, any Schedule A loss that cannot be used under the preceding provisions shall be carried forward to the succeeding accounting period and be treated for the purposes of section 75 as if it had been disbursed as expenses of management for that period.

(4) In this section—

- (a) a “Schedule A loss” means a loss incurred by a company in a Schedule A business carried on by it; and
- (b) “investment company” has the same meaning as in Part IV.

(5) The preceding provisions of this section apply to a Schedule A business only to the extent that it is carried on—

- (a) on a commercial basis, or

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- (b) in the exercise of statutory functions.
- (6) For the purposes of subsection (5)(a)—
  - (a) a business or part is not carried on on a commercial basis unless it is carried on with a view to making a profit, but if it is carried on so as to afford a reasonable expectation of profit it is treated as carried on with a view to making a profit; and
  - (b) if there is a change in the manner in which a business or part is carried on, it is treated as having been carried on throughout an accounting period in the way in which it was being carried on by the end of the period.
- (7) In subsection (5)(b) “statutory functions” means functions conferred by or under any enactment (including an enactment contained in a local or private Act).

#### **Losses from overseas property business.**

- 392B) Where in any accounting period a company incurs a loss in an overseas property business (whether carried on by it solely or in partnership)—
- (a) the loss shall be carried forward to the succeeding accounting period and set against any profits of the business for that period,
  - (b) if there are no profits of the business for that period, or if the profits for that period are exceeded by the amount of the loss, the loss or the remainder of it shall be carried forward again and set against any profits of the business for the next succeeding accounting period,
- and so on.
- (2) Subsections (5) to (7) of section 392A apply in relation to relief under subsection (1) above and an overseas property business as they apply in relation to relief under section 392A(1) to (3) and a Schedule A business.”.

29 For section 403 of the Taxes Act 1988 (losses, etc. which may be surrendered by way of group relief) substitute—

#### **“403 Amounts which may be surrendered by way of group relief.**

- (1) If in an accounting period (the “surrender period”) the surrendering company has—
  - (a) trading losses, excess capital allowances or a non-trading deficit on its loan relationships, or
  - (b) charges on income, Schedule A losses, or management expenses which are available for group relief,the amount may, subject to the provisions of this Chapter, be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (2) Trading losses, excess capital allowances and a non-trading deficit on the company’s loan relationships are eligible for surrender as group relief even if the surrendering company has other profits of the surrender period against which they could be set.

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Further provision about relief in respect of amounts eligible for surrender under this subsection is contained in sections 403ZA to 403ZC.

- (3) Charges on income, Schedule A losses and management expenses are available for surrender as group relief only to the extent that in aggregate they exceed the surrendering company's gross profits for the surrender period.

Any excess surrendered shall be taken to consist first of charges on income, then Schedule A losses, and finally management expenses.

Further provision about relief in respect of amounts available for surrender under this subsection is contained in section 403ZD.

- (4) This section has effect subject to—  
 section 404 (limitation of group relief in relation to certain dual resident companies), and  
 sections 492(8) and 494A (oil extraction activities: availability of group relief against ring fence profits).

#### **403ZA Amounts eligible for group relief: trading losses.**

- (1) For the purposes of section 403 a trading loss means a loss incurred by the surrendering company in the surrender period in carrying on a trade, computed as for the purposes of section 393A(1).
- (2) That section does not apply to a trading loss which would be excluded from section 393A(1) by—  
 (a) section 393A(3) (foreign trades and certain trades not carried on with a view to gain), or  
 (b) section 397 (farming and market gardening: restriction on loss relief).
- (3) Where a company owned by a consortium—  
 (a) has in any relevant accounting period incurred a trading loss, and  
 (b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393A(1),  
 the amount of the loss available to a member of the consortium on a consortium claim shall be determined on the assumption that the company has made a claim under section 393A(1) requiring the loss to be so set off.
- (4) Where the company mentioned in subsection (3) is a group/consortium company, the amount of the loss available under that subsection shall be determined before any reduction is made under section 405(1) to (3).

#### **403ZB Amounts eligible for group relief: excess capital allowances.**

- (1) For the purposes of section 403 excess capital allowances means capital allowances falling to be made to the surrendering company for the surrender period which—  
 (a) are to be given by discharge or repayment of tax, and  
 (b) are to be available primarily against a specified class of income,  
 to the extent to which their amount exceeds the company's income of the relevant class arising in that period.

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- (2) In determining the amount of the allowances falling to be made for the surrender period, no account shall be taken of any allowances carried forward from an earlier period.
- (3) The amount of the company's income of the relevant class means its amount before deduction of—
  - (a) losses of any other period, or
  - (b) capital allowances.

**403ZC Amounts eligible for group relief: non-trading deficit on loan relationships.**

- (1) For the purposes of section 403 a non-trading deficit on its loan relationships means a deficit of the surrendering company to which section 83 of the <sup>M226</sup>Finance Act 1996 applies.
- (2) Section 403 applies to such a deficit only to the extent that a claim is duly made under section 83(2) of the Finance Act 1996 for it to be treated as eligible for group relief.

**403ZD Other amounts available by way of group relief.**

- (1) References in section 403 to charges on income, Schedule A losses and management expenses shall be construed as follows.
- (2) Charges on income means the aggregate of the amounts paid by the surrendering company in the surrender period by way of charges on income.
- (3) A Schedule A loss means a loss incurred by the surrendering company in the surrender period in a Schedule A business carried on by the company.

It does not include—

- (a) an amount treated as such a loss by section 392A(2) (losses carried forward from earlier period), or
  - (b) a loss which would be excluded from section 392A by subsection (5) of that section (certain businesses not carried on with a view to gain).
- (4) Management expenses means the aggregate of the amounts disbursed by the surrendering company for the surrender period which are deductible under section 75(1) (expenses of management of investment company).

It does not include an amount deductible only by virtue of section 75(3) or 392A(3) (amounts carried forward from earlier periods).

- (5) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.

**403ZE Computation of gross profits.**

- (1) For the purposes of section 403 the surrendering company's gross profits of the surrender period means its profits for that period—
  - (a) without any deduction in respect of such losses, allowances and other amounts as are mentioned in paragraph (a) or (b) of subsection (1) of that section, and

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- (b) without any deduction falling to be made—
  - (i) in respect of losses, allowances or other amounts of any other period (whether or not of a description within subsection (1) of that section), or
  - (ii) by virtue of section 75(3) or 392A(3) (other amounts carried forward).

- (2) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.”.

#### Marginal Citations

M226 1996 c.8.

- 30 In Chapter V of Part XII of the Taxes Act 1988 (oil extraction activities), after section 494 insert—

#### “494A Computation of amount available for surrender by way of group relief.

- (1) In section 403(3) (availability of charges, Schedule A losses and management expenses for surrender as group relief) the reference to the gross profits of the surrendering company for an accounting period does not include the company’s relevant ring fence profits for that period.
- (2) If for that period—
  - (a) there are no charges on income paid by the company that are allowable under section 338, or
  - (b) the only charges on income so allowable are charges to which section 494(3) above applies,
 all the company’s ring fence profits are relevant ring fence profits.
- (3) In any other case the company’s relevant ring fence profits are so much of its ring fence profits as exceeds the amount of the charges on income paid by the company as—
  - (a) are allowable under section 338 for that period, and
  - (b) are not charges to which section 494(3) above applies.”.

- 31 In Chapter VI of Part XVII of the Taxes Act 1988 (tax avoidance: miscellaneous provisions), after section 768C insert—

#### “768D Change in ownership of company carrying on property business.

- (1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—
  - (a) in the case of an investment company, either—
    - (i) paragraph (a), (b) or (c) of section 768B(1) applies, or
    - (ii) section 768C applies;
  - (b) in the case of a company which is not an investment company, paragraph (a) or (b) of section 768(1) applies.



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- (2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.
- (3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (4) The profits or losses of the period in which the change occurs are apportioned to those two periods—
  - (a) in the case of an investment company—
    - (i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or
    - (ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and
  - (b) in the case of a company which is not an investment company, according to the length of the periods, unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—
  - (a) in the case of—
    - (i) an investment company where paragraph (a), (b) or (c) of section 768B(1) applies, or
    - (ii) a company which is not an investment company,profits of an accounting period ending after the change of ownership;
  - (b) in the case of an investment company where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.
- (7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section—
  - (a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;
  - (b) “investment company” has the same meaning as in Part IV.
- (9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.”

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- 32 In section 769 of the Taxes Act 1988 (rules for ascertaining change of ownership)—
- (a) in subsections (1), (2)(d) and (5) for “and 768C” substitute “, 768C and 768D”;
  - (b) in subsection (3) for “or 768A” substitute “, 768A or 768D”; and
  - (c) in subsection (4) for “or 768C” substitute “, 768C or 768D”.

### PART III

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### Commencement Information

**I23** Sch. 5 Pts. I-III in force and has effect as mentioned in s. 38.

#### *Taxes Management Act 1970 (c. 9)*

**F633** .....

##### Textual Amendments

**F6** Sch. 5 para. 33 repealed (31.7.1998 with effect as mentioned in s. 117, Sch. 27 Pt. III(28), Note) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

#### *Income and Corporation Taxes Act 1988 (c.1)*

- 34 In section 87(1) of the Taxes Act 1988 (treatment of taxable premiums in case of land used in connection with trade, profession or vocation), for paragraphs (a) and (b) substitute—
- “(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, or
  - (b) any amount would fall to be so treated but for the operation of section 37(2) or (3);”.
- 35 In section 118 of the Taxes Act 1988 (limited partnerships: restriction on relief)—
- (a) in the opening words of subsection (1), and
  - (b) in subsection (2), in the definition of “the aggregate amount”, for “403(1) to (3) and (7)” substitute “ 403 ”.
- 36 In section 400 of the Taxes Act 1988 (loss relief: effect of write-off of government investment), in subsection (2) after paragraph (b) insert—
- “(bb) any losses which—
  - (i) under section 392A(2) or 392B are carried forward to the next accounting period, or
  - (ii) under section 392A(3) are treated as management expenses disbursed in the next accounting period;”.
- 37 (1) Section 404 of the Taxes Act 1988 (limitation of group relief in relation to dual resident investment companies) is amended as follows.
- (2) In subsection (2), for paragraph (a) substitute—

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- “(a) in which the trading loss or Schedule A loss is incurred; or
- (aa) in which the non-trading deficit on the company’s loan relationships arises; or”.

(3) In subsection (6), omit paragraph (c).

38 In section 413(6) of the Taxes Act 1988 (interpretation: meaning of company being owned by consortium), for “403(10)” substitute “ 403ZA(3) ”.

39 In Chapter I of Part XII of the Taxes Act 1988 (insurance companies), after section 432A insert—

**“432AA Schedule A business or overseas property business.**

- (1) An insurance company is treated as carrying on separate Schedule A businesses, or overseas property businesses, in accordance with the following rules.
- (2) The exploitation of land held as an asset of the company’s long term business fund is treated as a separate business from the exploitation of land not so held.
- (3) The exploitation of land held as an asset of the company’s overseas life assurance fund is treated as a separate business from the exploitation of other land held as an asset of its long term business fund.
- (4) The exploitation of land held as an asset linked to any of the following categories of business is regarded as a separate business—
  - (a) pension business;
  - (b) life reinsurance business;
  - (c) basic life assurance and general annuity business;
  - (d) long term business other than life assurance business.
- (5) Accordingly, the exploitation of land held as an asset of the company’s long term business fund otherwise than as mentioned in subsection (3) or (4) is treated as a separate business from any other.
- (6) In this section “land” means any estate, interest or rights in or over land.

**432AB Losses from Schedule A business or overseas property business.**

- (1) This section applies to any loss arising in a Schedule A business or overseas property business.
- (2) A loss arising from any category of business mentioned in section 432A(2) shall be apportioned under that section in the same way as income.
- (3) So far as a loss is referable to basic life assurance and general annuity business, it shall be treated as if it were an amount of expenses of management under section 76 disbursed for the accounting period in which the loss arose.
- (4) Where a company is treated under section 432AA as carrying on—
  - (a) more than one Schedule A business, or
  - (b) more than one overseas property business,

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then, in relation to either kind of business, the reference in subsection (3) above to a loss referable to basic life assurance and general annuity business shall be construed as a reference to any aggregate net loss after setting the losses from those businesses which are so referable against any profits from those businesses that are so referable.

(5) The provisions of section 392A or 392B (loss relief) do not apply to a loss referable to life assurance business or any category of life assurance business.

(6) Where a company is treated under section 432AA as carrying on—

- (a) more than one Schedule A business, or
- (b) more than one overseas property business,

and, in relation to either kind of business, there are losses and profits referable to business which is not life assurance business, those losses shall be set against those profits before being used under section 392A or 392B.”.

40 (1) Section 434E of the Taxes Act 1988 (capital allowances: investment assets held for purposes of life assurance business) is amended as follows.

(2) For subsection (1) substitute—

“(1) In this section “investment asset” means an asset which—

- (a) is held by a company for the purposes of its life assurance business otherwise than for the management of that business, and
- (b) is not let in the course of a Schedule A business or overseas property business.”.

(3) Omit subsection (3).

(4) In subsection (6) for “section 145(3) shall not apply” substitute “ neither section 145(3) nor section 403(1) shall apply ”.

41 In section 441B of the Taxes Act 1988 (treatment of UK land linked to a company’s overseas life assurance business), after subsection (2) insert—

“(2A) For the purposes of subsection (2) above a Schedule A business for the exploitation of any land to which this section applies shall be treated as a separate business from any other such business.”.

42 For section 503 of the Taxes Act 1988 (letting of furnished holiday accommodation treated as a trade) substitute—

**“503 Letting of furnished holiday accommodation treated as a trade for certain purposes.**

(1) For the purposes specified in subsection (2)—

- (a) a Schedule A business which consists in, or so far as it consists in, the commercial letting of furnished holiday accommodation in the United Kingdom shall be treated as if it were a trade the profits of which are chargeable to tax under Case I of Schedule D, and
- (b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.

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The “commercial letting of furnished holiday accommodation” is defined below in section 504.

- (2) Subsection (1) above applies for the purposes of—
- (a) Chapters I and II of Part X (loss relief for income tax and corporation tax), and
  - (b) sections 623(2)(c), 644(2)(c) and 833(4)(c) (income regarded as relevant earnings for pension purposes or as earned income).
- (3) Chapter I of Part X (loss relief for income tax) as applied by this section has effect with the following adaptations—
- (a) no relief shall be given to an individual under section 381 (relief for losses in early years of trade) in respect of a year of assessment if any of the accommodation in respect of which the trade is carried on in that year was first let by that person as furnished accommodation more than three years before the beginning of that year of assessment;
  - (b) section 384 (restrictions on right of set-off) has effect with the omission of subsections (6) to (8) and the words after paragraph (b) in subsection (10) (which relate to certain losses attributable to capital allowances);
  - (c) section 390 (treatment of interest as loss) has effect as if the reference to a trade the profits of which are chargeable to tax under Case I of Schedule D were a reference to the Schedule A business so far as it is treated as a trade.
- (4) Where there is a letting of accommodation only part of which is holiday accommodation, such apportionments shall be made for the purposes of this section as are just and reasonable.
- (5) Relief shall not be given for the same loss, or the same portion of a loss, both under a provision of Part X as applied by this section and under any other provision of the Tax Acts.”.

- 43 In section 579 of the Taxes Act 1988, omit subsection (4) and in subsection (5) (twice) for “subsections (2), (3) and (4)” substitute “ subsections (2) and (3) ”.
- 44 In section 787(3) of the Taxes Act 1988 (restriction of relief for payments of interest) for “section 403(7)” substitute “ section 83(2)(b) of the Finance Act 1996 (claim to treat non-trading deficit as eligible for group relief) ”.
- 45 In section 832(1) of the Taxes Act 1988 (interpretation), at the appropriate place insert—
- ““overseas property business” has the meaning given by section 65A(4) or 70A(4);”.
- 46 In Schedule 26 to the Taxes Act 1988 (allowance of reliefs against amounts apportioned in respect of profits of controlled foreign companies), in paragraph 1(3) (a) for “section 393A(1)” substitute “ section 392A(1) or 393A(1) ”.

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### *Capital Allowances Act 1990 (c.1)*

47 For section 9 of the Capital Allowances Act 1990 (manner of making allowances and charges under Part I: industrial buildings) substitute—

#### **“9 Manner of making allowances and charges.**

(1) An allowance or charge to which a person is entitled or is liable under this Part is made in taxing that person’s trade.

What is meant by that is explained—

for income tax, in section 140(2), and  
for corporation tax, in section 144(2).

(2) If the interest of that person in the building or structure is subject to a lease at the relevant time, subsection (1) and the provisions referred to in it have effect—

(a) as if any Schedule A business carried on by that person at any time in the chargeable period for which the allowance or charge is made were the trade in the taxing of which the allowance or charge is to be made;

(b) where that person is not carrying on such a business at any time in that period, as if he were carrying on such a business and the business were the trade in the taxing of which the allowance or charge is to be made.

(3) The “relevant time” for the purposes of subsection (2) is—

(a) in relation to an initial allowance, the time when the expenditure is incurred or any subsequent time before the building or structure is used for any purpose;

(b) in relation to a writing-down allowance, the end of the chargeable period for which the allowance is made;

(c) in relation to a balancing allowance or charge, the time immediately before the event giving rise to the allowance or charge.

(4) This section applies where the building or structure in question is used by a licensee of the person entitled to the relevant interest as if that interest were subject to a lease.”.

48 In section 15 of the Capital Allowances Act 1990 (temporary disuse of industrial buildings or structures), omit subsections (2), (2A) and (3).

49 After that section insert—

#### **“15ZA Temporary disuse: manner of making allowances and charges in certain cases.**

(1) This section applies in certain cases where an allowance or charge falls to be made to or on a person in a period during which the building or structure—

(a) is temporarily out of use, but

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- (b) is deemed under section 15(1) still to be an industrial building or structure.
  - (2) If on the last occasion upon which the building or structure was in use as an industrial building or structure—
    - (a) it was in use for the purposes of a trade which has since been permanently discontinued, or
    - (b) the relevant interest in the building or structure was subject to a lease which has since come to an end,the allowance or charge shall be made under section 9 (manner of making allowances and charges) as if the relevant interest were subject to a lease at the relevant time.
  - (3) If in a case where this section applies—
    - (a) a balancing charge falls to be made on a person, and
    - (b) when the building or structure was last in use, it was in use as an industrial building or structure for the purposes of a trade which was carried on by that person but has been permanently discontinued,the same deductions may be made from the amount of the balancing charge as may be made under section 105 of the principal Act (deductions allowed in case of post-cessation receipts) from an amount chargeable to tax under section 103 or 104(1) of that Act.

This does not affect the making of any deduction allowed under any other provision of the Tax Acts.
  - (4) References in this section to the permanent discontinuance of a trade do not include an event treated as a permanent discontinuance under section 113 or 337(1) of the principal Act (change in persons carrying on trade; circumstances in which company treated as beginning or ceasing to carry on trade).
  - (5) This section applies where the building or structure in question is used by a licensee of the person entitled to the relevant interest as if that interest were subject to a lease.”
- 50 Section 15A of the Capital Allowances Act 1990 (balancing charge after cessation of trade) shall cease to have effect.
- 51 In section 29 of the Capital Allowances Act 1990 (commercial letting of furnished holiday accommodation to be treated as trade for the purposes of Part II)—
  - (a) in subsection (1) omit “Subject to subsection (1A) below,”; and
  - (b) omit subsection (1A).
- 52 In sections 30(4) and 31(10) of the Capital Allowances Act 1990 (postponed allowances not regarded as carried forward) for “403(3)” substitute “ 403ZB(2) ”.

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- 53 In section 52 of the Capital Allowances Act 1990 (expenditure incurred by holder of interest in land), in subsection (1)(a) for the words from “either for the purposes” to “in the course of a trade” substitute “ for the purposes of a trade carried on by him ”.
- 54 (1) Section 53 of the Capital Allowances Act 1990 (expenditure incurred by equipment lessor) is amended as follows.
- (2) In subsection (1)(b) omit “or for leasing otherwise than in the course of a trade”.
- (3) For subsection (1)(bb) substitute—
- “(bb) the equipment lessee is within the charge to tax in the United Kingdom on the profits of the trade for the purposes of which he has entered into that agreement, and”.
- (4) In subsection (1B)(a) for “ “course of a trade” ” substitute “ “by the equipment lessee” ”.
- 55 (1) Section 61 of the Capital Allowances Act 1990 (machinery and plant on lease) is amended as follows.
- (2) Omit subsection (6).
- (3) In subsection (7) for “403(3)” substitute “ 403 ”.
- 56 In section 67 of the Capital Allowances Act 1990 (expenditure on thermal insulation), omit subsections (2), (3) and (3A).
- 57 In section 73 of the Capital Allowances Act 1990 (manner of making allowances and charges under Part II: machinery and plant)—
- (a) in subsection (1), for “subsections (1A) and (2)” substitute “ subsection (2) ”;
- (b) omit subsection (1A); and
- (c) in subsection (2), omit “and section 67(3)”.
- 58 For section 92 of the Capital Allowances Act 1990 (manner of making allowances and charges under Part III: dwelling-houses let on assured tenancies), substitute—
- “92 Manner of making allowances and charges.**
- (1) An allowance or charge to which a person is entitled or is liable under this Part is made in taxing that person’s trade.
- What is meant by that is explained—
- for income tax, in section 140(2), and
- for corporation tax, in section 144(2).
- (2) Subsection (1) (and the provisions referred to in it) apply—



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- (a) as if any Schedule A business carried on by that person were the trade in the taxing of which the allowance or charge is to be made; or
- (b) where that person is not carrying on such a business, as if he were carrying on such a business and that business were the trade in the taxing of which the allowance or charge is to be made.”.

59 For section 132 of the Capital Allowances Act 1990 (manner of making allowances and charges under Part V: agricultural buildings, etc.), substitute—

**“132 Manner of making allowances and charges.**

- (1) An allowance or charge to which a person is entitled or is liable under this Part is made in taxing that person’s trade.

What is meant by that is explained—

for income tax, in section 140(2), and  
for corporation tax, in section 144(2).

- (2) In the case of an allowance or charge which falls to be made to a person for a chargeable period in which he is not carrying on a trade, subsection (1) applies—

- (a) as if any Schedule A business carried on by that person at that time were the trade in the taxing of which the allowance or charge is to be made; or
- (b) where that person is not carrying on such a business at that time, as if he were carrying on such a business and the business were the trade in the taxing of which the allowance or charge is to be made.”.

60 In section 159(1A) of the Capital Allowances Act 1990 (capital expenditure and capital sums: references to trade to include Schedule A business), omit the words from “or to any such activities” to the end.

61 In section 161 of the Capital Allowances Act 1990 (provisions relating to interpretation and application of that Act), for subsection (2A) substitute—

“(2A) This Act applies in relation to an overseas property business as it applies to a Schedule A business.”.

*Taxation of Chargeable Gains Act 1992 (c.12)*

62 In section 241(3) of the Taxation of Chargeable Gains Act 1992 (commercial letting of furnished holiday accommodation to be treated as trade for certain purposes), for paragraph (a) substitute—

- “(a) any Schedule A business (within the meaning of the Taxes Act) which consists in the commercial letting of furnished holiday accommodation in the United Kingdom shall be treated as a trade, and”.

63 (1) Schedule 8 to the Taxation of Chargeable Gains Act 1992 (leases) is amended as follows.

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- (2) In paragraph 5 (exclusion of premiums taxed under Schedule A, etc.)—
- (a) in sub-paragraphs (1) and (2), for “income tax has become chargeable under section 34 of the Taxes Act on any amount” substitute “ any amount is brought into account by virtue of section 34 of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act) ”; and
  - (b) in sub-paragraph (3), for “income tax has become chargeable under section 36 of the Taxes Act (sale of land with right of re-conveyance) on any amount” substitute “ any amount is brought into account by virtue of section 36 of the Taxes Act (sale of land with right of re-conveyance) as a receipt of a Schedule A business (within the meaning of that Act) ”.
- (3) In paragraph 6(2), for the words from “on which tax is paid” onwards substitute “ brought into account by virtue of section 35 of the Taxes Act (charge on assignment of a lease granted at an undervalue) as a receipt of a Schedule A business (within the meaning of that Act) ”.
- (4) In paragraph 7, for the words from “income tax” to “so chargeable” substitute “ any amount is brought into account by virtue of section 34(2) and (3) of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act) which is or is treated as carried on by any person, that person ”.
- (5) For paragraph 7A substitute—
- “7A References in paragraphs 5 to 7 above to an amount brought into account as a receipt of a Schedule A business include references to an amount brought into account as a receipt of an overseas property business.”.

*Finance Act 1996 (c. 8)*

- 64 (1) Schedule 8 to the Finance Act 1996 (loan relationships: claims relating to deficits) is amended as follows.
- (2) In paragraph 1 (claim to set off deficit against other profits for the same period), in sub-paragraph (3)(b) for paragraph (i) substitute—
- “(i) under section 392A(1) or 393A(1) of the Taxes Act 1988 (losses set against profits for the same or preceding accounting periods); or”.
- (3) In paragraph 2 (claim to treat deficit as eligible for group relief) for sub-paragraph (2) substitute—
- “(2) Section 403 of the Taxes Act 1988 (amounts which may be surrendered by way of group relief) applies in accordance with section 403ZC(2) of that Act.”.

**PART IV**

TRANSITIONAL PROVISIONS FOR CORPORATION TAX

*Introduction*

- 65 (1) This Part of this Schedule makes provision with respect to the application of the provisions of Parts I to III of this Schedule for corporation tax purposes.

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(2) In this Part of this Schedule—

“before commencement” and “after commencement” mean, respectively, before 1st April 1998 and on or after that date; and

“the new rules” means the provisions of the Tax Acts relating to Schedule A taxation or, as the case may be, to the taxation under Case V of Schedule D of income from land outside the United Kingdom, as they have effect after commencement.

*Receipts and expenses not to be counted twice*

- 66 (1) To the extent that receipts or expenses have been taken into account before commencement, they shall not be taken into account again under the new rules after commencement.
- (2) Nothing in section 43 of the <sup>M227</sup>Finance Act 1989 (computation of profits: effect of delayed payment of emoluments) shall be construed as affecting the rule in subparagraph (1) above.

**Marginal Citations**

M227 1989 c. 26.

*Receipts and expenses not to be left out of account*

- 67 To the extent that receipts or expenses would under the new rules have been brought into account before commencement, and were not so brought into account, they shall be brought into account immediately after commencement.

*Expenses not to be carried back to before commencement*

- 68 Expenses which were incurred before commencement but were not taken into account before commencement shall not, by virtue of section 25(3) or 31(3) of the Taxes Act 1988, be carried back and taken into account before commencement.

*Effect of transfer of underlying rights*

- 69 If any estate, interest or rights in or over land is or are transferred from one person to another, the references in paragraphs 66 to 68 to receipts or expenses being taken into account shall be construed as references to their being taken into account in relation to either of those persons.

*Bad debt relief*

- 70 (1) Where relief under section 41 of the Taxes Act 1988 (relief for rent, etc. not paid) has been given in respect of an amount before commencement, any receipt after commencement shall be taken into account under the new rules.
- (2) Any writing off of an amount after commencement shall be taken into account under the new rules, even where it relates to a receipt brought into account before commencement.

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*Meaning of “taken into account”*

- 71 For the purposes of paragraphs 66 to 70 an amount is “taken into account” if—
- (a) it is brought into account for tax purposes, or
  - (b) it would have been so brought into account if the person concerned were chargeable to tax.

*Unrelieved Case VI losses*

- 72 (1) A loss to which this paragraph applies which a company would, apart from this Schedule, have been entitled to carry forward under section 396 of the Taxes Act 1988 (Case VI losses) shall be treated after commencement as a loss of an earlier period within section 392A or 392B of that Act and accordingly available to be set off under those provisions.
- (2) This paragraph applies to a loss sustained in a business or transaction of a kind that after commencement would be treated as carried on or entered into in the course of a Schedule A business or overseas property business carried on by the company.

*Source ceasing in transitional accounting period*

- 73 (1) The provisions of Parts I to III of this Schedule do not apply in relation to a source which ceases in the course of a company’s transitional accounting period to be a source within the charge to tax under Schedule A or Case V or VI of Schedule D in relation to that company and any other person.
- (2) This paragraph does not apply if the company acquired the source in that accounting period or in the preceding twelve months.

*Superseded provisions relating to finance leasing*

- 74 (1) In Schedule 12 to the <sup>M228</sup>Finance Act 1997 (leasing arrangements: finance leases and loans), the following provisions (which apply concepts from Case I of Schedule D in relation to rent taxed under Schedule A) shall cease to have effect in accordance with this paragraph.
- (2) Paragraphs 3(6), 6(9)(b), 8(1) to (7) and 20(b) do not apply in relation to periods of account beginning on or after 1st April 1998.
- A “period of account” means a period for which accounts are made up.
- (3) Paragraph 8(8) does not apply if the time mentioned in that provision is on or after 1st April 1998.
- (4) Paragraph 8(9) does not apply if the time mentioned in paragraph (a) of that provision is on or after 1st April 1998.

**Marginal Citations**

M228 1997 c. 16.

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*Computation of amounts available for surrender as group relief*

- 75 In computing under section 403 of the Taxes Act 1988 the amounts available for surrender as group relief in a company's transitional accounting period, the amounts referable to the period before commencement shall be computed separately from the amounts referable to the period after commencement.

*Meaning of "transitional accounting period"*

- 76 For the purposes of paragraphs 73 and 75 a "transitional accounting period" means an accounting period beginning before, and ending on or after, 1st April 1998.

SCHEDULE 6

Section 44.

ADJUSTMENT ON CHANGE OF ACCOUNTING BASIS

*Introduction*

- 1 The provisions of this Schedule apply in the circumstances specified in section 44(1) and (2).

*Adjustment on change of accounting basis*

- 2 (1) The amount required by way of adjustment must be calculated (in accordance with paragraph 3) and—
- (a) if the amount is positive, it is chargeable to tax, and
  - (b) if it is negative, it is allowable as a deduction in computing profits.
- (2) An amount chargeable to tax under this paragraph—
- (a) is treated as income arising on the first day of the first period of account for which the new basis is adopted, subject to paragraphs 4 and 5 (spreading of adjustment charge in certain cases and election to accelerate payment);
  - (b) is chargeable to tax under Case VI of Schedule D;
  - (c) in the case of an individual whose income from the trade, profession or vocation in question is—
    - (i) relevant earnings within section 623(2)(c) or 644(2)(c) of the Taxes Act 1988, or
    - (ii) earned income within section 833(4)(c) of that Act,is similarly relevant earnings or earned income for the year of assessment in which it is charged to tax; and
  - (d) is treated for the purposes of Chapters I and II of Part X of the Taxes Act 1988 (loss relief) as profits of the trade, profession or vocation for the chargeable period for which it is charged to tax.
- (3) An amount allowable under this paragraph as a deduction in computing profits is treated as an expense of the trade, profession or vocation in the first period for which the new basis is adopted.

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### *Calculation of adjustment*

- 3 (1) The amount of the adjustment is calculated as follows.

#### *First step*

Add together any amounts representing the extent to which, comparing the two bases, profits were understated (or losses overstated) on the old basis:

- (1) Receipts which on the new basis would have been brought into account in computing the profits of a period before the change of basis, to the extent that they were not so brought into account.
- (2) Expenses which on the new basis fall to be brought into account in computing the profits of a period after the change, to the extent that they were brought into account in computing the profits of a period of account before the change of basis.
- (3) Deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis to the extent to which they are not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change.

#### *Second step*

Then deduct any amounts representing the extent to which, comparing the two bases, profits were overstated (or losses understated) on the old basis:

1. Receipts which were taken into account in a period before the change, to the extent that they would not have been taken into account for such a period if the profits had been computed on the new basis.
2. Expenses which were not taken into account in computing the profits of a period before the change, to the extent that they would have been taken into account for such a period if the profits had been computed on the new basis.
3. Credits in respect of closing trading stock or closing work in progress in the last period of account before the change of accounting basis to the extent to which they are not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis.

An amount so deducted may not be deducted again in computing the profits of a period of account.

#### *Third step*

In the case of a profession or vocation adopting a new accounting basis to comply with section 42 (true and fair view), a further deduction may be made by way of adjustment in respect of any change of accounting basis before 6th April 1999.

The amount deductible is calculated as follows—

- A. Add together the amounts by which profits were overstated (or losses understated) by reason of the previous change of accounting basis:
  1. Receipts to the extent that by reason of the change of accounting basis they were brought into account in more than one period of account.

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2. Expenses to the extent that by reason of the change of accounting basis they were not deducted in any period of account.
  3. Credits in respect of closing trading stock or closing work in progress in the last period of account before the change of accounting basis to the extent that they were not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account following the change.
- B. Then deduct the amounts by which profits were understated (or losses overstated) by reason of that change:
1. Receipts to the extent that by reason of the change of accounting basis they were not brought into account in any period of account.
  2. Expenses to the extent that by reason of the change of accounting basis they were deducted in more than one period of account.
  3. Deductions in respect of opening trading stock or opening work in progress in the first period of account following the change of accounting basis to the extent that they were not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change.

An amount may not be so deducted if it has previously been brought into account; and it may not be deducted again on a subsequent change of accounting basis.

- (2) The references in this paragraph to items being brought into account in a period of account before the change of basis are to their being brought into account—
- (a) in computing the profits of the same trade, profession or vocation, and
  - (b) in accordance with the law and practice then applicable.

For the purposes of paragraph (a) a trade, profession or vocation is not regarded as the same if section 113(1) or 337(1) of the Taxes Act 1988 applies (deemed discontinuance on change of persons carrying on trade, profession or vocation).

#### *Spreading of adjustment charge in certain cases*

- 4 (1) This paragraph provides for the spreading of the adjustment charge in certain cases where an individual—
- (a) has been entitled to compute the profits of a profession or vocation on a basis that does not comply with section 42 of this Act (true and fair view), or would not have complied with that section if it had been in force, and
  - (b) changes to an accounting basis that does comply with that section.
- (2) The cases in which this paragraph applies are where a change of basis is made to comply with that section—
- (a) on that section coming into effect in relation to periods of account beginning after 6th April 1999, or
  - (b) on the exemption given by section 43 of this Act (barristers and advocates in early years of practice) coming to an end or ceasing to apply.

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- (3) Where this paragraph applies the adjustment charge is spread over ten years of assessment, as follows.
- (4) In each of the nine years of assessment beginning with that in which the whole amount would otherwise be chargeable to tax, an amount equal to whichever is the less of—
- (a) one-tenth of the amount of the adjustment charge, and
  - (b) 10 per cent. of the profits of the profession or vocation for that year of assessment,
- is treated as arising and chargeable to tax.
- For the purposes of paragraph (b) the profits of the profession or vocation means the profits as computed for the purposes of Case II of Schedule D, leaving out of account any allowances or charges under the <sup>M229</sup>Capital Allowances Act 1990.
- (5) In the tenth year of assessment the balance of the adjustment charge is treated as arising and chargeable to tax.
- (6) If before the whole of the adjustment charge has been charged to tax the profession or vocation—
- (a) is permanently discontinued, or
  - (b) is treated as permanently discontinued under section 113(1) of the Taxes Act 1988 (change of persons carrying on profession or vocation),
- the preceding provisions of this paragraph continue to apply, but with the omission of the alternative limit in sub-paragraph (4)(b) by reference to profits of the profession or vocation.
- (7) This paragraph has effect subject to any election under paragraph 5.

#### Marginal Citations

[M229 1990 c. 1.](#)

#### *Election to accelerate payment of adjustment charge*

- 5 (1) A person who under paragraph 4 is chargeable to tax for a year of assessment on an amount representing part of an adjustment charge may elect that the amount treated as income arising in that year of assessment should be increased.
- (2) The election must be made—
- (a) by notice in writing,
  - (b) to an officer of the Board,
  - (c) before the 31st January following the year of assessment in question.
- (3) The election must specify the amount to be treated as income arising in the year of assessment, which may be any amount up to the whole of the adjustment charge so far as not previously charged to tax.
- (4) Where an election has been made, paragraph 4 applies in relation to any subsequent year of assessment as if the original amount of the adjustment charge were reduced by the additional amount treated as arising in the year for which the election was made.



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### *Application of provisions to partnerships*

- 6 (1) In the case of a trade, profession or vocation carried on in partnership, the amount of any adjustment under this Schedule shall be computed—
- (a) for income tax purposes, as if the partnership were an individual resident in the United Kingdom, and
  - (b) for corporation tax purposes, as if the partnership were a company resident in the United Kingdom.
- (2) Subject to the following provisions of this paragraph, each partner's share of any amount chargeable to tax under paragraph 2 shall be determined according to the profit-sharing arrangements for the twelve months ending immediately before the date on which the new accounting basis was adopted.
- (3) If paragraph 4 applies (spreading of adjustment charge in certain cases), then, subject to sub-paragraph (4) below—
- (a) each partner's share of the amount chargeable in any year of assessment shall be determined—
    - (i) for the first year of assessment, according to the profit-sharing arrangements for the twelve months ending immediately before the date on which the new accounting basis was adopted, and
    - (ii) for any subsequent year of assessment, according to the profit-sharing arrangements for the twelve months immediately preceding the anniversary in that year of that date; and
  - (b) any election under paragraph 5 (election for accelerated payment) in relation to a year of assessment must be made jointly by all the persons who have been members of the partnership in the relevant twelve month period.
- (4) If paragraph 4(6) applies (effect of discontinuance of profession or vocation), then—
- (a) each partner's share of any amount chargeable on or after the discontinuance is determined as follows—
    - (i) if the discontinuance occurs on the date on which the new accounting basis was adopted, according to the profit-sharing arrangements for the twelve months ending immediately before that date;
    - (ii) if the discontinuance occurs after that date but before the first anniversary of that date, according to the profit-sharing arrangements for the period between that date and the date of discontinuance;
    - (iii) if the discontinuance occurs after the first anniversary of the date on which the new accounting basis was adopted, according to the profit-sharing arrangements for the period between the immediately preceding anniversary of that date and the date of discontinuance; and
  - (b) any election under paragraph 5 after the discontinuance must be made by each former partner separately.
- (5) For the purposes of this paragraph—
- (a) “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade, profession or vocation for the period in question; and

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- (b) references to the date on which a new accounting basis was adopted are to the first day of the first period of account for which the new basis was adopted.
- (6) The provisions of section 111 of the Taxes Act 1988 (general provisions as to taxation of partnerships), except subsection (1) (partnership not to be treated as separate entity), do not apply to the extent that the preceding provisions of this paragraph apply.

*Liability of personal representatives in case of death of person chargeable*

- 7 In the case of the death of a person who, if he had not died, would have been chargeable to tax under paragraph 4 on an amount representing part of an adjustment charge—
- (a) the tax which would have been so chargeable shall be assessed and charged on his personal representatives and shall be a debt due from and payable out of his estate, and
  - (b) his personal representatives may make any election under paragraph 5 which he might have made.

*Interpretation*

- 8 In this Schedule—
- “adjustment charge” means a charge under paragraph 2 above; and
  - “period of account” means any period for which accounts of the trade, profession or vocation are drawn up.

SCHEDULE 7

Section 46(3).

REMOVAL OF UNNECESSARY REFERENCES TO GAINS

The following are the provisions of the Taxes Acts in which the amendments specified in section 46(3) are to be made.

- 1 In the Taxes Act 1988: sections 53(1) and (3), 55(1), 60(1) and (2) (twice), 61(1) (twice), 63A(1), (3) and (5), 65(2A) and (5)(b), 65A(2), 68(1), 74(1) opening words and paragraph (m), 77(1) and (2)(a)(i), 79(1), 79A(1), 80(10), 82(1) and (5), 83, 84A(2)(a), 85(1)(a), 85A(2)(a), 86(2) definition of “deductible”, 86A(2)(a), 87(2) and (6), 88(a), 89 (twice), 90(1)(a), 91(1) and (4)(a)(i), 91A(2) and (3)(a), 91B(2), (5) (a) and (6)(a), 91C(b), 94(1), 96(7), 97, 99(1) and (2), 100(1), (1D) and (1E) (twice each), 101(1) (twice) and (2)(a), 102(1), 103(1), (2)(a) (twice), (2)(b) (twice), (4) (a) and (5), 104(1) (twice), (2), (4), (5) and (7), 105(1)(a) (twice) and (4), 106(2), 107, 109(1)(b), 109A(2)(d), (4) and (4A), 110(3) (twice), (4) and (5) (three times), 110A(1), 111(2), (3) and (4) (twice), (7) (twice), (8)(a) and (11), 112(1A) and (1B), 113(1), 117(1), (3)(b) and (4), 118(1), 160(1C)(b), 291A(3)(f)(ii) (twice), 368(3) and (4)(a), 375A(1)(b), 379A(1)(a), (1)(b) (twice) and (7), 382(3), 385(4) (three times), 386(1), 388(1), (4) (four times), (5) (in the first two places) and (7), 400(6), 401(1) (b), 486(10) (twice), 491(3) (twice), (4), (5), (6), (8)(b) (twice) and (11), 509(1)

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(twice), 526(1)(b), 528(1)(a), 556(3)(a), 557 side note, (1) (twice) and (2)(a), (b) and (c), 559(4)(b) and (5) (twice), 568(1), 570(1), 577(1)(a) and (9), 577A(1) and (1A), 579(2), 588(3), 589A(8), 730C(1), 770(2)(a)(iii) and (b)(iii), 776(6)(a) and (b), 779(13)(b), 780(3)(a), 781(4)(a) and (5)(b), 782(1)(a), (2) and (3), 785 definition of “capital sum” where the words first occur, 830(4) in the second place, Schedule 5, paragraphs 1(1), 2(6) meaning of “qualifying year of assessment”, 3(1) and (4)(b), 5(1), 6(4) meaning of “qualifying year of assessment” and (5) and 8(7) (three times), Schedule 21, paragraph 6(1)(b) and (3) (twice).

- 2 In the <sup>M230</sup>Finance Act 1988: section 73(2), Schedule 12, paragraph 2(2).

**Marginal Citations**

[M230 1988 c.39.](#)

- 3 In the <sup>M231</sup>Finance Act 1989: sections 67(2)(a), 76(1) and (4)(a) and 112(1).

**Marginal Citations**

[M231 1989 c.26.](#)

- 4 In the <sup>M232</sup>Capital Allowances Act 1990: sections 12, 17(1) (twice), 18(13), 23(1) (c), 33A(3), 35(2), 42(1)(b) (twice), 43(2), 44(2)(a), 45(2), (4) and (5), 65(3), 68(7) and (10) (twice), 69(1) and (2), 70(1), 71(1), 80(1)(b), 109(1)(c), 115(2A), 136 and 153(2)(b).

**Marginal Citations**

[M232 1990 c.1.](#)

- 5 In the <sup>M233</sup>Finance Act 1990: section 126(2).

**Marginal Citations**

[M233 1990 c.29.](#)

- 6 In the <sup>M234</sup>Finance Act 1991: section 121.

**Marginal Citations**

[M234 1991 c.31.](#)

- 7 In the <sup>M235</sup>Taxation of Chargeable Gains Act 1992: sections 39(1) (in the first place) and (2) (in both places), 41(4) and (5) and 164L(8) (twice).

**Marginal Citations**

[M235 1992 c.12.](#)

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- 8 In the <sup>M236</sup>Finance (No. 2) Act 1992: section 42(8) and Schedule 12, paragraphs 3(3) (c) and 4(2) (twice).

**Marginal Citations**

[M236 1992 c.48.](#)

- 9 In the <sup>M237</sup>Finance Act 1994: Schedule 24, paragraph 12(2).

**Marginal Citations**

[M237 1994 c.9.](#)

- 10 In the <sup>M238</sup>Finance Act 1995: section 126(6) and (7).

**Marginal Citations**

[M238 1995 c.4.](#)

- 11 In the <sup>M239</sup>Finance Act 1996: sections 80(2) (in the second place) and 82(2)(a) and (b).

**Marginal Citations**

[M239 1996 c.8.](#)

- 12 In the <sup>M240</sup>Finance Act 1997: Schedule 12, paragraph 8(4)(a).

**Marginal Citations**

[M240 1997 c.16.](#)

SCHEDULE 8

Section 57.

SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

*Introductory*

- 1 Chapter IV of Part XIII of the Taxes Act 1988 shall be amended in accordance with paragraphs 2 to 6 below.

*Application of deductions to public departments etc*

- 2 (1) In section 559, after subsection (5) (excess of deduction from payment to sub-contractors to be treated as deduction for the purposes of the social security legislation) there shall be inserted the following subsection—

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“(5A) Notwithstanding anything in the preceding provisions of this section, the requirement to make a deduction under subsection (4) above shall have effect for the purposes of section 829 (application of Income Tax Acts to public departments) as if the whole of any deduction required to be made in pursuance of that subsection were in all cases a deduction of income tax.”

- (2) In subsection (2) of section 560 (persons who are contractors) after “applies” there shall be inserted “ (subject to subsection (2A) below) ”; and after that subsection there shall be inserted the following subsections—

“(2A) Subject to subsection (2B) below, subsection (2) above does not apply at any time to an office, department or body falling within paragraph (aa), (b), (c), (d), (e) or (ea) of that subsection unless that office, department or body has, in the period of three years ending with the 31st March next before that time, had an average annual expenditure on construction operations of more than £1,000,000.

(2B) Where the condition provided for in subsection (2A) above has been satisfied in the case of any office, department or body in relation to any period of three years, that subsection shall not prevent subsection (2) above from applying to that office, department or body until there have been three successive years after the end of that period in each of which the office, department or body has had expenditure on construction operations of less than £1,000,000.”

- (3) This paragraph has effect in relation to any payments made on or after the day, or first day, that is appointed under subsection (3) of section 139 of the <sup>M241</sup>Finance Act 1995 (commencement of changes to sub-contractors scheme) for the purposes of paragraph 2 of Schedule 27 to that Act (additional public bodies etc that may be contractors).
- (4) The reference in subsection (2B) of section 560 of the Taxes Act 1988 to a period of three years in relation to which the condition provided for in subsection (2A) of that section has been satisfied does not include a reference to any such period ending more than a year before the day or, as the case may be, first day mentioned in subparagraph (3) above.

#### Marginal Citations

M241 1995 c. 4.

#### *Conditions for exemption of partnerships*

- 3 (1) In subsection (2A) of section 564 (certificates for partnerships), for the words from “that” to the end there shall be substituted “that the carrying on of the firm’s business is likely to involve—
- (a) the receipt, annually in the period to which the certificate would relate, of an aggregate amount by way of relevant payments which is not less than the sum specified in subsection (2B) below; or
  - (b) the receipt, annually in the period to which the certificate would relate, of an aggregate amount by way of construction contract

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payments which is not less than the amount specified for the purposes of this paragraph in regulations made by the Board.”

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

“(2AA) In subsection (2A)(a) above “relevant payments” has the meaning given by section 562(2B).”

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

“(2C) In subsection (2A)(b) above “construction contract payments” means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—

- (a) are of a description specified in subsection (2) of section 567; but
- (b) are not of a description specified in subsection (3) of that section, other than so much of the payments as represents the direct cost to the firm of materials used or to be used in carrying out the operations in question.”

#### *Conditions of exemption for companies*

4 (1) For subsections (2A) and (2B) of section 565 (certificates for companies) there shall be substituted the following subsections—

“(2A) The company must either—

- (a) satisfy the Board, by such evidence as may be prescribed in regulations made by them, that the annual receipts test is satisfied; or
- (b) satisfy the Board that the only persons with shares in the company are companies which are limited by shares and themselves excepted from section 559 by virtue of a certificate which is in force under section 561.

(2B) The annual receipts test is satisfied in relation to a company if the carrying on of its business is likely to involve the receipt, annually in the period to which the certificate would relate—

- (a) of an aggregate amount by way of relevant payments which is not less than the amount obtained by multiplying the amount specified in regulations as the minimum turnover for the purposes of section 562(2A) by the number of persons who are relevant persons in relation to the company; or
- (b) of an aggregate amount by way of construction contract payments which is not less than the amount specified for the purposes of this paragraph in regulations made by the Board.

(2BB) In subsection (2B) above “relevant payments” has the meaning given by section 562(2B).”

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

“(2D) In subsection (2B) above “construction contract payments” means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—

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- (a) are of a description specified in subsection (2) of section 567; but
  - (b) are not of a description specified in subsection (3) of that section,
- other than so much of the payments as represents the direct cost to the company of materials used or to be used in carrying out the operations in question.”

#### *Commencement of paragraphs 3 and 4*

- 5 Paragraphs 3 and 4 above have effect in relation to any application for the issue or renewal of a certificate under section 561 of the <sup>M242</sup>Taxes Act 1988 in relation to which paragraphs 3(1) and 4 to 7 of Schedule 27 to the Finance Act 1995 (which amend sections 564 and 565 of the Taxes Act 1988) have effect in accordance with paragraph 8(1) of that Schedule.

#### **Marginal Citations**

M242 1995 c. 4.

#### *Powers to make regulations*

- 6 In section 566 (powers to make regulations under Chapter IV), the following subsections shall be inserted after subsection (3)—

“(4) Any power under this Chapter to make regulations authorising or requiring a document (whether or not of a particular description), or any records or information, to be issued, given or requested or to be sent, produced, returned or surrendered to the Board shall include power—

- (a) to authorise the Board to nominate a person who is not an officer of the Board to be the person who on behalf of the Board—
  - (i) issues, gives or requests the document, records or information; or
  - (ii) is the recipient of the document, records or information;

and

- (b) to require the document, records or information, in cases prescribed by or determined under the regulations, to be sent, produced, returned or surrendered to the address (determined in accordance with the regulations) of the person nominated by the Board to receive it on their behalf.

(5) Any power under this Chapter to make regulations imposing requirements with respect to any description of document, with respect to documents generally or with respect to any records or information shall include power to make provision, subject to such conditions as may be prescribed by or determined in accordance with the regulations—

- (a) for the documents, records or information to be allowed to take an electronic form so prescribed or determined;
- (b) for the issue, completion, furnishing, production, keeping, cancellation, return, surrender or giving of the documents, records

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- or information to be something that has to be or may be done by the electronic means so prescribed or determined; and
- (c) for the manner of proving in any proceedings the contents or transmission of anything that, by virtue of any regulations under this Chapter, takes an electronic form or is transmitted to any person by electronic means.”

*Transitional provision for commencement of 1995 Act amendments*

- 7 An order under subsection (3) of section 139 of the <sup>M243</sup>Finance Act 1995 (commencement of changes to sub-contractors scheme) appointing a day for the purposes of a provision of that section or Schedule 27 to that Act may also provide that certificates under section 561 of the Taxes Act 1988 which have been issued or renewed before the making of the order for periods ending on or after the appointed day are to cease to have effect at the end of the day immediately preceding the appointed day.

**Marginal Citations**

M243 1995 c. 4.

SCHEDULE 9

Section 58(2).

PAYMENTS AND OTHER BENEFITS IN CONNECTION WITH TERMINATION OF EMPLOYMENT ETC

**PART I**

SCHEDULE 11 TO THE TAXES ACT 1988

The Schedule substituted for Schedule 11 to the Taxes Act 1988 is as follows:—

“SCHEDULE 11

PAYMENTS AND OTHER BENEFITS IN CONNECTION  
WITH TERMINATION OF EMPLOYMENT, ETC.

*Introductory*

- 1 The provisions of this Schedule supplement the provisions of section 148 with respect to the taxation of payments and other benefits received in connection with—
- (a) the termination of a person’s employment, or
  - (b) any change in the duties of or emoluments from a person’s employment.

*Payments and other benefits to which section 148 applies*

- 2 (1) Section 148 applies to all payments and other benefits received directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination or change—



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- (a) by the employee or former employee,
  - (b) by the spouse or any relative or dependant of the employee or former employee,  
or
  - (c) by the personal representatives of the former employee.
- (2) For the purposes of section 148 a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee.

*Payments and other benefits excluded from charge under section 148*

- 3 Tax is not charged under section 148 on a payment or other benefit provided—
- (a) in connection with the termination of the employment by the death of the employee, or
  - (b) on account of injury to or disability of the employee.
- 4 (1) Tax is not charged under section 148 on a payment or other benefit provided in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or as is described in section 596(1) (approved retirement benefits schemes, etc) in the following cases.
- (2) The first case is where the payment or other benefit is by way of compensation for loss of employment, or for loss or diminution of emoluments, and the loss or diminution is due to ill-health.
  - (3) The second case is where the payment or other benefit is properly regarded as earned by past service.
- 5 Tax is not charged under section 148 on a payment or other benefit provided—
- (a) under a Royal Warrant, Queen’s Order or Order in Council relating to members of Her Majesty’s forces, or
  - (b) by way of payment in commutation of annual or other periodical payments authorised by any such Warrant or Order.
- 6 (1) Tax is not charged under section 148 on—
- (a) any benefit provided under a superannuation scheme administered by the government of an overseas territory within the Commonwealth, or
  - (b) any payment of compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to a person who, before the change, was employed in the public service of that territory.
- (2) In sub-paragraph (1) references to an overseas territory, to the government of such a territory, and to employment in the public service of such a territory have the same meaning as in the <sup>M244</sup> Overseas Development and Cooperation Act 1980: see sections 10(2) and 13(1) and (2) of that Act.

*Application of £30,000 threshold*

- 7 (1) This paragraph specifies how the £30,000 threshold in section 148(1) applies.
- (2) Tax is charged only on the excess over £30,000, but the threshold applies to the aggregate amount of payments and other benefits provided in respect of the same person—

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- (a) in respect of the same employment, or
  - (b) in respect of different employments with the same employer or associated employers (see paragraph 8).
- (3) If payments and other benefits are received in different tax years, the £30,000 is set against the amount of payments and other benefits received in earlier years before those of later years.
- (4) If more than one payment or other benefit is received in a tax year in which the threshold is exceeded—
- (a) the £30,000 (or the balance of it) is set against the amounts of cash benefits as they are received, and
  - (b) any balance at the end of the year is set against the aggregate amount of non-cash benefits received in the year.
- 8 (1) For the purposes of paragraph 7(2)(b) employers are associated if on the date which is the relevant date in relation to any of the payments or other benefits—
- (a) one of them is under the control of the other, or
  - (b) one of them is under the control of a third person who controls or is under the control of the other on that or any other such date.
- (2) In sub-paragraph (1)—
- (a) “control” has the meaning given by section 840, and
  - (b) references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person.
- Exclusion or reduction of charge in case of foreign service*
- 9 (1) If the employee’s service in the employment in respect of which the payment or other benefit is received included foreign service, then—
- (a) in certain cases, tax is not charged under section 148 (see paragraph 10);
  - (b) in other cases the amount charged to tax is reduced (see paragraph 11).
- (2) “Foreign service” for this purpose means—
- (a) service in or after the tax year 1974-75 such that—
    - (i) the emoluments from the employment were not chargeable under Case I of Schedule E (or would not have been so chargeable, had there been any), or
    - (ii) a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under paragraph 1 of Schedule 2 to the <sup>M245</sup>Finance Act 1974, paragraph 1 of Schedule 7 to the <sup>M246</sup>Finance Act 1977 or section 192A or 193(1) of this Act (foreign earnings deduction);
  - (b) service before the tax year 1974-75 such that tax was not chargeable in respect of the emoluments of the employment—
    - (i) in the tax year 1956-57 or later, under Case I of Schedule E;
    - (ii) in earlier tax years, under Schedule E.
- 10 Tax is not charged under section 148 if foreign service comprises—
- (a) three-quarters or more of the whole period of service down to the relevant date, or

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- (b) if the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or
  - (c) if the period of service down to the relevant date exceeded 20 years, one-half or more of that period, including any ten of the last 20 years.
- 11 (1) Where there is foreign service and paragraph 10 does not apply, the person chargeable to tax under section 148 may claim relief in the form of a proportionate reduction of the amount charged to tax.

The amount charged to tax means the amount after any reduction under paragraph 7 (application of £30,000 threshold).

- (2) The proportion is that which the length of the foreign service bears to the whole length of service in the employment before the relevant date.
- (3) A person is not entitled to relief under this paragraph in so far as the relief, together with any personal relief allowed to him, would reduce the amount of income on which he is chargeable below the amount of income tax which he is entitled—
  - (a) to charge against any other person, or
  - (b) to deduct, retain or satisfy out of any payment which he is liable to make.
- (4) For the purposes of sub-paragraph (3)—
  - (a) “personal relief” means relief under Chapter I of Part VII; and
  - (b) the amount of tax to which a person is or would be chargeable means the amount of tax to which he is or would be chargeable either by assessment or by deduction.

#### *Valuation of benefits*

- 12 (1) For the purposes of section 148, the amount of a payment or other benefit is taken to be—
- (a) in the case of a cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (2) The cash equivalent of a non-cash benefit is whichever is the greater of—
- (a) the amount which would be chargeable to tax under section 19(1) if the benefit were an emolument of the employment chargeable to tax under Case I of Schedule E, or
  - (b) the cash equivalent determined in accordance with the provisions of section 596B (cash equivalent of benefits in kind for purposes of charge to tax on benefits under non-approved retirement benefits scheme).

#### *Notional interest treated as paid if amount charged in respect of beneficial loan*

- 13 (1) This paragraph applies where a person is chargeable to tax under section 148 in any tax year on an amount which consists of or includes an amount representing the cash equivalent of the benefit of a loan determined in accordance with Part II of Schedule 7.
- (2) Where this paragraph applies, the person chargeable is treated as having paid interest on the loan of the same amount as the cash equivalent so determined.

This is subject to application of the £30,000 threshold: see sub-paragraph (5) below.

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- (3) The interest is treated as paid for all the purposes of the Tax Acts (other than section 148 and this Schedule), but not so as to make it—
- (a) income of the person making the loan, or
  - (b) relevant loan interest to which section 369 applies (mortgage interest payable under deduction of tax).
- (4) The interest is treated as accruing during and paid at the end of the tax year or, if different, the period in the tax year during which the loan is outstanding.
- (5) No amount of interest is treated as paid under this paragraph in a tax year in which, after applying the £30,000 threshold in section 148(1), no amount falls to be charged to tax.

If in any tax year the effect of the £30,000 threshold is that some but not all of the amount otherwise chargeable is charged to tax, the amount of interest treated as paid is limited to the amount charged to tax.

*Giving effect to the charge to tax*

- 14 (1) Tax under section 148 is charged on the employee or former employee, whether or not he is the recipient of the payment or other benefit.
- (2) After the death of the employee or former employee, any amount chargeable to tax under section 148 shall be assessed and charged upon his personal representatives and is a debt due from and payable out of the estate.

*Reporting requirements*

- 15 Provision may be made by regulations under section 203(2) requiring an employer or former employer to provide such information as may be prescribed by the regulations, within such time as may be so prescribed, as to payments or other benefits provided or to be provided in connection with the termination of a person's employment or a change in the duties of or emoluments from a person's employment.

*Interpretation*

- 16 In this Schedule—
- “the relevant date” means the date of the termination or change in question;
- and
- “tax year” means a year of assessment.”.

**Marginal Citations**

M244 1980 c.63.  
M245 1974 c.30.  
M246 1977 c.36.

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M244 1980 c.63.  
M245 1974 c.30.  
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## PART II

### CONSEQUENTIAL AMENDMENTS

#### *Income and Corporation Taxes Act 1988 (c.1)*

- 1 (1) Section 189 of the Taxes Act 1988 (exemption from Schedule E charge of lump sum payments under approved retirement benefits schemes, etc) is amended as follows.
  - (2) Make the existing provision subsection (1).
  - (3) In paragraph (a) of that subsection for the words from “and is neither” to “section 600” substitute “ and is not excepted from this paragraph by subsection (2) or (3) below ”.
  - (4) After that subsection insert—
    - “(2) Subsection (1)(a) above does not apply to a payment of compensation for loss of office or employment, or for loss or diminution of emoluments, unless—
      - (a) the loss or diminution is due to ill-health, or
      - (b) the payment is properly regarded as earned by past service.
    - (3) Subsection (1)(a) above does not apply to a payment chargeable to tax under section 600 (payments not authorised by rules of scheme).”.
- 2 In section 190 of the Taxes Act 1988 (payments to MPs and others exempt from tax as emoluments), for the words from “but without prejudice” to the end substitute “ but without prejudice to any charge to tax under section 148 ”.
- 3 In section 202B(8) of the Taxes Act 1988 (receipts basis of assessment), for “143(1) (a) or 148(4)” substitute “ or 143(1)(a) ”.
- 4 In section 833(3)(a) of the Taxes Act 1988 (calculation of top slice of a person’s income), after “payment” insert “ or other benefit ”.

#### *Finance Act 1995 (c.4)*

- 5 In section 92 of the Finance Act 1995 (post-employment deductions), for subsection (10) substitute—
  - “(10) Tax shall not be charged under section 148 of the Taxes Act 1988 (payments and other benefits in connection with termination of employment etc) in respect of a payment or other benefit received by an individual, or an individual’s executors or administrators, in so far as—
    - (a) in the case of a cash benefit, it is provided for meeting the cost of an amount to which this subsection applies, or
    - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of defraying such an amount.

This subsection applies to an amount which, without being an amount to which this section applies, would fall to be treated as such an amount if subsection (4) of this section were omitted and, where the individual has died, he had not died but had himself defrayed any amounts defrayed by his executors or administrators.”.

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## SCHEDULE 10

Section 61(2).

## ORDINARY COMMUTING AND PRIVATE TRAVEL

The Schedule inserted as Schedule 12A to the Taxes Act 1988 is as follows:—

## “SCHEDULE 12A

## ORDINARY COMMUTING AND PRIVATE TRAVEL

*Introduction*

- 1 (1) The provisions of this Schedule apply for the purposes of section 198(1A)(b)(ii) (qualifying travelling expenses: exclusion of ordinary commuting and private travel).
- (2) In this Schedule “employment” includes an office and “employee” includes an office-holder.

*Ordinary commuting and private travel*

- 2 (1) “Ordinary commuting” means travel between—
  - (a) the employee’s home, or
  - (b) a place that is not a workplace in relation to the employment, and a place which is a permanent workplace in relation to the employment.
- (2) “Private travel” means travel between—
  - (a) the employee’s home and a place that is not a workplace in relation to the employment, or
  - (b) between two places neither of which is a workplace in relation to the employment.
- (3) In sub-paragraphs (1)(b) and (2) “workplace” means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.
- 3 Travel between any two places that is for practical purposes substantially ordinary commuting or private travel is treated as ordinary commuting or private travel.

*Permanent and temporary workplaces*

- 4 For the purposes of paragraph 2, subject to the following provisions of this Schedule—
 

“permanent workplace” means a place which the employee regularly attends in the performance of the duties of the employment and which is not a temporary workplace; and

“temporary workplace” means a place which the employee attends in the performance of the duties of the employment for the purpose of performing a task of limited duration or for some other temporary purpose.

*The 24 month rule and fixed term appointments*

- 5 (1) A place is not regarded as a temporary workplace if the employee’s attendance is in the course of a period of continuous work at that place—
  - (a) lasting more than 24 months, or

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- (b) comprising all or almost all of the period for which the employee is likely to hold the employment,  
or if the employee's attendance is at a time when it is reasonable to assume that it will be in the course of such a period.
- (2) A "period of continuous work" at a place means a period over which, looking at the whole period and considering all the duties of the employment, the duties of the employment fall to be performed to a significant extent at that place.
- (3) An actual or contemplated modification of the place at which the duties of the employment fall to be performed is disregarded for the purposes of this paragraph if it does not have, or would not have, any substantial effect on the employee's journey, or expenses of travelling, to and from the place where the duties fall to be performed.

#### *Depots and bases*

- 6 A place which the employee regularly attends in the performance of the duties of the employment—
- (a) which forms the base from which the duties of the employment are performed, or
  - (b) is the place at which the tasks to be carried out in the performance of those duties are allocated,
- is treated as a permanent, and not a temporary, workplace.

#### *Area-based employees*

- 7 (1) An employee is treated as having a permanent workplace consisting of an area if the following conditions are met.
- (2) The conditions are that—
- (a) the duties of the employment are defined by reference to an area (whether or not they also require attendance at places outside the area),
  - (b) in the performance of the duties of the employment the employee attends different places within the area,
  - (c) none of the places he attends in the performance of the duties of the employment is a permanent workplace, and
  - (d) applying paragraphs 4 and 5 to the area as if it were a place, the area meets the conditions for being a permanent workplace.”.

## SCHEDULE 11

Section 62.

### TRANSITIONAL PROVISIONS FOR PROFIT-RELATED PAY

#### *Application of Schedule*

- 1 —(1) This Schedule applies for the purposes of Chapter III of Part V of the Taxes Act 1988 (profit-related pay) where—
- (a) profit-related pay is or has been paid to an employee by reference to any period (“the relevant period”) and in accordance with a registered scheme (“the affected scheme”), and

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- (b) sub-paragraph (2) or (3) below applies in the employee's case to the relevant period.
- (2) This sub-paragraph applies in the employee's case to the relevant period if—
- (a) that period is a period beginning for the employee at a time on or after 17th March 1998 and ending before 31st December 2000;
  - (b) the employee has been eligible in accordance with a related scheme to receive profit-related pay by reference to the whole or a part of any profit period for the related scheme ("the earlier period");
  - (c) the earlier period is (or, by virtue of sub-paragraph (4) below, is treated as being) a period beginning before the first day of the relevant period; and
  - (d) the relevant anniversary is (or, by virtue of that sub-paragraph, is treated as being) in a later calendar year than the first day of the relevant period.
- (3) This sub-paragraph applies in the employee's case to the relevant period if—
- (a) that period is a period beginning for the employee at a time on or after 17th March 1998 and ending before 31st December 2000;
  - (b) the employee has been eligible in accordance with either the affected scheme or a related scheme to receive profit-related pay by reference to the whole or any part of a profit period ("the earlier period");
  - (c) the earlier period is a period beginning twelve months or less before the first day of the relevant period;
  - (d) the section 171(4) limit for the earlier period is a limit computed in accordance with this Schedule; and
  - (e) the relevant anniversary is in a later calendar year than the first day of the relevant period.
- (4) Where—
- (a) the conditions in paragraphs (a) and (b) of sub-paragraph (2) above are satisfied in relation to the relevant period in the case of any employee, and
  - (b) the person who is the scheme employer in relation to the affected scheme, by notice to the employee, elects that this sub-paragraph shall apply in relation to the related scheme,

the earlier period referred to in that sub-paragraph shall be assumed for the purposes of this Schedule to be a period beginning with the 1st January next before the first day of the relevant period.

*Rule for determining section 171(4) limit*

- 2 (1) The section 171(4) limit applicable to any profit-related pay paid to the employee in accordance with the affected scheme and by reference to the relevant period shall be—
- (a) if the relevant period does not begin for the employee before the apportionment date, the limit for the part of the profit period falling on or after that date; and
  - (b) in any other case the sum of—
    - (i) the limit for the part of the relevant period falling on or after the apportionment date; and
    - (ii) the limit for the part of the relevant period falling before that date.



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- (2) For the purposes of sub-paragraph (1) above the limit for a part of the relevant period shall be computed by—
- (a) taking the amount given by virtue of section 61 of the <sup>M247</sup>Finance Act 1997 (phasing out of relief for profit-related pay) as the section 171(4) limit for a profit period beginning with the first day of that part of that period and ending with the last day of that part of that period;
  - (b) making a proportionate reduction for so much of that part of that period (if any) as is not included in any period by reference to which the employee is eligible for profit-related pay in accordance with the affected scheme; and
  - (c) using—
    - (i) the amount produced by the reduction, or
    - (ii) (if no reduction has been made) the amount taken in accordance with paragraph (a) above,as the limit for that part of the relevant period.
- (3) Subject to sub-paragraph (4) below, the apportionment date in the case of any employee is for the purposes of this paragraph—
- (a) except where the person who is the scheme employer for the affected scheme otherwise elects by notice to that employee, the 1st January that falls next after the first day of the relevant period; and
  - (b) where that person does so elect, the date which is the relevant anniversary for the purposes of whichever of sub-paragraphs (2) and (3) of paragraph 1 above applies to the relevant period in the employee's case.
- (4) Where—
- (a) both sub-paragraphs (2) and (3) of paragraph 1 above apply to the relevant period in the employee's case, or
  - (b) there is, for any other reason, more than one date which (but for this sub-paragraph) would be taken in accordance with sub-paragraph (3)(b) above to be the apportionment date,
- the apportionment date shall be the earliest of those dates to fall in the calendar year immediately following that in which the first day of the relevant period falls.

#### Marginal Citations

M247 1997 c. 16.

#### *Meaning of related scheme*

- 3 (1) In the case of any employee a scheme is, in relation to the affected scheme, a related scheme for the purposes of this Schedule if—
- (a) it was a registered scheme at any relevant time and the conditions set out in sub-paragraph (2) below are satisfied with respect to it; or
  - (b) notice that for the purposes of this Schedule it is to be treated as a related scheme in relation to the affected scheme is given to the employee by the scheme employer for the affected scheme.
- (2) Those conditions are satisfied with respect to a scheme ("the relevant scheme") if a person who is the scheme employer for the affected scheme was, at a relevant time—
- (a) the scheme employer for the relevant scheme; or

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- (b) connected with a person who was, at that or another relevant time, the scheme employer for the relevant scheme.
- (3) In this paragraph “relevant time” means any time on the day of the beginning for the employee of the relevant period or in the period of twelve months preceding that day.
- (4) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.
- (5) Without prejudice to sub-paragraph (4) above, for the purposes of this paragraph—
  - (a) each of the members of a partnership shall be regarded as connected with the partnership and with any person (including another partnership) with whom the partnership is connected; and
  - (b) a partnership shall be regarded as connected with each of its members and with any person (including another partnership) with whom any of its members is connected.

*Meaning of “relevant anniversary”y*

- 4 For the purposes of this Schedule the relevant anniversary is—
  - (a) for the purposes of paragraph 1(2) above, the first anniversary of the first day of the earlier period; and
  - (b) for the purposes of paragraph 1(3) above, the first anniversary of the date that is taken to be the relevant anniversary for the purpose of computing the section 171(4) limit for the earlier period in accordance with this Schedule.

*General interpretation*

- 5 (1) Expressions used in this Schedule and in Chapter III of Part V of the Taxes Act 1988 have the same meanings in this Schedule as in that Chapter.
- (2) References in this Schedule to the section 171(4) limit are references to the second of the limits mentioned in section 171(2) of the Taxes Act 1988; and this Schedule shall have effect on the basis that that limit is nil for any period (or part of a period) beginning on or after 1st January 2000.
- (3) References in this Schedule to the beginning for the employee of any profit period by reference to which he is eligible to receive profit-related pay are references—
  - (a) where sub-paragraph (4) below applies, to the earliest time in that period which is included in a part of that period by reference to which he is so eligible; and
  - (b) in any other case, to the beginning of the first day of the period in question.
- (4) This sub-paragraph applies where—
  - (a) the employee is eligible to receive profit-related pay by reference to only a part of the relevant period; and
  - (b) that part of that period begins after the beginning of that period.

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## SCHEDULE 12

Section 70.

### EIS AND VCTS: MEANING OF QUALIFYING TRADE

#### *New exclusions for the enterprise investment scheme*

- 1 (1) In subsection (2) of section 297 of the Taxes Act 1988 (activities excluded from qualifying trade), the following paragraphs shall be inserted after paragraph (f)—
- “(fa) property development;
  - (fb) farming or market gardening;
  - (fc) holding, managing or occupying woodlands, any other forestry activities or timber production;
  - (fd) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment;
  - (fe) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home;”.
- (2) In paragraph (g) of that subsection (providing support for the carrying on of excluded activities), for “(f)” there shall be substituted “ (fe) ”.
- (3) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) For the purposes of this Chapter the activities of a person shall not be taken to fall within paragraph (fd) or (fe) of subsection (2) above except where that person has an estate or interest in, or is in occupation of, the hotels or comparable establishments or, as the case may be, the nursing homes or residential care homes.”

#### *Definition of excluded activities for the enterprise investment scheme*

- 2 (1) In subsection (5) of section 298 of the Taxes Act 1988 (interpretation of section 297), after the definition of “film” there shall be inserted the following definition—
- ““nursing home” means any establishment which exists wholly or mainly for the provision of nursing care for persons suffering from sickness, injury or infirmity or for women who are pregnant or have given birth to children;”.
- (2) In that subsection, before the word “and” at the end of the definition of “pleasure craft” there shall be inserted the following definitions—
- ““property development” means the development of land—
- (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed;
- “residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of old age, mental or physical disabilities, past or present dependence on alcohol or drugs or any past illnesses or past or present mental disorders; ”.

- (3) After that subsection there shall be inserted the following subsections—

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“(5A) References in this section, in relation to an hotel, to a comparable establishment are references to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (whether with or without catering services).

(5B) Subject to subsection (5C) below, the reference in subsection (5) above to an interest in land is a reference to—

- (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land; or
- (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant the estate, interest or right.

(5C) References in this section to an interest in land do not include references to—

- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land; or
- (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.”

#### *New exclusions for VCTs*

- 3 (1) In sub-paragraph (2) of paragraph 4 of Schedule 28B to the Taxes Act 1988 (activities excluded from qualifying trade), the following paragraphs shall be inserted after paragraph (e)—

- “(ea) property development;
- (eb) farming or market gardening;
- (ec) holding, managing or occupying woodlands, any other forestry activities or timber production;
- (ed) operating or managing hotels or comparable establishments, or managing property used as an hotel or comparable establishment;
- (ee) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home;”.

- (2) In paragraph (f) of that sub-paragraph (providing support for the carrying on of excluded activities), for “(e)” there shall be substituted “(ee)”.

- (3) After sub-paragraph (3) of that paragraph there shall be inserted the following sub-paragraph—

“(3A) For the purposes of this Schedule the activities of a person shall not be taken to fall within paragraph (ed) or (ee) of sub-paragraph (2) above except where that person has an estate or interest in, or is in occupation of, the hotels or comparable establishments or, as the case may be, the nursing homes or residential care homes.”

#### *Definition of excluded activities for VCTs*

- 4 (1) In sub-paragraph (1) of paragraph 5 of that Schedule (interpretation of paragraph 4), after the definition of “film” there shall be inserted the following definition—

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““nursing home” means any establishment which exists wholly or mainly for the provision of nursing care for persons suffering from sickness, injury or infirmity or for women who are pregnant or have given birth to children;”.

- (2) In that sub-paragraph, after the definition of “pleasure craft” there shall be inserted the following definition—

““property development” means the development of land—

- (a) by a company which has, or at any time has had, an interest in the land, and
- (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed;”.

- (3) In that sub-paragraph, before the word “and” at the end of the definition of “research and development” there shall be inserted the following definition—

“residential care home means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of old age, mental or physical disabilities, past or present dependence on alcohol or drugs or any past illnesses or past or present mental disorders;”.

- (4) In sub-paragraph (5) of that paragraph (definitions for the purposes of that paragraph), after the definition of “director” there shall be inserted the following definition—

““interest in land” means (subject to sub-paragraph (6) below)—

- (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land; or
- (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant the estate, interest or right.”

- (5) After that sub-paragraph there shall be inserted the following sub-paragraphs—

“(6) References in paragraph 4 above, in relation to an hotel, to a comparable establishment are references to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (whether with or without catering services).

(7) References in this paragraph to an interest in land do not include references to—

- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land; or
- (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.”

#### *Commencement*

- 5 (1) Paragraphs 1 and 2 above have effect in relation to shares issued on or after 17th March 1998.

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- (2) Subject to sub-paragraph (3) below, paragraphs 3 and 4 above have effect for the purpose of determining whether any shares or securities are, as at any time on or after 17th March 1998, to be regarded as comprised in the qualifying holdings of any company (“the trust company”).
- (3) Paragraphs 3 and 4 above shall not have effect for the purpose of making such a determination in relation to any shares or securities acquired by the trust company by means of the investment of—
- (a) money raised by the issue before 17th March 1998 of shares in or securities of the trust company, or
  - (b) money derived from the investment by that company of any such money.

## SCHEDULE 13

Section 74(1).

### CHANGES TO EIS ETC

#### PART I

#### EIS INCOME TAX RELIEF

##### *Eligibility for relief*

- 1 (1) In subsection (1) of section 289 of the Taxes Act 1988—
- (a) in paragraph (a), after the words “has subscribed” there shall be inserted the words “wholly in cash”;
  - (b) after that paragraph there shall be inserted the following paragraph—
    - “(aa) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),”;
  - (c) in paragraph (b), after the words “the shares” there shall be inserted the words “and all other shares comprised in the same issue”; and
  - (d) in paragraph (c), for the words “that activity” there shall be substituted the words “the activity mentioned in paragraph (b) above”.
- (2) In subsection (1A)(c) of that section, for the word “subsidiary” there shall be substituted the words “90 per cent. subsidiary”.
- (3) In subsection (6) of that section, after the word “subscribed” there shall be inserted the word “for”.
- (4) In subsection (7) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.
- (5) After subsection (8) of that section there shall be inserted the following subsection—
- “(9) In this section “90 per cent. subsidiary”, in relation to the qualifying company, means a subsidiary of a kind which the company might hold by virtue of section 308 if—
    - (a) the references in subsection (2) of that section to 75 per cent. were references to 90 per cent.; and

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(b) subsection (4) of that section were omitted.”

*Form of relief*

2 In subsection (4) of section 289A of the Taxes Act 1988, for “£15,000” there shall be substituted “ £25,000 ”.

*Attribution of relief to shares*

3 (1) In subsection (3)(b) of section 289B of the Taxes Act 1988, for the words “bonus shares in that company which are eligible shares” there shall be substituted the words “ corresponding bonus shares in that company ”.

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

“(3A) In subsection (3) above “corresponding bonus shares” means bonus shares which—

- (a) are issued in respect of the shares comprised in the original issue; and
- (b) are of the same class, and carry the same rights, as those shares.”

(3) For subsection (4) of that section there shall be substituted the following subsection—

“(4) Subject to subsection (5) below, in this Chapter references (however expressed) to an issue of eligible shares in any company to an individual are references to any eligible shares in the company that are of the same class and are issued to him on the same day.”

(4) In subsection (5) of that section, for the words “the following provisions of this Chapter (except section 290(1))” there shall be substituted the words “ sections 299(4) and 306(1) ”.

(5) Sub-paragraphs (1) and (2) above have effect in relation to bonus shares issued on or after 6th April 1998.

*Maximum subscriptions etc.*

4 In subsection (2) of section 290 of the Taxes Act 1988, for “£100,000” there shall be substituted “ £150,000 ”.

5 Section 290A of the Taxes Act 1988 shall cease to have effect.

*Individuals qualifying for relief*

6 (1) In subsection (1) of section 291 of the Taxes Act 1988, for the words “the relevant period connected with the company” there shall be substituted the words “ the seven year period connected with the company (whether before or after its incorporation) ”.

(2) In subsection (2) of that section, the words “and sections 291A and 291B” shall cease to have effect.

(3) For subsection (3) of that section there shall be substituted the following subsection—

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“(3) In subsection (2) above “subsidiary”, in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned or his associate is such an employee, partner or director as is mentioned in that subsection.”

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

“(6) In this Chapter “the seven year period”, in relation to relief in respect of any eligible shares issued by a company, means the period beginning two years before, and ending five years after, the issue of the shares.”

*Connected persons: directors*

7 (1) In subsection (1)(a) of section 291A of the Taxes Act 1988, for the words “the relevant period” there shall be substituted the words “the seven year period”.

(2) In subsection (5) of that section—

(a) for sub-paragraph (ii) of paragraph (b) there shall be substituted the following sub-paragraph—

“(ii) involved in carrying on (whether on his own account or as a partner, director or employee) the whole or any part of the trade carried on by the issuing company or a subsidiary, and”; and

(b) the words “and the reference to a trade previously carried on includes part of such a trade” shall cease to have effect.

*Connected persons: persons interested in capital etc.*

8 (1) After subsection (5) of section 291B of the Taxes Act 1988 there shall be inserted the following subsection—

“(5A) An individual is not connected with a company by reason only of the fact that one or more shares in the company are held by him, or by an associate of his, at a time when the company—

(a) has not issued any shares other than subscriber shares; and

(b) has not begun to carry on, or to make preparations for carrying on, any trade or business.”

(2) For subsection (6) of that section there shall be substituted the following subsection—

“(6) In this section “subsidiary”, in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent. subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.”



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### *Qualifying companies and qualifying trades*

- 9 (1) In subsection (3B)(b) of section 293 of the Taxes Act 1988, after the word “activities” there shall be inserted the words “ (other than research and development and oil exploration) ”.
- (2) In paragraph (a) of subsection (6) of that section, the words “it is shown that” shall cease to have effect.
- (3) After that subsection there shall be inserted the following subsections—
- “(6A) The value of the relevant assets—
- (a) must not exceed £15 million immediately before the issue of the eligible shares; and
- (b) must not exceed £16 million immediately afterwards.
- (6B) Subject to subsection (6C) below, the reference in subsection (6A) above to the value of the relevant assets is a reference—
- (a) in relation to a time when the company did not have any qualifying subsidiaries, to the value of the gross assets of the company at that time; and
- (b) in relation to any other time, to the aggregate value at that time of the gross assets of all the companies in the company’s group.
- (6C) For the purposes of subsection (6B) above assets of any member of the company’s group that consist in rights against, or in shares in or securities of, another member of the group shall be disregarded.
- (6D) In subsections (6B) and (6C) above references, in relation to any time, to the company’s group are references to the company and its qualifying subsidiaries at that time.”
- (4) Subsection (7) of that section shall cease to have effect.
- (5) In subsection (8) of that section, for the words “Subject to section 308” there shall be substituted the words “ Subject to sections 304A and 308 ”.
- (6) Sub-paragraph (2) above has effect in relation to events occurring on or after 6th April 1998.
- 10 In subsection (1) of section 297 of the Taxes Act 1988, the words “Subject to section 298(7) below” shall cease to have effect.
- 11 In subsection (1) of section 298 of the Taxes Act 1988, for the words “sections 293(9) and 297” there shall be substituted the words “ section 297 ”.

### *Disposal of shares*

- 12 (1) In subsection (1) of section 299 of the Taxes Act 1988—
- (a) for the words from the beginning to “relevant period” there shall be substituted the words “ Subject to section 304(1), where an individual makes, before the end of the relevant period, any disposal of eligible shares to which relief is attributable ”; and
- (b) in paragraphs (a) and (b)(ii), for the words “any relief” there shall be substituted the words “ the relief ”.
- (2) In subsection (3) of that section—

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- (a) for the words “any issue of shares held by any person” there shall be substituted the words “any issue of eligible shares held by any individual”; and
  - (b) for the words “the shares” there shall be substituted the words “the issue”.
- (3) In subsection (4) of that section—
- (a) after the words “any issue of” there shall be inserted the word “eligible”; and
  - (b) after the word “shares” there shall be inserted the words “issued in that year (or treated by section 289B(5) as so issued)”.
- (4) After subsection (5) of that section there shall be inserted the following subsection—
- “(5A) The shares to which such an option relates shall be taken to be those which, if—
- (a) the option were exercised immediately after the grant, and
  - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of this section as disposed of in pursuance of the option.”
- (5) For subsection (6) of that section there shall be substituted the following subsections—
- “(6) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated for the purposes of this section as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (6A) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated for the purposes of this section as disposed of in the following order, namely—
- (a) first any to which neither relief under this Chapter nor deferral relief is attributable;
  - (b) next any to which deferral relief, but not relief under this Chapter, is attributable;
  - (c) next any to which relief under this Chapter, but not deferral relief, is attributable; and
  - (d) finally any to which both relief under this Chapter and deferral relief are attributable;
- and in this subsection and subsection (6C) below “deferral relief” has the same meaning as in Schedule 5B to the 1992 Act.
- (6B) Any shares falling within paragraph (c) or (d) of subsection (6A) above which are treated by section 289B(5) as issued on an earlier day shall be treated as disposed of before any other shares falling within that paragraph.
- (6C) The following, namely—
- (a) any shares to which relief under this Chapter is attributable and which were transferred to an individual as mentioned in section 304, and
  - (b) any shares to which deferral relief, but not relief under this Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 of the 1992 Act applies,

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shall be treated for the purposes of subsections (6) and (6A) above as acquired by him on the day on which they were issued.

(6D) In a case to which section 127 of the 1992 Act applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of subsections (6) and (6A) above as acquired when the original shares were acquired.

In this subsection “new holding” and “original shares” shall be construed in accordance with sections 126, 127, 135 and 136 of the 1992 Act.”

- (6) Subsection (7) of that section shall cease to have effect.
- (7) Subsection (8)(a) of that section shall cease to have effect.
- (8) Sub-paragraphs (1), (3)(b), (5) and (6) above have effect in relation to disposals made on or after 6th April 1998.
- (9) Sub-paragraph (4) above has effect in relation to options granted on or after that date.

*Value received from company*

13 (1) For subsection (1) of section 300 of the Taxes Act 1988 there shall be substituted the following subsection—

“(1) Subsection (1A) below applies where an individual who subscribes for eligible shares in a company receives any value from the company at any time in the seven year period.”

(2) For subsection (1C) of that section there shall be substituted the following subsection—

“(1C) References in subsection (1) above to the receipt of value from a company include references to the receipt of value from a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the time when the individual concerned receives the value from him; and other references to the company in this section and section 301 shall be read accordingly.”

(3) After subsection (5) of that section there shall be inserted the following subsection—

“(6) Where by reason of an individual’s disposal of shares in a company any relief attributable to those shares is withdrawn or reduced under section 299, the individual shall not be treated for the purposes of this section as receiving value from the company in respect of the disposal.”

(4) Sub-paragraph (3) above has effect in relation to disposals made on or after 6th April 1998.

14 (1) After subsection (4) of section 301 of the Taxes Act 1988 there shall be inserted the following subsection—

“(4A) For the purposes of this section and section 300, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.”

(2) In subsection (5) of that section, for the words “the credit” there shall be substituted the words “ any credit ”.

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- (3) Sub-paragraph (1) above has effect in relation to value received (within the meaning of section 300 of that Act) on or after 6th April 1998.

*Value received by persons other than claimants*

- 15 (1) For subsections (1) to (2) of section 303 of the Taxes Act 1988 there shall be substituted the following subsections—

“(1) Where, in the case of an issue of eligible shares in a company, any relief is attributable to any shares comprised in the issue which are held by an individual, subsection (1A) below shall apply if at any time in the seven year period the company or any subsidiary—

- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than that individual or a person who falls within subsection (1B) below, or
- (b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(1A) The relief—

- (a) if it is greater than the amount mentioned in subsection (1C) below, shall be reduced by that amount, and
- (b) if paragraph (a) above does not apply, shall be withdrawn.

(1B) A person falls within this subsection if the repayment, redemption, repurchase or payment in question—

- (a) causes any relief attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a), or
- (b) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act) in respect of him.

(1C) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given—

- (a) where subsection (1) above does not apply in the case of any other individual, on the amount receivable by the member;
- (b) where that subsection also applies in the case of one or more other individuals, on the appropriate fraction of that amount;

and subsection (4) of section 299 applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.

(1D) In subsection (1C) above “the appropriate fraction” is—

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

where—

A is the amount subscribed by the individual for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A)(b) above, would be attributable;

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B is the aggregate of that amount and the amount or amounts subscribed by the other individual or individuals for such shares.

- (2) Where the repayment, redemption, repurchase or payment mentioned in subsection (1) above falls within the seven year periods for two or more issues of eligible shares in the company, subsection (1A) above shall have effect in relation to each of those issues as if the amount receivable by the member were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

where—

C is the amount subscribed by individuals for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A) (b) above, would be attributable;

D is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.”

- (2) In subsection (3) of that section, for the words “the relevant period” there shall be substituted the words “ the seven year period ”.
- (3) For subsection (9A) of that section there shall be substituted the following subsection—

“(9A) References in this section to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question or, as the case may be, the receipt of value in question.”

#### *Husband and wife*

- 16 (1) After subsection (3) of section 304 of the Taxes Act 1988 there shall be inserted the following subsection—

“(4) Subsections (6) to (6D) of section 299 shall apply for the purposes of this section as they apply for the purposes of that section.”

- (2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

#### *Acquisition of share capital by new company*

- 17 (1) After section 304 of the Taxes Act 1988 there shall be inserted the following section—

#### **“304A Acquisition of share capital by new company.**

(1) This section applies where—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
- (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;

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- (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
  - (e) at some time before the issue of the new shares—
    - (i) the old company issued eligible shares; and
    - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and
  - (f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—
    - (i) will be effected for bona fide commercial reasons; and
    - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.
- (2) For the purposes of this Chapter—
- (a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and
  - (b) any relief under this Chapter which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and
  - (d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which his liability was so reduced in respect of the old shares.
- (4) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and
  - (d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that

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for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

- (5) Where relief becomes so attributable to any new shares—
- (a) this Chapter shall have effect as if anything which, under section 306(2), 307(1A) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and
  - (b) any appeal brought by the old company against a notice under section 307(1A)(b) may be prosecuted by the new company as if it had been brought by that company.
- (6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
- (7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.
- (8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.”
- (2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.

#### *Relief for loss on disposal of shares*

- 18 (1) In subsection (2) of section 305A of the Taxes Act 1988, for the words “576(2) and (3)” there shall be substituted the words “ 576(1) to (3) ”.
- (2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

#### *Claims*

- 19 (1) In subsection (1) of section 306 of the Taxes Act 1988, after the word “assessment”, in the first place where it occurs, there shall be inserted the words “ (or treated by section 289B(5) as so issued) ”.
- (2) In subsection (2) of that section, for the words “the conditions for the relief, so far as applying to the company and the trade,” there shall be substituted the words “ , except so far as they fall to be satisfied by that person, the conditions for the relief ”.
- (3) For subsection (3) of that section there shall be substituted the following subsection—
- “(3) Before issuing a certificate for the purposes of subsection (2) above a company shall furnish the inspector with a statement to the effect that, except so far as they fall to be satisfied by the persons to whom eligible shares comprised in the share issue have been issued, the conditions for the relief—
- (a) are satisfied in relation to that issue; and

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- (b) have been so satisfied at all times since the beginning of the relevant period.”
- (4) In subsection (3A) of that section, the words “but section 289B(5) shall not apply for the purposes of this subsection” shall cease to have effect.
- (5) For subsections (4) and (5) of that section there shall be substituted the following subsections—
- “(4) No certificate shall be issued for the purposes of subsection (2) above without the authority of the inspector; but where the company, or a person connected with the company, has given notice to the inspector under section 310(2) or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act, the authority must be given or renewed after the receipt of the notice.
- (5) Any statement under subsection (3) above shall be in such form as the Board may direct and shall contain—
- (a) such additional information as the Board may reasonably require, including in particular information relating to the persons who have requested the issue of certificates under subsection (2) above;
- (b) a declaration that the statement is correct to the best of the company’s knowledge and belief; and
- (c) such other declarations as the Board may reasonably require.”

#### *Withdrawal of relief*

- 20 (1) In subsection (1A) of section 307 of the Taxes Act 1988—
- (a) for the words “section 289(1)(b) or (c)” there shall be substituted the words “ section 289(1)(b), (ba) or (c) ”; and
- (b) after the words “section 310” there shall be inserted the words “ or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act ”.
- (2) After subsection (1B) of that section there shall be inserted the following subsection—
- “(1C) Where any issue has been determined on an appeal brought by virtue of paragraph 1A(6) of Schedule 5B to the 1992 Act (appeal against notice that shares never have been, or have ceased to be, eligible shares), the determination shall be conclusive for the purposes of any appeal brought by virtue of subsection (1B) above on which that issue arises.”
- (3) In subsection (4) of that section, for the words “ordinary shares” there shall be substituted the words “ eligible shares ”.
- (4) In subsection (6)(b) of that section, for the words “section 291” there shall be substituted the words “ section 289(1)(ba), 291 ”.

#### *Application to subsidiaries*

- 21 In subsection (2) of section 308 of the Taxes Act 1988, for the words “90 per cent.”, in each place where they occur, there shall be substituted the words “ 75 per cent. ”.



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### *Information*

- 22 (1) In subsection (1) of section 310 of the Taxes Act 1988, for the words “299A, 300 or 304” there shall be substituted the words “ 299A or 300 ”.
- (2) In subsection (2) of that section—
- (a) for the words “289(1)(c) or (6), 293, 297” there shall be substituted the words “ 289(1)(ba) or (c), 293 ”; and
- (b) the words “or payment” shall cease to have effect.
- (3) In subsection (7) of that section, for the words “300, 301 and 303(3)” there shall be substituted the words “ 300 and 303(3) ”.
- (4) After subsection (9) of that section there shall be inserted the following subsection—
- “(9A) References in this section to withdrawal of relief include its reduction.”
- (5) This paragraph has effect in relation to events occurring on or after 6th April 1998.

### *Interpretation of Chapter III*

- 23 (1) In subsection (1) of section 312 of the Taxes Act 1988—
- (a) the definition of “new consideration” shall cease to have effect; and
- (b) for the definitions of “research and development” and “relief” there shall be substituted the following definitions—
- “relief” means relief under this Chapter;
- ‘research and development’ means any activity which is intended to result in a patentable invention (within the meaning of the <sup>M248</sup>Patents Act 1977) or in a computer program;
- ‘the seven year period’ has the meaning given by section 291(6);”.
- (2) In subsection (1A) of that section, the words “(disregarding section 289B(5))” shall cease to have effect.
- (3) In subsection (1B)(c) of that section, the words “dealt in on the Unlisted Securities Market or” shall cease to have effect.
- (4) In subsection (2) of that section, for the words “sections 291 to 291B” there shall be substituted the words “ section 291, section 291A(1), (4) and (5) and section 291B ”.
- (5) After subsection (4) of that section there shall be inserted the following subsections—
- “(4A) In this Chapter references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day.
- (4B) For the purposes of this Chapter shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.”
- (6) In subsection (7) of that section, for the words “section 289(2)(c)” there shall be substituted the words “ subsection (2)(c) of section 289 ”.

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### Marginal Citations

M248 1977 c. 37.

## PART II

### EIS RELIEF AGAINST CHARGEABLE GAINS

- 24 (1) In subsections (1) and (2) of section 150A of the <sup>M249</sup>Taxation of Chargeable Gains Act 1992 (enterprise investment schemes), the word “eligible” shall cease to have effect.
- (2) In subsection (4)(a) of that section, for the words “issued to a person at different times a disposal relates” there shall be substituted the words “acquired by an individual at different times a disposal relates to”.
- (3) In subsection (5) of that section, for the words “Sections 104, 105 and 107” there shall be substituted the words “Sections 104, 105 and 106A”.
- (4) For subsection (6) of that section there shall be substituted the following subsections—
- “(6) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which relief is attributable and to which subsection (6A) below applies,
  - (b) shares to which relief is attributable and to which that subsection does not apply, and
  - (c) shares to which relief is not attributable,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this section) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (6A) This subsection applies to any shares if—
- (a) expenditure on the shares has been set under Schedule 5B to this Act against the whole or part of any gain; and
  - (b) in relation to the shares there has been no chargeable event for the purposes of that Schedule.”

(5) In subsection (8A)(a) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.

(6) After subsection (8C) of that section there shall be inserted the following subsection—

“(8D) Where shares to which relief is attributable are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—

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- (a) subsection (8) above shall not have effect to disapply section 135; and
  - (b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.”
- (7) After subsection (10) of that section there shall be inserted the following subsection—
- “(10A) In this section—
- “ordinary share capital” has the same meaning as in the Taxes Act;
  - “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.”
- (8) In this paragraph—
- (a) sub-paragraphs (1) to (3) have effect in relation to disposals made on or after 6th April 1998;
  - (b) sub-paragraph (4) has effect in relation to reorganisations taking effect on or after that date;
  - (c) sub-paragraph (5) has effect in relation to new shares (within the meaning of section 150A(8A) of the <sup>M250</sup>Taxation of Chargeable Gains Act 1992) issued on or after that date;
  - (d) sub-paragraph (6) has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after that date; and
  - (e) sub-paragraph (7) has effect in relation to events occurring on or after that date.

#### Marginal Citations

M249 1992 c. 12.

M250 1992 c. 12.

- 25 (1) In subsection (1) of section 150B of that Act (enterprise investment scheme: reduction of relief), the word “eligible” shall cease to have effect.
- (2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

### PART III

#### EIS DEFERRAL OF CHARGEABLE GAINS

##### *Preliminary*

- 26 Schedule 5B to the <sup>M251</sup>Taxation of Chargeable Gains Act 1992 (enterprise investment scheme: re-investment) shall be amended in accordance with the following provisions of this Part.

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### Marginal Citations

M251 1992 c. 12.

### Application of Schedule

27 (1) In sub-paragraph (1)(b) of paragraph 1, after the words “in accordance with” there shall be inserted the words “ section 164F or 164FA, ”.

(2) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted the following sub-paragraphs—

“(2) The investor makes a qualifying investment for the purposes of this Schedule if—

- (a) eligible shares in a company for which he has subscribed wholly in cash are issued to him at a qualifying time and, where that time is before the accrual time, the shares are still held by the investor at the accrual time,
- (b) the company is a qualifying company in relation to the shares,
- (c) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),
- (d) the shares are subscribed for, and issued, for bona fide commercial purposes and not as part of arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
- (e) the requirements of section 289(1A) of the Taxes Act are satisfied in relation to the company,
- (f) all the shares comprised in the issue are issued in order to raise money for the purpose of a qualifying business activity, and
- (g) the money raised by the issue is employed not later than the time mentioned in section 289(3) of the Taxes Act wholly for the purpose of that activity,

and for the purposes of this Schedule, the condition in paragraph (g) above does not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.

(3) In sub-paragraph (2) above “a qualifying time”, in relation to any shares subscribed for by the investor, means—

- (a) any time in the period beginning one year before and ending three years after the accrual time, or
- (b) any such time before the beginning of that period or after it ends as the Board may by notice allow.”

### Failure of conditions of application

28 After that paragraph there shall be inserted the following paragraph—

#### “ Failure of conditions of application

1A (1) If the condition in sub-paragraph (2)(b) of paragraph 1 above is not satisfied in consequence of an event occurring after the issue of eligible shares, the

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shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.

- (2) If the condition in sub-paragraph (2)(e) of that paragraph is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.
- (3) If the condition in sub-paragraph (2)(f) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule as never having been eligible shares.
- (4) If the condition in sub-paragraph (2)(g) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule—
  - (a) if the claim under this Schedule is made after the time mentioned in section 289(3) of the Taxes Act, as never having been eligible shares; and
  - (b) if that claim is made before that time, as ceasing to be eligible shares at that time.
- (5) None of the preceding sub-paragraphs applies unless—
  - (a) the company has given notice under paragraph 16(2) or (4) below or section 310(2) of the Taxes Act; or
  - (b) an inspector has given notice to the company stating that, by reason of the matter mentioned in that sub-paragraph, the shares should, in his opinion, be treated for the purposes of this Schedule as never having been or, as the case may be, as ceasing to be eligible shares.
- (6) The giving of notice by an inspector under sub-paragraph (5) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.
- (7) Where any issue has been determined on an appeal brought by virtue of section 307(1B) of the Taxes Act (appeal against notice that relief was not due), the determination shall be conclusive for the purposes of any appeal brought by virtue of sub-paragraph (6) above on which that issue arises.”

#### *Postponement of original gain*

29 In sub-paragraph (3) of paragraph 2, for paragraph (a) there shall be substituted the following paragraph—

- “(a) the investor’s qualifying expenditure on any relevant shares is the amount subscribed by him for the shares; and”.

#### *Chargeable events*

- 30 (1) In sub-paragraph (1) of paragraph 3—
- (a) in paragraphs (c) and (d), for the words “the first relevant period” there shall be substituted the words “ the five year period ”; and
  - (b) for paragraphs (e) and (f) there shall be substituted the words “or

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(e) those shares cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.”

(2) Sub-paragraph (2) of that paragraph shall cease to have effect.

(3) After sub-paragraph (5) of that paragraph there shall be inserted the following sub-paragraph—

“(6) Any reference in the following provisions of this Schedule to a chargeable event falling within a particular paragraph of sub-paragraph (1) above is a reference to a chargeable event arising for the purposes of this Schedule by virtue of that paragraph.”

*Gains accruing on chargeable event*

31 (1) For sub-paragraphs (2) to (4) of paragraph 4 there shall be substituted the following sub-paragraphs—

“(2) Any question for the purposes of capital gains tax as to whether any shares to which a disposal (including a disposal within marriage) relates are shares to which deferral relief is attributable shall be determined in accordance with sub-paragraphs (3) and (4) below.

(3) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated as disposed of in the following order, namely—

- (a) first any to which neither deferral relief nor relief under Chapter III of Part VII of the Taxes Act is attributable;
- (b) next any to which deferral relief, but not relief under that Chapter, is attributable;
- (c) next any to which relief under that Chapter, but not deferral relief, is attributable; and
- (d) finally any to which both deferral relief and relief under that Chapter are attributable.

(4A) The following, namely—

- (a) any shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable and which were disposed of to an individual by a disposal within marriage, and
- (b) any shares to which relief under that Chapter is attributable and which were transferred to an individual as mentioned in section 304 of that Act,

shall be treated for the purposes of sub-paragraphs (3) and (4) above as acquired by him on the day on which they were issued.

(4B) Chapter I of Part IV of this Act has effect subject to sub-paragraphs (2) to (4A) above.

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(4C) Sections 104, 105 and 106A shall not apply to shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.”

(2) In sub-paragraph (5)(b) of that paragraph, for the words “the assumptions for which sub-paragraph (3) above provides” there shall be substituted the words “ sub-paragraphs (3) to (4A) above ”.

(3) This paragraph has effect in relation to disposals made on or after 6th April 1998.

*Persons to whom gain accrues*

32 In sub-paragraph (1) of paragraph 5, for paragraphs (c) and (d) there shall be substituted the words “or

(c) to the person who holds the shares in question when they cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.”

*Claims*

33 For paragraph 6 there shall be substituted the following paragraph—

*“ Claims*

6 (1) Subject to sub-paragraph (2) below, section 306 of the Taxes Act shall apply in relation to a claim under this Schedule in respect of relevant shares as it applies in relation to a claim for relief under Chapter III of Part VII of that Act in respect of eligible shares.

(2) That section, as it so applies, shall have effect as if—

- (a) any reference to the conditions for the relief were a reference to the conditions for the application of this Schedule;
- (b) in subsection (1), the words “(or treated by section 289B(5) as so issued)” were omitted; and
- (c) subsections (7) to (9) were omitted.”

*Reorganisations and reconstructions*

34 After paragraph 6 there shall be inserted the following paragraphs—

*“ Reorganisations*

7 (1) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—

- (a) shares to which deferral relief and relief under Chapter III of Part VII of the Taxes Act are attributable,
- (b) shares to which deferral relief but not relief under that Chapter is attributable, and
- (c) shares to which deferral relief is not attributable,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this paragraph) separately to shares falling within paragraph (a), (b) or (c)

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above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(2) Where—

- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
  - (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 existing holding or the allotted shares are shares to which deferral relief is attributable,
- sections 127 to 130 shall not apply in relation to the existing holding.

*Acquisition of share capital by new company*

8 (1) This paragraph applies where—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
  - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
  - (e) at some time before the issue of the new shares—
    - (i) the old company issued eligible shares; and
    - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied); and
  - (f) by virtue of section 127 as applied by section 135(3), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (2) For the purposes of this Schedule, deferral relief attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company; and
  - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.



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- (4) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were acquired by the individual on a disposal within marriage, this Schedule shall have effect as if—
  - (a) the new shares had been subscribed for at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company; and
  - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (5) Where deferral relief becomes so attributable to any new shares—
  - (a) this Schedule shall have effect as if anything which, under paragraph 1A(5) above, paragraph 16 below or section 306(2) of the Taxes Act as applied by paragraph 6 above has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and
  - (b) any appeal brought by the old company against a notice under paragraph 1A(5)(b) may be prosecuted by the new company as if it had been brought by that company.
- (6) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in sub-paragraph (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
- (7) Nothing in section 293(8) of the Taxes Act, as applied by the definition of “qualifying company” in paragraph 19(1) below, shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in sub-paragraph (1) above or arrangements with a view to such an exchange.

#### *Other reconstructions and amalgamations*

- 9 (1) Subject to sub-paragraphs (2) and (3) below, sections 135 and 136 shall not apply in respect of shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.
- (2) Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where—
  - (a) the new holding consists of new ordinary shares (“the new 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 right to be redeemed,
  - (b) the new shares are issued after the end of the relevant period, and
  - (c) the condition in sub-paragraph (4) below is satisfied.
- (3) Sub-paragraph (1) above shall not have effect to disapply section 135 where shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable are exchanged for other shares in such circumstances as are mentioned in paragraph 8(1) above.

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- (4) 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 (as applied by paragraph 6 above) and in accordance with that section (as so applied).
- (5) In sub-paragraph (2) above “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.”

*Anti-avoidance provisions*

35 After paragraph 9 there shall be inserted the following paragraphs—

*“ Re-investment in same company etc.*

- 10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—
- (a) is the company in which the initial holding subsisted; or
  - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.
- (2) Where—
- (a) any eligible shares in a qualifying company (“the acquired holding”) are issued to an individual,
  - (b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the “postponed gain”), and
  - (c) after the issue of those shares, eligible shares in a relevant company are issued to him,
- he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.
- (3) For the purposes of sub-paragraph (2) above a company is a relevant company if—
- (a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;
  - (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or

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- (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

*Pre-arranged exits*

- 11 (1) Where an individual subscribes for eligible shares (“the shares”) in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
  - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.
- (3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
  - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
  - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in sub-paragraph (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section.
- (6) In this paragraph “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and

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- (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

*Put options and call options*

- 12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares ("the shares") in a company and—
- (a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or
  - (b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.
- (2) The shares to which the option relates shall be treated for the purposes of this Schedule—
- (a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.
- (3) The shares to which the option relates shall be taken to be those which, if—
- (a) the option were exercised immediately after the grant, and
  - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of this Schedule as disposed of in pursuance of the option.
- (4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.
- (5) An individual who acquires any eligible shares on a disposal within marriage shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

*Value received by investor*

- 13 (1) Where an individual who subscribes for eligible shares ("the shares") in a company receives any value from the company at any time in the seven year period, the shares shall be treated as follows for the purposes of this Schedule—
- (a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.
- (2) For the purposes of this paragraph an individual receives value from the company if the company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;

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- (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—
    - (i) on or after the date on which he subscribed for the shares; and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
  - (c) makes to the individual any payment for giving up his right to any debt on its extinguishment;
  - (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
  - (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;
  - (f) provides a benefit or facility for the individual;
  - (g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
  - (h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or
  - (i) makes any payment to the individual other than a qualifying payment.
- (3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
  - (b) the amount of any debt due from the individual to a third person which has been assigned to the company.
- (4) For the purposes of this paragraph an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6) of the Taxes Act.
- (5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act, be treated as connected with the company—
- (a) purchases any of its share capital or securities which belong to the individual; or
  - (b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.
- (6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.
- (7) In this paragraph “qualifying payment” means—

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- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
  - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
  - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
  - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;
  - (e) any payment for the supply of goods which does not exceed their market value;
  - (f) any payment for the acquisition of an asset which does not exceed its market value;
  - (g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
  - (h) any reasonable and necessary remuneration which—
    - (i) is paid by any company for services rendered to that company in the course of a trade or profession; and
    - (ii) is taken into account in computing the profits of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits are assessed under that Schedule;
  - (i) a payment in discharge of an ordinary trade debt.
- (8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (9) In this paragraph—
- (a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and
  - (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (10) In this paragraph—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;
  - (b) any reference to an individual includes a reference to an associate of his; and
  - (c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.

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- (11) In this paragraph “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
- (a) does not exceed six months; and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

*Value received by other persons*

- 14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and at any time in the seven year period the company or any subsidiary—
- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or an individual falling within sub-paragraph (3) below, or
  - (b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- (2) The shares shall be treated for the purposes of this Schedule—
- (a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.
- (3) An individual falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) gives rise to a qualifying chargeable event in respect of him, or
  - (b) causes any relief under Chapter III of Part VII of the Taxes Act attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of that Act.
- (4) In sub-paragraph (3) above “qualifying chargeable event” means—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or
  - (b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).
- (5) Where—
- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the <sup>M252</sup>Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and
  - (b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares,
- the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

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- (6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) above to the <sup>M253</sup>Companies Act 1985 and to section 117 of that Act shall have effect as references to the <sup>M254</sup>Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.
- (7) References in this paragraph to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

*Investment-linked loans*

- 15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares (“the shares”) in a company, the shares shall be treated for the purposes of this Schedule—
- (a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and
- (b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.
- (2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.
- (3) References in this paragraph to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
- (b) to the assignment or assignation to that person of any debt due from that individual.
- (4) In this paragraph any reference to an individual includes a reference to an associate of his.”

**Marginal Citations**

**M252** 1985 c. 6.

**M253** 1985 c. 6.

**M254** S.I. 1986/1032 (N.I.6).

*Supplementary provisions*

- 36 After paragraph 15 there shall be inserted the following paragraphs—

*“ Information*

- 16 (1) Where, in relation to any relevant shares held by an individual—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above occurs at any time in the five year period,



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- (b) a chargeable event falling within paragraph 3(1)(c) or (d) above occurs, or
  - (c) a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 12(2)(b), 13(1)(b) or 15(1)(b) above,

the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (2) Where, in relation to any relevant shares in a company, a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 1A(1) or (2), 13(1)(b) or 14(2)(b) above—
  - (a) the company, and
  - (b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (3) A chargeable event falling within paragraph 3(1)(e) above which, but for paragraph 1A(5) above, would occur at any time by virtue of paragraph 1A(1) or (2) above shall be treated for the purposes of sub-paragraph (2) above as occurring at that time.
- (4) Where a company has issued a certificate under section 306(2) of the Taxes Act (as applied by paragraph 6 above) in respect of any eligible shares in the company, and the condition in paragraph 1(2)(g) above is not satisfied in relation to the shares—
  - (a) the company, and
  - (b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the time mentioned in section 289(3) of the Taxes Act or, in the case of a person within paragraph (b) above, of his coming to know that the condition is not satisfied, give notice to the inspector setting out the particulars of the case.
- (5) If the inspector has reason to believe that a person has not given a notice which he is required to give—
  - (a) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
  - (b) under sub-paragraph (4) above in respect of any particular case,

the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Schedule.
- (6) Where a claim is made under this Schedule in respect of shares in a company and the inspector has reason to believe that it may not be well founded by reason of any such arrangements as are mentioned in paragraphs 1(2)(d) or 11(1) above, or section 293(8) or 308(2)(e) of the Taxes Act, he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—

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- (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed;
  - (b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (7) For the purposes of sub-paragraph (6) above, the persons who are persons concerned are—
- (a) in relation to paragraph 1(2)(d) above, the claimant, the company and any person controlling the company;
  - (b) in relation to paragraph 11(1) above, the claimant, the company and any person connected with the company; and
  - (c) in relation to section 293(8) or 308(2)(e) of the Taxes Act, the company and any person controlling the company;
- and for those purposes the references in paragraphs (a) and (b) above to the claimant include references to any person to whom the claimant appears to have made a disposal within marriage of any of the shares in question.
- (8) Where deferral relief is attributable to shares in a company—
- (a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of paragraph 13 above, and
  - (b) any person on whose behalf such a payment or asset is received, shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.
- (9) Where a claim has been made under this Schedule in relation to shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state—
- (a) whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself; and
  - (b) if so, the name and address of that person.
- (10) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

*Trustees: general*

- 17 (1) Subject to the following provisions of this paragraph, this Schedule shall apply as if—
- (a) any reference to an individual included a reference to the trustees of a settlement, and
  - (b) in relation to any such trustees, the reference in paragraph 1(1) above to any asset were a reference to any asset comprised in any settled property to which this paragraph applies (a “trust asset”).
- (2) This paragraph applies—

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- (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
  - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals.
- (3) If, at the time of the disposal of the trust asset in a case where this Schedule applies by virtue of this paragraph—
  - (a) the settled property comprising that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, but
  - (b) not all the beneficiaries are individuals,only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of this Schedule as it so applies.
- (4) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(a) above unless, immediately after the acquisition of the relevant shares, the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(a) above.
- (5) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above unless, immediately after the acquisition of the relevant shares—
  - (a) the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, and
  - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the trust asset.
- (6) If, at any time, in the case of settled property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, both individuals and others have interests in possession, “the relevant proportion” at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—
  - (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
  - (b) the total amount of all the income of the settled property.
- (7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this paragraph shall apply as if—
  - (a) the interests of the relevant beneficiaries were a single interest in possession, and
  - (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.

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- (8) In this paragraph references to interests in possession do not include interests for a fixed term and, except in sub-paragraph (1), references to individuals include any charity.

*Trustees: anti-avoidance*

- 18 (1) Paragraphs 13 and 15 above shall have effect in relation to the subscription for shares by the trustees of a settlement as if references to the individual subscribing for the shares were references to—
- (a) those trustees;
  - (b) any individual or charity by virtue of whose interest, at a relevant time, paragraph 17 above applies to the settled property; or
  - (c) any associate of such an individual, or any person connected with such a charity.
- (2) The relevant times for the purposes of sub-paragraph (1)(b) above are the time when the shares are issued and—
- (a) in a case where paragraph 13 above applies, the time when the value is received;
  - (b) in a case where paragraph 15 above applies, the time when the loan is made.

*Interpretation*

- 19 (1) For the purposes of this Schedule—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
- “associate” has the meaning that would be given by subsections (3) and (4) of section 417 of the Taxes Act if in those subsections “relative” did not include a brother or sister;
- “eligible shares” has the meaning given by section 289(7) of that Act;
- “the five year period”, in the case of any relevant shares, means the period of five years beginning with the issue of the shares;
- “non-resident” means a person who is neither resident nor ordinarily resident in the United Kingdom;
- “ordinary share capital” has the same meaning as in the Taxes Act;
- “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;
- “qualifying business activity” has the meaning given by section 289(2) of the Taxes Act;
- “qualifying company”, in relation to any eligible shares, means a company which, in relation to those shares, is a qualifying company for the purposes of Chapter III of Part VII of that Act;
- “the relevant period”, in the case of any shares, means the period found by applying section 312(1A)(a) of that Act by reference to the company that issued the shares and by reference to the shares;

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“relevant shares”, in relation to a case to which this Schedule applies, means any of the shares which are acquired by the investor in making the qualifying investment;

“the seven year period” has the meaning given by section 291(6) of the Taxes Act.

- (2) For the purposes of this Schedule, “deferral relief” is attributable to any shares if—
- (a) expenditure on the shares has been set under this Schedule against the whole or part of any gain; and
  - (b) in relation to the shares there has been no chargeable event for the purposes of this Schedule.
- (3) In this Schedule—
- (a) references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day;
  - (b) references to a disposal within marriage are references to any disposal to which section 58 applies; and
  - (c) references to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.
- (4) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.
- (5) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.”

#### PART IV

##### BES INCOME TAX RELIEF AND RELIEF AGAINST CHARGEABLE GAINS

- 37 Any reference in this Part to a provision of Chapter III of Part VII of the Taxes Act 1988 is a reference to that provision as it has effect in relation to shares issued before 1st January 1994.
- 38 (1) In subsection (8) of section 293 of the Taxes Act 1988 (qualifying companies), for the words “Subject to sections 308 and 309” there shall be substituted the words “Subject to sections 304A, 308 and 309”.
- (2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.
- 39 (1) At the beginning of subsection (1) of section 299 of the Taxes Act 1988 (disposals of shares) there shall be inserted the words “Subject to section 304(5),”.
- (2) For subsection (4) of that section there shall be substituted the following subsections—
- “(4) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall, subject to

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subsection (3) above, be treated for the purposes of this section as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4A) Where shares of any class in a company have been acquired by an individual on the same day, any disposal by him of shares of that class shall, subject to subsection (3) above, be treated for the purposes of this section as relating to those in respect of which relief has not been given, or has been withdrawn, rather than to those in respect of which relief has been given and has not been withdrawn.

(4B) Any shares in respect of which relief has been given and has not been withdrawn and which were transferred to an individual as mentioned in section 304 shall be treated for the purposes of subsections (4) and (4A) above as acquired by him on the day on which they were issued.

(4C) In a case to which section 127 of the 1992 Act applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of subsections (4) and (4A) above as acquired when the original shares were acquired.

In this subsection “new holding” and “original shares” shall be construed in accordance with sections 126, 127, 135 and 136 of the 1992 Act.”

(3) This paragraph has effect in relation to disposals made on or after 6th April 1998.

40 (1) After subsection (6) of section 304 of the Taxes Act 1988 (husband and wife) there shall be inserted the following subsection—

“(7) Subsections (3) to (4C) of section 299 shall apply for the purposes of this section as they apply for the purposes of that section.”

(2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

41 (1) After that section there shall be inserted the following section—

**“304A Acquisition of share capital by new company.**

(1) This section applies where—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
- (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
- (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
- (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
- (e) at some time before the issue of the new shares—
  - (i) the old company issued eligible shares; and
  - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and

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- (f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—
  - (i) will be effected for bona fide commercial reasons; and
  - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.
- (2) For the purposes of this Chapter—
  - (a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and
  - (b) any relief which has been given (and not withdrawn) in respect of any old shares shall be treated as given (and not withdrawn) in respect of the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual in respect of which relief is treated as so given (and not withdrawn), the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—
  - (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares;
  - (d) relief had been given to him in respect of the new shares for the same year of assessment as that for which relief was given to him in respect of the old shares; and
  - (e) any reduction made, or falling to be made, in the amount of relief given to him in respect of the old shares had been made, or fell to be made, in the amount of relief given to him in respect of the new shares.
- (4) Where, in the case of any new shares held by an individual in respect of which relief is treated as so given (and not withdrawn), the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—
  - (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares;
  - (d) relief had been given to him in respect of the new shares for the same year of assessment as that for which relief was given in respect of the old shares; and
  - (e) any reduction made, or falling to be made, in the amount of relief given in respect of the old shares had been made, or fell to be made, in the amount of relief given to him in respect of the new shares.
- (5) Where relief is treated as so given (and not withdrawn) in respect of any new shares, this Chapter shall have effect as if anything which, under

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section 306(2) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company.

(6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.

(7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.

(8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.”

(2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.

42 (1) In subsection (4)(a) of section 150 of the <sup>M255</sup>Taxation of Chargeable Gains Act 1992 (business expansion schemes)—

(a) for the words “issued to a person” there shall be substituted the words “acquired by an individual”; and

(b) after the word “relates” there shall be inserted the word “to”.

(2) In subsection (5) of that section, for the words “Notwithstanding anything in section 107(1) and (2), section 107 does not apply” there shall be substituted the words “Sections 104, 105 and 106A do not apply”.

(3) In subsection (7) of that section, for the words “eligible shares” there shall be substituted the words “shares in respect of which relief has been given and not withdrawn”.

(4) In subsection (8) of that section, the word “eligible” shall cease to have effect.

(5) In subsection (8A)(a) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.

(6) After subsection (8C) of that section there shall be inserted the following subsection—

“(8D) Where shares in respect of which relief has been given and not withdrawn are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—

(a) subsection (8) above shall not have effect to disapply section 135; and

(b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.”

(7) After subsection (11) of that section there shall be inserted the following subsection—

“(12) In this section—



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“ordinary share capital” has the same meaning as in the Taxes Act;

“ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.”

(8) In this paragraph—

- (a) sub-paragraphs (1) and (2) have effect in relation to disposals made on or after 6th April 1998;
- (b) sub-paragraph (3) has effect in relation to subsequent disposals made on or after that date;
- (c) sub-paragraph (4) has effect in relation to events occurring on or after that date;
- (d) sub-paragraph (5) has effect in relation to new shares (within the meaning of section 150(8A) of the <sup>M256</sup>Taxation of Chargeable Gains Act 1992) issued on or after that date;
- (e) sub-paragraph (6) has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after that date; and
- (f) sub-paragraph (7) has effect in relation to events occurring on or after that date.

**Marginal Citations**

M255 1992 c. 12.

M256 1992 c. 12.

SCHEDULE 14

Section 86.

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

*Section 547*

- 1 (1) Section 547 of the Taxes Act 1988 (method of charging gain to tax) shall be amended as follows.
- (2) In paragraph (a) of subsection (1) (individuals) the words from “(including” to “1964)” (which are superseded by the new subsection (14)) shall cease to have effect.
- (3) After paragraph (c) of subsection (1), there shall be added—
- “(d) if, immediately before the happening of that event,—
    - (i) those rights were held on trusts, and the person who created the trusts was not resident in the United Kingdom or had died or (in the case of a company or foreign institution) had been dissolved or wound up or had otherwise come to an end, or
    - (ii) those rights were held as security for a debt owed by trustees,subsection (9) or (10) below (as the case may be) shall apply in relation to the amount of the gain;
  - (e) if, immediately before the happening of that event, those rights—

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- (i) were in the beneficial ownership of a foreign institution, or
- (ii) were held as security for a debt owed by a foreign institution,

subsection (11) below shall apply in relation to the amount of the gain.”

- (4) Subsection (3) (which relates to cases where there are two or more beneficial owners, settlors or debtors and which is superseded by the new section 547A) shall cease to have effect.
- (5) In subsection (4), for “subsections (1) and (3) above” there shall (in consequence of sub-paragraph (4) above) be substituted “ subsection (1) above ”.
- (6) In subsection (5) (tax treatment where a sum is included in an individual’s total income by virtue of subsection (1)) for “subsection (1)” there shall be substituted “ subsection (1)(a) ”.
- (7) After subsection (5) there shall be inserted—
  - “(5AA) If, in a case falling within subsection (1)(d) above, a sum forms part of the income of trustees by virtue of subsection (9)(a) below, subsection (5) above shall (subject to subsections (6) and (7) below and section 553(6)) apply in relation to the trustees and that sum—
    - (a) as it applies in relation to an individual and a sum included in his total income by virtue of subsection (1)(a) above, but
    - (b) with the omission from paragraph (a) of the words from “or” to the end of that paragraph.”
- (8) Subsection (9) shall be renumbered as subsection (13) and after subsection (8) there shall be inserted—
  - “(9) If, in a case falling within subsection (1)(d) above, the trustees were resident in the United Kingdom immediately before the happening of the chargeable event in question, the amount of the gain—
    - (a) shall be deemed to form part of the income of the trustees for the year of assessment in which the chargeable event happened; and
    - (b) shall be chargeable to income tax at the rate applicable to trusts for that year.
  - (10) If, in a case falling within subsection (1)(d) above, the trustees were not resident in the United Kingdom immediately before the happening of the chargeable event in question, then, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of the amount of the gain, section 740 shall apply as if—
    - (a) the amount of the gain constituted income becoming payable to the trustees; and
    - (b) that income were income arising to the trustees in the year of assessment in which the chargeable event happened.
  - (11) In a case falling within subsection (1)(e) above, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of the amount of the gain, section 740 shall apply as if—

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- (a) the amount of the gain constituted income becoming payable to the foreign institution; and
  - (b) that income were income arising to the foreign institution in the year of assessment in which the chargeable event happened.
- (12) For the purposes of this section, property held for the purposes of a foreign institution shall be regarded as in the beneficial ownership of the foreign institution.”
- (9) In subsection (13) (definitions) the following definition shall be inserted at the appropriate place—
- ““foreign institution” means a person which is a company or other institution resident or domiciled outside the United Kingdom.”
- (10) After that subsection there shall be inserted—
- “(14) Any reference in this section to trusts created by an individual includes a reference to trusts arising under—
- (a) section 11 of the <sup>M257</sup>Married Women’s Property Act 1882;
  - (b) section 2 of the <sup>M258</sup>Married Women’s Policies of Assurance (Scotland) Act 1880; or
  - (c) section 4 of the <sup>M259</sup>Law Reform (Husband and Wife) Act Northern Ireland) 1964;
- and references to the settlor or to the person creating the trusts shall be construed accordingly.”

**Marginal Citations**

**M257** 1882 c. 75.

**M258** 1880 c. 26.

**M259** 1964 c. 23 (N.I.).

*Multiple interests*

- 2 After section 547 of the Taxes Act 1988 there shall be inserted—

**“547A Method of charging gain to tax: multiple interests.**

- (1) Where, immediately before the happening of a chargeable event, two or more persons have relevant interests in the rights conferred by the policy or contract in question, section 547 shall have effect in relation to each of those persons as if that person had been the only person with a relevant interest in those rights, but with references to the amount of the gain construed as references to his proportionate share of the amount of the gain.
- (2) References in this section to the rights conferred by a policy or contract are, in the case of an assignment of a share only in any rights, references to that share.
- (3) For the purposes of this section, a person has a “relevant interest” in the rights conferred by a policy or contract—

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- (a) in the case of an individual, if a share in the rights is vested in him as beneficial owner, or is held on trusts created, or as security for a debt owed, by him;
  - (b) in the case of a company, if a share in the rights is in the beneficial ownership of the company, or is held on trusts created, or as security for a debt owed, by the company;
  - (c) in the case of personal representatives, if a share in the rights is vested in them;
  - (d) in the case of trustees—
    - (i) if a share in the rights is held by them, and the person who created the trusts is not resident in the United Kingdom or has died or (in the case of a company or foreign institution) has been dissolved or wound up or has otherwise come to an end; or
    - (ii) if a share in the rights is held as security for a debt owed by them;
  - (e) in the case of a foreign institution, if a share in the rights is in the beneficial ownership of the foreign institution, or is held as security for a debt owed by the foreign institution.
- (4) For the purposes of subsection (1) above, a person's "proportionate share" of the amount of a gain is that share of it which is proportionate to the share of the rights by reference to which he has the relevant interest in question.
- (5) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held as security for one or more debts owed by two or more persons, this section shall effect in relation to the chargeable event as if—
- (a) each of those persons were instead the sole debtor in respect of a separate debt; and
  - (b) the security for that separate debt were the appropriate share of the security for the actual debt or debts (so far as consisting of the rights, or a share in the rights, conferred by the policy or contract);
- and for the purposes of paragraph (b) above the appropriate share, in the case of any person, is a share which is proportionate to that share of the actual debt or, as the case may be, the aggregate of the two or more actual debts, for which he is liable as between the debtors.
- (6) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held on trusts created by two or more persons, this section shall have effect in relation to that chargeable event as if—
- (a) each of those persons had instead been the sole settlor in relation to a separate share of the rights or share so held; and
  - (b) that separate share were proportionate to the share which originates from him of the whole of the property subject to the trusts immediately before the happening of the chargeable event.
- (7) The reference in subsection (6)(b) above to the share of the property which originates from a person is a reference to the share of the property which consists of—

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- (a) property which that person has provided directly or indirectly for the purposes of the trusts;
  - (b) property representing property which that person has so provided; and
  - (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.
- (8) References in subsection (7) above to property which a person has provided directly or indirectly—
  - (a) include references to property which has been provided directly or indirectly by another in pursuance of reciprocal arrangements with the person, but
  - (b) do not include references to property which the person has provided directly or indirectly in pursuance of reciprocal arrangements with another.
- (9) References in subsection (7) above to property which represents other property include references to property which represents accumulated income from that other property.
- (10) Where immediately before the happening of a chargeable event—
  - (a) the rights conferred by the policy or contract in question are, or a share in those rights is, held subject to any trusts, and
  - (b) different shares of the whole of the property subject to those trusts originate (within the meaning of subsection (6)(b) above) from different persons,the rights or share shall, in relation to that chargeable event, be taken for the purposes of this section to be held on trusts created by those persons.
- (11) Where the rights conferred by a policy or contract are, or an interest in any such rights is, in the beneficial ownership of two or more persons jointly, the rights or interest shall be treated for the purposes of this section as if they were in the beneficial ownership of those persons in equal shares.
- (12) A non-fractional interest in the rights conferred by a policy or contract shall be treated for the purposes of this section as if it were instead such a share in those rights as may justly and reasonably be regarded for those purposes as representing the non-fractional interest.
- (13) For the purposes of subsection (12) above, a “non-fractional interest” in the rights conferred by a policy or contract is an interest in some or all of those rights which is not a share in all of those rights (otherwise than by virtue only of subsection (2) above).
- (14) This section applies in a case where the same person has two or more relevant interests in the rights conferred by a policy or contract as it applies in a case where two or more persons have separate relevant interests, unless—
  - (a) that person is the only person with a relevant interest in those rights, and
  - (b) he has all the relevant interests in the same capacity,in which case section 547 applies.

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(15) In this section—

“foreign institution” has the same meaning as in section 547;

“personal representatives” has the same meaning as in Part XVI.

(16) Subsections (12) and (14) of section 547 apply for the purposes of this section as they apply for the purposes of that section.”

*Right of company to recover tax from trustees*

3 After section 551 of the Taxes Act 1988 (right of individual to recover tax from trustees) there shall be inserted—

**“551A Right of company to recover tax from trustees.**

(1) Where—

(a) an amount is included in a company’s income by virtue of section 547(1)(b), and

(b) the rights or share in question were held immediately before the happening of the chargeable event on trust,

the company shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, the amount (if any) by which T1 exceeds T2.

(2) For the purposes of subsection (1) above—

T1 is the tax with which the company is chargeable for the accounting period in question; and

T2 is the tax with which the company would have been chargeable for the accounting period if the amount mentioned in subsection (1)(a) above had not been included as there mentioned.

(3) A company may require the Board to certify any amount recoverable by the company by virtue of this section, and the certificate shall be conclusive evidence of the amount.”

*Foreign institution policies: no reduction under section 553*

4 (1) Section 553 of the Taxes Act 1988 (non-resident policies and capital redemption policies) shall be amended as follows.

(2) In subsection (3) (which, subject to subsection (5), provides for the gain to be reduced by reference to the policy holder’s time of residence in the United Kingdom) for “subsection (5)” there shall be substituted “ subsections (5) and (5A) ”.

(3) After subsection (5) there shall be inserted—

“(5A) If, on the happening of the chargeable event referred to in subsection (3) above or at any time during the period referred to in that subsection, the policy is or was held by a foreign institution, no reduction shall be made under that subsection unless—

(a) the policy was issued in respect of an insurance made on or before 16th March 1998; and

(b) on that date the policy was held by a foreign institution.”

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(4) In subsection (10) (definitions) there shall be inserted at the appropriate place—

““foreign institution” has the same meaning as in section 547;”.

#### *Consequential amendments*

5 In section 7(9) of the <sup>M260</sup>Taxes Management Act 1970 (meaning of “relevant trustees” for the purposes of that Act)—

(a) in paragraph (a), after “in relation to income” there shall be inserted “ (other than gains treated as arising under Chapter II of Part XIII of the principal Act) ”; and

(b) after paragraph (a) there shall be inserted—

“(aa) in relation to gains treated as arising under Chapter II of Part XIII of the principal Act, the persons who are trustees in the year of assessment in which the gains arise and any persons who subsequently become trustees; and”.

#### **Marginal Citations**

**M260** 1970 c. 9.

6 In section 151 of the <sup>M261</sup>Finance Act 1989 (assessment of trustees etc) for subsection (2) (definition of “the relevant trustees”) there shall be substituted—

“(2) In this section “the relevant trustees”—

(a) in relation to any income, other than gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees to whom the income arises and any subsequent trustees of the settlement; and

(b) in relation to gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees in the year of assessment in which the gains arise and any subsequent trustees of the settlement;

and “the relevant personal representatives” has a corresponding meaning.”

#### **Marginal Citations**

**M261** 1989 c. 26.

#### *Commencement*

7 (1) Paragraph (d) of section 547(1) of the Taxes Act 1988 shall not have effect in relation to the amount of a gain if—

(a) the gain is treated as arising on the happening of a chargeable event on or after 6th April 1998 in relation to a pre-commencement policy or contract; and

(b) the trusts in question were created before 17th March 1998 and the person, or (disregarding section 547A(6) of that Act) at least one of the persons, who created them was an individual who died before that date.

(2) In sub-paragraph (1) above, “pre-commencement policy or contract” means—

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- (a) a policy of life insurance issued in respect of an insurance made before 17th March 1998,
  - (b) a contract for a life annuity made before that date, or
  - (c) a capital redemption policy where the contract was effected before that date, but does not include a policy or contract varied on or after that date so as to increase the benefits secured or to extend the term of the insurance, annuity or capital redemption policy (any exercise of rights conferred by the policy or contract being regarded for this purpose as a variation).
- (3) The amendment made by paragraph 6 above has effect in relation to income arising on or after 6th April 1998.
- (4) In that amendment, the express references to gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988 are references to gains treated as so arising on the happening of chargeable events on or after 6th April 1998.
- (5) Except as provided by the preceding provisions of this paragraph, this Schedule has effect in relation to chargeable events happening on or after 6th April 1998.

## SCHEDULE 15

Section 92.

## APPROVED RETIREMENT BENEFITS SCHEMES

*Amendment of section 591C of the Taxes Act 1988*

- 1 (1) Section 591C of the Taxes Act 1988 (charge to tax arising on cessation of approval) shall be amended as follows.
- (2) In subsection (4) (section to apply to schemes in respect of which either of the specified conditions is satisfied), for “either” there shall be substituted “one or more”.
- (3) After subsection (6) there shall be inserted the following subsection—
- “(6A) The third condition is satisfied in respect of a scheme if—
- (a) at any time within the period of three years ending with the date of the cessation of the approval of the scheme, the scheme has received a transfer value in respect of any person;
  - (b) contributions made by or in respect of that person to any approved pension arrangements (whether or not those from which the transfer value was received) were represented in the transfer value; and
  - (c) the contributions so represented were made by or in respect of that person by reference to—
    - (i) any service by him with a company of which he is or has at any time been a controlling director;
    - (ii) any remuneration in respect of any such service; or
    - (iii) any income chargeable to tax under Schedule D and immediately derived by him from the carrying on or exercise by him (whether as an individual or in partnership with others) of a trade, profession or vocation.”



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- (4) In subsection (7) of that section (meaning of “controlling director”), for “subsection (6) above” there shall be substituted “this section”.
- (5) After that subsection there shall be inserted the following subsections—
- “(8) In subsection (6A) above—
- (a) the references to the receipt of a transfer value by a scheme are references to the transfer, so as to become held for the purposes of the scheme, of any sum or asset held for the purposes of any other approved pension arrangements; and
  - (b) the references to contributions to approved pension arrangements include references to—
    - (i) any contributions made in accordance with, or for the purposes of, the arrangements; and
    - (ii) anything paid by way of premium or other consideration under an annuity contract for which the arrangements provide.
- (9) In this section “approved pension arrangements” means—
- (a) any scheme or arrangements approved for the purposes of this Chapter or Chapter IV of this Part or, in relation to a time before 6th April 1988, the corresponding provisions then in force;
  - (b) any scheme being considered for approval under this Chapter;
  - (c) any annuity contract entered into for the purposes of any scheme or arrangements falling within paragraph (a) or (b) above; or
  - (d) any contract or scheme approved for the purposes of Chapter III of this Part or, in relation to a time before 6th April 1988, the corresponding provisions then in force.”
- (6) This paragraph has effect in relation to any case in which the date of the cessation of the approval is on or after 17th March 1998.

#### *Amendment of section 591D*

- 2 (1) In section 591D(3) of the Taxes Act 1988 (persons loans to whom are loans to which the valuation rule in section 591D(2) applies), for paragraphs (c) and (d) there shall be substituted the following paragraphs—
- “(c) any person who has at any time (whether or not before the making of the loan) been a member of the scheme;
  - (d) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (c) above.”
- (2) This paragraph has effect in relation to any case in which the date of the cessation of the approval of the scheme is on or after 17th March 1998.

#### *Application for scheme approval*

- 3 (1) In subsection (1) of section 604 of the Taxes Act 1988 (application for approval)—
- (a) for “the administrator of the scheme” there shall be substituted “the appropriate applicant”; and
  - (b) in paragraph (c), after “given to the” there shall be inserted “appropriate applicant,”.

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

“(1A) In subsection (1) above “the appropriate applicant” means—

- (a) in the case of a trust scheme, the trustee or trustees of the scheme; and
- (b) in the case of a non-trust scheme, the scheme sponsor or scheme sponsors;

and subsection (9) of section 611AA applies for the purposes of this subsection as it applies for the purposes of that section.”

(3) This paragraph has effect in relation to any application made on or after the day on which this Act is passed.

#### *Information powers*

4 In section 605(1B) of the Taxes Act 1988 (matters about which information may be obtained in pursuance of regulations under section 605(1A) of that Act), for paragraph (a) there shall be substituted the following paragraph—

“(a) a scheme which is or has been an approved scheme;”.

#### *Employers responsible for discharging administrator’s duties*

5 (1) Section 606 of the Taxes Act 1988 (persons responsible where there is no administrator or the administrator cannot be traced or is in default) shall have effect, and shall be deemed always to have had effect, with the insertion of the following subsection after subsection (9)—

“(9A) Where by virtue of this section any person is the person, or one of the persons, responsible for the discharge of the duties of the administrator of a scheme, any power or duty by virtue of this Part to serve any notice on, or to do any other thing in relation to, the administrator may be exercised or performed, instead, by the service of that notice on that person or, as the case may be, by the doing of that other thing in relation to that person.”

(2) After subsection (11) of that section there shall be inserted the following subsection—

“(11A) In determining for the purposes of this section—

- (a) whether all of the persons who are the administrator of a scheme are at any time in default in respect of an amount of tax chargeable by virtue of section 591C, or
- (b) whether a trustee of a scheme is in default in respect of any amount of tax so chargeable,

the persons who at that time are trustees of the scheme or hold appointments in relation to the scheme under section 611AA(4) to (6) shall be deemed not to include any person who by virtue of section 591D(4) is not liable for that tax.”

(3) Sub-paragraph (2) above has effect for determinations made in relation to any time on or after 17th March 1998.

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*Recourse to scheme members in respect of section 591C charge*

- 6 (1) After section 606 of the Taxes Act 1988 there shall be inserted the following section—

**“606A Recourse to scheme members.**

- (1) This section applies where—
- (a) an approval of a retirement benefits scheme has ceased to have effect;
  - (b) a person (“the employer”) has become liable by virtue of section 606 to any tax chargeable on the administrator of the scheme under section 591C;
  - (c) the employer has failed, either in whole or in part, to pay that tax; and
  - (d) a person falling within subsection (2) below (“the relevant member”) was a member of the scheme at the time (“the relevant time”) immediately before the date of the cessation of its approval.
- (2) A person falls within this subsection in relation to any tax chargeable under section 591C if—
- (a) at the relevant time or at any time before that time he was a controlling director of the employer; or
  - (b) he is a person by or in respect of whom any contributions were made by reference to which the condition in subsection (6A) of that section has been satisfied for the purpose of the charge to that tax.
- (3) Subject to subsection (4) below, if in a case where this section applies—
- (a) the employer has ceased to exist, or
  - (b) the Board notify the relevant member that they consider the failure of the employer to pay the unpaid tax to be of a serious nature,
- the relevant member shall be treated as included in the persons on whom the unpaid tax was charged and shall be assessable accordingly.
- (4) The amount of tax for which the relevant member shall be taken to be assessable by virtue of this section shall not exceed the amount determined by—
- (a) taking the amount equal to 40 per cent. of his share of the scheme; and
  - (b) subtracting from that amount his share of any tax charged under section 591C that has already been paid otherwise than by another person on whom it is treated as charged in accordance with this section.
- (5) For the purposes of this section the relevant member’s share of the scheme is the amount equal to so much of the value of the assets held for the purposes of the scheme at the relevant time (taking the value at that time) as, on a just and reasonable apportionment, would have fallen to be treated as the value at that time of the assets then held for the purposes of the provision under the scheme of benefits to or in respect of the relevant member.
- (6) For the purposes of this section the relevant member’s share of an amount of tax already paid is such sum as bears the same proportion to the amount

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paid as is borne by his share of the scheme to the total value at the relevant time of the assets then held for the purposes of the scheme.

- (7) The reference in subsection (5) above to the provision of benefits to or in respect of the relevant member includes a reference to the provision of a benefit to or in respect of a person connected with the relevant member.
  - (8) For the purposes of this section a person is a controlling director of a company if he is a director of the company and is within section 417(5)(b) in relation to the company.
  - (9) A notification given to any person for the purposes of subsection (3)(b) above may be included in any assessment on that person of the tax to which he becomes liable by virtue of the notification.
  - (10) An assessment to tax made by virtue of this section shall not be out of time if it is made within three years after the date on which the tax which the employer has failed to pay first became due from him.
  - (11) Subsections (1) to (3) of section 591D shall apply to the determination of the value at any time of an asset held for the purposes of a scheme as they apply for the purposes of section 591C(2).
  - (12) Subsections (7) and (8) of section 591D shall apply for the purposes of this section as they apply for the purposes of subsection (1) of section 591C and section 591C, respectively.
  - (13) Section 839 (connected persons) shall apply for the purposes of this section.”
- (2) This paragraph has effect in relation to any case in which the date of the cessation of the approval is on or after 17th March 1998.

*Modification of certain existing approved schemes*

- 7 (1) This paragraph applies in relation to any retirement benefits scheme which—
- (a) was approved by the Board on or before 17th March 1998; and
  - (b) contains provision requiring one of the trustees of the scheme to be an approved independent trustee.
- (2) Notwithstanding anything to the contrary in the scheme or its rules, the appointment (whenever made) of any person to be a trustee of the scheme, and any requirement on him or entitlement of his to act as such, shall be (and be treated as having been) incapable of termination at any time on or after 17th March 1998 except—
- (a) by the death of that person;
  - (b) by an order of the court;
  - (c) by virtue of section 3, 4 or 29 of the <sup>M262</sup>Pensions Act 1995 or Article 3, 4 or 29 of the <sup>M263</sup>Pensions (Northern Ireland) Order 1995 (prohibition, suspension or disqualification); or
  - (d) in circumstances mentioned in sub-paragraph (3)(a), (b) or (c) below, in accordance with the rules of the scheme.
- (3) Those circumstances are—
- (a) where the trustee is not the trustee by reference to whom the requirement mentioned in sub-paragraph (1)(b) above was satisfied immediately before the termination;

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- (b) where immediately after the termination that requirement is satisfied by reference to a trustee whose appointment takes effect at that time;
  - (c) where the trustee whose appointment is terminated has committed a fraudulent breach of trust in relation to the scheme and that is the reason for the termination.
- (4) Any provisions of the scheme or of any instrument by which the administration of the scheme is governed which require a successor to an approved independent trustee of the scheme to be appointed in specified circumstances shall have effect, in relation to any case in which those circumstances arise at a time on or after the day on which this Act is passed, as if they required the appointment to be made no more than 30 days after that time.
- (5) Subsection (5) of section 591D of the Taxes Act 1988 (meaning of “approved independent trustee”) shall apply for the purposes of this paragraph as it applies for the purposes of that section.
- (6) In this paragraph “retirement benefits scheme” has the same meaning as in Chapter I of Part XIV of the Taxes Act 1988, and “approved” means approved for the purposes of that Chapter or any enactment re-enacted in that Chapter.

**Marginal Citations**

M262 1995 c. 26.

M263 S.I. 1995/3213 (N.I. 22).

SCHEDULE 16

Section 108.

TRANSFER PRICING ETC: NEW REGIME

The Schedule inserted after Schedule 28A to the Taxes Act 1988 is as follows:—

“SCHEDULE 28AA

PROVISION NOT AT ARM’S LENGTH

*Basic rule on transfer pricing etc.*

- 1 (1) This Schedule applies where—
- (a) provision (“the actual provision”) has been made or imposed as between any two persons (“the affected persons”) by means of a transaction or series of transactions, and
  - (b) at the time of the making or imposition of the actual provision—
    - (i) one of the affected persons was directly or indirectly participating in the management, control or capital of the other; or
    - (ii) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (2) Subject to paragraphs 8, 10 and 13 below, if the actual provision—

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- (a) differs from the provision (“the arm’s length provision”) which would have been made as between independent enterprises, and
  - (b) confers a potential advantage in relation to United Kingdom taxation on one of the affected persons, or (whether or not the same advantage) on each of them, the profits and losses of the potentially advantaged person or, as the case may be, of each of the potentially advantaged persons shall be computed for tax purposes as if the arm’s length provision had been made or imposed instead of the actual provision.
- (3) For the purposes of this Schedule the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises shall include the case in which provision is made or imposed as between any two persons but no provision would have been made as between independent enterprises; and references in this Schedule to the arm’s length provision shall be construed accordingly.

*Principles for construing rules in accordance with OECD principles*

- 2 (1) This Schedule shall be construed (subject to paragraphs 8 to 11 below) in such manner as best secures consistency between—
- (a) the effect given to paragraph 1 above; and
  - (b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.
- (2) In this paragraph “the OECD model” means—
- (a) the rules which, at the passing of this Act, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development; or
  - (b) any rules in the same or equivalent terms.
- (3) In this paragraph “the transfer pricing guidelines” means—
- (a) all the documents published by the Organisation for Economic Co-operation and Development, at any time before 1st May 1998, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations; and
  - (b) such documents published by that Organisation on or after that date as may for the purposes of this Schedule be designated, by an order made by the Treasury, as comprised in the transfer pricing guidelines.

*Meaning of “transaction” and “series of transactions”*

- 3 (1) In this Schedule “transaction” includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).
- (2) References in this Schedule to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.
- (3) A series of transactions shall not be prevented by reason only of one or more of the matters mentioned in sub-paragraph (4) below from being regarded for the purposes of this Schedule as a series of transactions by means of which provision has been made or imposed as between any two persons.
- (4) Those matters are—

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- (a) that there is no transaction in the series to which both those persons are parties;
  - (b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons; and
  - (c) that there is one or more transactions in the series to which neither of those persons is a party.
- (5) In this paragraph, “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

*Participation in the management, control or capital of a person*

- 4 (1) For the purposes of this Schedule a person is directly participating in the management, control or capital of another person at a particular time if, and only if, that other person is at that time—
- (a) a body corporate or a partnership; and
  - (b) controlled by the first person.
- (2) For the purposes of this Schedule a person (“the potential participant”) is indirectly participating in the management, control or capital of another person at a particular time if, and only if—
- (a) he would be taken to be directly so participating at that time if the rights and powers attributed to him included all the rights and powers mentioned in sub-paragraph (3) below that are not already attributed to him for the purposes of sub-paragraph (1) above; or
  - (b) he is, at that time, one of a number of major participants in that other person’s enterprise.
- (3) The rights and powers referred to in sub-paragraph (2)(a) above are—
- (a) rights and powers which the potential participant is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;
  - (b) rights and powers of persons other than the potential participant to the extent that they are rights or powers falling within sub-paragraph (4) below;
  - (c) rights and powers of any person with whom the potential participant is connected; and
  - (d) rights and powers which for the purposes of sub-paragraph (2)(a) above would be attributed to a person with whom the potential participant is connected if that connected person were himself the potential participant.
- (4) Rights and powers fall within this sub-paragraph to the extent that they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—
    - (i) on behalf of the potential participant;
    - (ii) under the direction of the potential participant; or
    - (iii) for the benefit of the potential participant;and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (5) In sub-paragraphs (3)(b) to (d) and (4) above, the references to a person’s rights and powers include references to any rights or powers which he either—

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- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (6) In paragraph (d) of sub-paragraph (3) above, the reference to rights and powers which would be attributed to a connected person if he were the potential participant includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to him through a number of persons each of whom is connected with at least one of the others.
- (7) For the purposes of this paragraph a person (“the potential major participant”) is a major participant in another person’s enterprise at a particular time if at that time—
- (a) that other person (“the subordinate”) is a body corporate or partnership; and
  - (b) the 40 per cent. test is satisfied in the case of each of two persons who, taken together, control the subordinate and of whom one is the potential major participant.
- (8) For the purposes of this paragraph the 40 per cent. test is satisfied in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40 per cent. of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.
- (9) For the purposes of this paragraph—
- (a) the question whether a person is controlled by any two or more persons taken together, and
  - (b) any question whether the 40 per cent. test is satisfied in the case of a person who is one of two persons,
- shall be determined after attributing to each of the persons all the rights and powers attributed to a potential participant for the purposes of sub-paragraph (2)(a) above.
- (10) References in this paragraph—
- (a) to rights and powers of a person, or
  - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.
- (11) For the purposes of this paragraph two persons are connected with each other if—
- (a) one of them is an individual and the other is his spouse, a relative of his or of his spouse, or the spouse of such a relative; or
  - (b) one of them is a trustee of a settlement and the other is—
    - (i) a person who in relation to that settlement is a settlor; or
    - (ii) a person who is connected with a person falling within sub-paragraph (i) above.
- (12) In sub-paragraph (11) above—
- “relative” means brother, sister, ancestor or lineal descendant; and
  - “settlement” and “settlor” have the same meanings as in Chapter IA of Part XV.

*Advantage in relation to United Kingdom taxation*

- 5 (1) For the purposes of this Schedule (but subject to sub-paragraph (2) below) the actual provision confers a potential advantage on a person in relation to United Kingdom



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taxation wherever, disregarding this Schedule, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of the following, that is to say—

- (a) that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of that person's profits for any chargeable period; or
  - (b) that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of that person.
- (2) Subject to paragraph 11(2) below, the actual provision shall not be taken for the purposes of this Schedule to confer a potential advantage in relation to United Kingdom taxation on either of the persons as between whom it is made or imposed if—
- (a) the three conditions set out in sub-paragraphs (3) to (5) below are all satisfied in the case of each of those two persons; and
  - (b) the further condition set out in sub-paragraph (6) below is satisfied in the case of each of those persons who is an insurance company.
- (3) The first condition is satisfied in the case of any person if—
- (a) that person is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities;
  - (b) that person is not entitled to any exemption from income tax or corporation tax in respect of, or of a part of, the income or profits arising from the relevant activities in respect of which he is within that charge; and
  - (c) where that person is within the charge to income tax in respect of profits arising from those activities, he is resident in the United Kingdom in the chargeable periods in which he is so within that charge.
- (4) The second condition is satisfied in the case of any person if he is neither—
- (a) a person with an entitlement, in pursuance of any double taxation arrangements or under section 790(1), to be given credit in any chargeable period for any foreign tax on or in respect of profits arising from the relevant activities; nor
  - (b) a person who would have such an entitlement in any such period if there were any such profits or if they exceeded a certain amount.
- (5) The third condition is satisfied in the case of any person if the amounts taken into account in computing the profits or losses arising from the relevant activities to that person in any chargeable period in which he is within the charge to income tax or corporation tax in respect of profits arising from those activities do not include any income the amount of which is reduced in accordance with section 811(1) (deduction for foreign tax where no credit allowable).
- (6) The further condition is satisfied in the case of an insurance company if the profits arising from the relevant activities in respect of which the company is within the charge to corporation tax do not include—
- (a) any profits in the computation of which acquisition expenses have been brought into account in accordance with section 86 of the <sup>M264</sup>Finance Act 1989 (expenses of acquiring insurance business); or
  - (b) any profits in relation to which the rate of corporation tax is fixed by section 88 or 88A of that Act (lower rate on certain profits of insurance companies).

*Elimination of double counting*

- 6 (1) This paragraph applies where—

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- (a) only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; but
  - (b) the other affected person (“the disadvantaged person”) is a person in relation to whom the condition set out in sub-paragraph (3) of paragraph 5 above either—
    - (i) is satisfied, or
    - (ii) were any such exemption as is mentioned in paragraph (b) of that sub-paragraph to be disregarded, would be satisfied.
- (2) Subject to sub-paragraphs (3) to (6) and paragraph 7 below, on the making of a claim by the disadvantaged person for the purposes of this paragraph—
- (a) the disadvantaged person shall be entitled to have his profits and losses computed for tax purposes as if the arm’s length provision had been made or imposed instead of the actual provision; and
  - (b) notwithstanding any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments shall be made in his case as may be required to give effect to the assumption that the arm’s length provision was made or imposed instead of the actual provision.
- (3) A claim made by the disadvantaged person for the purposes of this paragraph—
- (a) shall not be made unless a computation has been made in the case of the advantaged person on the basis that the arm’s length provision was made or imposed instead of the actual provision; and
  - (b) must be consistent with the computation made on that basis in the case of the advantaged person.
- (4) For the purposes of sub-paragraph (3) above a computation shall be taken to have been made in the case of the advantaged person on the basis that the arm’s length provision was made or imposed instead of the actual provision if, and only if—
- (a) the computations made for the purposes of any return by the advantaged person have been made on that basis by virtue of this Schedule; or
  - (b) a relevant notice given to the advantaged person takes account of a determination in pursuance of this Schedule of an amount falling to be brought into account for tax purposes on that basis.
- (5) Subject to section 111(3)(b) of the Finance Act 1998 (which provides for the extension of the period for making a claim), a claim for the purposes of this paragraph shall not be made except within one of the following periods—
- (a) in a case where a return has been made by the advantaged person on the basis mentioned in sub-paragraph (3)(a) above, the period of two years beginning with the day of the making of the return; and
  - (b) in any case where a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above has been given to the advantaged person, the period of two years beginning with the day on which that notice was given.
- (6) Subject to section 111(3)(b) of the Finance Act 1998, where—
- (a) a claim for the purposes of this paragraph is made by the disadvantaged person in relation to a return made on the basis mentioned in sub-paragraph (3)(a) above, and
  - (b) a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above is subsequently given to the advantaged person,

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the disadvantaged person shall be entitled, within the period mentioned in sub-paragraph (5)(b) above, to make any such amendment of the claim as may be appropriate in consequence of the determination contained in that notice.

(7) In this paragraph—

“relevant notice” means—

- (a) a notice under section 28A(5) or 28B(5) of the Management Act stating the conclusions of an officer of the Board in relation to any self-assessment, partnership statement, claim or election;
- (b) a closure notice under paragraph 32 of Schedule 18 to the Finance Act 1998 in relation to an enquiry into a company tax return;
- (c) a notice of an assessment under section 29 of the Management Act;
- (d) a notice of any discovery assessment or discovery determination under paragraph 41 of Schedule 18 to the Finance Act 1998 (including any notice of an assessment by virtue of paragraph 52 of that Schedule);
- (e) a notice under section 30B(1) of the Management Act amending a partnership statement;

“return” means any return required to be made under the Management Act or Schedule 18 to the Finance Act 1998 for income tax or corporation tax purposes or any voluntary amendment of such a return; and

“voluntary amendment”, in relation to a return, means any amendment in accordance with the Management Act or Schedule 18 to the Finance Act 1998, other than one made in response to the giving of a relevant notice.

*Adjustment of disadvantaged person’s double taxation relief*

7 (1) Subject to sub-paragraph (4) below, where—

- (a) a claim is made for the purposes of paragraph 6 above, and
- (b) the disadvantaged person is entitled, on that claim, to make a computation, or to have an adjustment made in his case, on the basis that the arm’s length provision was made or imposed instead of the actual provision,

the assumptions specified in sub-paragraph (2) below shall apply, in the disadvantaged person’s case, as respects any credit for foreign tax which the disadvantaged person has been or may be given in pursuance of any double taxation arrangements or under section 790(1).

(2) Those assumptions are—

- (a) that the foreign tax paid or payable by the disadvantaged person does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm’s length provision had been made or imposed instead of the actual provision; and
- (b) that the amount of the relevant profits of the disadvantaged person in respect of which he is given credit for foreign tax does not include the amount (if any) by which his relevant profits are treated as reduced in accordance with paragraph 6 above.

(3) Sub-paragraph (4) below applies if—

- (a) a claim is made for the purposes of paragraph 6 above;
- (b) the disadvantaged person is entitled, on that claim, to make a computation, or to have an adjustment made in his case, on the basis that the arm’s length provision was made or imposed instead of the actual provision;

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- (c) the application of that basis in the computation of the disadvantaged person's profits or losses for any chargeable period involves a reduction in the amount of any income; and
  - (d) that income is also income that falls to be treated as reduced in accordance with section 811(1).
- (4) Where this sub-paragraph applies—
- (a) the reduction mentioned in sub-paragraph (3)(c) above shall be treated as made before any reduction under section 811(1); and
  - (b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in sub-paragraph (3)(c) above shall be disregarded for the purposes of section 811(1).
- (5) Where, in a case in which a claim has been made for the purposes of paragraph 6 above, any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this paragraph—
- (a) it may be made in any case by setting the amount of the adjustment against any relief or repayment to which the disadvantaged person is entitled in pursuance of that claim; and
  - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended shall prevent that adjustment from being so made.
- (6) References in this paragraph to relevant profits of the disadvantaged person are references to profits arising to the disadvantaged person from the carrying on of the relevant activities.

*Foreign exchange gains and losses and financial instruments*

- 8 (1) Subject to sub-paragraph (2) below, this Schedule shall not require the amounts brought into account in any person's case under—
- (a) Chapter II of Part II of the <sup>M265</sup>Finance Act 1993 (foreign exchange gains and losses), or
  - (b) Chapter II of Part IV of the <sup>M266</sup>Finance Act 1994 (financial instruments),
- to be computed in that person's case on the assumption that the arm's length provision had been made or imposed instead of the actual provision.
- (2) Sub-paragraph (1) above—
- (a) shall not affect so much of sections 136 and 136A of the <sup>M267</sup>Finance Act 1993 (application of arm's length test) as has effect by reference to whether the whole or any part of a loan falls to be treated in accordance with this Schedule as an amount on which interest has been charged or, as the case may be, has been charged at a higher rate; and
  - (b) accordingly, shall not prevent the assumption mentioned in that sub-paragraph from determining for the purposes of sections 136(8) and (9) and 136A(6) and (7) of that Act how much (if any) of any loan falls to be so treated.

*Special rules for sales etc. of oil*

- 9 (1) Subject to paragraph 10 below, this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil if—

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- (a) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company (“the producer”) which (although it may be the seller) is not the buyer; and
  - (b) at the time of the sale not less than 20 per cent. of the producer’s ordinary share capital is owned directly or indirectly by one or more of the following, that is to say, the buyer and the companies (if any) that are linked to the buyer.
- (2) Where this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil, this Schedule shall have effect as respects that provision as if the buyer, the seller and (if it is not the seller) the producer were all controlled by the same person at the time of the making or imposition of that provision.
- (3) For the purposes of this paragraph two companies are linked if—
- (a) one is under the control of the other; or
  - (b) both are under the control of the same person or persons.
- (4) For the purposes of this paragraph—
- (a) any question whether ordinary share capital is owned directly or indirectly by a company shall be determined as for section 838;
  - (b) rights to extract oil shall be taken to be exercisable by a company even if they are exercisable by that company only jointly with one or more other companies; and
  - (c) a sale of oil shall be deemed to take place at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier.
- (5) In this paragraph “oil” includes any mineral oil or relative hydrocarbon, as well as natural gas.

*Transactions and deemed transactions involving oil*

- 10 This Schedule does not apply in relation to provision made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of subsections (1) to (4) of section 493 (transactions and deemed transactions involving oil treated as made at market value).

*Special provision for companies carrying on ring fence trades*

- 11 (1) This paragraph applies where any person (“the taxpayer”) carries on as, or as part of, a trade any activities (“the ring fence trade”) which, in accordance with section 492(1) either—
- (a) fall to be treated for any tax purposes as a separate trade, distinct from all other activities carried on by him as part of the trade; or
  - (b) would so fall if the taxpayer did carry on any other activities as part of that trade.
- (2) Subject to paragraph 10 above and sub-paragraph (4) below, where provision made or imposed as between the taxpayer and another person by means of a transaction or series of transactions—
- (a) falls, in relation to the taxpayer, to be regarded as made or imposed in the course of, or with respect to, the ring fence trade; but
  - (b) falls, in relation to the other person, to be regarded as made or imposed in the course of, or with respect to, activities of that other person which do not fall within section 492(1),

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this Schedule shall have effect in relation to that provision with the omission of paragraph 5(2) above.

- (3) Subject to paragraph 10 above and sub-paragraph (4) below, this Schedule shall have effect as respects any provision made or imposed by the taxpayer as between the ring fence trade and any other activities carried on by him as if—
- (a) that trade and those activities were carried on by two different persons;
  - (b) that provision were made or imposed as between those two persons by means of a transaction;
  - (c) a potential advantage in relation to United Kingdom taxation were conferred by that provision on each of those two persons;
  - (d) those two persons were both controlled by the same person at the time of the making or imposition of that provision; and
  - (e) paragraphs 5 to 7 above were omitted.
- (4) This Schedule shall apply in accordance with this paragraph in relation to any provision mentioned in sub-paragraph (2) or (3) above only where the effect of its application in relation to that provision is either—
- (a) that a larger amount (including, if there would not otherwise have been profits, an amount of more than nil) is taken for tax purposes to be the amount of the profits of the ring fence trade for any chargeable period; or
  - (b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of that trade.

### *Appeals*

- 12 (1) In so far as the question in dispute on any appeal falling within sub-paragraph (2) below—
- (a) is or involves a determination of whether this Schedule has effect as respects any provision made or imposed as between any two persons, or of how it so has effect, and
  - (b) is not a question that would fall to be determined by the Special Commissioners apart from this sub-paragraph,
- that question shall be determined by them.
- (2) The appeals falling within this sub-paragraph are—
- (a) any appeal under section 31 of, or Schedule 1A to, the Management Act;
  - (b) any appeal under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company's return; and
  - (c) any appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.
- (3) Sub-paragraph (4) below applies where—
- (a) any such question as is mentioned in sub-paragraph (1) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them; and
  - (b) that question relates to any provision made or imposed as between two persons each of whom is a person in relation to whom the condition set out in paragraph 5(3) above is satisfied.
- (4) Where this sub-paragraph applies—

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- (a) each of the persons as between whom the actual provision was made or imposed shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
- (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
- (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.

(5) In this paragraph—

“discovery assessment” means a discovery assessment under paragraph 41 of Schedule 18 to the Finance Act 1998 (including one by virtue of paragraph 52 of that Schedule); and

“discovery determination” means a discovery determination under paragraph 41 of that Schedule.

*Saving for the provisions relating to capital allowances and capital gains*

13 Nothing in this Schedule shall be construed as affecting—

- (a) the computation of the amount of any capital allowance or balancing charge made under the 1990 Act; or
- (b) the computation in accordance with the 1992 Act of the amount of any chargeable gain or allowable loss;

and nothing in this Schedule shall require the profits or losses of any person to be computed for tax purposes as if, in his case, instead of income or losses falling to be brought into account in connection with the taxation of income, there were gains or losses falling to be brought into account in accordance with the 1992 Act.

*General interpretation etc.*

14 (1) In this Schedule—

“the actual provision” and “the affected persons” shall be construed in accordance with paragraph 1(1) above;

“the arm”’s length provision’ shall be construed in accordance with paragraph 1(2) and (3) above;

“double taxation arrangements” means arrangements having effect by virtue of section 788;

“foreign tax” means any tax under the law of a territory outside the United Kingdom or any amount which falls for the purposes of any double taxation arrangements to be treated as if it were such tax;

“insurance company” has the same meaning as in Chapter I of Part XII;

“losses” includes amounts which are not losses but in respect of which relief may be given in accordance with any of the following enactments—

- (a) section 75(3) (excess of management expenses);
- (b) section 468L(5) (allowance for interest distributions of a unit trust);
- (c) Part X (loss relief and group relief);
- (d) section 83 of and Schedule 8 to the <sup>M268</sup>Finance Act 1996 or paragraph 4 of Schedule 11 to that Act (deficits on loan relationships);

“profits” includes income;

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“the relevant activities”, in relation to a person who is one of the persons as between whom any provision is made or imposed, means such of his activities as—

- (i) comprise the activities in the course of which, or with respect to which, that provision is made or imposed; and
- (ii) are not activities carried on either separately from those activities or for the purposes of a different part of that person’s business;

“transaction” and “series of transactions” shall be construed in accordance with paragraph 3 above.

- (2) Without prejudice to paragraphs 9(2) and 11(3) above, references in this Schedule to a person controlling a body corporate or a partnership shall be construed in accordance with section 840.
- (3) In determining for the purposes of this Schedule whether a person has an entitlement, in pursuance of any double taxation arrangements or under section 790(1), to be given credit for foreign tax, any requirement that a claim is made before such a credit is given shall be disregarded.
- (4) Any adjustments required to be made by virtue of this Schedule may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.
- (5) This Schedule shall have effect as if—
  - (a) a unit trust scheme were a company that is a body corporate;
  - (b) the rights of the unit holders under such a scheme were shares in the company that the scheme is deemed to be;
  - (c) rights and powers of a person in the capacity of a person entitled to act for the purposes of the scheme were rights and powers of the scheme; and
  - (d) provision made or imposed as between any person in such a capacity and another person were made or imposed as between the scheme and that other person.”

#### Marginal Citations

M264 1989 c. 26.  
M265 1993 c. 34.  
M266 1994 c. 9.  
M267 1993 c. 34.  
M268 1996 c. 8.

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## SCHEDULE 17

Section 113.

### CONTROLLED FOREIGN COMPANIES

#### *Section 747*

- 1 (1) Section 747 of the Taxes Act 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies) shall be amended as follows.
- (2) In subsection (1) (which provides that the provisions of the Chapter shall apply in relation to an accounting period of a company if the Board have reason to believe certain things and so direct)—
- (a) the words “the Board have reason to believe that”, and
  - (b) the words “and the Board so direct”,
- shall cease to have effect.
- (3) In subsection (3) (apportionment of controlled foreign company’s chargeable profits and creditable tax among the persons with an interest in the company) for “Where, by virtue of a direction under subsection (1) above,” there shall be substituted “ Subject to section 748, where ”.
- (4) In subsection (4)—
- (a) in paragraph (a) (which provides for a sum to be assessed on and recovered from a company resident in the United Kingdom as if it were corporation tax) for “assessed on and recoverable from” there shall be substituted “ chargeable on ”;
  - (b) in the words following paragraph (b), for “to which the direction under subsection (1) above relates” there shall be substituted “ which is mentioned in subsection (1) above ”.
- (5) In subsection (5) (tax not to be assessed and recoverable from the resident company unless, among other things, at least 10 per cent. of the controlled foreign company’s chargeable profits are apportioned to the resident company or persons connected or associated with it)—
- (a) for “assessed and recoverable from” there shall be substituted “ chargeable on ”; and
  - (b) for “10 per cent.” there shall be substituted “ 25 per cent. ”

#### *Section 747A*

- 2 (1) Section 747A of the Taxes Act 1988 (special rule for computing chargeable profits) shall be amended as follows.
- (2) In subsection (6), for “a direction has been given under section 747” there shall be substituted “ an apportionment under section 747(3) has fallen to be made ”.
- (3) In subsection (8), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
- “(a) an apportionment under section 747(3) has fallen to be made, or
  - (b) it can reasonably be assumed that such an apportionment would have fallen to be made, but for the fact that the company pursued, within

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the meaning of Part I of Schedule 25, an acceptable distribution policy.”.

- (4) In subsection (9) (which defines a company’s commencement day by reference to an appointed day) in paragraph (b), after “the appointed day” there shall be inserted “ (which, for ease of reference, is 23rd March 1995) ”.

#### Section 748

- 3 (1) Section 748 of the Taxes Act 1988 (limitations on direction-making power) shall be amended as follows.

- (2) In subsection (1) (no direction to be given if the conditions specified in any of the paragraphs of the subsection are satisfied) for the words preceding paragraph (a) there shall be substituted—

“(1) No apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company if—”.

- (3) In paragraph (d) of that subsection (cases where chargeable profits do not exceed £20,000 etc) for “£20,000” there shall be substituted “ £50,000 ”.

- (4) After that paragraph there shall be inserted “or

(e) as respects the accounting period, the company is, within the meaning of regulations made by the Board for the purposes of this paragraph, resident in a territory specified in the regulations and satisfies—

- (i) such conditions with respect to its income or gains as may be so specified; and  
(ii) such other conditions (if any) as may be so specified.”

- (5) After subsection (1) there shall be inserted—

“(1A) Regulations under paragraph (e) of subsection (1) above may—

- (a) make different provision for different cases or with respect to different territories;  
(b) make provision having effect in relation to accounting periods of controlled foreign companies ending not more than one year before the date on which the regulations are made; and  
(c) contain such supplementary, incidental, consequential and transitional provision as the Board may think fit.”

- (6) Subsection (2) (which relates to directions under section 747) shall cease to have effect.

- (7) In subsection (3) (which refers to paragraphs (a) to (d) of subsection (1)) for “(d)” there shall be substituted “ (e) ”.

- (8) Also in subsection (3), for “no direction may be given under section 747(1) with respect to that accounting period if it appears to the Board that” there shall be substituted “ no apportionment under section 747(3) falls to be made as regards that accounting period if it is the case that ”.

- (9) For the side-note to the section, there shall be substituted “ Cases where section 747(3) does not apply. ”

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### Section 749

- 4 For section 749 of the Taxes Act 1988 (residence and interest) there shall be substituted—

#### “749 Residence.

- (1) Subject to subsections (2) to (4) and (6) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.
- (2) If, in the case of any company,—
- (a) there are in any accounting period two or more territories falling within subsection (1) above, and
  - (b) no election or designation made under paragraph (d) or (e) of subsection (3) below in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to that accounting period,
- subsection (3) below shall apply with respect to that company and that accounting period.
- (3) Where this subsection applies, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of those territories, namely—
- (a) if, throughout the accounting period, the company’s place of effective management is situated in one of those territories only, in that territory;
  - (b) if, throughout the accounting period, the company’s place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company’s assets is situated;
  - (c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company’s assets is situated;
  - (d) if—
    - (i) paragraph (a) above does not apply, and
    - (ii) neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories,in that one of them (if any) which is specified in an election made in relation to that accounting period by any one or more persons who together have a majority assessable interest in the company in that accounting period; and
  - (e) if, in a case falling within paragraph (d) above, the time by which any election under that paragraph in relation to that accounting period must be made in accordance with section 749A(3)(b) expires without such an election having been made, in that one of those territories which the Board justly and reasonably designates in relation to that accounting period.

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- (4) If, in the case of any company,—
- (a) there are in any accounting period two or more territories falling within subsection (1) above, and
  - (b) an election or designation made under paragraph (d) or (e) of subsection (3) above in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to the accounting period mentioned in paragraph (a) above,
- the company shall in that accounting period be regarded for the purposes of this Chapter as resident in that one of those territories which is the subject of the election or designation.
- (5) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.
- (6) In any case where it becomes necessary for the purposes of subsection (3) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period—
- (a) account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories; and
  - (b) the amount of them shall be determined by reference to their market value at that time.
- (7) This section is without prejudice to the provision that may be made in regulations under section 748(1)(e).
- (8) For the purposes of this section, one or more persons together have a "majority assessable interest" in a controlled foreign company in an accounting period of the company if—
- (a) each of them has an assessable interest in the company in that accounting period; and
  - (b) it is likely that, were an apportionment of the chargeable profits of the company for that accounting period made under section 747(3), the aggregate of the amounts which would be apportioned to them is greater than 50 per cent. of the aggregate of the amounts which would be apportioned to all the persons who have an assessable interest in the company in that accounting period.
- (9) For the purposes of subsection (8) above, a person has an "assessable interest" in a controlled foreign company in an accounting period of the company if he is one of the persons who it is likely would be chargeable to tax under section 747(4)(a) on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3).

#### **749A Elections and designations under section 749: supplementary provisions.**

- (1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—

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- (a) the accounting period in relation to which it is made (“the original accounting period”), and
  - (b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.
- (2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—
  - (a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or
  - (b) some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
  - (a) must be made by notice given to an officer of the Board;
  - (b) must be made no later than twelve months after the end of the controlled foreign company’s accounting period in relation to which it is made;
  - (c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;
  - (d) must be signed by the persons making it; and
  - (e) is irrevocable.
- (4) Nothing in—
  - (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
  - (b) Schedule 1A to the Management Act (claims or elections not included in returns),shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).
- (5) A designation under section 749(3)(e) is irrevocable.
- (6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.
- (7) A notice under subsection (6) above shall specify—
  - (a) the date on which the designation was made;
  - (b) the controlled foreign company to which the designation relates;
  - (c) the accounting period of the controlled foreign company in relation to which the designation is made; and

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(d) the territory designated.

(8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.

#### **749B Interests in companies.**

(1) For the purposes of this Chapter, the following persons have an interest in a company—

- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
- (b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;
- (c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and
- (d) any other person who, either alone or together with other persons, has control of the company.

(2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.

(3) For the purposes of subsection (1)(b) above, the definition of “distribution” in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

(4) References in subsection (1) above to being entitled to do anything apply where a person—

- (a) is presently entitled to do it at a future date, or
- (b) will at a future date be entitled to do it;

but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.

(5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.

(6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.

(7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person’s interest in that company, the same interest as the first company has in the second company.

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- (8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.”

#### Section 750

- 5 (1) Section 750 of the Taxes Act 1988 (territories with a lower level of taxation) shall be amended as follows.
- (2) In subsection (1) (which refers to certain provisions of section 749)—
- (a) for “subsection (3)” there shall be substituted “ subsection (5) ”; and
  - (b) for “subsection (1) or subsection (2)” there shall be substituted “ any of subsections (1) to (4) ”.
- (3) In subsection (3), for paragraph (a) (which refers to a direction under section 747(1) and a declaration under paragraph 11(3) of Schedule 24) there shall be substituted—
- “(a) it shall be assumed for the purposes of Schedule 24 that an apportionment under section 747(3) falls to be made as regards that period; and”.

#### Section 751

- 6 (1) Section 751 of the Taxes Act 1988 (accounting periods and creditable tax) shall be amended as follows.
- (2) In subsection (1) (occasions on which an accounting period begins) in paragraph (b) (company commencing to carry on business)—
- (a) the words “not being the subject of an earlier direction under section 747(1)” shall cease to have effect; and
  - (b) after “commences to carry on business” there shall be inserted “ unless an accounting period of the company has previously begun as respects which an apportionment under section 747(3) falls or has fallen to be made ”.
- (3) In subsection (5) (direction may specify accounting period where beginning or end appears uncertain)—
- (a) for “a direction under section 747(1) may” there shall be substituted “ the Board may by notice ”; and
  - (b) for “the direction” there shall be substituted “ the notice ”.
- (4) In subsection (5) (power to amend so as to specify true accounting period where further facts come to the knowledge of the Board after making a direction)—
- (a) for “making of a direction (including facts emerging on an appeal against notice of the making of the direction)” there shall be substituted “ giving of a notice under subsection (4) above ”; and
  - (b) for “direction”, in the third and fourth places where it occurs, there shall be substituted “ notice ”.
- (5) After subsection (5) there shall be inserted—
- “(5A) Any notice under subsection (4) above, and notice of any amendment of such a notice under subsection (5) above, shall be given to every person who has an assessable interest (as defined in section 749(9)) in the company in the accounting period in question.”

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- (6) In subsection (6) (meaning of “creditable tax”) for “in respect of which a direction is given under section 747(1)” there shall be substituted “ as regards which an apportionment under section 747(3) falls to be made ”.

### Section 752

- 7 For section 752 of the Taxes Act 1988 (apportionment of chargeable profits and creditable tax) there shall be substituted—

#### “752 Apportionment of chargeable profits and creditable tax.

- (1) This section applies in any case where an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company.
- (2) Where—
- (a) the persons who have relevant interests in the controlled foreign company at any time in the relevant accounting period have those interests by virtue only of directly or indirectly holding ordinary shares of the company,
  - (b) each of those persons satisfies the condition that he is either—
    - (i) resident in the United Kingdom throughout that accounting period, or
    - (ii) resident in the United Kingdom at no time in that accounting period, and
  - (c) no company which has an intermediate interest in the controlled foreign company at any time in the relevant accounting period has that interest otherwise than by virtue of directly or indirectly holding ordinary shares of the controlled foreign company,
- subsection (3) below shall apply.
- (3) Where this subsection applies, the apportionment of the controlled foreign company’s chargeable profits and creditable tax (if any) for the relevant accounting period shall be made among the persons who have relevant interests in the company at any time in that period in direct proportion to the percentage of the issued ordinary shares of the controlled foreign company which, in accordance with section 752B, each of those relevant interests represents.
- (4) Where subsection (3) above does not apply, the apportionment of the controlled foreign company’s chargeable profits and creditable tax (if any) for the relevant accounting period shall be made on a just and reasonable basis among the persons who have relevant interests in the company at any time in that period.

#### 752A Relevant interests.

- (1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.



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- (2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.
- (3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.
- (4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.
- (5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
  - (a) a UK resident company; or
  - (b) another related person.
- (6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
  - (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
  - (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.
- (7) A person who—
  - (a) has a direct interest in a controlled foreign company, but
  - (b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.
- (8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—
  - (a) has the whole or any part of the same interest indirectly, and
  - (b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.
- (9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.
- (10) In this section—

“related person” means a person who—

  - (a) is not a UK resident company, but
  - (b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;

“UK resident company” means a company resident in the United Kingdom.

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**752B Section 752(3): the percentage of shares which a relevant interest represents.**

- (1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and  
S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

- (2) In subsection (1) above and this subsection—  
“the appropriate fraction”, in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;  
“the lowest share-linked company”, in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;  
“share-linked company” means a company which is share-linked to the controlled foreign company in question.
- (3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—  
(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and  
(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.
- (4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.
- (5) For the purposes of subsection (4) above—  
“holding period”, in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

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“the relevant percentage”, in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.

### **752C Interpretation of apportionment provisions.**

- (1) In this section “the relevant provisions” means sections 752 to 752B and this section.
- (2) For the purposes of the relevant provisions—
  - (a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;
  - (b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;
  - (c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.
- (3) For the purposes of the relevant provisions, a company is “share-linked” to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—
  - (a) of the controlled foreign company, or
  - (b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or
  - (c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,and so on.
- (4) For the purposes of the relevant provisions, a company (“company A”) has an intermediate interest in a controlled foreign company if (and only if)—
  - (a) it has a direct or indirect interest in the controlled foreign company; and
  - (b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.

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- (5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.
- (6) Where—
- (a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and
  - (b) subsection (5) above does not apply, but
  - (c) there are one or more identifiable beneficiaries,
- the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.
- (7) In the relevant provisions—
- “bare trustee” means a person acting as trustee—
- (a) for a person absolutely entitled as against the trustee; or
  - (b) for any person who would be so entitled but for being a minor or otherwise under a disability; or
  - (c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;
- “ordinary shares”, in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;
- “the relevant accounting period” means the accounting period mentioned in section 752(1);
- “share” includes a reference to a fraction of a share.”

#### *Section 753*

- 8 Section 753 of the Taxes Act 1988 (notices and appeals) shall cease to have effect.

#### *Section 754*

- 9 (1) Section 754 of the Taxes Act 1988 (assessment, recovery and postponement of tax) shall be amended as follows.
- (2) In subsection (1) (provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax to be taken as applying all enactments applying generally to corporation tax, including certain described enactments)—
- (a) for “assessment and recovery” there shall be substituted “the charging”; and
  - (b) after “including” there shall be inserted “ those relating to company tax returns, ”.
- (3) After subsection (1) there shall be inserted—
- “(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—

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- (a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and
  - (b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).”
- (4) For subsection (2) (which provides for any sum assessable and recoverable under section 747(4)(a) to be regarded as corporation tax which falls to be assessed for the accounting period in which ends the accounting period of the controlled foreign company and which makes provision as to the contents of a notice of assessment) there shall be substituted—
  - “(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which ends that one of the controlled foreign company’s accounting periods the chargeable profits of which give rise to that sum.”
- (5) After subsection (2) there shall be inserted—
  - “(2A) Where—
    - (a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and
    - (b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and
    - (c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,the Board may determine that another basis is to be used for the apportionment.
  - (2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—
    - (a) to produce to them such documents in the company’s power or possession, and
    - (b) to provide them with such information, in such form,as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.
  - (2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.
  - (2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.
  - (2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company’s company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable.”

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- (6) For subsection (3) (appeals) there shall be substituted the following subsections—
- “(3) Where any appeal—
- (a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or
  - (b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),
- involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.
- (3A) Where—
- (a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and
  - (b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,
- subsection (3B) below shall apply.
- (3B) Where this subsection applies—
- (a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected by the resolution of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;
  - (b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and
  - (c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.”

(7) Subsection (4) shall cease to have effect.

(8) In subsection (6) (power of Board to serve notice of liability to tax on another company with the same interest where tax assessed by virtue of section 752(6) remains unpaid by the assessable company)—

    - (a) for “assessed” and “assessable”, wherever occurring, there shall be substituted “chargeable”;
    - (b) in paragraph (a), for “752(6)” there shall be substituted “747(4)(a)”;
    - (c) in paragraph (b), before “the same interest” there shall be inserted “the whole or any part of”; and
    - (d) at the beginning of the words following paragraph (b) there shall be inserted “the whole or, as the case may be, the corresponding part”.

(9) In subsection (7) (liability for interest where notice of liability to tax is served)—

    - (a) at the beginning of paragraph (a) there shall be inserted “the whole, or (as the case may be) the corresponding part, of”;
    - (b) in paragraph (a), for “assessed” and “assessable” there shall be substituted “chargeable”; and

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- (c) at the end of paragraph (b), there shall be added “(so far as referable to tax payable by the responsible company by virtue of the notice)”.
- (10) In subsection (8) (recovery of tax and interest from the assessable company where the responsible company fails to pay within the time allowed) for “assessable” there shall be substituted “chargeable”.

*Returns where it is not established whether acceptable distribution policy applies*

10 After section 754 of the Taxes Act 1988 there shall be inserted—

**“754A Returns where it is not established whether acceptable distribution policy applies.**

- (1) This section applies where—
  - (a) a company resident in the United Kingdom (“the UK company”) has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;
  - (b) the UK company delivers a company tax return; and
  - (c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.
- (2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.
- (3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.
- (4) In any case where—
  - (a) the UK company acts in pursuance of subsection (2) above, but
  - (b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.
- (5) In any case where—
  - (a) the UK company acts in pursuance of subsection (3) above, but
  - (b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,

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the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.

- (6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above (“an ADP amendment”) shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.
- (7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.
- (8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.
- (9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).
- (10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.
- (11) In this section, “the period allowed for establishing an ADP” means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—
  - (a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or
  - (b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.
- (12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.”

*Determinations requiring the sanction of the Board*

11 After section 754A of the Taxes Act 1988 there shall be inserted—

**“754B Determinations requiring the sanction of the Board.**

- (1) This section has effect where a determination requiring the Board’s sanction is made for any of the following purposes, that is to say—
  - (a) the giving of a closure notice; or
  - (b) the making of a discovery assessment.
- (2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—



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- (a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or
  - (b) notification of the Board’s approval having been served on that person at or before the time of the giving of the notice,

the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.
- (3) A notification under subsection (2)(b) above—
  - (a) must be in writing;
  - (b) must state that the Board have given their approval on the basis that—
    - (i) an amount of chargeable profits, and
    - (ii) an amount of creditable tax (which may be nil),for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;
  - (c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and
  - (d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.
- (4) For the purposes of this section, the Board’s approval of a determination requiring their sanction—
  - (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
  - (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.
- (5) In this section references to a determination requiring the Board’s sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).
- (6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board’s sanction if—
  - (a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;
  - (b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and
  - (c) the matters to which the agreement relates include the amount determined.
- (7) In paragraph (a) of subsection (6) above, “the relevant amounts” means—
  - (a) the amount of chargeable profits, and
  - (b) the amount of creditable tax (which may be nil),

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for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.

- (8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person (“the taxpayer”) in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
  - (b) that time is after the end of the period of thirty days beginning—
    - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
    - (ii) in any other case, with the day of the agreement’s confirmation in writing; and
  - (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—
- (a) stating that the agreement has been made; and
  - (b) setting out the terms of the agreement.
- (10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board’s approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (11) In this section—
- “closure notice” means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);
- “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).”

#### *Section 755*

- 12 Section 755 of the Taxes Act 1988 (information relating to controlled foreign companies) shall cease to have effect.

*Treatment of chargeable profits and creditable tax  
apportioned to company carrying on life assurance business*

- 13 After section 755 of the Taxes Act 1988 there shall be inserted—

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### **“755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.**

- (1) This section applies in any case where—
  - (a) an amount (“the apportioned profit”) of a controlled foreign company’s chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
  - (b) the UK company carries on life assurance business in that one of its accounting periods (“the relevant accounting period”) in which ends the accounting period of the controlled foreign company; and
  - (c) the property or rights which represent the UK company’s relevant interest in the controlled foreign company constitute to any extent assets of the UK company’s long term business fund.
- (2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.
- (3) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders’ part of any BLAGAB apportioned profit shall be—
  - (a) if a single rate of tax under section 88A(1) of the <sup>M269</sup>Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or
  - (b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.
- (4) Where this subsection applies, the “appropriate rate” for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—
  - (a) pension business,
  - (b) life reinsurance business, or
  - (c) overseas life assurance business,carried on by the UK company.
- (5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the “appropriate rate” for the purposes of—
  - (a) section 747(4)(a), and
  - (b) paragraph 1 of Schedule 26,shall be nil in relation to so much of the apportioned profit as is referable to the UK company’s relevant interest so far as represented by assets of its long term business fund.
- (6) If, in the case of the relevant accounting period,—
  - (a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,

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- (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and
  - (c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above, so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (7) If, in the case of the relevant accounting period,—
- (a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and
  - (b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,
- so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of the UK company's long term business fund shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.
- (8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.
- (9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3)—
- (a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and
  - (b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.
- (10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.
- (11) For the purposes of this section, the "policy holders' part" of any BLAGAB apportioned profit is—
- (a) in a case where subsection (4) of section 88A of the <sup>M270</sup>Finance Act 1989 applies, the whole; and
  - (b) in any other case, the fraction described in subsection (5)(b) of that section.
- (12) In this section—
- "BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;
- "long term business fund" has the meaning given by section 431(2).

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(13) For the purposes of this section, the part of the apportioned profit which is referable to—

- (a) pension business,
- (b) life reinsurance business,
- (c) overseas life assurance business, or
- (d) basic life assurance and general annuity business,

carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.

(14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.”

#### Marginal Citations

M269 1989 c. 26.

M270 1989 c. 26.

#### *Amendment of return where general insurance business of foreign company accounted for on non-annual basis*

14 After section 755A of the Taxes Act 1988 there shall be inserted—

#### **“755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.**

(1) This section applies where—

- (a) a controlled foreign company carries on general insurance business in an accounting period;
- (b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom (“the UK company”);
- (c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and
- (d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.

(2) The methods which fall within this subsection are—

- (a) the method described in paragraph 52 of Schedule 9A to the <sup>M271</sup>Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and

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- (b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (3) Where this section applies—
- (a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company’s accounts at any time within twelve months from the date on which the provision was replaced; and
- (b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).
- (4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
- (a) the controlled foreign company, and
- (b) any person with an interest in the controlled foreign company,
- shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the <sup>M272</sup>Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.
- (5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.
- (6) In this section “general insurance business” means insurance business which is general business, as defined in section 1 of the <sup>M273</sup>Insurance Companies Act 1982.”

#### Marginal Citations

M271 1985 c. 6.

M272 1985 c. 6.

M273 1982 c. 50.

*Application of Chapter where general insurance business  
of foreign company accounted for on non-annual basis.*

15 After section 755B of the Taxes Act 1988 there shall be inserted—

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**“755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.**

- (1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—
  - (a) carries on general insurance business; and
  - (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.
- (2) Regulations under subsection (1) above may—
  - (a) make different provision for different cases;
  - (b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and
  - (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.
- (3) In this section—

“general insurance business” has the same meaning as in section 755B;

“non-resident company” means a company resident outside the United Kingdom;

“prescribed” means prescribed in regulations under this section.”

*Section 756*

- 16 (1) Section 756 of the Taxes Act 1988 (interpretation and construction of Chapter IV) shall be amended as follows.
- (2) In subsection (1), after “In this Chapter” there shall be inserted the following definition—
- ““company tax return” means a return required to be made under Schedule 18 to the Finance Act 1998;”.

*Paragraph 1 of Schedule 24*

- 17 (1) In Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits, creditable tax and corresponding United Kingdom tax of foreign companies) paragraph 1 shall be amended as follows.
- (2) Sub-paragraph (3A) (assumption for applying provisions of Schedule 24 which refer to the first accounting period for which a direction is given or which is an ADP exempt period in cases where, as respects the accounting period in question and any earlier ones, no direction has been given and it has not been established that there is an ADP exempt period) shall be amended in accordance with sub-paragraphs (3) to (5) below.
- (3) In paragraph (a) (necessity to determine the chargeable profits) after “to determine” there shall be inserted “ in the case of any person ”.
- (4) In paragraph (b) (conditions obtaining at the time in question)—

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- (a) for sub-paragraph (i) (no direction given) there shall be substituted—
- “(i) it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made, and”; and
- (b) in sub-paragraph (ii) (not established that there is an ADP exempt period) after “it has not been established” there shall be inserted “ in the case of that person ”.
- (5) For the words following paragraph (b) (assumption for purpose of the provisions in question that the accounting period is the first for which a direction is given or which is an ADP exempt period) there shall be substituted—
- “in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those provisions of paragraphs 2 and 10 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made or which is an ADP exempt period, that that period (but not any earlier period) is an accounting period in respect of which such an apportionment falls to be made or which is an ADP exempt period.”
- (6) Sub-paragraph (4) (assumption for applying provisions of Schedule 24 which refer to the first accounting period for which a direction is given in cases where, as respects the accounting period in question and any earlier ones, no direction has been given) shall be amended in accordance with sub-paragraphs (7) to (9) below.
- (7) In paragraph (a) (necessity to determine chargeable profits) after “to determine” there shall be inserted “ in the case of any person ”.
- (8) For paragraph (b) (no direction given) there shall be substituted—
- “(b) at that time it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made,”.
- (9) For the words following paragraph (b) (assumption for the purpose of the provisions in question that the accounting period is the first for which a direction is given) there shall be substituted—
- “in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those provisions of paragraph 9 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made, that such an apportionment falls to be made in respect of that period (but not in respect of any earlier period).”

*Paragraph 2 of Schedule 24*

- 18 In paragraph 2(1) of Schedule 24 to the Taxes Act 1988 (foreign company assumed to become resident in UK at beginning of first accounting period in respect of which a direction is given or which is an ADP exempt period)—



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- (a) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) falls to be made ”; and
- (b) in the words following paragraph (b), for “a direction is given” there shall be substituted “ an apportionment falls to be made ”.

*Paragraph 4 of Schedule 24*

- 19 (1) Paragraph 4 of Schedule 24 to the Taxes Act 1988 (assumption that claims or elections giving maximum relief have been made, subject to notice to the contrary) shall be amended as follows.
- (2) In sub-paragraph (1A)(a) (sub-paragraph (2) to apply to accounting period of foreign company in respect of which a direction is given) for “a direction is given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) falls to be made ”.
- (3) In sub-paragraph (2) (notice to be given to the Board at any time not later than the expiry of the appropriate period etc)—
- (a) for “given to the Board” there shall be substituted “ given to an officer of the Board ”; and
  - (b) for “the appropriate period” there shall be substituted “ the period of twenty months following the end of the accounting period ”.
- (4) In consequence of sub-paragraph (3)(b) above, sub-paragraph (2A) shall cease to have effect.
- (5) In sub-paragraph (3) (majority interest in foreign company) in paragraph (b) for “an assessment” there shall be substituted “ any liability ”.
- (6) In sub-paragraph (3A) (application of sub-paragraph (3) to ADP exempt periods)—
- (a) in paragraph (a), for “a direction had been duly given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) had fallen to be made ”;
  - (b) for paragraph (b) there shall be substituted—
    - “(b) such apportionments as are mentioned in sub-paragraph (3) above had been made and such liabilities as are mentioned in that sub-paragraph had arisen.”

*Paragraph 9 of Schedule 24*

- 20 (1) Paragraph 9 of Schedule 24 to the Taxes Act 1988 (losses in pre-direction accounting periods) shall be amended as follows.
- (2) For “pre-direction”, wherever occurring, there shall be substituted “ pre-apportionment ”.
- (3) In sub-paragraph (1) (which provides that, subject to sub-paragraph (2), the paragraph applies where the foreign company incurs a loss in an accounting period preceding the first in respect of which a direction is given etc)—
- (a) the words “Subject to sub-paragraph (2) below,” shall cease to have effect; and
  - (b) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) falls to be made ”.

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- (4) Sub-paragraph (2) (which provides that the paragraph does not apply where a declaration is made under paragraph 11(3)) shall cease to have effect.
- (5) In sub-paragraph (3) (assumption that pre-direction period was first accounting period in respect of which a direction was given) for “a direction was given under section 747(1)” there shall be substituted “an apportionment under section 747(3) fell to be made”.
- (6) For sub-paragraph (4) (claim to be made by notice given to Board within 60 days of notice under section 753(1) or (3) relating to starting period etc) there shall be substituted—
- “(4) A claim under sub-paragraph (3) above shall be made by notice given to an officer of the Board within the period of twenty months following the end of the starting period or within such longer period as the Board may in any particular case allow.”
- (7) Sub-paragraph (5) (which provides for an assumption that Chapter IV was in force before the beginning of the first of the pre-direction periods, and which is of no further practical utility) shall cease to have effect.
- (8) Sub-paragraph (6) (no account to be taken of declaration under paragraph 11(3)) shall cease to have effect.
- (9) At the end of the paragraph there shall be added—
- “(7) Nothing in—
- (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
- (b) Schedule 1A to the Management Act (claims or elections not included in returns),
- shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (3) above.”

*Paragraph 10 of Schedule 24*

- 21 In paragraph 10 of Schedule 24 to the Taxes Act 1988 (capital allowances) in sub-paragraph (1) (which, subject to paragraphs 11 and 12, provides an assumption where capital expenditure is incurred in an accounting period falling before the first accounting period in respect of which a direction is given or which is an ADP exempt period)—
- (a) for “Subject to paragraphs 11 and 12 below,” there shall be substituted “Subject to paragraph 12 below, ”; and
- (b) in paragraph (a), for “a direction is given under section 747(1)” there shall be substituted “an apportionment under section 747(3) falls to be made”.

*Paragraph 11 of Schedule 24*

- 22 Paragraph 11 of Schedule 24 to the Taxes Act 1988 (power of Board by notice to declare that a specified accounting period is to be treated as the first direction period where it appears that no direction was given as respects that period as a result of capital allowances being claimed) shall cease to have effect.

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#### *Paragraph 11A of Schedule 24*

- 23 In paragraph 11A of Schedule 24 to the Taxes Act 1988 (capital allowances) sub-paragraphs (3) and (6) (which relate to the application of paragraph 11(1)(c)) shall cease to have effect.

#### *Transfer pricing*

- 24 After paragraph 19 of Schedule 24 to the Taxes Act 1988 there shall be inserted—

#### *“ Transfer pricing*

- 20 (1) Sub-paragraph (2) of paragraph 5 of Schedule 28AA (no potential UK tax advantage where both parties are within charge to income or corporation tax etc) shall be assumed not to apply in any case where, apart from that sub-paragraph (and on the assumption in paragraph 1(1) above),—
- (a) paragraph 6 of that Schedule would apply; and
  - (b) the company would be the disadvantaged person for the purposes of that paragraph.
- (2) Schedule 28AA (transfer pricing etc: provision not at arm’s length) shall be assumed not to apply in any case where, apart from this sub-paragraph,—
- (a) the actual provision would (on the assumption in paragraph 1(1) above) confer a potential advantage in relation to United Kingdom taxation on the company;
  - (b) the other affected person would be a company resident outside the United Kingdom; and
  - (c) each accounting period of that company which falls wholly or partly within the accounting period in question is one as regards which—
    - (i) an apportionment under section 747(3) falls to be made; or
    - (ii) no such apportionment falls to be made by virtue of the period being an ADP exempt period.
- (3) In any case where—
- (a) by virtue of sub-paragraph (2) above, Schedule 28AA is assumed not to apply, and
  - (b) the actual provision mentioned in paragraph (a) of that sub-paragraph involves (on the assumption in paragraph 1(1) above) any such interest or other distribution out of assets as would constitute a distribution for the purposes of the Corporation Tax Acts by virtue of paragraph (da) of section 209(2),
- that interest or distribution out of assets shall be assumed not to constitute such a distribution by virtue of that paragraph.”

#### *Schedule 25*

- 25 For the heading to Schedule 25 to the Taxes Act 1988 (cases excluded from direction-making powers) there shall be substituted—

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“ Cases where section 747(3) does not apply”.

*Paragraph 1 of Schedule 25*

- 26 In paragraph 1 of Schedule 25 to the Taxes Act 1988 (which provides that Part I of the Schedule has effect for the purposes of section 748(1)(a)) there shall be added at the end “and the other provisions of Chapter IV of Part XVII which refer to a company pursuing an acceptable distribution policy”.

*Paragraph 2A of Schedule 25*

- 27 (1) Paragraph 2A of Schedule 25 to the Taxes Act 1988 (acceptable distribution policy: modifications of paragraph 2) shall be amended as follows.
- (2) In sub-paragraph (2) (dividend paid for earlier accounting period which is not an excluded period to be treated as falling within paragraph 2(1)(a)) in paragraph (a) and paragraph (b)—
- (a) for “which immediately precedes” there shall be substituted “ immediately preceding ”; and
  - (b) for “is not an excluded period” there shall be substituted “ which is not an excluded dividend ”.
- (3) In sub-paragraph (4) (position where no direction could be given under section 747(1) in respect of earlier accounting period because foreign company pursued acceptable distribution policy) for “no direction could be given in respect of the earlier period under section 747(1)” there shall be substituted “ no apportionment under section 747(3) fell to be made in respect of the earlier period ”.
- (4) In sub-paragraph (8), before paragraph (a) (definition of “excluded period”) there shall be inserted—
- “(aa) a dividend is an excluded dividend if it is paid, in whole or in part, out of the total profits from which (in accordance with section 747(6) (a)) the chargeable profits for an excluded period are derived,”.
- (5) In sub-paragraph (8)(a) (which defines an excluded period as one for which a direction is given under section 747(1)) for “a direction is given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) falls to be made ”.

*Paragraph 3 of Schedule 25*

- 28 In paragraph 3(4A) of Schedule 25 to the Taxes Act 1988 (meaning of “net chargeable profits”) in paragraph (b), for “a direction were given under section 747(1)” there shall be substituted “ an apportionment under section 747(3) fell to be made ”.

*Paragraph 5 of Schedule 25*

- 29 In paragraph 5(2)(a) of Schedule 25 to the Taxes Act 1988, for “749(3)” there shall be substituted “ 749(5) ”.

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*Paragraph 6 of Schedule 25*

- 30 (1) Paragraph 6 of Schedule 25 to the Taxes Act 1988 (exemption for controlled foreign companies engaged in exempt activities) shall be amended as follows.
- (2) In sub-paragraph (1)(c) (which provides that for a company to be engaged in exempt activities, any of sub-paragraphs (2) to (4) must apply) for “(4)” there shall be substituted “(4A)”.
- (3) In sub-paragraph (2)(b) (which in certain cases requires less than 50 per cent. of gross trading receipts to be derived from connected or associated persons or persons who have an interest in the company at any time during the accounting period) for “an interest in the company at any time during” there shall be substituted “a 25 per cent. assessable interest in the company in the case of”.
- (4) In sub-paragraph (3) (local holding companies) in paragraph (b) (controlled companies which are not themselves holding companies but which are otherwise engaged in exempt activities)—
- (a) after “holding companies” there shall be inserted “or superior holding companies”; and
- (b) after “exempt activities” there shall be inserted “or are, in terms of sub-paragraph (5A) below, exempt trading companies”.
- (5) In sub-paragraph (4) (holding companies other than local holding companies) in paragraph (b) (controlled companies which are not holding companies but which are otherwise engaged in exempt activities)—
- (a) after “holding companies (whether local or not)” there shall be inserted “or superior holding companies”; and
- (b) after “exempt activities” there shall be inserted “or are, in terms of sub-paragraph (5A) below, exempt trading companies”.
- (6) After sub-paragraph (4) there shall be inserted—
- “(4A) This sub-paragraph applies to a company which is a superior holding company if at least 90 per cent. of its gross income during the accounting period in question—
- (a) represents qualifying exempt activity income of its subsidiaries; and
- (b) is derived directly from companies which it controls and which fall within sub-paragraph (4B) below.
- (4B) For the purposes of paragraph (b) of sub-paragraph (4A) above, a company falls within this sub-paragraph if—
- (a) throughout the accounting period mentioned in that sub-paragraph, it is not itself a superior holding company but otherwise is, in terms of this Schedule, engaged in exempt activities or is, in terms of sub-paragraph (5A) below, an exempt trading company; or
- (b) it is itself a superior holding company throughout that period and at least 90 per cent of its gross income during that period—
- (i) represents qualifying exempt activity income of its subsidiaries, and
- (ii) is derived directly from companies which it controls and which themselves fall within this paragraph or paragraph (a) above.”

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(7) After sub-paragraph (4B) there shall be inserted—

“(4C) For the purposes of sub-paragraph (2)(b) above, a person has a 25 per cent. assessable interest in a controlled foreign company in the case of an accounting period of the company if, on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3), at least 25 per cent. of the controlled foreign company’s chargeable profits for the accounting period would be apportioned to that person.”

(8) In sub-paragraph (5) (extended meaning of references in sub-paragraph (3) or (4) to companies which a holding company controls)—

- (a) for “sub-paragraph (3) or (4)” there shall be substituted “ sub-paragraphs (3) to (4B) ”; and
- (b) after “holding company”, in each place where it occurs, there shall be inserted “ or superior holding company ”.

(9) After sub-paragraph (5) there shall be inserted—

“(5A) For the purposes of sub-paragraphs (3) to (4B) above, a company is an exempt trading company throughout any period if—

- (a) it is a trading company throughout each of its accounting periods which falls wholly or partly within that period; and
- (b) each of those accounting periods is one as regards which—
  - (i) the condition in section 747(1)(c) is not satisfied; or
  - (ii) the conditions in section 748(1)(e) are satisfied; or
  - (iii) the conditions in section 748(3)(a) and (b) are satisfied.”

*Paragraph 8 of Schedule 25*

31 (1) Paragraph 8 of Schedule 25 to the Taxes Act 1988 (which relates to the condition in paragraph 6(1)(b) of that Schedule) shall be amended as follows.

(2) In sub-paragraph (3) (which applies sub-paragraph (2) with modifications in relation to a holding company) after “In the case of a holding company” there shall be inserted “ or superior holding company ”.

*Paragraph 12 of Schedule 25*

32 (1) Paragraph 12 of Schedule 25 to the Taxes Act 1988 (meaning of “holding company” in paragraphs 6 and 8(3)) shall be amended as follows.

(2) In sub-paragraph (1), after “in paragraphs 6 and 8(3) above and” there shall be inserted “ paragraph 12A below and in ”.

(3) In sub-paragraph (5) (exclusion of income derived from certain sources) in paragraph (a)—

- (a) after “which is not a holding company” there shall be inserted “ or superior holding company ”; and
- (b) after “engaged in exempt activities” there shall be inserted “ or, in terms of sub-paragraph (5A) of that paragraph, is an exempt trading company ”.

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*Superior holding companies: supplementary provisions*

- 33 After paragraph 12 of Schedule 25 to the Taxes Act 1988 there shall be inserted—
- “12A (1) In paragraphs 6, 8(3) and 12(5) above and this paragraph, “superior holding company” means—
- (a) a company whose business consists wholly or mainly in the holding of shares or securities of companies which—
    - (i) are holding companies or local holding companies; or
    - (ii) are themselves superior holding companies; or
  - (b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.
- (2) For the purposes of sub-paragraphs (4A) and (4B) of paragraph 6 above, the income of a company during any period which “represents qualifying exempt activity income of its subsidiaries” is any income of the company during that period which is directly or indirectly derived from companies—
- (a) which it controls, and
  - (b) which, throughout that period, fall within sub-paragraph (4B) (a) of that paragraph, but
  - (c) which are not holding companies other than local holding companies.
- (3) In determining for the purposes of sub-paragraph (4A) or (4B) of paragraph 6 above the companies from which, and the proportions in which, different descriptions of income of a company are derived (whether directly or indirectly), any dividend shall be taken to be paid out of the appropriate profits.
- (4) Subsections (3) and (4) of section 799 (which provide rules for determining the profits out of which a dividend is to be regarded as paid for the purpose of subsection (1) of that section) shall apply for determining the appropriate profits for the purposes of subsection (3) above as they apply for determining the relevant profits for the purposes of subsection (1) of that section.
- (5) Sub-paragraphs (4) to (6) of paragraph 12 above shall apply in relation to sub-paragraph (4A) or (4B) of paragraph 6 above and a superior holding company as they apply in relation to sub-paragraph (3) or (4) of paragraph 6 above and a holding company, but taking the reference in sub-paragraph (4) of paragraph 12 above to paragraph (a) or (b) of sub-paragraph (1) of that paragraph as a reference to paragraph (a) or (b) of sub-paragraph (1) above.”

*Paragraph 1 of Schedule 26*

- 34 (1) In Schedule 26 to the Taxes Act 1988 (reliefs against liability for tax in respect of chargeable profits apportioned to UK resident company) paragraph 1 (trading losses and group relief etc) shall be amended as follows.

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- (2) In sub-paragraph (1) (set-off against liability to tax under section 747(4)(a) where UK resident company entitled to deduction in respect of relevant allowance) the following provisions shall cease to have effect—
- (a) paragraph (c) (set-off only available if company has no profits or relevant allowance exceeds profits) and the word “and” immediately preceding that paragraph; and
  - (b) in the words following paragraph (c), the words “or, as the case may be, of the excess of it referred to in paragraph (c) above”.
- (3) In sub-paragraph (2)(a) (which defines the appropriate accounting period as that for which by virtue of section 754(2) the company is regarded as assessed to corporation tax in respect of the chargeable profits concerned) for “regarded as assessed to corporation tax” there shall be substituted “chargeable to tax by virtue of this Chapter”.
- (4) Sub-paragraph (4) (time limit for making claims for group relief) shall cease to have effect.
- (5) Sub-paragraph (6) (which modifies section 43 of the <sup>M274</sup>Taxes Management Act 1970 in its application for the purposes of the paragraph) shall cease to have effect.

#### Marginal Citations

M274 1970 c. 9.

#### Paragraph 3 of Schedule 26

- 35 (1) Paragraph 3 of Schedule 26 to the Taxes Act 1988 (gains on disposal of shares in controlled foreign companies) shall be amended as follows.
- (2) In sub-paragraph (1), for paragraph (a) (which refers to a direction having been given in respect of an accounting period of a controlled foreign company) there shall be substituted—
- “(a) an accounting period of a controlled foreign company (“the apportionment period”) is one in respect of which an apportionment under section 747(3) falls to be made; and”.
- (3) Accordingly, in paragraphs (b) and (c) of sub-paragraph (1), for the words “the direction period”, in each place where they occur, there shall be substituted “the apportionment period”.
- (4) In paragraph (d) of sub-paragraph (1) (which refers to a sum being, under section 747(1)(a), assessed and recoverable from a company) for “assessed on and recoverable from” there shall be substituted “chargeable on”.
- (5) In sub-paragraph (3), for “the direction period” there shall be substituted “the apportionment period”.
- (6) In sub-paragraph (4), in the words following paragraph (c), for “assessed and recoverable” there shall be substituted “chargeable under section 747(4)(a)”.
- (7) After subsection (6) there shall be inserted—
- “(6A) Nothing in—



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- (a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or
- (b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (6) above.”

*Paragraph 4 of Schedule 26*

- 36 (1) Paragraph 4 of Schedule 26 to the Taxes Act 1988 (dividends from the controlled foreign company) shall be amended as follows.
- (2) In sub-paragraph (1), for paragraph (a) (which refers to a direction having been given in respect of an accounting period of a controlled foreign company) there shall be substituted—
- “(a) an accounting period of a controlled foreign company is one in respect of which an apportionment under subsection (3) of section 747 falls to be made; and”.
- (3) Accordingly, in paragraph (b) of that sub-paragraph for “subsection (3) of that section” there shall be substituted “ that subsection ”.
- (4) In sub-paragraph (2) (which refers to sums assessed on and recoverable from companies in accordance with s.747(4)(a)) for “assessed on and recoverable from” there shall be substituted “ chargeable on ”.
- (5) In sub-paragraph (5)(a) (which refers to the amount of tax assessed on and recoverable from the company in accordance with s.747(4)(a)) for “assessed on and recoverable from” there shall be substituted “ chargeable on ”.

*Commencement and transitional provision*

- 37 (1) The preceding provisions of this Schedule have effect as respects accounting periods of companies resident in the United Kingdom which end on or after the corporation tax self-assessment appointed day.
- (2) Where by virtue of sub-paragraph (1) above any question as to liability (if any) to tax by virtue of Chapter IV of Part XVII of the Taxes Act 1988 as respects any particular accounting period of a non-resident company which ends before the corporation tax self-assessment appointed day falls to be determined—
- (a) in the case of at least one company resident in the United Kingdom, for an accounting period of its which ends on or after that day, and
  - (b) in the case of at least one other such company, for an accounting period of its which ends before that day,
- such separate determinations and computations shall be made as are necessary for determining the liability of the companies which fall within paragraph (a) above and the liability of the companies which fall within paragraph (b) above.
- (3) For the purposes of sub-paragraph (2) above—
- (a) any question as to the liability (if any) of a company falling within paragraph (a) shall be determined as if, in the case of every company resident in the United Kingdom, the accounting period of the non-resident

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company ended in an accounting period of the company ending on or after the corporation tax self-assessment appointed day; and

- (b) any question as to the liability (if any) of a company falling within paragraph (b) shall be determined as if, in the case of every company resident in the United Kingdom, the accounting period of the non-resident company ended in an accounting period of the company ending before the corporation tax self-assessment appointed day.

(4) In this paragraph—

“accounting period”, in relation to a non-resident company, has the same meaning as it has in Chapter IV of Part XVII of the Taxes Act 1988;

“the corporation tax self-assessment appointed day” means the day which is the appointed day for the purposes of section 199 of the <sup>M275</sup>Finance Act 1994 (corporation tax self-assessment);

“non-resident company” means a company resident outside the United Kingdom.

**Marginal Citations**

M275 1994 c. 9.

SCHEDULE 18

Section 117(1).

COMPANY TAX RETURNS, ASSESSMENTS AND RELATED MATTERS

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

**C2** Sch. 18 restricted (31.7.1998) by 1988 c. 1, s. 754B(10) (as inserted (31.7.1998 with effect as mentioned in Sch. 17 para. 37 of 1998 c. 36) by 1998 c. 36, s. 113, Sch. 17 para. 11)

**PART I**

INTRODUCTION

*Meaning of “tax”*

- 1 In this Schedule “tax” means corporation tax including, except as otherwise indicated, any amount assessable or chargeable as if it was corporation tax.

Amounts are assessable or chargeable as if they were corporation tax under—  
 section 419(1) of the Taxes Act 1988 (tax on loan or advance made by close company to a participator), and  
 section 747(4)(a) of that Act (tax on profits of controlled foreign company).

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### *Duty to give notice of chargeability*

- 2 (1) A company which—
- (a) is chargeable to tax for an accounting period, and
  - (b) has not received a notice requiring a company tax return,
- must give notice to the Inland Revenue that it is so chargeable.
- (2) The notice must be given within twelve months from the end of the accounting period.
- (3) A company which fails to comply with this paragraph is liable to a penalty not exceeding the amount of tax payable for the accounting period in question that remains unpaid twelve months after the end of the period.
- (4) In computing the amount of unpaid tax for this purpose, no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

## **PART II**

### COMPANY TAX RETURN

#### *Company tax return*

- 3 (1) The Inland Revenue may by notice require a company to deliver a return (a “company tax return”) of such information, accounts, statements and reports—
- (a) relevant to the tax liability of the company, or
  - (b) otherwise relevant to the application of the Corporation Tax Acts to the company,
- as may reasonably be required by the notice.
- (2) Different information, accounts, statements and reports may be required from different descriptions of company.
- (3) A company tax return must include a declaration by the person making the return that the return is to the best of his knowledge correct and complete.
- (4) The return must be delivered to the officer of the Board by whom the notice was issued not later than the filing date.

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

- C3** Sch. 18 para. 3 extended (31.7.1998) by 1988 c. 1, s. 488(12)(a) (as inserted (31.7.1998) by 1998 c. 36, s. 117, Sch. 19 para. 48(3))
- C4** Sch. 18 Pt. II para. 3(1) modified (24.7.2002 with application as mentioned in s. 96(4) of 2002 c. 23) by 1988 c. 1, s. 349E(6) (as inserted with application as mentioned by s. 96(4) of the amending Act) by 2002 c. 23, s. 96(1))

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#### *Meaning of delivery of return*

- 4 References in this Schedule to the delivery of a company tax return are to the delivery of all the information, accounts, statements and reports required to comply with the notice requiring the return.

#### *Period for which return required*

- 5 (1) A notice requiring a company tax return must specify the period to which the notice relates.
- (2) If an accounting period of the company ended during (or at the end of) the specified period, a return is required for that accounting period.
- If there is more than one, a separate company tax return is required for each of them.
- (3) If sub-paragraph (2) does not apply but an accounting period of the company began during the specified period, a company tax return is required for the part of the specified period before the accounting period began.
- (4) If the company was outside the charge to corporation tax for the whole of the specified period, a company tax return is required for the whole of the specified period.
- (5) If none of the above provisions applies, no company tax return is required in response to the notice.

#### *Notice relating to period beginning before appointed day*

- 6 (1) A notice requiring a company tax return may be given on or after the self-assessment appointed day in relation to a period beginning before that day.
- (2) Where the effect of such a notice is to require a return for an accounting period ending before that day, the provisions of the Tax Acts apply as if it were a notice under section 11 of the <sup>M276</sup>Taxes Management Act 1970.
- (3) The provisions of this Act relating to company tax returns, or amending other provisions of the Tax Acts so as to refer to such returns, do not affect the operation of those Acts in relation to such a notice.

#### **Marginal Citations**

M276 1970 c. 9.

#### *Return to include self-assessment*

- 7 (1) Every company tax return for an accounting period must include an assessment (a "self-assessment") of the amount of tax which is payable by the company for that period—
- (a) on the basis of the information contained in the return, and
  - (b) taking into account any relief or allowance for which a claim is included in the return or which is required to be given in relation to that accounting period.

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- (2) For this purpose a company tax return is regarded as a return for an accounting period if the period is treated in the return as an accounting period and is not longer than twelve months, even though it is not, or may not be, an accounting period.

#### *Calculation of tax payable*

- 8 (1) The amount of tax payable for an accounting period is calculated as follows.

*First step*

*Second step*

*Third step*

Then add any amounts assessable or chargeable as if they were corporation tax (reduced by any reliefs specific to those amounts):

- 1 Any amount due under section 419(1) of the Taxes Act 1988 (tax on a loan or advance made by close company to a participator).
- 2 Any sum chargeable under section 747(4)(a) of that Act (tax on profits of a controlled foreign company).

*Fourth step*

Then deduct any amounts to be set off against the company's overall tax liability for that period:

- 1 Any amount to be set off under section 7(2) or 11(3) of the Taxes Act 1988 (income tax borne by deduction).
- 2 Any amount to be set off under section 246N or 246Q of that Act (advance corporation tax paid in respect of foreign income dividend).

- (2) Except as otherwise provided, references in this Schedule to the amount of tax payable by a company for an accounting period are to the amount shown in the company's self-assessment as the amount payable.

#### *Claims that cannot be made without a return*

- 9 (1) No claim to which this paragraph applies may be made by a company before it delivers a company tax return for the period to which the claim relates.
- (2) This paragraph applies to a claim by a company for any repayment of income tax called for by virtue of—
- (a) section 6(2) of the Taxes Act 1988 (exclusion of income tax charge in case of UK resident company or income within chargeable profits for corporation tax), or
  - (b) exemptions from income tax conferred by the Corporation Tax Acts.
- (3) This paragraph applies to a claim by a company for payment of a tax credit, unless—
- (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 Taxes Act 1988 (pension business).

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*Other claims and elections to be included in return*

- 10 (1) In Part VII of this Schedule (general provisions as to claims and elections) paragraphs 57 to 59 contain provisions as to the circumstances in which a claim or election may or must be made, or is to be treated as having been made, in a company tax return.
- (2) A claim to which Part VIII or IX of this Schedule applies (claims for group relief or capital allowances) can only be made by being included in a company tax return (see paragraphs 67 and 79).

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

- C5** Sch. 18 para. 10 excluded (31.7.1998) by 1988 c. 1, s. 754(5), **Sch. 26 para. 3(6A)(a)** (as inserted (31.7.1998) by 1998 c. 36, s. 113, Sch. 17 paras. 35(7), 37)  
 Sch. 18 para. 10 excluded (31.7.1998) by 1988 c. 1, s. 749A(4)(a) (as substituted (31.7.1998) by 1998 c. 36, s. 113, Sch. 17 paras. 4, 37)  
 Sch. 18 para. 10 excluded (31.7.1998) by 1988 c. 1, s. 747(6), **Sch. 24 para. 9(7)** (as added (31.7.1998) by 1998 c. 36, s. 113, Sch. 17 paras. 20(9), 37)

*Accounts required in case of Companies Act company*

- 11 (1) In the case of a company which—
- (a) is required to deliver a company tax return for a period,
  - (b) is resident in the United Kingdom throughout that period, and
  - (c) is required under the <sup>M277</sup>Companies Act 1985 to prepare accounts for a period consisting of or including the whole of that period,
- the power to require the delivery of accounts as part of the return is limited to such accounts, containing such information and having annexed to them such documents, as are required to be prepared under that Act.
- (2) In relation to a company registered in Northern Ireland, for the reference in sub-paragraph (1) to the <sup>M278</sup>Companies Act 1985 substitute a reference to the <sup>M279</sup>Companies (Northern Ireland) Order 1986.

**Marginal Citations**

- M277** 1985 c. 6.  
**M278** 1985 c. 6.  
**M279** S.I. 1986/1032 (N.I. 6).

*Information about business carried on in partnership*

- 12 (1) A company tax return of a company which carries on a trade, profession or business in partnership must include any amount which in a relevant partnership statement is stated to be its share of any income, loss, consideration, tax, credit or charge.
- (2) A “relevant partnership statement” means a statement under section 12AB of the <sup>M280</sup>Taxes Management Act 1970 for the period for which the return is made or a period which includes that period or any part of it.

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**Marginal Citations**

M280 1970 c. 9.

*Information about chargeable gains*

- 13 (1) A notice requiring a company tax return may require details of assets acquired by the company in the period specified in the notice.

The details required may include details of the person from whom the asset was acquired and the consideration for its acquisition.

- (2) The power in sub-paragraph (1) does not apply to —
- (a) assets exempted by —
    - section 121 of the <sup>M281</sup>Taxation of Chargeable Gains Act 1992 (government non-marketable securities), or
    - section 263 of that Act (passenger vehicles); or
  - (b) tangible movable property, unless—
    - (i) the amount or value of the consideration for its acquisition exceeded £6,000, or
    - (ii) it is within the exceptions in section 262(6) of the Taxation of Chargeable Gains Act 1992 (terminal markets and currency); or
  - (c) assets acquired as trading stock, unless they are held for the purposes of long term business carried on by an insurance company.
- (3) In sub-paragraph (2)(c)—
- “trading stock” has the meaning given by section 100(2) of the Taxes Act 1988, and
- “long term business” and “insurance company” have the meaning given by section 431(2) of that Act.

**Marginal Citations**

M281 1992 c. 12.

*Filing date*

- 14 (1) The filing date for a company tax return is the last day of whichever of the following periods is the last to end—

- (a) twelve months from the end of the period for which the return is made;
- (b) if the company’s relevant period of account is not longer than 18 months, twelve months from the end of that period;
- (c) if the company’s relevant period of account is longer than 18 months, 30 months from the beginning of that period;
- (d) three months from the date on which the notice requiring the return was served.

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- (2) In sub-paragraph (1) “relevant period of account” means, in relation to a return for an accounting period, the period of account of the company in which the last day of that accounting period falls.

For this purpose “period of account” means a period for which the company makes up accounts.

*Amendment of return by company*

- 15 (1) A company may amend its company tax return by notice to the Inland Revenue.
- (2) The notice must be in such form as the Inland Revenue may require.
- (3) The notice must contain such information and be accompanied by such statements as the Inland Revenue may reasonably require.
- (4) Except as otherwise provided, an amendment may not be made more than twelve months after—
- (a) the filing date, or
  - (b) in the case of a return for the wrong period, what would be the filing date if the period for which the return was made were an accounting period.

*Correction of return by Revenue*

- 16 (1) The Inland Revenue may amend a company tax return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this paragraph is made by notice to the company concerned.
- (3) No such correction may be made more than nine months after—
- (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment by the company under paragraph 15, the day on which that amendment was made.
- (4) A correction under this paragraph is of no effect if the company—
- (a) amends its return so as to reject the correction, or
  - (b) after the end of the period within which it may amend its return, but within three months from the date of issue of the notice of correction, gives notice rejecting the correction.
- (5) Notice under sub-paragraph (4)(b) must be given—
- (a) in writing,
  - (b) to the officer of the Board by whom notice of the correction was given.

*Failure to deliver return: flat-rate penalty*

- 17 (1) A company which is required to deliver a company tax return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.
- It may also be liable to a tax-related penalty under paragraph 18.
- (2) The penalty is—
- (a) £100, if the return is delivered within three months after the filing date, and



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- (b) £200, in any other case.
- (3) The amounts are increased to £500 and £1000 for a third successive failure, that is, where—
  - (a) the company is within the charge to corporation tax for three consecutive accounting periods (and at no time between the beginning of the first of those periods and the end of the last is it outside the charge to corporation tax),
  - (b) a company tax return is required for each of those accounting periods,
  - (c) the company was liable to a penalty under this paragraph in respect of each of the first two of those periods, and
  - (d) the company is again liable to a penalty under this paragraph in respect of the third period.
- (4) The first or second period mentioned in sub-paragraph (3) may be a period ending before the self-assessment appointed day, in relation to which—
  - (a) the reference in paragraph (b) to a company tax return shall be construed as a reference to a return under section 11 of the <sup>M282</sup>Taxes Management Act 1970, and
  - (b) the references in paragraphs (c) and (d) to a penalty under this paragraph shall be construed as a reference to a penalty under section 94 of that Act.

#### Marginal Citations

M282 1970 c. 9.

#### *Failure to deliver return: tax-related penalty*

- 18 (1) A company which is required to deliver a company tax return for an accounting period and fails to do so—
- (a) within 18 months after the end of that period, or
  - (b) if the filing date is later than that, by the filing date,
- is liable to a tax-related penalty under this paragraph.
- This is in addition to any flat-rate penalty under paragraph 17.
- (2) The penalty is—
- (a) 10 per cent. of the unpaid tax, if the return is delivered within two years after the end of the period for which the return is required, and
  - (b) 20 per cent. of the unpaid tax, in any other case.
- (3) The “unpaid tax” means the amount of tax payable by the company for the accounting period for which the return was required which remains unpaid on the date when the liability to the penalty arises under sub-paragraph (1).
- (4) In determining that amount no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

#### *Excuse for late delivery of return*

- 19 A company is not liable to a penalty under paragraph 17 (flat rate penalty) if—

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- (a) the period for which the return is required is one for which the company is required to deliver accounts under the <sup>M283</sup>Companies Act 1985, and
- (b) the return is delivered no later than the last day for the delivery of those accounts to the registrar of companies.

In relation to a company registered in Northern Ireland, for the reference in paragraph (a) to the <sup>M284</sup>Companies Act 1985 substitute a reference to the <sup>M285</sup>Companies (Northern Ireland) Order 1986.

#### Marginal Citations

**M283** 1985 c. 6.

**M284** 1985 c. 6.

**M285** S.I. 1986/1032 (N.I. 6).

#### *Penalty for incorrect or uncorrected return*

- 20 (1) A company which—
- (a) fraudulently or negligently delivers a company tax return which is incorrect, or
  - (b) discovers that a company tax return delivered by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax understated, that is, the difference between—
- (a) the amount of tax payable by the company for the period for which the return is made, and
  - (b) the amount which would have been so payable on the basis of the return delivered.
- (3) In computing for this purpose the amount of tax payable, no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

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

**C6** Sch. 18 Pt. II para. 20 modified (24.7.2002 with application as mentioned in s. 96(4) of 2002 c. 23) by 1998 c. 1, s. 349E(7) (as inserted by 2002 c. 23, s. 96(7))

#### *<sup>F7</sup>Voluntary returns*

#### Textual Amendments

**F7** Sch. 18 para. 20A and cross-heading inserted (retrospectively) by Finance Act 2019 (c. 1), s. 87(2)(3) (with s. 87(4))

- 20A (1) This paragraph applies where—

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- (a) a company delivers a purported return (“the relevant return”) for a period (“the relevant period”),
  - (b) no notice under paragraph 3 has been given to the company in respect of the relevant period, and
  - (c) Her Majesty’s Revenue and Customs treats the relevant return as a return made and delivered in pursuance of such a notice.
- (2) For the purposes of the Taxes Acts—
- (a) treat a relevant notice as having been given to the company on the day the relevant return was delivered, and
  - (b) treat the relevant return as having been made and delivered in pursuance of that notice (and, accordingly, treat it as if it were a company tax return under paragraph 3).
- (3) “Relevant notice” means a notice under paragraph 3 requiring the company to deliver a return for the relevant period.
- (4) In sub-paragraph (1)(a) “purported return” means anything that—
- (a) is in a form, and is delivered in a way, that a corresponding return could have been made and delivered had a relevant notice been given, and
  - (b) purports to be a company tax return.
- (5) Nothing in this paragraph affects paragraph 46 or any other provisions of the Taxes Acts specifying a time limit for the making of an assessment.]

### PART III

#### DUTY TO KEEP AND PRESERVE RECORDS

##### *Duty to keep and preserve records*

- 21 (1) A company which may be required to deliver a company tax return for any period must—
- (a) keep such records as may be needed to enable it to deliver a correct and complete return for the period, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved for six years from the end of the period for which the company may be required to deliver a company tax return.
- (3) If the company is required to deliver a company tax return by notice given before the end of that six year period, the records must be preserved until any later date on which—
- (a) any enquiry into the return is completed, or
  - (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the return.
- (4) If the company is required to deliver a company tax return by notice given after the end of that six year period and has in its possession at that time any records that may be needed to enable it to deliver a correct and complete return, it is under a duty to preserve those records until the date on which—
- (a) any enquiry into the return is completed, or

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- (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the return.
- (5) The records required to be kept and preserved under this paragraph include records of—
- (a) all receipts and expenses in the course of the company’s activities, and the matters in respect of which the receipts and expenses arise, and
  - (b) in the case of a trade involving dealing in goods, all sales and purchases made in the course of the trade.
- (6) The duty to preserve records under this paragraph includes a duty to preserve all supporting documents relating to the items mentioned in sub-paragraph (5)(a) and (b).
- “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

*Preservation of information instead of original records*

- 22 (1) The duty under paragraph 21 to preserve records may be satisfied by the preservation of the information contained in them, except in the case of records of the kinds specified in sub-paragraph (3) below.
- (2) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (3) The records excluded from sub-paragraph (1) are—
- (a) any statement in writing such as is mentioned in—
    - (i) section 234(1) of the Taxes Act 1988 (amount of qualifying distribution and tax credit), or
    - (ii) section 352(1) of that Act (gross amount, tax deducted and actual amount paid, in certain cases where payments are made under deduction of tax),
 provided by the company or person there mentioned whether after the making of a request or otherwise;
  - (b) any certificate or other record (however described) required by regulations under section 566(1) of the Taxes Act 1988 to be given to a sub-contractor (within the meaning of Chapter IV of Part XIII of that Act) on the making of a payment to which section 559 of that Act applies (deductions on account of tax);
  - (c) any record relating to an amount of tax—
    - (i) paid under the law of a territory outside the United Kingdom, or
    - (ii) which would have been so payable but for a relief to which section 788(5) of the Taxes Act 1988 applies (relief for promoting development or contemplated by double taxation arrangements).

*Penalty for failure to keep and preserve records*

- 23 (1) A company which fails to comply with paragraph 21 in relation to an accounting period is liable to a penalty not exceeding £3,000, subject to the following exceptions.

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- (2) No penalty is incurred if the records which the company fails to keep or preserve are records which might have been needed only for the purposes of claims, elections or notices not included in the return.
- (3) No penalty is incurred if—
- (a) the records which the company fails to keep or preserve are statements in writing such as are mentioned in—
    - (i) section 234(1) of the Taxes Act 1988 (amount of qualifying distribution and tax credit), or
    - (ii) section 352(1) of that Act (gross amount, tax deducted and actual amount paid, in certain cases where payments are made under deduction of tax),provided by the company or person there mentioned whether after the making of a request or otherwise, and
  - (b) the Inland Revenue are satisfied that any facts which they reasonably require to be proved, and which would have been proved by the records, are proved by other documentary evidence furnished to them.

## PART IV

### ENQUIRY INTO COMPANY TAX RETURN

#### *Notice of enquiry*

- 24 (1) The Inland Revenue may enquire into a company tax return if they give notice to the company of their intention to do so ("notice of enquiry") within the time allowed.
- (2) If the return was delivered on or before the filing date, notice of enquiry may be given at any time up to twelve months from the filing date.
- (3) If the return was delivered after the filing date, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the return was delivered.
- (4) If the company amends its return, notice of enquiry may be given at any time up to and including the 31st January, 30th April, 31st July or 31st October next following the first anniversary of the day on which the amendment was made.
- (5) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) by the company of its return.

#### *Scope of enquiry*

- 25 (1) An enquiry into a company tax return extends to anything contained in the return, or required to be contained in the return, including—
- (a) any claim or election included in the return,
  - (b) any amount that affects or may affect—
    - (i) the tax payable by that company for another accounting period, or
    - (ii) the tax liability of another company for any accounting period,subject to the following limitation.

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- (2) If the notice of enquiry is given—
- (a) as a result of an amendment by the company of its return, and
  - (b) at a time when it is no longer possible to give notice of enquiry under paragraph 24(2) or (3),
- the enquiry into the return is limited to matters to which the amendment relates or which are affected by the amendment.

*Enquiry into return for wrong period*

- 26 (1) In the case of a company tax return which it appears to the Inland Revenue—
- (a) is or may be a return for the wrong period, or
  - (b) has become a return for the wrong period as a result of a direction under section 12(5A) of the Taxes Act 1988 (power of Board to direct which accounting date to be used where company carries on several trades),
- the power to enquire into the return includes power to enquire into the period for which the return ought to have been made.
- (2) A return is a “return for the wrong period” in the following cases.
- (3) The first case is where the return is made for a period which is treated in the return as an accounting period, but which is not an accounting period of the company.
- (4) The second case is where the return is made on the basis that there is no accounting period ending in or at the end of the specified period, but there is such an accounting period.
- (5) In relation to a return for the wrong period the references to the filing date in paragraph 24(2) and (3) (period within which notice of enquiry may be given) are to the date that would be the filing date if the period for which the return was made were a period of the kind it is treated as in the return.
- (6) In this paragraph “the specified period” means the period specified in the notice requiring a company tax return.

*Notice to produce documents, etc. for purposes of enquiry*

- 27 (1) If the Inland Revenue give a notice of enquiry to a company, they may by notice require the company—
- (a) to produce to them such documents in the company’s possession or power, and
  - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which the company is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and

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- (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the company is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any document produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige the company to produce documents or provide information relating to the conduct of any pending appeal by the company.

*Appeal against notice to produce documents, etc*

- 28
- (1) An appeal may be brought against a requirement imposed by a notice under paragraph 27 to produce documents or provide information.
  - (2) Notice of appeal must be given—
    - (a) in writing,
    - (b) within 30 days after the notice was given to the company,
    - (c) to the officer of the Board by whom that notice was given.
  - (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
  - (4) On an appeal under this paragraph the Commissioners—
    - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, which appears to them not reasonably required for the purposes of the enquiry, and
    - (b) shall confirm the notice so far as it requires the production of documents, or the provision of information, which appears to them reasonably required for the purposes of the enquiry.
  - (5) A notice which is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
  - (6) The decision of the Commissioners on an appeal under this paragraph is final and conclusive.

*Penalty for failure to produce documents, etc*

- 29
- (1) A company which fails to comply with a notice under paragraph 27 (notice to produce documents, etc. for purposes of enquiry) is liable—
    - (a) to a penalty of £50, and
    - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the amount specified in sub-paragraph (2) below for each day on which the failure continues.
  - (2) The amount referred to in sub-paragraph (1)(b) is—
    - (a) £30 if the penalty is determined by an officer of the Board under section 100 of the <sup>M286</sup>Taxes Management Act 1970, and
    - (b) £150 if the penalty is determined by the Commissioners under section 100C of that Act.

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- (3) An officer of the Board authorised by the Board for the purposes of section 100C of the <sup>M287</sup>Taxes Management Act 1970 may commence proceedings under that section for any penalty under sub-paragraph (1)(b) above.
- (4) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

#### Marginal Citations

M286 1970 c. 9.

M287 1970 c. 9.

#### *Amendment of self-assessment during enquiry to prevent loss of tax*

- 30 (1) If after notice of enquiry has been given and before the enquiry is completed the Inland Revenue form the opinion—
  - (a) that the amount stated in the company's self-assessment as the amount of tax payable is insufficient, and
  - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,
 they may by notice to the company amend its self-assessment to make good the deficiency.
- (2) In the case of an enquiry which under paragraph 25(2) is limited to matters arising from an amendment of the return, sub-paragraph (1) above only applies so far as the deficiency is attributable to the amendment.
- (3) An appeal may be brought against an amendment of a company's self-assessment by the Inland Revenue under this paragraph.
- (4) Notice of appeal must be given—
  - (a) in writing,
  - (b) within 30 days after the amendment was notified to the company,
  - (c) to the officer of the Board by whom the notice of amendment was given.
- (5) The appeal shall not be heard and determined before the completion of the enquiry.

#### *Amendment of return by company during enquiry*

- 31 (1) This paragraph applies if a company amends its company tax return at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects—
  - (a) the amount stated in the company's self-assessment as the amount of tax payable, or
  - (b) any amount that affects or may affect—
    - (i) the tax payable by the company for another accounting period, or
    - (ii) the tax liability of another company for any accounting period,



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it does not take effect until after the enquiry is completed.

This does not affect any claim by the company under section 59DA of the <sup>M288</sup>Taxes Management Act 1970 (claim for repayment in advance of liability being established).

- (4) An amendment whose effect is deferred under sub-paragraph (3) takes effect as follows—
  - (a) if the conclusions in the closure notice state either—
    - (i) that the amendment was not taken into account in the enquiry, or
    - (ii) that no amendment of the return is required arising from the enquiry, the amendment takes effect on the completion of the enquiry;
  - (b) in any other case, the amendment shall be taken into account by the company in amending its return to accord with the conclusions stated in the closure notice and takes effect accordingly as part of those amendments.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which the Inland Revenue give notice of enquiry into the return, and
  - (b) ending with the day on which the enquiry is completed.

#### Marginal Citations

M288 1970 c. 9.

VALID FROM 11/05/2001

#### *Referral of questions to Special Commissioners during enquiry*

- [<sup>F831A</sup>(1) At any time when an enquiry is in progress into a company's tax return any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
    - (a) jointly by the company and the Inland Revenue,
    - (b) in writing,
    - (c) to the Special Commissioners.
  - (3) The notice of referral must specify the question or questions being referred.
  - (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
  - (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
    - (a) beginning with the day on which the Inland Revenue give notice of enquiry into the return, and
    - (b) ending with the day on which the enquiry is completed.]

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### Textual Amendments

- F8** Sch. 18 Pt. IV para. 31A-31D inserted (11.5.2001 with application as mentioned in [Sch. 29 para. 7\(2\)](#) of the amending Act) by [2001 c. 9, s. 88](#), [Sch. 29 para. 7](#)

VALID FROM 11/05/2001

### *Withdrawal of notice of referral*

- <sup>F9</sup>31B (1) The Inland Revenue or the company may withdraw a notice of referral under paragraph 31A by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
- (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

### Textual Amendments

- F9** Sch. 18 Pt. IV para. 31A-31D inserted (11.5.2001 with application as mentioned in [Sch. 29 para. 7\(2\)](#) of the amending Act) by [2001 c. 9, s. 88](#), [Sch. 29 para. 7](#)

VALID FROM 11/05/2001

### *Effect of referral on enquiry*

- <sup>F10</sup>31C(1) While proceedings on a referral under paragraph 31A are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of that determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

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### Textual Amendments

- F10** Sch. 18 Pt. IV para. 31A-31D inserted (11.5.2001 with application as mentioned in [Sch. 29 para. 7\(2\)](#) of the amending Act) by [2001 c. 9, s. 88](#), [Sch. 29 para. 7](#)

VALID FROM 11/05/2001

### *Effect of determination*

- <sup>F11</sup>31D(1) The determination of a question referred to the Special Commissioners under paragraph 31A is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue in reaching their conclusions on the enquiry.
- (3) Any right of appeal under paragraph 30 or 34(3) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.

### Textual Amendments

- F11** Sch. 18 Pt. IV para. 31A-31D inserted (11.5.2001 with application as mentioned in [Sch. 29 para. 7\(2\)](#) of the amending Act) by [2001 c. 9, s. 88](#), [Sch. 29 para. 7\(1\)](#)

### *Completion of enquiry*

- 32 (1) An enquiry is completed when the Inland Revenue by notice (a “closure notice”) inform the company they have completed their enquiry and state their conclusions.
- The notice takes effect when it is issued.
- (2) If the Inland Revenue conclude that the return was a return for the wrong period, the closure notice must designate the accounting period for which a return should have been made (specifying the dates on which the period begins and ends).
- (3) If there is more than one accounting period ending in or at the end of the period specified in the notice requiring a return, the closure notice shall only designate the first of those accounting periods for which no return has been delivered.
- Paragraph 35 provides for a return to be delivered for any other outstanding accounting period.

### *Direction to complete enquiry*

- 33 (1) The company may apply to the Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.

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- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

*Amendment of return after enquiry*

- 34 (1) The company has 30 days beginning with the day on which the enquiry is completed in which—

- (a) to amend the return that was the subject of the enquiry—
- (i) to accord with the conclusions stated in the closure notice, and
- (ii) in the case of a return for the wrong period, to make it a return appropriate to the designated period, and
- (b) to make any amendments of other company tax returns delivered by it which are required to give effect to the conclusions stated in the closure notice.

The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under paragraph (a) or (b).

- (2) If after the end of that period of 30 days the Inland Revenue are not satisfied—

- (a) that the return that was the subject of the enquiry—
- (i) is correct and complete, and
- (ii) in the case of a return for the wrong period, is a return appropriate to the designated period, and
- (b) that any necessary amendments have been made to any other return delivered by the company that are required to give effect to the conclusions stated in the closure notice,

they may, within the following period of 30 days, by notice to the company make such amendments of that return or those returns as they consider necessary.

- (3) An appeal may be brought against any such amendment of a company's return.

- (4) Notice of appeal must be given—

- (a) in writing,
- (b) within 30 days after the amendment was notified to the company,
- (c) to the officer of the Board by whom the notice of amendment was given.

- (5) In this paragraph “the designated period” means the period designated in the closure notice.

*Further return for outstanding period*

- 35 (1) Where, following an enquiry into a company tax return—

- (a) it is finally determined—
- (i) that the return is a return for the wrong period, and
- (ii) what the period is for which the return should have been made, and
- (b) the effect of the determination is that there is a further period (“the outstanding period”) for which a company tax return should have been made under the original notice requiring a return,

then, if there is no such return delivered by the company which can be amended so as to become a return for the outstanding period, the original notice shall be taken to require the company to deliver a return in respect of that period.

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- (2) The filing date for such a return for an outstanding period is whichever is the later of—
- (a) the original filing date, and
  - (b) the last day of the period of 30 days beginning with the day on which the matters mentioned in sub-paragraph (1)(a) are finally determined.

## PART V

### REVENUE DETERMINATIONS AND ASSESSMENTS

#### *Determination of tax payable if no return delivered in response to notice*

- 36 (1) If no return is delivered in response to a notice requiring a company tax return, the Inland Revenue may determine to the best of their information and belief the amount of tax payable by the company.
- (2) The power to make a determination under this paragraph becomes exercisable if no return is delivered on or before the following date—
- (a) if the filing date for any return required by the notice can be ascertained, that date;
  - (b) if no such date can be ascertained, the later of—
    - (i) 18 months from the end of the period specified in the notice, or
    - (ii) three months from the day on which the notice was served.
- (3) The accounting period or periods for which a determination may be made are—
- (a) if there is only one accounting period ending in or at the end of the period specified in the notice, that period;
  - (b) if there is more than one accounting period ending in or at the end of the period specified in the notice, each of those periods;
  - (c) if the Inland Revenue have insufficient information to identify the accounting periods of the company, such period or periods ending in or at the end of the period specified in the notice as they may determine.
- (4) Notice of a determination under this paragraph must be served on the company, stating the date on which the determination is issued.
- (5) No determination under this paragraph may be made more than five years after the day on which the power becomes exercisable.
- (6) If the company shows—
- (a) that there is no accounting period of the company ending in or at the end of the period specified in the notice, or
  - (b) that it has delivered a return for the accounting period, or each accounting period, ending in or at the end of the period specified in the notice, or
  - (c) that no return is yet due for any such period,
- any determination under this paragraph is of no effect.

#### *Determination of tax payable if notice complied with in part*

- 37 (1) If a notice requiring a company tax return is served on a company and—

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- (a) a return is delivered for an accounting period ending in or at the end of the period specified in the notice, but
  - (b) there is another period so ending (the “outstanding period”) which appears to the Inland Revenue is or may be an accounting period,
- the Inland Revenue may determine to the best of their information and belief the amount of corporation tax payable by the company for the outstanding period.
- (2) The power to make a determination under this paragraph becomes exercisable—
- (a) if the filing date for the outstanding period can be ascertained and no return is delivered on or before that date;
  - (b) if no such date can be ascertained and no return for that period is delivered by the later of—
    - (i) 30 months from the end of the period specified in the notice, or
    - (ii) three months from the day on which the notice was served.
- (3) Notice of a determination under this paragraph must be served on the company, stating the date on which the determination is issued.
- (4) No determination under this paragraph may be made more than five years after the day on which the power first became exercisable.
- (5) If the company shows—
- (a) that the outstanding period is not an accounting period, or
  - (b) that it has delivered a return for that period,
- any determination under this paragraph is of no effect.

*Extent of power to make determination*

- 38 (1) The power to make a determination under paragraph 36 or 37 includes power to determine—
- (a) any of the amounts mentioned in paragraph 8(1) (calculation of amount of tax payable), and
  - (b) any amount forming part of the calculation of any of those amounts.
- (2) Notice of a determination under either of those paragraphs may be accompanied by notice of any determination by the Inland Revenue relating to the dates on which amounts of tax become due and payable under section 59D or 59E of the <sup>M289</sup>Taxes Management Act 1970.

**Marginal Citations**

**M289** 1970 c. 9.

*Determination to have effect as self-assessment*

- 39 (1) A determination under paragraph 36 or 37 has effect for enforcement purposes as if it were a self-assessment by the company.
- (2) In sub-paragraph (1) “for enforcement purposes” means for the purposes of—
- (a) the following Parts of the <sup>M290</sup>Taxes Management Act 1970—  
 Part VA (payment),

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- Part VI (collection and recovery),
  - Part IX (interest on overdue tax), and
  - Part XI (miscellaneous and supplementary provisions);
  - (b) the provisions of this Schedule imposing tax-related penalties; and
  - (c) the provisions of the Corporation Tax Acts enabling unpaid tax assessed on a company to be assessed on other persons.
- (3) For those purposes the period for which the determination is made shall be treated as an accounting period of the company, even though—
- (a) in the case of a determination under paragraph 36, the Inland Revenue have insufficient information to determine the accounting periods of the company and exercise their power under sub-paragraph (3)(c) of that paragraph, or
  - (b) in the case of a determination under paragraph 37, the Inland Revenue have insufficient information to determine whether the outstanding period is an accounting period.

#### Marginal Citations

M290 1970 c. 9.

#### *Determination superseded by actual self-assessment*

- 40 (1) If after a determination has been made under paragraph 36—
- (a) the company delivers a company tax return for a period ending in or at the end of the period specified in the notice requiring a company tax return, and
  - (b) the period is, or is treated in the return as, an accounting period,
- the self-assessment included in that return supersedes the determination or, if there is more than one, the determination for the period which is, or most closely approximates to, the period for which the return is made.
- (2) If after a determination has been made under paragraph 37—
- (a) the company delivers a further company tax return for a period ending in or at the end of the period specified in the notice requiring a company tax return, and
  - (b) the period is, or is treated in the return as, an accounting period,
- the self-assessment included in that return supersedes the determination.
- (3) Sub-paragraphs (1) and (2) do not apply to a return made—
- (a) more than five years after the day on which the power to make the determination first became exercisable (see paragraph 36(2) or 37(2)), or
  - (b) more than twelve months after the date of the determination,
- whichever is the later.
- (4) Where—
- (a) the Inland Revenue have begun proceedings for the recovery of any tax charged by a determination under paragraph 36 or 37, and

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- (b) before the proceedings are concluded the determination is superseded by a self-assessment,

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

*Assessment where loss of tax discovered or  
determination of amount discovered to be incorrect*

- 41 (1) If the Inland Revenue discover as regards an accounting period of a company that—
- (a) an amount which ought to have been assessed to tax has not been assessed, or
  - (b) an assessment to tax is or has become insufficient, or
  - (c) relief has been given which is or has become excessive,
- they may make an assessment (a “discovery assessment”) in the amount or further amount which ought in their opinion to be charged in order to make good to the Crown the loss of tax.
- (2) If the Inland Revenue discover that a company tax return delivered by a company for an accounting period incorrectly states—
- (a) an amount that affects, or may affect, the tax payable by that company for another accounting period, or
  - (b) an amount that affects, or may affect, the tax liability of another company,
- they may make a determination (a “discovery determination”) of the amount which in their opinion ought to have been stated in the return.

*Restrictions on power to make discovery assessment or determination*

- 42 (1) The power to make—
- (a) a discovery assessment for an accounting period for which the company has delivered a company tax return, or
  - (b) a discovery determination,
- is only exercisable in the circumstances specified in paragraph 43 or 44 and subject to paragraph 45 below.
- (2) Those restrictions do not apply to an assessment or determination which only gives effect to a discovery determination duly made with respect to an amount stated in another company’s company tax return.
- (3) Any objection to a discovery assessment or determination on the ground that those paragraphs have not been complied with can only be made on an appeal against the assessment or determination.

*Fraudulent or negligent conduct*

- 43 A discovery assessment for an accounting period for which the company has delivered a company tax return, or a discovery determination, may be made if the situation mentioned in paragraph 41(1) or (2) is attributable to fraudulent or negligent conduct on the part of—
- (a) the company, or
  - (b) a person acting on behalf of the company, or
  - (c) a person who was a partner of the company at the relevant time.



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*Situation not disclosed by return or related documents etc.*

- 44 (1) A discovery assessment for an accounting period for which the company has delivered a company tax return, or a discovery determination, may be made if at the time when the Inland Revenue—
- (a) ceased to be entitled to give a notice of enquiry into the return, or
  - (b) completed their enquiries into the return,
- they could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware of the situation mentioned in paragraph 41(1) or (2).
- (2) For this purpose information is regarded as made available to the Inland Revenue if—
- (a) it is contained in a relevant return by the company or in documents accompanying any such return, or
  - (b) it is contained in a relevant claim made by the company or in any accounts, statements or documents accompanying any such claim, or
  - (c) it is contained in any documents, accounts or information produced or provided by the company to the Inland Revenue for the purposes of an enquiry into any such return or claim, or
  - (d) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 41(1) or (2)—
    - (i) could reasonably be expected to be inferred by the Inland Revenue from information falling within paragraphs (a) to (c) above, or
    - (ii) are notified in writing to the Inland Revenue by the company or a person acting on its behalf.
- (3) In sub-paragraph (2)—
- “relevant return” means the company’s company tax return for the period in question or either of the two immediately preceding accounting periods, and
- “relevant claim” means a claim made by or on behalf of the company as regards the period in question.

*Return made in accordance with prevailing practice*

- 45 No discovery assessment for an accounting period for which the company has delivered a company tax return, or discovery determination, may be made if—
- (a) the situation mentioned in paragraph 41(1) or (2) is attributable to a mistake in the return as to the basis on which the company’s liability ought to have been computed, and
  - (b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

*General time limits for assessments*

- 46 (1) Subject to any provision of the Taxes Acts allowing a longer period in any particular class of case no assessment may be made more than six years after the end of the accounting period to which it relates.
- (2) In a case involving fraud or negligence on the part of—
- (a) the company, or
  - (b) a person acting on behalf of the company, or

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(c) a person who was a partner of the company at the relevant time, an assessment may be made up to 21 years after the end of the accounting period to which it relates.

(3) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on an appeal against the assessment.

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

C7 Sch. 18 para. 46(2)(3) applied (28.7.2000 with application as mentioned in s. 63(4) of the amending Act) by 2000 c. 17, s. 63(1), **Sch. 15 Pt. VI para. 62(3)**

*Assessment procedure*

- 47 (1) Notice of an assessment to tax on a company must be served on the company stating—
- (a) the date on which the notice is issued, and
  - (b) the time within which any appeal against the assessment may be made.
- (2) After that notice has been served on the company, the assessment may not be altered except in accordance with the express provisions of the Taxes Acts.

*Appeal against assessment*

- 48 (1) An appeal may be brought against any assessment to tax on a company which is not a self-assessment.
- (2) Notice of appeal must be given—
- (a) in writing,
  - (b) within 30 days after notice of the assessment was issued,
  - (c) to the officer of the Board by whom the notice of the assessment was given.

*Application of provisions to discovery determinations*

- 49 The provisions of paragraphs 46 to 48 (assessments: general provisions as to time limits, procedure and appeals) apply to a discovery determination as they apply to an assessment.

**PART VI**

EXCESSIVE ASSESSMENTS OR REPAYMENTS, ETC

*Relief in case of double assessment*

- 50 (1) A company which believes it has been assessed to tax more than once for the same cause and for the same accounting period may make a claim for relief—
- (a) by notice in writing,
  - (b) given to the Board.
- (2) If on a claim being made the Board are satisfied that the company has been assessed to tax more than once for the same cause and for the same accounting period, they shall

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amend the assessment or assessments concerned, or give relief by way of discharge or repayment of tax or otherwise, so as to eliminate the double charge.

- (3) An appeal against the Board's decision on a claim for relief under this paragraph may be brought to the Commissioners having jurisdiction to hear an appeal relating to the assessment, or the later of the assessments, to which the claim relates.

*Relief in case of mistake in return*

- 51 (1) A company which believes it has paid tax under an assessment which was excessive by reason of some mistake in a return may make a claim for relief—
- (a) by notice in writing,
  - (b) given to the Board,
  - (c) not more than six years after the end of the accounting period to which the return relates.

- (2) On receiving the claim the Board shall enquire into the matter and give by way of repayment such relief in respect of the mistake as is reasonable and just.

- (3) No relief shall be given under this paragraph—
- (a) in respect of a mistake as to the basis on which the liability of the claimant ought to have been computed when the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made, or
  - (b) in respect of a mistake in a claim or election which is included in the return.

- (4) In determining a claim under this paragraph the Board shall have regard to all the relevant circumstances of the case.

They shall, in particular, consider whether the granting of relief would result in amounts being excluded from charge to tax.

For that purpose they may take into consideration the liability of the claimant company, and assessments made on it, for accounting periods other than that to which the claim relates.

- (5) On an appeal against the Board's decision on the claim, the Special Commissioners shall hear and determine the claim in accordance with the same principles as apply to the determination by the Board of claims under this paragraph.

- (6) Neither the company nor the Board may appeal under section 56A of the <sup>M291</sup>Taxes Management Act 1970 against the determination of the Special Commissioners, except on a point of law arising in connection with the computation of—

- (a) the profits of the company for the purposes of corporation tax,
- (b) any amount assessable under section 419(1) of the Taxes Act 1988 (tax on loan or advance made by close company to a participator), or
- (c) any amount chargeable under section 747(4)(a) of that Act (tax on profits of controlled foreign company).

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

- C8** Sch. 18 para. 51 restricted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1994 c. 9, s. 118(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 8**)

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**Marginal Citations**

M291 1970 c. 9.

*Recovery of excessive repayments etc*

- 52 (1) The provisions of paragraphs 41 to 48 relating to discovery assessments apply to an amount to which this paragraph applies as if it were unpaid tax, unless—
- (a) it is assessable under those provisions apart from this paragraph, or
  - (b) it is recoverable under section 826(8A) of the Taxes Act 1988 (interest overpaid which is recoverable in same way as interest charged).
- (2) This paragraph applies to an amount paid to a company by way of—
- (a) repayment of tax (or income tax) or payment of a tax credit,
  - (b) repayment supplement under section 825 of the Taxes Act 1988, or
  - (c) interest paid under section 826 of that Act,
- to the extent that it ought not to have been paid.
- (3) For the purposes of this paragraph—
- (a) an amount is regarded as paid if it is allowed by way of set-off, and
  - (b) an amount is regarded as a repayment if it was intended as repayment but exceeds the amount paid by the company.
- (4) An assessment made by virtue of this paragraph shall be made under Case VI of Schedule D.
- (5) An assessment to recover—
- (a) an amount of tax repaid to a company in respect of an accounting period, or interest on any such repayment, or
  - (b) an amount of income tax repaid to a company in respect of a payment received by the company in an accounting period, or interest on any such repayment,
- shall be treated as an assessment to tax for the accounting period referred to in paragraph (a) or (b).
- (6) The sum assessed shall carry interest at the prescribed rate for the purposes of section 87A of the <sup>M292</sup>Taxes Management Act 1970 (interest on overdue corporation tax, etc.) from the date when the payment being recovered was made until payment.

**Marginal Citations**

M292 1970 c. 9.

*Time limit for recovery of excessive repayments, etc.*

- 53 (1) An assessment made by virtue of paragraph 52 is not out of time under paragraph 46(1) (general six year time limit for assessments) if it is made—
- (a) before the end of the accounting period following that in which the amount assessed was paid, or

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- (b) if later, before the end of the period of three months beginning with the day on which the Inland Revenue complete an enquiry into a relevant company tax return by the company concerned.
- (2) Sub-paragraph (1) above is without prejudice to paragraph 46(2) (time limit for assessment in case of fraud or negligence).

## PART VII

### GENERAL PROVISIONS AS TO CLAIMS AND ELECTIONS

#### *Claims must be quantified*

- 54 A claim under any provision of the Corporation Tax Acts for a relief, an allowance or a repayment of tax must be for an amount which is quantified at the time when the claim is made.

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

- C9** Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), Sch. 11 para. 6)  
Sch. 18 paras. 54-60 excluded (28.7.2000) by 1990 c. 1, s. 76B(5)(b) (as inserted (28.7.2000) by 2000 c. 17, s. 77(1))  
Sch. 18 paras. 54-60 applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 3(5)(6)  
Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, s. 201 (5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)  
Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

#### *General time limit for making claims*

- 55 Subject to any provision prescribing a longer or shorter period, a claim for relief under any provision of the Corporation Tax Acts must be made within six years from the end of the accounting period to which it relates.

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

- C10** Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), Sch. 11 para. 6)  
Sch. 18 paras. 54-60 excluded (28.7.2000) by 1990 c. 1, s. 76B(5)(b) (as inserted (28.7.2000) by 2000 c. 17, s. 77(1))  
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### *Supplementary claim or election*

- 56 A company which has made a claim or election under any provision of the Corporation Tax Acts (by including it in a return or otherwise) and subsequently discovers that a mistake has been made in it may make a supplementary claim or election within the time allowed for making the original claim or election.

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

- C11** Sch. 18 para. 56 restricted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1994 c. 9, s. 118(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 8**)
- Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 6**)
- Sch. 18 paras. 54-60 excluded (28.7.2000) by 1990 c. 1, s. 76B(5)(b) (as inserted (28.7.2000) by 2000 c. 17, s. 77(1))
- Sch. 18 paras. 54-60 applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 3(5)(6)
- Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, s. 201(5)(b) (with Sch. 3 Pt. IV paras. 54, 55)
- Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

### *Claims or elections affecting a single accounting period*

- 57 (1) This paragraph applies to a claim or election for tax purposes which affects only one accounting period ("the relevant accounting period").
- (2) If notice has been given under paragraph 3 requiring a company to deliver a company tax return for the relevant accounting period, a claim or election by the company which can be made by being included in the return (as originally made or by amendment) must be so made.
- (3) If a company has delivered a company tax return for the relevant accounting period, a claim or election made by the company which could be made by amending the return is treated as an amendment of the return.

The provisions of paragraph 15 (amendment of return by company) apply.

- (4) Schedule 1A to the <sup>M293</sup>Taxes Management Act 1970 (claims and elections not included in returns) applies to a claim or election made by a company which cannot be included in a company tax return for the relevant accounting period.

This applies in particular to a claim or election made—

- (a) before any notice is given under paragraph 3 requiring a company tax return for the relevant accounting period, or
- (b) at a time when its return for the relevant accounting period cannot be amended.

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

- C12** Sch. 18 paras. 57-60 excluded (31.7.1998) by 1988 c. 1, s. 438A, **Sch 19AB(1)(6)** (as substituted (31.7.1998) by 1998 c. 36, s. 117(3), **Sch. 19 para. 51(3)**)  
Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 6**)  
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Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

#### Marginal Citations

M293 1970 c. 9.

#### *Claims or elections involving more than one accounting period*

- 58 (1) This paragraph applies to a claim or election for tax purposes if—
- (a) the event or occasion giving rise to it occurs in one accounting period (the period to which it “relates”), and
  - (b) it affects one or more other accounting periods (whether or not it also affects the period to which it relates).
- (2) If a company makes a claim or election which—
- (a) relates to an accounting period for which the company has delivered a company tax return and could be made by amendment of the return, or
  - (b) affects an accounting period for which the company has delivered a company tax return and could be given effect by amendment of the return,
- the claim or election is treated as an amendment of the return.
- The provisions of paragraph 15 (amendment of return by company) apply.
- (3) Schedule 1A to the <sup>M294</sup>Taxes Management Act 1970 (claims and elections not included in returns) applies to a claim or election made by a company if or to the extent that it is not—
- (a) made by being included (by amendment or otherwise) in the company tax return for the accounting period to which it relates, and
  - (b) given effect by being included (by amendment or otherwise) in company tax returns for the accounting periods affected by it.

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

- C13** Sch. 18 paras. 57-60 excluded (31.7.1998) by 1988 c. 1, s. 438A, **Sch 19AB(1)(6)** (as substituted (31.7.1998) by 1998 c. 36, s. 117(3), **Sch. 19 para. 51(3)**)  
Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 6**)



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Sch. 18 paras. 54-60 applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 3(5)(6)

Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, s. 201(5)(b) (with Sch. 3 Pt. IV paras. 54, 55)

Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

#### Marginal Citations

M294 1970 c. 9.

#### *Other claims and elections*

- 59 (1) Schedule 1A to the Taxes Management Act 1970 applies to a claim or election for tax purposes which is not within paragraph 57 or 58, whether or not it is included (by amendment or otherwise) in a company tax return.
- (2) The provisions of this Schedule do not apply where or to the extent that the provisions of Schedule 1A apply.

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

C14 Sch. 18 paras. 57-60 excluded (31.7.1998) by 1988 c. 1, s. 438A, Sch 19AB(1)(6) (as substituted (31.7.1998) by 1998 c. 36, s. 117(3), Sch. 19 para. 51(3))

Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), Sch. 11 para. 6)

Sch. 18 paras. 54-60 excluded (28.7.2000) by 1990 c. 1, s. 76B(5)(b) (as inserted (28.7.2000) by 2000 c. 17, s. 77(1))

Sch. 18 paras. 54-60 applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 3(5)(6)

Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, s. 201(5)(b) (with Sch. 3 Pt. IV paras. 54, 55)

Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

#### *Provisions supplementary to paragraphs 57 to 59*

- 60 (1) Paragraphs 57 to 59 have effect subject to any express provision to the contrary.
- (2) Nothing in those paragraphs affects the time limit or any other conditions for making a claim or election.
- (3) Where Schedule 1A to the <sup>M295</sup>Taxes Management Act 1970 applies by virtue of any of those paragraphs and the claim or election results in an increase in the amount of tax payable, all such adjustments by way of assessment or otherwise shall be made as are necessary to give effect to it.



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

- C15** Sch. 18 paras. 57-60 excluded (31.7.1998) by 1988 c. 1, s. 438A, **Sch 19AB(1)(6)** (as substituted (31.7.1998) by 1998 c. 36, s. 117(3), **Sch. 19 para. 51(3)**)
- Sch. 18 para. 54-60 excluded (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1990 c. 1, s. 59C(7)(b) (as substituted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 93(1)(2), **Sch. 11 para. 6**)
- Sch. 18 paras. 54-60 excluded (28.7.2000) by 1990 c. 1, s. 76B(5)(b) (as inserted (28.7.2000) by 2000 c. 17, s. 77(1))
- Sch. 18 paras. 54-60 applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 3(5)(6)
- Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned s. 579(1) of the amending Act) by 2001 c. 2, s. 201(5)(b) (with Sch. 3 Pt. IV paras. 54, 55)
- Sch. 18 paras. 54-60 excluded (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 227(5)(b) (with Sch. 3 Pt. 4 paras. 54, 55)

#### Marginal Citations

M295 1970 c. 9.

#### *Consequential claims, etc. arising out of certain Revenue amendments or assessments*

- 61 (1) Paragraphs 62 to 64 have effect to allow certain claims, elections, applications and notices to be made or given, or if previously given to be revoked or varied, where—
- an amendment of a company tax return is made under paragraph 34(2)(b) (amendments of other returns required in consequence of closure notice) which has the effect of increasing the amount of tax payable by a company,
  - a discovery assessment is made, or
  - an assessment is made under paragraph 76 (recovery of excessive group relief).
- (2) Paragraphs 62 to 64 do not apply in relation to an assessment made in a case involving fraudulent or negligent conduct on the part of—
- the company, or
  - a person acting on behalf of the company, or
  - a person who was a partner of the company at the relevant time.
- In such a case more limited provision is made by paragraph 65.
- (3) In paragraphs 62 to 64 “the relevant accounting period”, in relation to the time limit for making a consequential claim, election, application or notice, means—
- in relation to an amendment of a company tax return under paragraph 34(2)
  - (b), the accounting period in which the closure notice was issued;
  - in relation to an assessment, the accounting period in which the assessment was made.

#### *Consequential claims etc that may be made*

- 62 (1) A claim, election, application or notice to which this paragraph applies—
- may be made or given at any time within one year from the end of the relevant accounting period, or
  - if previously made or given may at any such time be revoked or varied—

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- (i) in the same manner as it was made or given, and
  - (ii) by or with the consent of the same person or persons who made, gave or consented to it (or, if a person has died, by or with the consent of his personal representatives),
- unless, by virtue of any enactment, it is irrevocable.
- (2) This paragraph applies to a claim, election, application or notice—
- (a) relating to the accounting period in respect of which the amendment or assessment is made, or
  - (b) made or given by reference to an event occurring in that period,
- whose making, giving, revocation or variation has or could have the effect of reducing a relevant liability of the company.
- (3) The following are relevant liabilities of the company for this purpose—
- (a) the increased liability to tax resulting from the amendment or assessment;
  - (b) any other liability to tax of the company—
    - (i) for the accounting period to which the amendment or assessment relates, or
    - (ii) for any subsequent accounting period ending not later than one year after the end of the relevant accounting period.
- (4) Where a claim, election, application or notice is made, given, revoked or varied by virtue of this paragraph, all such adjustments shall be made, whether by way of discharge or repayment of tax or the making of amendments, assessments or otherwise, as are required to take account of the effect of the taking of that action on any person's liability to tax for any chargeable period.
- (5) The provisions of the <sup>M296</sup>Taxes Management Act 1970 relating to appeals against decisions on claims apply with any necessary modifications to a decision on the revocation or variation of a claim by virtue of this paragraph.
- (6) This paragraph has effect subject to—
- paragraph 63 (consequential claims etc. affecting tax liability of another person), and
  - paragraph 64 (consequential claims etc. not to give rise to reduction in liability).

**Marginal Citations**

**M296** 1970 c. 9.

*Consequential claims etc. affecting tax liability of another person*

- 63 (1) If the effect of the exercise by any person of a power conferred by paragraph 62 would be to alter the liability to tax of another person, the power may not be exercised except with the consent in writing of that other person or, if he has died, of his personal representatives.
- (2) Where such a power is exercised so as to increase the liability to tax of another person, neither paragraph 61 above nor section 43A of the <sup>M297</sup>Taxes Management Act 1970 (which makes corresponding provision in relation to income tax or capital gains tax) applies in relation to any amendment or assessment made because of that increased liability.

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(3) In this paragraph “tax” includes income tax or capital gains tax.

**Marginal Citations**

M297 1970 c. 9.

*Consequential claims etc. not to give rise to reduction in liability*

- 64 (1) If in any case—
- (a) one or more claims, elections, applications or notices are made, given, revoked or varied under paragraph 62 in consequence of an amendment or assessment, and
  - (b) the total of the reductions in liability to tax resulting from that action would exceed the additional liability to tax resulting from the amendment or assessment,
- the excess is not available to reduce any liability to tax.
- (2) Where sub-paragraph (1) has the effect of limiting either—
- (a) the reduction in a person’s liability to tax for more than one period, or
  - (b) the reduction in the liability to tax of more than one person,
- the limited amount shall be apportioned between the periods or persons concerned.
- (3) The apportionment shall be made in such manner as the Inland Revenue may specify by notice in writing to the person or persons concerned, unless notice is given under the following provision.
- (4) If the person concerned gives (or the persons concerned jointly give) notice in writing to the Inland Revenue within the period of 30 days beginning with—
- (a) the day on which notice under sub-paragraph (3) is given to the person concerned, or
  - (b) where more than one person is concerned, the latest date on which such notice is given to any of them,
- the apportionment shall be made in such manner as may be specified in the notice given by the person or persons concerned.
- (5) In this paragraph “tax” includes income tax or capital gains tax.

*Consequential claims in case of fraud or negligence*

- 65 (1) This paragraph applies where an assessment is made on a company in a case involving fraudulent or negligent conduct on the part of—
- (a) the company, or
  - (b) a person acting on behalf of the company, or
  - (c) a person who was a partner of the company at the relevant time.
- (2) If the company so requires, effect shall be given in determining the amount of the tax charged by the assessment to any relief or allowance to which the company would have been entitled for that accounting period on a claim or application made within the time allowed by the Taxes Acts.

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## PART VIII

### CLAIMS FOR GROUP RELIEF

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

- C16** Sch. 18 Pt. VIII (except paras. 70(4), 71(4)) applied (with modifications) (23.11.1999) by S.I. 1999/2975, reg. 10(3)  
 Sch. 18 Pt. VIII (except para. 77) applied (28.7.2000) by 2000 c. 17, s. 82, Sch. 22 Pt. IX para. 81(3)

#### *Introduction*

- 66 This Part of this Schedule applies to claims for relief under Chapter IV of Part X of the Taxes Act 1988 (group relief).

#### *Claim to be included in company tax return*

- 67 (1) A claim for group relief must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.  
 (2) It may be included in the return originally made or by amendment.

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

- C17** Sch. 18 para. 67 applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the amending S.I.) by S.I. 2001/1163, regs. 1, 8

#### *Content of claims*

- 68 (1) A claim for group relief must specify—  
 (a) the amount of relief claimed, and  
 (b) the name of the surrendering company.  
 (2) The amount specified must be an amount which is quantified at the time the claim is made.

#### *Claims for more or less than the amount available for surrender*

- 69 (1) A claim for group relief may be made for less than the amount available for surrender at the time the claim is made.  
 (2) A claim is ineffective if the amount claimed exceeds the amount available for surrender at the time the claim is made.  
 (3) For these purposes the amount available for surrender at any time is calculated as follows.

#### *First step*

Determine the total amount available for surrender under section 403 of the Taxes Act 1988—

- (a) on the basis of the information in the company's company tax return, and

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- (b) disregarding any amendments whose effect is deferred under paragraph 31(3).

*Second step*

Then deduct the total of all amounts for which notices of consent have been given by the company and not withdrawn.

- (4) Where one or more claims are withdrawn on the same day as one or more claims are made, the withdrawals are given effect first.
- (5) Where more than one claim is made on the same day, and the claims together take the amount claimed over the limit of what is available for surrender, the Inland Revenue may determine which of the claims is to be ineffective.
- (6) The power under sub-paragraph (5) shall not be exercised to any greater extent than is necessary to bring the total amount claimed within the amount available for surrender.

*Consent to surrender*

- 70 (1) A claim for group relief requires the consent of the surrendering company.
- (2) A consortium claim also requires the consent of each member of the consortium.
- (3) The necessary consent or consents must be given—
- (a) by notice in writing,
  - (b) to the officer of the Board to whom the surrendering company makes its company tax returns,
  - (c) at or before the time the claim is made.
- Otherwise the claim is ineffective.
- (4) A claim for group relief is ineffective unless it is accompanied by a copy of the notice of consent to surrender given by the surrendering company.
- (5) A consortium claim is ineffective unless it is also accompanied by a copy of the notice of consent to surrender given by each member of the consortium.

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

**C18** Sch. 18 para. 70(1)(3)(4) applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the amending S.I.) by S.I. 2001/1163, **regs. 1, 8**

*Notice of consent*

- 71 (1) Notice of consent by the surrendering company must contain all the following details—
- (a) the name of the surrendering company;
  - (b) the name of the company to which relief is being surrendered;
  - (c) the amount of relief being surrendered;
  - (d) the accounting period of the surrendering company to which the surrender relates;
  - (e) the tax district references of the surrendering company and the company to which relief is being surrendered.

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Otherwise the notice is ineffective.

- (2) Notice of consent may not be amended, but it may be withdrawn and replaced by another notice of consent.
- (3) Notice of consent may be withdrawn by notice to the officer of the Board to whom the notice of consent was given.
- (4) Except where the consent is withdrawn under paragraph 75 (withdrawal in consequence of reduction of amount available for surrender), the notice of withdrawal must be accompanied by a notice signifying the consent of the claimant company to the withdrawal.

Otherwise the notice is ineffective.

- (5) The claimant company must, so far as it may do so, amend its company tax return for the accounting period for which the claim was made so as to reflect the withdrawal of consent.

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

**C19** Sch. 18 para. 71 applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the amending S.I.) by [S.I. 2001/1163](#), [regs. 1, 8](#)

*Notice of consent requiring amendment of return*

- 72
- (1) Where notice of consent by the surrendering company is given after the company has made a company tax return for the period to which the surrender relates, the surrendering company must at the same time amend its return so as to reflect the notice of consent.
  - (2) Where notice of consent by the surrendering company relates to a loss in respect of which relief has been given under section 393(1) of the Taxes Act 1988 (carry forward of trading losses), the surrendering company must at the same time amend its company tax return for the period or, if more than one, each of the periods in which relief for that loss has been given under section 393(1) so as to reflect the new notice of consent.

For this purpose relief under section 393(1) is treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

- (3) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under sub-paragraph (1) or (2).
- (4) If the surrendering company fails to comply with sub-paragraph (1) or (2), the notice of consent is ineffective.

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

**C20** Sch. 18 para. 72(1)(4) applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the amending S.I.) by [S.I. 2001/1163](#), [regs. 1, 8](#)

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### *Withdrawal or amendment of claim*

- 73 (1) A claim for group relief may be withdrawn by the claimant company only by amending its company tax return.
- (2) A claim for group relief may not be amended, but must be withdrawn and replaced by another claim.

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

**C21** Sch. 18 para. 73 applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the commencing Regulations) by S.I. 2001/1163, regs. 1, 8

### *Time limit for claims*

- 74 (1) A claim for group relief may be made or withdrawn at any time up to whichever is the last of the following dates—
- (a) the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made;
  - (b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;
  - (c) if after such an enquiry the Inland Revenue amend the return under paragraph 34(2), 30 days after notice of the amendment is issued;
  - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (2) A claim for group relief may be made or withdrawn at a later time if the Inland Revenue allow it.
- (3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes or withdraws a claim for group relief within the time allowed by or under this paragraph.
- (4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making or withdrawing a claim for group relief.
- An enquiry is so restricted if—
- (a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and
  - (b) the amendment giving rise to the enquiry consisted of the making or withdrawing of a claim for group relief.

### *Reduction in amount available for surrender*

- 75 (1) This paragraph applies if, after the surrendering company has given one or more notices of consent to surrender, the amount available for relief is reduced to less than the amount stated in the notice, or the total of the amounts stated in the notices, as being surrendered.
- (2) The company must within 30 days withdraw the notice of consent, or as many of the notices as is necessary to bring the total amount surrendered within the new amount available for surrender, and may give one or more new notices of consent.



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- (3) The company must give notice in writing of the withdrawal of consent, and send a copy of any new notice of consent—
- (a) to each of the companies affected, and
  - (b) to the Inland Revenue.
- (4) If the surrendering company fails to act in accordance with sub-paragraph (2), the Inland Revenue may by notice to the surrendering company give such directions as they think fit as to which notice or notices are to be ineffective or are to have effect in a lesser amount.
- This power shall not be exercised to any greater extent than is necessary to secure that the total amount stated in the notice or notices is consistent with the amount available for surrender.
- (5) The Inland Revenue must at the same time send a copy of the notice to the claimant company, or each claimant company, affected by their action.
- (6) A claimant company which receives—
- (a) notice of the withdrawal of consent, or a copy of a new notice of consent, under sub-paragraph (3), or
  - (b) a copy of a notice containing directions by the Inland Revenue under sub-paragraph (4),
- must, so far as it may do so, amend its company tax return for the accounting period for which the claim is made so that it is consistent with the new position with regard to consent to surrender.
- (7) An appeal may be brought by the surrendering company against any directions given by the Inland Revenue under sub-paragraph (4).
- (8) Notice of appeal must be given—
- (a) in writing,
  - (b) within 30 days after the notice containing the directions was issued,
  - (c) to the officer of the Board by whom the notice was given.

VALID FROM 27/07/1999

*[<sup>F12</sup>Assessment on other claimant companies]*

**Textual Amendments**

**F12** Sch. 18 para. 75A and crossheading inserted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 92(3)(7)

- <sup>F13</sup>75A(1) This paragraph applies where, after the surrendering company has given notice of consent to surrender, a claimant company (“the chargeable company”) has become liable to tax in consequence of receiving—
- (a) notice of the withdrawal of consent, or a copy of a new notice of consent, under paragraph 75(3), or
  - (b) a copy of a notice containing directions by the Inland Revenue under paragraph 75(4).



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- (2) If any of the tax is unpaid six months after the chargeable company's time limit for claims, the Inland Revenue may make an assessment to tax in the name of the chargeable company on any other company that has obtained group relief as a result of the surrender.
- (3) The assessment may not be made more than two years after that time limit.
- (4) The amount of the assessment must not exceed—
  - (a) the amount of the unpaid tax, or
  - (b) if less, the amount of tax which the other company saves by virtue of the surrender.
- (5) A company assessed to an amount of tax under sub-paragraph (2) is entitled to recover from the chargeable company—
  - (a) a sum equal to that amount, and
  - (b) any interest on that amount which it has paid under section 87A of the <sup>M298</sup>Taxes Management Act 1970 (interest on unpaid corporation tax).
- (6) For the purposes of this paragraph the chargeable company's time limit for claims is the last of the dates mentioned in paragraph 74(1) on which the chargeable company could make or withdraw a claim for group relief for the accounting period for which the claim in question is made.]

#### Textual Amendments

**F13** Sch. 18 Pt. VIII para. 75A inserted (27.7.1999 with effect in relation to accounting periods ending on or after 1.7.1999) by 1999 c. 16, s. 92(3)(7)

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

**C22** Sch. 18 para. 75A applied (with modifications) (31.3.2001 with effect as mentioned in reg. 1(2) of the commencing Regulations) by S.I. 2001/1163, regs. 1, 8

#### Marginal Citations

**M298** 1970 c.9.

### *Assessment to recover excessive group relief*

- 76
- (1) If the Inland Revenue discover that any group relief which has been given is or has become excessive, they may make an assessment to tax in the amount which in their opinion ought to be charged.
  - (2) This power is without prejudice to—
    - (a) the power to make a discovery assessment under paragraph 41(1);
    - (b) the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

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### *Joint amended returns*

- 77 (1) The Treasury may by regulations make provision for arrangements under which—
- (a) a claim for group relief may be made without being accompanied by a copy of the notice of consent to surrender given by the surrendering company, and
  - (b) one company may be authorised to act on behalf of two or more companies in the same group in amending their company tax returns for the purpose of claiming or surrendering group relief or revising the amounts of group relief claimed or surrendered by them.
- (2) Regulations under this paragraph may add to, exclude or modify the operation of any provisions of this Part of this Schedule to such extent as the Treasury think necessary or expedient for the purpose of, or in connection with, such arrangements.
- (3) Provision may in particular be made—
- (a) altering the conditions for making and withdrawing claims for group relief, and
  - (b) giving the Inland Revenue power to recover from the authorised company or another company in the group any amount which might be recovered from the claimant company by an assessment under paragraph 76.

## PART IX

### CLAIMS FOR CAPITAL ALLOWANCES

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

**C23** Sch. Pt. IX applied (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 135(5) (with Sch. 3 Pt. IV paras. 54, 55)

### *Introduction*

- [<sup>F14</sup>78 This Part of this Schedule applies to claims for allowances under the Capital Allowances Act which—
- (a) are made for corporation tax purposes, and
  - (b) are required under section 3 of that Act to be included in a tax return.]

### *Claim to be included in company tax return*

- 79 (1) A claim for capital allowances must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.
- (2) It may be included in the return originally made or by amendment.

### *Content of claims*

- 80 A claim for capital allowances must specify the amount claimed, which must be an amount which is quantified at the time the claim is made.

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### *Amendment or withdrawal of claim*

- 81 A claim for capital allowances may be amended or withdrawn by the claimant company only by amending its company tax return.

### *Time limit for claims*

- 82 (1) A claim for capital allowances may be made, amended or withdrawn at any time up to whichever is the last of the following dates—
- (a) the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made;
  - (b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;
  - (c) if after such an enquiry the Inland Revenue amend the return under paragraph 34(2), 30 days after notice of the amendment is issued;
  - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (2) A claim for capital allowances may be made, amended or withdrawn at a later time if the Inland Revenue allow it.
- (3) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim for capital allowances within the time allowed by or under this paragraph.
- (4) The references in sub-paragraph (1) to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim for capital allowances.

An enquiry is so restricted if—

- (a) the scope of the enquiry is limited as mentioned in paragraph 25(2), and
- (b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim for capital allowances.

### *Consequential amendment of return for another accounting period*

- 83 (1) This paragraph applies if the effect of a claim for capital allowances is to reduce the amount available by way of capital allowances for another accounting period of the company for which a company tax return has been delivered.
- (2) The company has 30 days within which to make any necessary amendments of the company tax return for that other period.
- (3) If it does not do so, the Inland Revenue may by notice in writing to the company amend the return to make it consistent with the amount available by way of capital allowances.
- (4) The time limits otherwise applicable to amendment of a company tax return do not prevent an amendment being made under sub-paragraph (2) or (3).
- (5) An appeal may be brought by the company against any such amendment.
- (6) Notice of appeal must be given—
- (a) in writing,
  - (b) within 30 days after notice of the amendment was issued,

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(c) to the officer of the Board by whom the notice of amendment was issued.

VALID FROM 28/07/2000

## [<sup>F15</sup>PART IXA

### CLAIMS FOR R&D TAX CREDIT

#### Textual Amendments

**F15** Sch. 18 Pt. 9A (paras. 83A-83F) inserted (28.7.2000 with effect as mentioned in s. 69(1) of the amending Act) by 2000 c. 17, s. 69(2), Sch. 21 para. 4

#### *Introduction*

83A This Part of this Schedule applies to claims for R&D tax credits under Schedule 20 to the Finance Act 2000.

#### *Claim to be included in company tax return*

83B (1) A claim for an R&D tax credit must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.

(2) It may be included in the return originally made or by amendment.

#### *Content of claim*

83C A claim for an R&D tax credit must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

#### *Amendment or withdrawal of claim*

83D A claim for an R&D tax credit may be amended or withdrawn by the claimant company only by amending its company tax return.

#### *Time limit for claims*

83E (1) A claim for an R&D tax credit may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.

(2) The claim may be made, amended or withdrawn at a later date if the Inland Revenue allow it.

#### *Penalty*

83F (1) The company is liable to a penalty where it—  
 (a) fraudulently or negligently makes a claim for an R&D tax credit which is incorrect, or

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- (b) discovers that a claim for an R&D tax credit made by it (neither fraudulently or negligently) is incorrect and does not remedy the error without unreasonable delay.
- (2) The penalty is an amount not exceeding the excess R&D tax credit claimed, that is, the difference between—
- (a) the amount of the R&D tax credit to which the company is entitled for the accounting period to which the claim relates, and
  - (b) the amount of the R&D tax credit claimed by the company for that period.]

VALID FROM 11/05/2001

## [<sup>F16</sup>PART 9B

### CLAIMS RELATING TO REMEDIATION OF CONTAMINATED LAND

#### Textual Amendments

**F16** Sch. 18 Pt. 9B inserted (11.5.2001 with effect as mentioned in s. 70 of the amending Act) by virtue of 2001 c. 9, s. 70, **Sch. 23 para. 6**

#### Introduction

- <sup>F17</sup>83G This Part of this Schedule applies to claims for—
- (a) land remediation tax credits under paragraph 14 of Schedule 22 to the Finance Act 2001 (“land remediation tax credits”), and
  - (b) life assurance company tax credits under paragraph 24 of that Schedule (“life assurance company tax credits”).

#### Textual Amendments

**F17** Sch. 18 Pt. 9B para. 83G inserted (11.5.2001 with effect as mentioned in s. 70 of the amending Act) by 2001 c. 9, s. 70, **Sch. 23 para. 6**

#### Claim to be included in company tax return

- <sup>F18</sup>83H(1) A claim for a land remediation tax credit or a life assurance company tax credit must be made by being included in the claimant company’s company tax return for the accounting period for which the claim is made.
- (2) It may be included in the return originally made or by amendment.

#### Textual Amendments

**F18** Sch. 18 Pt. 9B para. 83H inserted (11.5.2001 with effect as mentioned in s. 70 of the amending Act) by 2001 c. 9, s. 70, **Sch. 23 para. 6**

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### *Content of claim*

- <sup>F19</sup>83I A claim for a land remediation tax credit or a life assurance company tax credit must specify the amount of the tax credit claimed, which must be an amount quantified at the time the claim is made.

#### **Textual Amendments**

- F19** Sch. 18 Pt. 9B para. 83I inserted (11.5.2001 with effect as mentioned in [s. 70](#) of the amending Act) by [2001 c. 9, s. 70](#), [Sch. 23 para. 6](#)

### *Amendment or withdrawal of claim*

- <sup>F20</sup>83J A claim for a land remediation tax credit or a life assurance company tax credit may be amended or withdrawn by the claimant company only by amending its company tax return.

#### **Textual Amendments**

- F20** Sch. 18 Pt. 9B para. 83J inserted (11.5.2001 with effect as mentioned in [s. 70](#) of the amending Act) by [2001 c. 9, s. 70](#), [Sch. 23 para. 6](#)

### *Time limit for claims*

- <sup>F21</sup>83K(1) A claim for a land remediation tax credit or a life assurance company tax credit may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.
- (2) The claim may be made, amended or withdrawn at a later date if the Inland Revenue allow it.

#### **Textual Amendments**

- F21** Sch. 18 Pt. 9B para. 83K inserted (11.5.2001 with effect as mentioned in [s. 70](#) of the amending Act) by [2001 c. 9, s. 70](#), [Sch. 23 para. 6](#)

### *Penalty*

- <sup>F22</sup>83L(1) The company is liable to a penalty where it—
- (a) fraudulently or negligently makes a claim for a land remediation tax credit or a life assurance company tax credit and that claim is incorrect, or
  - (b) discovers that such a claim made by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay.
- (2) The penalty is an amount not exceeding the excess land remediation tax credit or excess life assurance company tax credit claimed, that is, the difference between—
- (a) the amount of the land remediation tax credit or the life assurance company tax credit claimed by the company for the accounting period to which the claim relates, and

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- (b) the amount of the land remediation tax credit or the life assurance company tax credit to which the company is entitled for that period.]

**Textual Amendments**

- F22** Sch. 18 Pt. 9B para. 83L inserted (11.5.2001 with effect as mentioned in s. 70 of the amending Act) by 2001 c. 9, s. 70, **Sch. 23 para. 6**

VALID FROM 24/07/2002

[<sup>F23</sup>PART 9C CLAIMS FOR TAX CREDIT UNDER SCHEDULE 13 TO THE FINANCE ACT 2002

**Textual Amendments**

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in Sch. 14 para. 5 of the amending Act) by 2002 c. 23, s. 54, **Sch. 14 para. 4**

*Introduction*

- 83M This Part of this Schedule applies to claims for tax credits under Schedule 13 to the Finance Act 2002 (vaccine research etc).

**Textual Amendments**

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in Sch. 14 para. 5 of the amending Act) by 2002 c. 23, s. 54, **Sch. 14 para. 4**

*Claim to be included in company tax return*

- 83N (1) A claim to which this Part of this Schedule applies must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.
- (2) It may be included in the return originally made or by amendment.

**Textual Amendments**

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in Sch. 14 para. 5 of the amending Act) by 2002 c. 23, s. 54, **Sch. 14 para. 4**

*Content of claim*

- 83O A claim to which this Part of this Schedule applies must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

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#### Textual Amendments

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in [Sch. 14 para. 5](#) of the amending Act) by [2002 c. 23, s. 54](#), [Sch. 14 para. 4](#)

#### *Amendment or withdrawal of claim*

- 83P A claim to which this Part of this Schedule applies may be amended or withdrawn by the claimant company only by amending its company tax return.

#### Textual Amendments

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in [Sch. 14 para. 5](#) of the amending Act) by [2002 c. 23, s. 54](#), [Sch. 14 para. 4](#)

#### *Time limit for claims*

- 83Q (1) A claim to which this Part of this Schedule applies may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.
- (2) The claim may be made, amended or withdrawn at a later date if the Inland Revenue allow it.

#### Textual Amendments

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in [Sch. 14 para. 5](#) of the amending Act) by [2002 c. 23, s. 54](#), [Sch. 14 para. 4](#)

#### *Penalty*

- 83R (1) The company is liable to a penalty where it—
- (a) fraudulently or negligently makes a claim to which this Part of this Schedule applies which is incorrect, or
  - (b) discovers that such a claim made by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay.
- (2) The penalty is an amount not exceeding the excess credit claimed, that is, the difference between—
- (a) the amount of the credit to which the company is entitled under Schedule 13 to the Finance Act 2002 for the accounting period to which the claim relates, and
  - (b) the amount of such credit claimed by the company for that period.]



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### Textual Amendments

- F23** Sch. 18 Pt. 9C inserted (24.7.2002 with effect as mentioned in Sch. 14 para. 5 of the amending Act) by 2002 c. 23, s. 54, Sch. 14 para. 4

## PART X

### SPECIAL PROVISIONS

#### *Choice between different Cases of Schedule D*

- 84 (1) This paragraph applies in the following cases.
- (2) The first case is where amounts may be brought into charge to tax either—
- (a) in computing profits chargeable to tax under Case I of Schedule D, or
  - (b) as amounts within Case III or V of that Schedule.
- (3) The second case is where amounts may be brought into charge to tax either—
- (a) in computing profits charged to tax under Case I of Schedule D, or
  - (b) for the purpose of applying the basis commonly called the I minus E basis under which a company carrying on life assurance business is charged to tax on that business otherwise than under Case I of Schedule D.
- In paragraph (b) “life assurance business” includes annuity business within the meaning of Chapter I of Part XII of the Taxes Act 1988.
- (4) Where this paragraph applies, the Inland Revenue may by notice require a company—
- (a) to produce to them such documents in the company’s power or possession, and
  - (b) to provide them with such information, in such form,
- as they may reasonably require for the purpose of determining which basis of charge is to be used for an accounting period.
- The provisions of paragraphs 27 to 29 (notice to produce documents, etc. for purposes of enquiry: supplementary provisions and penalty) apply in relation to such a notice.
- (5) A determination by the Inland Revenue under this paragraph is final and conclusive as to the basis of charge to be used for the accounting period concerned.

#### *Non-annual accounting of general insurance business*

- 85 (1) This paragraph applies where a company carrying on insurance business delivers a company tax return based wholly or partly on accounts drawn up using the method described in paragraph 52 of Schedule 9A to the <sup>M299</sup>Companies Act 1985.
- That paragraph provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding.
- (2) Where this paragraph applies—

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- (a) the company may make any amendments of its return arising from the replacement of the technical provision at any time within twelve months from the date on which the provision was replaced, and
  - (b) the Inland Revenue may give notice of enquiry into the return at any time up to two years from that date.
- (3) Nothing in this paragraph prevents notice of enquiry being given at any later time in accordance with the general rule in paragraph 24(3).

**Marginal Citations**

M299 1985 c. 6.

*Insurance companies with non-annual actuarial investigations*

- 86 (1) This paragraph applies where a company tax return is delivered by an insurance company which is permitted by an order under section 68 of the <sup>M300</sup>Insurance Companies Act 1982 to cause investigations to be made into its financial condition less frequently than is required by section 18 of that Act.
- (2) Where this paragraph applies—
- (a) the company may make any amendments of its return arising from the relevant investigation at any time within twelve months from the date as at which that investigation is carried out, and
  - (b) the Inland Revenue may give notice of enquiry into the return at any time up to two years from that date.
- (3) “The relevant investigation” means—
- (a) if the return is for a period as at the end of which there is carried out an investigation under section 18 of the <sup>M301</sup>Insurance Companies Act 1982 into the financial condition of the company, that investigation;
  - (b) if the return is not for such a period, the first such investigation to be made into the financial condition of the company as at the end of a subsequent period.

**Marginal Citations**

M300 1982 c. 50.

M301 1982 c. 50.

*Friendly societies with non-annual actuarial investigations*

- 87 (1) This paragraph applies where a company tax return is delivered by a friendly society which is required by section 47 of the <sup>M302</sup>Friendly Societies Act 1992 to cause an investigation to be made into its financial condition at least once in every period of three years.
- (2) Where this paragraph applies—

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- (a) the society may make any amendments of its return arising from the relevant investigation at any time within 15 months from the date as at which that investigation is carried out, and
  - (b) the Inland Revenue may give notice of enquiry into the return at any time up to 27 months from that date.
- (3) “The relevant investigation” means—
- (a) if the return is for a period as at the end of which there is carried out an investigation under section 47 of the <sup>M303</sup>Friendly Societies Act 1992 into the financial condition of the society, that investigation;
  - (b) if the return is not for such a period, the first such investigation to be made into the financial condition of the company as at the end of a subsequent period.

#### Marginal Citations

M302 1992 c. 40.

M303 1992 c. 40.

## PART XI

### SUPPLEMENTARY PROVISIONS

#### *Conclusiveness of amounts stated in return*

- 88 (1) This paragraph applies to an amount stated in a company tax return for an accounting period which is required to be included in the return and which affects or may affect—
- (a) the tax payable by the company making the return for another accounting period, or
  - (b) the tax liability of another company for any accounting period.
- (2) If such an amount can no longer be altered it is taken to be conclusively determined for the purposes of the Corporation Tax Acts in relation to that other period or other company.

Sub-paragraphs (3) to (5) explain what is meant by can no longer be altered.

- (3) An amount is regarded as one that can no longer be altered if—
- (a) the period specified in paragraph 15(4) (general period for amendment by company) has ended,
  - (b) any enquiry into the return has been completed and the period specified in paragraph 34(1) (period for amendment by company after enquiry) has ended,
  - (c) if the Inland Revenue amend the return under paragraph 34(2), the period within which an appeal may be brought against that amendment has ended, and
  - (d) if an appeal is brought, the appeal has been finally determined.
- (4) If the return is amended by the company under a provision that allows an amendment after the end of the period specified in paragraph 15(4), an amount affected by the

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amendment ceases to be regarded as one that can no longer be altered until after whichever is the last of the following—

- (a) the end of the period within which notice of enquiry into the return may be given in consequence of the amendment;
  - (b) if such a notice is given, the end of the period specified in paragraph 34(1);
  - (c) if the Inland Revenue amend the return under paragraph 34(2), the end of the period within which an appeal against that amendment may be brought;
  - (d) if an appeal is brought, the date on which the appeal is finally determined.
- (5) If the return is amended by the Inland Revenue under paragraph 83(3) (consequential amendment of return where amount available by way of capital allowances is reduced), an amount affected by the amendment ceases to be regarded as one that can no longer be altered until after—
- (a) the end of the period within which an appeal against that amendment may be brought, or
  - (b) if an appeal is brought, the date on which the appeal is finally determined.
- (6) For the purposes of this paragraph an amount carried forward from a period for which a return was made under section 11 of the <sup>M304</sup>Taxes Management Act 1970 is not regarded as one required to be included in a company tax return for a later period.
- (7) Nothing in this paragraph affects any power to make an assessment other than a self-assessment or the power to make a discovery determination.

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

**C24** Sch. 18 para. 88 excluded (24.7.2002 with effect as mentioned in s. 80(2) of 2002 c. 23) by 1993 c. 34, ss. 94AA(7), 94AB(4) (as substituted by 2002 c. 23, s. 80, Sch. 24 paras. 5, 6)

**Marginal Citations**

**M304** 1970 c. 9.

*Penalty for fraud or negligence*

- 89 (1) A company which fraudulently or negligently—
- (a) makes any incorrect return, statement or declaration in connection with a claim for any allowance, deduction or relief in respect of tax, or
  - (b) submits to the Inland Revenue, or to the Special or General Commissioners, any incorrect accounts in connection with ascertainment of the company's tax liability,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax understated, that is, the difference between—
- (a) the amount of tax payable by the company for the accounting period or periods to which the claim or accounts relate, and
  - (b) the amount which would have been so payable on the basis of the return, statement or declaration made, or the accounts submitted.
- (3) In computing for this purpose the amount of tax payable, no account shall be taken of any relief under section 419(4) of the Taxes Act 1988 (relief in respect of repayment, etc. of loan) which is deferred under subsection (4A) of that section.

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- (4) For the purposes of this paragraph any accounts submitted on behalf of a company shall be taken to be submitted by it unless the company proves that they were submitted without its consent or connivance.

*Multiple tax-related penalties in respect of same accounting period*

- 90 (1) This paragraph applies where a company incurs more than one penalty whose amount falls to be determined by reference to the tax payable by it for an accounting period.
- (2) Each penalty after the first shall be reduced so that the total amount of the penalties, so far as determined by reference to any particular part of the tax, does not exceed whichever is, or but for this paragraph would be, the greater or greatest of them, so far as so determined.

*European Economic Interest Groupings*

- 91 An act or omission such as is mentioned in section 98B of the <sup>M305</sup>Taxes Management Act 1970 (European Economic Interest Groupings: acts or omissions attracting penalties) on the part of a grouping, or a member of a grouping, is treated as the act or omission of each member of the grouping for the purposes of—
- paragraphs 43 and 46(2) (assessment in case of fraud or negligence), and
  - paragraphs 61(2) and 65(1) (consequential claims in case of such an assessment).

**Marginal Citations**

M305 1970 c. 9.

*Notices of appeal*

- 92 (1) This paragraph applies in relation to any appeal under this Schedule.
- (2) The notice of appeal shall specify the grounds of appeal.
- (3) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not wilful or unreasonable.

*General jurisdiction of Special or General Commissioners*

- 93 (1) This paragraph applies in relation to an appeal against—
- (a) an amendment of a self-assessment under paragraph 30, or
  - (b) an amendment of a company tax return under paragraph 34(2), or
  - (c) an assessment to tax other than a self-assessment, or
  - (d) a discovery determination.
- (2) An appeal against a decision of the Board shall be to the Special Commissioners.
- (3) Any other appeal shall be to the General Commissioners, subject—

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- (a) to any provision made by or under Part V of the <sup>M306</sup>Taxes Management Act 1970, and
- (b) to any election under paragraph 94 below.

**Marginal Citations**

**M306** 1970 c. 9.

*Election to take appeal to Special Commissioners*

- 94 (1) The appellant may elect (in accordance with section 46(1) of the <sup>M307</sup>Taxes Management Act 1970) to bring an appeal to which paragraph 93(3) would otherwise apply before the Special Commissioners.
- (2) Such an election shall be disregarded if—
- (a) the appellant and the Inland Revenue agree in writing, at any time before the determination of the appeal, that it is to be disregarded, or
  - (b) the General Commissioners have given a direction under sub-paragraph (4) and have not revoked it.
- (3) At any time before the determination of an appeal in respect of which an election has been made, the inspector or other officer of the Board for the time being concerned with the proceedings, after giving notice to the appellant, may refer the election to the General Commissioners.
- (4) On any such reference the Commissioners shall, unless they are satisfied that the appellant has arguments to present or evidence to adduce on the merits or the appeal, direct that the election be disregarded.
- (5) If, at any time before the giving of such a direction (but before the determination of the appeal) the General Commissioners are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, they shall revoke the direction.
- (6) Any decision to give or revoke such a direction shall be final.

**Marginal Citations**

**M307** 1970 c. 9.

*Meaning of “the Inland Revenue”*

- 95 (1) References in this Schedule to “the Inland Revenue” are to any officer of the Board, except as otherwise provided.
- (2) Functions under these provisions are functions of the Board—
- paragraph 50 (relief in case of double assessment),
  - paragraph 51 (relief in case of mistake in return).
- (3) Functions under these provisions are exercisable by the Board or an officer of the Board—

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paragraph 41(1) or (2) (power to make discovery assessment or determination),  
 paragraph 52 (recovery of excessive repayments, etc.).

- (4) Functions exercisable by the Board under sub-paragraph (2) or (3) are within section 4A of the <sup>M308</sup>Inland Revenue Regulation Act 1890 (functions of Board exercisable by officer acting with their authority).
- (5) These provisions require things to be done by or in relation to the officer of the Board indicated in the Table:—

<i>Provision</i>	<i>Subject-matter</i>	<i>Officer</i>
paragraph 3(4)	Delivery of return	Officer by whom notice requiring return was issued.
paragraph 16(5)(b)	Notice rejecting correction of return.	Officer by whom notice of correction was given.
paragraph 28(2)(c)	Notice of appeal against requirement to produce documents, etc.	Officer by whom notice was given making the requirement.
paragraph 30(4)(c)	Notice of appeal against amendment of self-assessment during enquiry.	Officer by whom notice of amendment was given.
paragraph 34(4)(c)	Notice of appeal against amendment of return after enquiry.	Officer by whom notice of amendment was given.
paragraph 48(2)(c)	Notice of appeal against assessment other than self-assessment.	Officer by whom notice of assessment was given.
paragraph 70(3)(b)	Notice of consent to surrender group relief.	Officer to whom the surrendering company makes its company tax returns.
paragraph 71(3)	Notice of withdrawal of consent to surrender group relief.	Officer to whom the notice of consent was given.
paragraph 75(8)(c)	Notice of appeal against amendment of consent to surrender group relief.	Officer by whom notice of amendment was given.
paragraph 83(6)(c)	Appeal against amendment of return to reduce claim for capital allowances.	Officer by whom notice of amendment was given.
paragraph 94(3)	Election to take appeal to Special Commissioners.	Inspector or other officer of the Board for the time being concerned with the proceedings.

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(6) In this Schedule “the Board” means the Commissioners of Inland Revenue.

**Marginal Citations**

M308 1890 c. 21.

*The self-assessment appointed day*

96 In this Schedule “the self-assessment appointed day” means the day appointed by the Treasury under section 199 of the <sup>M309</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

**Marginal Citations**

M309 1994 c. 9.

*Construction of references to assessment*

97 Any reference in the Tax Acts (however expressed) to a person being assessed to tax, or being charged to tax by an assessment, include a reference to his being so assessed, or being so charged—

- (a) by a self-assessment under this Schedule, or an amendment of such a self-assessment, or
- (b) by a determination under paragraph 36 or 37 of this Schedule (which, until superseded by a self-assessment, has effect as if it were one).

*Index of defined expressions*

98 In this Schedule the expressions listed below are defined or otherwise explained by the provisions indicated—

the Board	paragraph 95(6)
closure notice	paragraph 32(1)
company tax return	paragraph 3(1)
delivery (in relation to company tax return)	paragraph 4
discovery assessment	paragraph 41(1)
discovery determination	paragraph 41(2)
filing date	paragraph 14
Inland Revenue	paragraph 95
notice of enquiry	paragraph 24(1)
notice requiring company tax return	paragraph 3(1)
self-assessment	paragraph 7
self-assessment appointed day	paragraph 96



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tax	paragraph 1 (and see paragraphs 63(3) and 64(5))
tax payable	paragraph 8
wrong period (return for)	paragraph 26(2) to (4)

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SCHEDULE 19

Section 117(3).

COMPANY TAX RETURNS, ETC.: MINOR AND CONSEQUENTIAL AMENDMENTS

*Taxes Management Act 1970 (c.9)*

- 1 The following provisions of the Taxes Management Act 1970 shall cease to have effect—
- section 10 (notice of liability to corporation tax),
  - section 11 (return of profits),
  - section 11AA (return of profits to include self-assessment),
  - section 11AB (power to enquire into return of profits),
  - sections 11AC to 11AE (modifications of sections 11AA and 11AB for certain insurance companies and friendly societies).
- 2 In section 12(2) of the Taxes Management Act 1970 (information about chargeable gains), omit “or section 11”.
- 3 In section 12AA(7) of the Taxes Management Act 1970 (partnership return: information about chargeable gains), after “section 12(2) of this Act” insert “ or paragraph 13 of Schedule 18 to the Finance Act 1998 ”.
- 4 In section 12AB of the Taxes Management Act 1970 (partnership return to include partnership statement), for subsection (4) substitute—
- “(4) Where a partnership statement is amended under subsection (2) above, the officer shall by notice to the partners amend—
    - (a) their self-assessment under section 9 of this Act, or
    - (b) their company tax return,so as to give effect to the amendments of the partnership statement.”.
- 5 In section 12AC of the Taxes Management Act 1970 (power to enquire into partnership return), for subsection (3) substitute—
- “(3) The giving of notice under subsection (1) above at any time shall be deemed to include—
    - (a) the giving of notice under section 9A(1) of this Act to each partner who at that time has made a return under section 9 of this Act or at any subsequent time makes such a return;
    - (b) the giving of notice of enquiry under Schedule 18 to the Finance Act 1998 to each partner who at that time has made a company tax return or at any subsequent time makes such a return.”.

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- 6 In section 12B(1) of the Taxes Management Act 1970 (records to be kept for purposes of returns), omit “, 11”.
- 7 In section 19A(1) of the Taxes Management Act 1970 (power to call for documents for purposes of certain enquiries), omit “, 11AB(1)”.
- 8 (1) Section 28A of the Taxes Management Act 1970 (amendment of self-assessment where enquiries made) is amended as follows.
- (2) In subsection (1) omit “or 11AB(1)”.
- (3) In subsection (7B) omit paragraph (b) and the word “and” preceding it.
- (4) Omit subsection (7C).
- (5) For subsection (8) substitute—
- “(8) In this section “filing date” means the day mentioned in section 8(1A) or section 8A(1A) of this Act, as the case may be.”.
- 9 Sections 28AA and 28AB of the Taxes Management Act 1970 (amendment of return of profits made for wrong period) shall cease to have effect.
- 10 (1) Section 28B of the Taxes Management Act 1970 (amendment of partnership statement where enquiries made) is amended as follows.
- (2) For subsection (4) substitute—
- “(4) Where a partnership statement is amended under this section, the officer shall by notice to each of the partners amend—
- (a) the partner’s self-assessment under section 9 of this Act, or
- (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership statement.”.
- (3) For subsection (6B) substitute—
- “(6B) For the purposes of subsection (6A) above—
- (a) “period of account” has the same meaning as in section 12AB of this Act, and
- (b) the cases where alternative methods are allowed by the Tax Acts are those specified in section 28A(7B) of this Act or paragraph 84(2) or (3) of Schedule 18 to the Finance Act 1998.”.
- 11 Sections 28D, 28E and 28F of the Taxes Management Act 1970 (determination of corporation tax in absence of self-assessment) shall cease to have effect.
- 12 (1) Section 29 of the Taxes Management Act 1970 (assessment where loss of tax discovered) is amended as follows.
- (2) In subsection (1) for “profits which ought to have been assessed to tax” substitute “income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, ”.
- (3) For “chargeable period”, wherever it occurs, substitute “ year of assessment ”.

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- (4) In subsections (2), (3), (5)(a), (6)(a) and (7)(a) for “section 8, 8A or 11” substitute “section 8 or 8A”.
- (5) In subsection (3)(b) omit “in the case of a return under section 8 or 8A,”.
- (6) Omit subsection (10).
- 13 (1) Section 30 of the Taxes Management Act 1970 (recovery of overpayment of tax, etc.) is amended as follows.
- (2) In subsection (1) for “tax” in the first place where it occurs substitute “income tax or capital gains tax”.
- (3) In subsection (2)(a), omit “or 825”.
- (4) Omit subsection (2A).
- (5) In subsection (3), omit “or corporation tax”.
- (6) Omit subsection (3A).
- (7) For subsection (4) substitute—
- “(4) An assessment to income tax under this section shall be made under Case VI of Schedule D.”.
- (8) Omit subsection (4A).
- (9) In subsection (5)(a), for “chargeable period” substitute “year of assessment”.
- 14 (1) Section 30B of the Taxes Management Act 1970 (amendment of partnership statement where loss of tax discovered) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) Where a partnership statement is amended under subsection (1) above, the officer shall by notice to each of the relevant partners amend—
- (a) the partner’s self-assessment under section 9 of this Act, or
- (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership statement.”.
- (3) In subsection (7)(b) for “section 8, 8A or 11” substitute “section 8 or 8A”.
- (4) In subsection (9) for the definition of “profits” substitute—
- ““profits”—
- (a) in relation to income tax, means income,
- (b) in relation to capital gains tax, means chargeable gains, and
- (c) in relation to corporation tax, means profits as computed for the purposes of that tax;”.
- 15 (1) Section 33 of the Taxes Management Act 1970 (error or mistake) is amended as follows.
- (2) For subsection (1) substitute—

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- “(1) If a person who has paid income tax or capital gains tax under an assessment (whether a self-assessment or otherwise) alleges that the assessment was excessive by reason of some error or mistake in a return, he may by notice in writing at any time not later than five years after the 31st January next following the year of assessment to which the return relates, make a claim to the Board for relief.”
- (3) In subsection (5), after paragraph (a) insert “, and ” and omit paragraph (c).
- 16 (1) Section 33A of the Taxes Management Act 1970 (error or mistake in partnership statement) is amended as follows.
- (2) In subsection (1) omit “under section 9 or 11AA of this Act”.
- (3) For subsection (4) substitute—
- “(4) Where a partnership statement is amended under subsection (3) above, the Board shall by notice to each of the relevant partners amend—
- (a) the partner’s self-assessment under section 9 of this Act, or
- (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership statement.”
- 17 In section 34(1) of the Taxes Management Act 1970 (ordinary time limit for assessment), for the words from “an assessment to tax may be made” to the end substitute “ an assessment to income tax or capital gains tax may be made at any time not later than five years after the 31st January next following the year of assessment to which it relates ”.
- 18 In section 36(1) of the Taxes Management Act 1970 (fraudulent or negligent conduct)—
- (a) for “loss of tax” substitute “ loss of income tax or capital gains tax ”, and
- (b) for the words from “not later than” to the end substitute “ not later than 20 years after the 31st January next following the year of assessment to which it relates ”.
- 19 Sections 41A, 41B and 41C of the Taxes Management Act 1970 (corporation tax determinations) shall cease to have effect.
- 20 (1) Section 42 of the Taxes Management Act 1970 (procedure for making claims, etc.) is amended as follows.
- (2) In subsections (2), (9) and (11)(a) omit “, 11”.
- (3) Omit subsections (4) and (4A), and in subsection (5) the words from “and the reference in subsection (4)” to the end.
- (4) In subsection (13), after paragraph (a) insert “, and ” and omit paragraph (c).
- 21 In section 43 of the Taxes Management Act 1970, for subsection (1) substitute—
- “(1) Subject to any provision of the Taxes Acts prescribing a longer or shorter period, no claim for relief in respect of income tax or capital gains tax may be made more than five years after the 31st January next following the year of assessment to which it relates.”

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- 22 (1) Section 43A of the Taxes Management Act 1970 (further assessments: claims etc.) is amended as follows.
- (2) In subsection (1) for paragraph (a) substitute—
- “**(a)** where by virtue of section 29 of this Act an assessment to income tax or capital gains tax is made on any person for a year of assessment, and”.
- (3) In subsections (2), (3), (4) and (5) for “chargeable period”, wherever occurring, substitute “ year of assessment ”.
- 23 In section 46(2) of the Taxes Management Act 1970 (determinations of Commissioner to be final), omit the words “and in particular save as provided by section 29 of this Act”.
- 24 In section 46B(2) of the Taxes Management Act 1970 (questions to be determined by Special Commissioners), for paragraph (a) substitute—
- “**(a)** an appeal against an amendment of a self-assessment under—
- (i) section 28A(2) or (4) of this Act, or
- (ii) paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998;”.
- 25 In section 46C(2) of the Taxes Management Act 1970 (jurisdiction of Special Commissioners), for paragraph (a) substitute—
- “**(a)** an appeal against an amendment of a self-assessment under—
- (i) section 28A(2) or (4) of this Act, or
- (ii) paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998;”.
- 26 In section 46D(2) of the Taxes Management Act 1970 (questions to be determined by Lands Tribunal), for paragraph (a) substitute—
- “**(a)** an appeal against an amendment of a self-assessment under—
- (i) section 28A(2) or (4) of this Act, or
- (ii) paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998;”.
- 27 (1) Section 50 of the Taxes Management Act 1970 (procedure) is amended as follows.
- (2) In subsection (6)(a), after “28A(2) or (4) of this Act” insert “ or paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998 ”.
- (3) In subsection (7)(a), after “28A(2) or (4) of this Act” insert “ or paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998 ”.
- (4) For subsection (9) substitute—
- “**(9)** Where any amounts contained in a partnership statement are reduced under subsection (6) above or increased under subsection (7) above, an officer of the Board shall by notice to each of the relevant partners amend—

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- (a) the partner’s self-assessment under section 9 of this Act, or  
 (b) the partner’s company tax return,  
 so as to give effect to the reductions or increases of those amounts.”.
- 28 In section 55(1) of the Taxes Management Act 1970 (recovery of tax not postponed), for paragraphs (a) and (b) substitute—
- “(a) an amendment of a self-assessment under—  
 (i) section 28A(2) or (4) of this Act, or  
 (ii) paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998,  
 (b) an assessment to tax other than a self-assessment.”.
- 29 (1) In Part VA of the Taxes Management Act 1970 (payment of tax), before section 59A insert the heading “*Income tax and capital gains tax*”.
- (2) For section 59D of that Act substitute—

*“ Corporation tax*

**59D General rule as to when corporation tax is due and payable.**

- (1) Corporation tax for an accounting period is due and payable on the day following the expiry of nine months from the end of that period.
- (2) If the tax payable is then exceeded by the total of any relevant amounts previously paid (as stated in the relevant company tax return), the excess shall be repaid.
- (3) The tax payable means the amount computed in accordance with paragraph 8 of Schedule 18 to the Finance Act 1998.
- (4) Relevant amounts previously paid means any of the following, so far as relating to the accounting period in question—
  - (a) any amount of corporation tax paid by the company and not repaid;
  - (b) any corporation tax refund surrendered to the company by another group company;
  - (c) any amount by which the sums available for set off under Step 4 of the calculation in paragraph 8 of Schedule 18 to the Finance Act 1998 (amounts set off against overall tax liability) exceeds the amount against which they may be set off under that provision;
  - (d) any amount treated as corporation tax paid in respect of profits of the company under section 559 of the principal Act (deductions from payments to sub-contractors).
- (5) This section has effect subject to section 59E.

**59DA Claim for repayment in advance of liability being established.**

- (1) This section applies where a company has paid an amount of corporation tax for an accounting period and the circumstances of the company change, so that the company has grounds for believing that the amount paid exceeds its probable tax liability although that liability has not been finally established.

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- (2) The company may, by notice given to an officer of the Board, claim repayment of the excess.

No such claim may be made before the date which under section 826 of the principal Act (interest on overpaid tax), subject to regulations under section 826A of that Act, is the material date in relation to that tax.

- (3) The notice must state—
- (a) the amount which the company considers should be repaid, and
  - (b) its grounds for believing that the amount paid exceeds its probable tax liability.
- (4) If the company has appealed against an amendment of an assessment, or an assessment, relating to the tax liability in question, and the appeal has not been finally determined, it may apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending determination of the liability.
- (5) Any claim under subsection (2) or application under subsection (4) shall be heard and determined in the same way as an appeal.
- (6) If the company makes an application under section 55(3) or (4) (application to postpone payment pending determination of appeal), that application may be combined with an application under subsection (4) above.
- (7) If a company makes a claim or application under this section before it has delivered a company tax return for the period in question, any deductions under section 559 of the principal Act (deductions from payments to certain subcontractors) shall be disregarded in considering whether the amount paid by the company exceeds its probable tax liability.

- (8) This section has effect subject to section 59E.”

- 30 (1) Section 65 of the Taxes Management Act 1970 (recovery of small amounts of tax by civil proceedings in the magistrates’ court) is amended as follows.
- (2) In subsection (1) for the words from the beginning to “payment or tax” substitute “Any amount due and payable by way of income tax, capital gains tax or corporation tax which does not exceed £2,000”.
  - (3) In subsection (3), omit the words from “for the recovery of” to the end of paragraph (b).
  - (4) In subsection (5) for “sums” substitute “sum”.
- 31 In section 69 of the Taxes Management Act 1970 (interest on tax), after “Part II, VA or X of this Act” insert “ or under Schedule 18 to the Finance Act 1998 ”.
- 32 In section 70(2)(a) of the Taxes Management Act 1970 (certificate of collector as evidence), after “Part II, VA or X of this Act” insert “ or under Schedule 18 to the Finance Act 1998 ”.
- 33 Section 94 of the Taxes Management Act 1970 (penalty for failure to make return for corporation tax) shall cease to have effect.

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- 34 Section 96 of the Taxes Management Act 1970 (incorrect return or accounts for corporation tax) shall cease to have effect.
- 35 In section 97 of the Taxes Management Act 1970 (incorrect return or accounts: supplemental), in subsections (1) and (2) for “sections 95 and 96” substitute “section 95”.
- 36 In section 97AA(1) of the Taxes Management Act 1970 (penalty for failure to produce documents for purposes of enquiry), after “section 19A(2), (2A) or (3) of this Act” insert “ or paragraph 6(2) or (3A)(b) of Schedule 1A to this Act, ”.
- 37 In section 97A of the Taxes Management Act 1970 (two or more tax-geared penalties in respect of same tax), omit paragraph (b) and the word “or” preceding it.
- 38 In section 100(6)(a) of the Taxes Management Act 1970 (determination of penalties), for “section 94(6) above” substitute “ paragraph 18(2) of Schedule 18 to the Finance Act 1998 ”.
- 39 For section 101 of the Taxes Management Act 1970 (evidence of profits for purposes of preceding provisions of Part X) substitute—

**“101 Evidence for purposes of proceedings relating to penalties.**

An assessment which can no longer be varied by any Commissioners on appeal or by order of any court is sufficient evidence, for the purposes of—

- (a) the preceding provisions of this Part, and
- (b) the provisions of Schedule 18 to the Finance Act 1998 relating to penalties,

that the amounts in respect of which tax is charged in the assessment arose or were received as stated in the assessment.”.

- 40 In section 103A of the Taxes Management Act 1970 (interest on penalties), after “this Part of this Act” insert “ , or Schedule 18 to the Finance Act 1998, ”.
- 41 In section 113(1B) of the Taxes Management Act 1970 (Revenue assessments to tax), after “section 29 of this Act” insert “ or paragraph 41 of Schedule 18 to the Finance Act 1998 ”.
- 42 (1) Schedule 1A to the Taxes Management Act 1970 (claims, etc. not included in returns) is amended as follows.
- (2) In paragraph 1, for the definition of “profits” substitute—
- ““profits”—
- (a) in relation to income tax, means income,
  - (b) in relation to capital gains tax, means chargeable gains, and
  - (c) in relation to corporation tax, means profits as computed for the purposes of that tax;”.
- (3) In paragraph 2(5)(c) after “section 12 of this Act” insert “ or paragraph 13 of Schedule 18 to the Finance Act 1998 ”.
- (4) In paragraph 2A (keeping and preserving of records), in sub-paragraphs (3) and (5) (a) after “12B(4A) of this Act” insert “ or paragraph 22(3) of Schedule 18 to the Finance Act 1998 ”.



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- (5) In paragraph 5 (power to enquire into claims), in sub-paragraph (3)(b) for “section 9A(1), 11AB(1) or 12AC(1) of this Act” substitute “ section 9A(1) or 12AC(1) of this Act or paragraph 24 of Schedule 18 to the Finance Act 1998 ”.
- (6) In paragraph 6 (power to call for documents for purposes of enquiries), for sub-paragraph (3) substitute—
- “(3A) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
  - (b) the officer may by notice require the original to be produced for inspection.
- A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the company is to comply with it.
- (3B) The officer may take copies of, or make extracts from, any document produced to him under this paragraph.
- (3C) A notice under this paragraph does not oblige the claimant to produce documents or provide accounts or information relating to the conduct of any pending appeal by the claimant.”.
- (7) After that paragraph insert—

*“ Appeal against notice to produce documents, etc*

- 6A (1) An appeal may be brought against a requirement imposed by a notice under paragraph 6 to produce documents or provide accounts or information.
- (2) Notice of appeal must be given—
- (a) in writing,
  - (b) within 30 days after the notice was given to the claimant,
  - (c) to the officer of the Board by whom that notice was given.
- (3) On an appeal under this paragraph the Commissioners—
- (a) shall set aside the notice so far as it requires the production of documents, or the provision of accounts or information, which appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production of documents, or the provision of accounts or information, which appear to them are reasonably required for the purposes of the enquiry.
- (4) A notice which is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (5) The decision of the Commissioners on an appeal under this paragraph is final and conclusive.”.
- 43 (1) Schedule 3A to the Taxes Management Act 1970 (electronic lodgement of tax returns) is amended as follows.

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- (2) In paragraph 1(4)(a), after “Part II of this Act” insert “ or Schedule 18 to the Finance Act 1998 ”.
- (3) In paragraph 8(2)(a), after “Part II of this Act” insert “ or Schedule 18 to the Finance Act 1998 ”.

*Income and Corporation Taxes Act 1988 (c.1)*

- 44 (1) Section 246Q of the Taxes Act 1988 (repayment or set-off of ACT in respect of foreign income dividend) is amended as follows.
  - (2) In subsection (6) for the words from the beginning to “section 11 of the Management Act” substitute “ A company tax return made by the company for the relevant period ”.
  - (3) In subsection (7) for “a return under section 11 of the Management Act” substitute “ a company tax return ”.
- 45 (1) Section 246U of the Taxes Act 1988 (repayments treated as repayments of ACT in case of international headquarters company) is amended as follows.
  - (2) In subsection (7), for paragraph (a) substitute—
    - “(a) a company tax return made by the company for the accounting period, or”.
  - (3) In subsection (8) for “a return under section 11 of the Management Act” substitute “ a company tax return ”.
- 46 For section 412 of the Taxes Act 1988 (group relief: claims and adjustments) substitute—

**“412 Claims and adjustments.**

- (1) Claims for group relief are dealt with in Part VIII of Schedule 18 to the Finance Act 1998.
- (2) Paragraph 76 of that Schedule provides for assessments or other adjustments where group relief has been given which is or has become excessive.”.
- 47 (1) Section 419 of the Taxes Act 1988 (tax on loans to participators, etc. by close company) is amended as follows.
  - (2) In subsection (3), after “due and payable” insert “ in accordance with section 59D of the Management Act ”.
  - (3) In subsection (4) omit “by discharge or repayment”.
  - (4) After subsection (4A) insert—
    - “(4B) Schedule 1A to the Taxes Management Act 1970 (claims and elections not included in return) applies to a claim for relief under subsection (4) above unless—
      - (a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and
      - (b) the relief may be given at the time the claim is made.”.

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- 48 (1) Section 488 of the Taxes Act 1988 (co-operative housing associations) is amended as follows.
- (2) In subsection (11A)—
- (a) in paragraph (a) for the words from the beginning to “amendment of a return” substitute “ into a company tax return ”, and
- (b) in the closing words, for “self-assessment” substitute “ return ”.
- (3) For subsection (12) substitute—
- “(12) A housing association making a claim under this section may be required—
- (a) under paragraph 3 of Schedule 18 to the Finance Act 1998, if the claim is included in a company tax return, and
- (b) under paragraph 2(5) of Schedule 1A to the Taxes Management Act 1970 if it is not so included,
- to deliver as part of the return or claim an authority, granted by all members of the association, for any relevant information contained in any return made by a member under the provisions of the Income Tax Acts to be used by an officer of the Board in such manner as he may think fit in connection with any enquiry relating to the association’s claim.”.
- 49 In section 489 of the Taxes Act 1988 (self-build societies), in subsection (9A)—
- (a) in paragraph (a) for the words from the beginning to “amendment of a return” substitute “ into a company tax return ”, and
- (b) in the closing words, for “self-assessment” substitute “ return ”.
- 50 (1) Schedule 13A to the Taxes Act 1988 (surrenders of advance corporation tax) is amended as follows.
- (2) In paragraph 5(1) for “a return under section 11 of the Management Act” substitute “ a company tax return ”.
- (3) For paragraph 5(2) substitute—
- “(2) The provisions of Part VII of Schedule 18 to the Finance Act 1998 (general provisions as to claims and elections) do not apply to the making of claims.”.
- (4) In paragraph 14(1) omit the words from “(which correspond” to “Management Act)”.
- (5) In paragraph 14(6) for “an amendment of a self-assessment under section 28A(4) of that Act” substitute “ an amendment of a company tax return under paragraph 34(2) of Schedule 18 to the Finance Act 1998 ”.
- (6) In paragraph 14(8) omit the words from “against an amendment” to the end.
- 51 (1) Schedule 19AB to the Taxes Act 1988 (pension business: payments on account of tax credits and deducted tax) is amended as follows.
- (2) In paragraph 1(4), for “section 11 return” substitute “ company tax return ”.
- (3) For paragraph 1(6) substitute—
- “(6) Paragraphs 57 to 60 of Schedule 18 to the Finance Act 1998 (general provisions as to procedure on claims and elections) do not apply to a claim for a provisional repayment.”.

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(4) In paragraph 1(7) for “section 7 of this Act” substitute “ paragraph 9(2) of Schedule 18 to the Finance Act 1998 ”.

(5) For paragraph 1(10) and (11) substitute—

“(10) In this paragraph—

“latest company tax return”, in the case of an accounting period of a company (“the current accounting period”), means, subject to subparagraph (11) below, the company tax return for the latest preceding accounting period of the company for which such a return has been delivered before the making of the first claim for a provisional repayment for the current accounting period; and

“self-assessment” means an assessment included in a company tax return, and includes a reference to such an assessment as amended.

(11) In any case where—

(a) there is a company tax return which would, apart from this subparagraph, be the latest such return in the case of an accounting period of a company,

(b) the self-assessment required to be included in that return has been amended, and

(c) that amendment was made before the making of the first claim for a provisional repayment for the accounting period mentioned in paragraph (a) above,

the return which is to be regarded as the latest company tax return in the case of that accounting period shall be that return as it stands amended immediately after the making of that amendment of the self-assessment (or, if the self-assessment has been so amended more than once, that return as it stands amended immediately after the making of the last such amendment) but ignoring amendments which do not give rise to any change in the fraction which, on the basis of the return as it has effect from time to time, would be the relevant fraction for the purposes of section 432A(5) for the accounting period to which the return relates.”.

(6) In paragraph 2(1)(c), for “section 11 return” substitute “ company tax return ”.

(7) In paragraph 3(1) for “section 30 of the Management Act” substitute “ paragraph 52 of Schedule 18 to the Finance Act 1998 ”.

(8) In paragraph 3(1A) for “section 7 of this Act” substitute “ paragraph 9(2) of Schedule 18 to the Finance Act 1998 ”.

(9) For paragraph 3(1D) substitute—

“(1D) Paragraph 53 of Schedule 18 to the Finance Act 1998 (time limit for recovery of excessive repayments etc.) does not apply to an assessment under paragraph 52 of that Schedule made by virtue of this paragraph.

But such an assessment is not out of time under paragraph 46 of that Schedule (general six year time limit for assessments) if it is made not later than the end of the accounting period following that in which the self-assessment mentioned in subparagraph (1)(a) above becomes final.”.

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- (10) In paragraph 3(3) for “section 30 of that Act” substitute “ paragraph 52 of Schedule 18 to the Finance Act 1998 ”.
- (11) In paragraph 3(7) for “section 30 of the Management Act” substitute “ paragraph 52 of Schedule 18 to the Finance Act 1998 ”.
- (12) In paragraph 3(9) for “a return under section 11 of the Management Act by virtue of section 11AA of that Act” substitute “ company tax return ”.
- (13) In paragraph 6(4)(b) for “return under that section” substitute “ company tax return ”.

## SCHEDULE 20

Section 121.

### APPLICATION OF TAPER RELIEF

The Schedule inserted before Schedule 1 to the <sup>M310</sup>Taxation of Chargeable Gains Act 1992 is as follows:—

#### “SCHEDULE A1

### APPLICATION OF TAPER RELIEF

#### *Introductory*

- 1 (1) Section 2A shall be construed subject to and in accordance with this Schedule.
- (2) The different provisions of this Schedule have effect for construing the other provisions of this Schedule, as well as for construing section 2A.

#### *Period for which an asset is held and relevant period of ownership*

- 2 (1) In relation to any gain on the disposal of a business or non-business asset, the period after 5th April 1998 for which the asset had been held at the time of its disposal is the period which—
  - (a) begins with whichever is the later of 6th April 1998 and the time when the asset disposed of was acquired by the person making the disposal; and
  - (b) ends with the time of the disposal on which the gain accrued.
- (2) Where an asset is disposed of, its relevant period of ownership is whichever is the shorter of—
  - (a) the period after 5th April 1998 for which the asset had been held at the time of its disposal; and
  - (b) the period of ten years ending with that time.
- (3) The following shall be disregarded for determining when a person is to be treated for the purposes of this paragraph as having acquired an asset, that is to say—
  - (a) so much of section 73(1)(b) as treats the asset as acquired at a date before 6th April 1965; and
  - (b) sections 239(2)(b), 257(2)(b) and 259(2)(b).

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- (4) Where the period after 5th April 1998 for which an asset had been held at the time of its disposal includes any period which, in accordance with any of paragraphs 10 to 12 below, is a period that does not count for the purposes of taper relief—
- (a) the qualifying holding period of the asset shall be treated for the purposes of section 2A as reduced by the length of the period that does not count or, as the case may be, of the aggregate of the periods that do not count; and
  - (b) the period that does not count or, as the case may be, every such period—
    - (i) shall be left out of account in computing for the purposes of sub-paragraph (2) above the period of ten years ending with the time of the asset's disposal; and
    - (ii) shall be assumed not to be comprised in the asset's relevant period of ownership.
- (5) Sub-paragraphs (1) to (3) above have effect subject to the provisions of paragraphs 13 to 19 below.

*Rules for determining whether a gain is a gain on  
the disposal of a business asset or non-business asset*

- 3 (1) Subject to the following provisions of this Schedule, a chargeable gain accruing to any person on the disposal of any asset is a gain on the disposal of a business asset if that asset was a business asset throughout its relevant period of ownership.
- (2) Where—
- (a) a chargeable gain accrues to any person on the disposal of any asset,
  - (b) that gain does not accrue on the disposal of an asset that was a business asset throughout its relevant period of ownership, and
  - (c) that asset has been a business asset throughout one or more periods comprising part of its relevant period of ownership,
- a part of that gain shall be taken to be a gain on the disposal of a business asset and, in accordance with sub-paragraph (4) below, the remainder shall be taken to be a gain on the disposal of a non-business asset.
- (3) Subject to the following provisions of this Schedule, where sub-paragraph (2) above applies, the part of the chargeable gain accruing on the disposal of the asset that shall be taken to be a gain on the disposal of a business asset is the part of it that bears the same proportion to the whole of the gain as is borne to the whole of its relevant period of ownership by the aggregate of the periods which—
- (a) are comprised in its relevant period of ownership, and
  - (b) are periods throughout which the asset is to be taken (after applying paragraphs 8 and 9 below) to have been a business asset.
- (4) So much of any chargeable gain accruing to any person on the disposal of any asset as is not a gain on the disposal of a business asset shall be taken to be a gain on the disposal of a non-business asset.
- (5) Where, by virtue of sub-paragraphs (2) to (4) above, a gain on the disposal of a business asset accrues on the same disposal as a gain on the disposal of a non-business asset—
- (a) the two gains shall be treated for the purposes of taper relief as separate gains accruing on separate disposals of separate assets; but
  - (b) the periods after 5th April 1998 for which each of the assets shall be taken to have been held at the time of their disposal shall be the same and shall be

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determined without reference to the length of the periods mentioned in sub-paragraph (3)(a) and (b) above.

*Conditions for shares to qualify as business assets*

- 4 (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it consisted of, or of an interest in, any shares in a company (“the relevant company”).
- (2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to that individual.
- (3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to the trustees of that settlement.
- (4) Where the disposal is made by an individual’s personal representatives, the asset was a business asset at that time if at that time—
- (a) the relevant company was a trading company or the holding company of a trading group; and
  - (b) the voting rights in that company were exercisable, as to not less than 25 per cent., by the deceased’s personal representatives.
- (5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time—
- (a) it was held by the personal representatives of the deceased; and
  - (b) the conditions in sub-paragraph (4)(a) and (b) above were satisfied.

*Conditions for other assets to qualify as business assets*

- 5 (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it was neither shares in a company nor an interest in shares in a company.
- (2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
- (a) the purposes of a trade carried on at that time by that individual or by a partnership of which that individual was at that time a member;
  - (b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to that individual;
  - (c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to that individual;
  - (d) the purposes of any qualifying office or employment to which that individual was at that time required to devote substantially the whole of his time;
  - (e) the purposes of any office or employment that does not fall within paragraph (d) above but was an office or employment with a trading company in relation to

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which that individual falls to be treated as having, at that time, been a full-time working officer or employee.

- (3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
- (a) the purposes of a trade carried on by the trustees of the settlement;
  - (b) the purposes of a trade carried on at that time by an eligible beneficiary or by a partnership of which an eligible beneficiary was at that time a member;
  - (c) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;
  - (d) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;
  - (e) the purposes of any qualifying office or employment to which an eligible beneficiary was at that time required to devote substantially the whole of his time;
  - (f) the purposes of any office or employment that does not fall within paragraph (e) above but was an office or employment with a trading company in relation to which an eligible beneficiary falls to be treated as having, at that time, been a full-time working officer or employee.
- (4) Where the disposal is made by an individual's personal representatives, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—
- (a) the purposes of a trade carried on by the deceased's personal representatives;
  - (b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the deceased's personal representatives;
  - (c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the deceased's personal representatives.
- (5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time it was—
- (a) being held by the personal representatives of the deceased, and
  - (b) being used, wholly or partly, for purposes falling within one or more of paragraphs (a) to (c) of sub-paragraph (4) above.

#### *Companies which are qualifying companies*

- 6 (1) The times when a company shall be taken to have been a qualifying company by reference to an individual, the trustees of a settlement or an individual's personal representatives are—
- (a) in the case of an individual, those set out in sub-paragraphs (2) and (3) below; and
  - (b) in the case of the trustees of a settlement, those set out in sub-paragraphs (2) and (4) below; and



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- (c) in the case of personal representatives, those set out in sub-paragraph (2) below.
- (2) A company was a qualifying company by reference to an individual, the trustees of a settlement or personal representatives at any time when both the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group; and
  - (b) the voting rights in that company were exercisable, as to not less than 25 per cent., by that individual or, as the case may be, the trustees of the settlement or the personal representatives.
- (3) A company was also a qualifying company by reference to an individual at any time when all of the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group;
  - (b) the voting rights in that company were exercisable, as to not less than 5 per cent., by that individual; and
  - (c) that individual was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.
- (4) A company was also a qualifying company by reference to the trustees of a settlement at any time when all the following conditions were satisfied, that is to say—
- (a) the company was a trading company or the holding company of a trading group;
  - (b) the voting rights in that company were exercisable, as to not less than 5 per cent., by the trustees of that settlement; and
  - (c) an eligible beneficiary was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.

*Persons who are eligible beneficiaries*

- 7 (1) An eligible beneficiary, in relation to an asset comprised in a settlement and a time, is any individual having at that time a relevant interest in possession under the settlement in either—
- (a) the whole of the settled property; or
  - (b) a part of the settled property that is or includes that asset.
- (2) In this paragraph “relevant interest in possession”, in relation to property comprised in a settlement, means any interest in possession under that settlement other than—
- (a) a right under that settlement to receive an annuity; or
  - (b) a fixed-term entitlement.
- (3) In sub-paragraph (2) above “fixed-term entitlement”, in relation to property comprised in a settlement, means any interest under that settlement which is limited to a term that is fixed and is not a term at the end of which the person with that interest will become entitled to the property.

*Cases where there are non-qualifying beneficiaries*

- 8 (1) This paragraph applies in the case of a disposal of an asset by the trustees of a settlement where the asset’s relevant period of ownership is or includes a period (“a sharing period”) throughout which—
- (a) the asset was a business asset by reference to one or more eligible beneficiaries;

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- (b) the asset would not otherwise have been a business asset; and
  - (c) there is a non-qualifying part of the relevant income, or there would be if there were any relevant income for that period.
- (2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every sharing period were a period throughout which the asset was not a business asset.
- (3) In sub-paragraph (2) above “the relevant fraction”, in relation to any sharing period, means the fraction which represents the proportion of relevant income for that period which is, or (if there were such income) would be, a non-qualifying part of that income.
- (4) Where a sharing period is a period in which the proportion mentioned in sub-paragraph (3) above has been different at different times, this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of that period for which there is a different proportion.
- (5) For the purposes of this paragraph the non-qualifying part of any relevant income for any period is so much of that income for that period as is or, as the case may be, would be—
- (a) income to which no eligible beneficiary has any entitlement; or
  - (b) income to which a non-qualifying eligible beneficiary has an entitlement.
- (6) In sub-paragraph (5) above “non-qualifying eligible beneficiary”, in relation to a period, means an eligible beneficiary who is not a beneficiary by reference to whom (if he were the only beneficiary) the asset disposed of would be a business asset throughout that period.
- (7) In this paragraph “relevant income” means income from the part of the settled property comprising the asset disposed of.

*Cases where an asset is used at the same time for different purposes*

- 9 (1) This paragraph applies in the case of a disposal by any person of an asset where the asset’s relevant period of ownership is or includes a period (“a mixed-use period”) throughout which the asset—
- (a) was a business asset by reference to its use for purposes mentioned in paragraph 5(2) to (5) above; but
  - (b) was, at the same time, being put to a non-qualifying use.
- (2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every mixed-use period were a period throughout which the asset was not a business asset.
- (3) In sub-paragraph (2) above “the relevant fraction”, in relation to any mixed-use period, means the fraction which represents the proportion of the use of the asset during that period that was a non-qualifying use.
- (4) Where both this paragraph and paragraph 8 above apply in relation to the whole or any part of a period—
- (a) effect shall be given to that paragraph first; and
  - (b) further reductions by virtue of this paragraph in the period for which the asset disposed of is taken to have been a business asset shall be made in respect of only the relevant part of any non-qualifying use.

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- (5) In sub-paragraph (4) above the reference to the relevant part of any non-qualifying use is a reference to the proportion of that use which is not a use to which a non-qualifying part of any relevant income is attributable.
- (6) Where a mixed-use period is a period in which—
- (a) the proportion mentioned in sub-paragraph (3) above has been different at different times, or
  - (b) different attributions have to be made for the purposes of sub-paragraphs (4) and (5) above for different parts of the period,
- this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of the period for which there is a different proportion or attribution.
- (7) In this paragraph—
- “non-qualifying use”, in relation to an asset, means any use of the asset for purposes which are not purposes in respect of which the asset would fall to be treated as a business asset at the time of its use; and
  - “non-qualifying part” and “relevant income” have the same meanings as in paragraph 8 above.

*Periods of limited exposure to fluctuations in value not to count*

- 10 (1) Where, in the case of any asset disposed of (“the relevant asset”), the period after 5th April 1998 for which that asset had been held at the time of its disposal is or includes a period during which—
- (a) the person making the disposal, or
  - (b) a relevant predecessor of his,
- had limited exposure to fluctuations in the value of the asset, the period during which that person or predecessor had that limited exposure shall not count for the purposes of taper relief.
- (2) The times when a person shall be taken for the purposes of this paragraph to have had such limited exposure in the case of the relevant asset shall be all the times while he held that asset when a transaction entered into at any time by him, or by a relevant predecessor of his, had the effect that he—
- (a) was not exposed, or not exposed to any substantial extent, to the risk of loss from fluctuations in the value of the relevant asset; and
  - (b) was not able to enjoy, or to enjoy to any substantial extent, any opportunities to benefit from such fluctuations.
- (3) The transactions referred to in sub-paragraph (2) above do not include—
- (a) any insurance policy which the person in question might reasonably have been expected to enter into and which is insurance against the loss of the relevant asset or against damage to it, or against both; or
  - (b) any transaction having effect in relation to fluctuations in the value of the relevant asset so far only as they are fluctuations resulting from fluctuations in the value of foreign currencies.
- (4) In this paragraph “relevant predecessor”—
- (a) in relation to a person disposing of an asset, means any person other than the person disposing of it who held that asset at a time falling in the period which

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is taken to be the whole period for which it had been held at the time of its disposal; and

- (b) in relation to a relevant predecessor of a person disposing of an asset, means any other relevant predecessor of that person.

- (5) In sub-paragraph (4) above, the reference, in relation to an asset, to the whole period for which it had been held at the time of its disposal is a reference to the period that would be given for that asset by paragraph 2(1) above if, in paragraph (a), the words “whichever is the later of 6th April 1998 and” were omitted.

*Periods of share ownership not to count where there is a change of activity by the company*

- 11 (1) This paragraph applies where—

- (a) there is a disposal of an asset consisting of shares in a close company; and  
(b) the period beginning with the relevant time and ending with the time of the disposal includes at least one relevant change of activity involving that company.

- (2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period when there was a relevant change of activity involving the close company shall not count for the purposes of taper relief.

- (3) Where—

- (a) a close company or any of its 51 per cent. subsidiaries has at any time begun to carry on a trade, and  
(b) immediately before that time, neither that company nor any of its 51 per cent. subsidiaries was carrying on a trade,

a relevant change of activity involving the close company shall be taken to have occurred at that time.

- (4) For the purposes of this paragraph where—

- (a) at the time of the disposal of the shares, the close company was carrying on a business of holding investments, and  
(b) there has been any occasion falling within—

(i) the period of twelve months ending with that time, or

(ii) the period of twelve months ending with any earlier time after the relevant time,

when the close company was not carrying on that business or when the size of that business was small by comparison with its size at the end of that period,

a relevant change of activity involving the close company shall be taken to have occurred immediately after the latest such occasion before the time of the disposal.

- (5) For the purposes of sub-paragraph (4) above the size of any business at any time shall be determined by assuming it to correspond to the aggregate of the amounts and values given by way of consideration for the assets held at that time for the purposes of the business.

- (6) In determining for the purposes of this paragraph whether a close company is at any time carrying on a business of holding investments, and in determining for those purposes the size at any time of such a business—

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- (a) all the activities of a close company and of all its 51 per cent. subsidiaries shall be taken together as if they were all being carried on by the close company; and
  - (b) the activities that are included in a business of holding investments shall be taken not to include—
    - (i) holding shares in a 51 per cent. subsidiary of the company holding the shares;
    - (ii) making loans to an associated company or to a participator in the company making the loan or in an associated company; or
    - (iii) placing money on deposit.
- (7) In this paragraph—
- (a) references to a company’s carrying on a trade, or to beginning to carry one on, do not include references to its carrying on or beginning to carry on a trade that is merely incidental to any non-trading activities carried on by that company or another company in the same group of companies; and
  - (b) references to a business of holding investments include references to a business of making investments.
- (8) For the purposes of this paragraph a company is to be treated as another’s associated company at any time if at that time, or at another time within one year previously—
- (a) one of them has had control of the other; or
  - (b) both have been under the control of the same person or persons.
- (9) In this paragraph—
- ‘51 per cent. subsidiary’, in relation to another company, means a company which, in accordance with section 170(7), is an effective 51 per cent. subsidiary of the other company for the purposes of sections 170 to 181; and
- ‘participator’, in relation to a company, has the meaning given by section 417(1) of the Taxes Act.
- (10) In this paragraph “the relevant time”, in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

*Periods of share ownership not to count in a case of value shifting*

- 12 (1) This paragraph applies (subject to sub-paragraph (4) below) where—
- (a) there is a disposal of an asset consisting of shares in a close company, and
  - (b) at least one relevant shift of value involving that asset has occurred between the relevant time and the time of the disposal.
- (2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period at which there was a relevant shift of value involving that asset shall not count for the purposes of taper relief.
- (3) For the purposes of this paragraph a relevant shift of value involving any asset shall be taken to have occurred whenever—
- (a) a person having control of a close company exercised his control of that company so that value passed into that asset out of a relevant holding; or
  - (b) effect was given to any other transaction by virtue of which value passed into that asset out of a relevant holding.

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- (4) A relevant shift of value involving an asset shall be disregarded for the purposes of this paragraph if—
- (a) that shift of value is one in which the value passing into that asset out of the relevant holding is insignificant; or
  - (b) that shift of value took place at a time when the qualifying holding period of the relevant holding was at least as long as the qualifying holding period of that asset.
- (5) In sub-paragraphs (3) and (4) above the references to a relevant holding shall be construed, in relation to any case in which value has passed out of one asset into another asset consisting of shares in a company, as a reference to any holding by—
- (a) the person who, following the exercise of control or other transaction by virtue of which the value has passed, held the other asset, or
  - (b) a person connected with him,
- of any shares in that company or in a company under the control of the same person or persons as that company.
- (6) For the purposes of sub-paragraph (4)(b) above the reference to the qualifying holding period of a holding or other asset at the time when a shift of value takes place shall be taken to be what, in relation to a disposal at that time of that holding or other asset by the person then entitled to dispose of it, would be taken to have been its qualifying holding period for the purposes of section 2A.
- (7) In this paragraph references to shares in a company include references to rights over a company.
- (8) In this paragraph “the relevant time”, in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

#### *Rules for options*

- 13 (1) This paragraph applies where by virtue of section 144—
- (a) the grant of an option and the transaction entered into by the grantor in fulfilment of his obligations under the option, or
  - (b) the acquisition of an option and the transaction entered into by the person exercising the option,
- fall to be treated as one transaction.
- (2) The time of the disposal of any asset disposed of in pursuance of the transaction shall be the time of the following disposal—
- (a) if the option binds the grantor to sell, the disposal made in fulfilment of the grantor’s obligations under the option;
  - (b) if the option binds the grantor to buy, the disposal made to the grantor in consequence of the exercise of the option.
- (3) The time of the acquisition of any asset acquired in pursuance of the option, or in consequence of its exercise, shall be the time of the exercise of the option.
- (4) Any question whether the asset disposed of or acquired was a business asset at any time shall be determined by reference to the asset to which the option related, and not the option.

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#### *Further rules for assets derived from other assets*

- 14 (1) This paragraph applies if, in a case where—
- (a) assets have merged,
  - (b) an asset has divided or otherwise changed its nature, or
  - (c) different rights or interests in or over any asset have been created or extinguished at different times,
- the value of any asset disposed of is derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from one or more other assets acquired into the same ownership at a time before the acquisition of the asset disposed of.
- (2) The asset disposed of shall be deemed for the purposes of this Schedule to have been acquired at the earliest time at which any asset from which its value is derived was acquired into the same ownership.
- (3) Any determination of whether the asset disposed of was a business asset at a time when another asset from which its value is derived was in the ownership of the person making the disposal shall be made as if that other asset were the asset disposed of or, as the case may be, were comprised in it.

#### *Special rules for assets transferred between spouses*

- 15 (1) This paragraph applies where a person (“the transferring spouse”) has disposed of any asset to another (“the transferee spouse”) by a disposal falling within section 58(1).
- (2) Paragraph 2 above shall have effect in relation to any subsequent disposal of the asset as if the time when the transferee spouse acquired the asset were the time when the transferring spouse acquired it.
- (3) Where for the purposes of paragraph 2 above the transferring spouse would be treated—
- (a) in a case where there has been one or more previous disposals falling within section 58(1), by virtue of sub-paragraph (2) above, or by virtue of that sub-paragraph together with any other provision of this Schedule, or
  - (b) in a case where there has not been such a previous disposal, by virtue of such another provision,
- as having acquired the asset at a time other than the time when the transferring spouse did acquire it, the reference in that sub-paragraph to the time when the transferring spouse acquired it shall be read as a reference to the time when for the purposes of that paragraph the transferring spouse is treated as having acquired it.
- (4) Where there is a disposal by the transferee spouse, any question whether the asset was a business asset at a time before that disposal shall be determined as if—
- (a) in relation to times when the asset was held by the transferring spouse, references in paragraph 5(2) above to the individual by whom the disposal is made included references to the transferring spouse; and
  - (b) the reference in paragraph 5(5) above to the acquisition of the asset as a legatee by the individual by whom the disposal is made included a reference to its acquisition as a legatee by the transferring spouse.
- (5) Where, in the case of any asset, there has been more than one transfer falling within section 58(1) during the period after 5th April 1998 for which the transferee spouse has held it at the time of that spouse’s disposal of that asset, sub-paragraph (4) above shall have effect as if a reference, in relation to any time, to the transferring spouse were

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a reference to the individual who was the transferring spouse in relation to the next disposal falling within section 58(1) to have been made after that time.

*Special rules for postponed gains*

- 16 (1) Sub-paragraph (3) below applies where the whole or any part of any gain which—
- (a) would (but for any provision of this Act) have accrued on the disposal of any asset, or
  - (b) would have accrued on any disposal assumed under any enactment to have been made at any time,
- falls by virtue of an enactment mentioned in sub-paragraph (2) below to be treated as accruing on or after 6th April 1998 at a time (whether or not the time of a subsequent disposal) which falls after the time of the actual or assumed disposal mentioned in paragraph (a) or (b) above (“the charged disposal”).
- (2) Those enactments are—
- (a) section 10A,
  - (b) section 116(10),
  - (c) section 134,
  - (d) section 154(2) or (4),
  - (e) Schedule 5B or 5C, or
  - (f) paragraph 27 of Schedule 15 to the <sup>M311</sup>Finance Act 1996 (qualifying indexed securities).
- (3) In relation to the gain or part of a gain that is treated as accruing after the time of the charged disposal—
- (a) references in this Schedule (except this sub-paragraph) to the disposal on which the gain or part accrues are references to the charged disposal; and
  - (b) references in this Schedule to the asset disposed of by that disposal are references to the asset that was or would have been disposed of by the charged disposal;
- and, accordingly, the end of the period after 5th April 1998 for which that asset had been held at the time of the disposal on which that gain or part accrues shall be deemed to have been the time of the charged disposal.
- (4) In relation to any gain that is treated by virtue of—
- (a) subsection (1) of section 12, or
  - (b) subsection (2) of section 279,
- as accruing after the time of the disposal from which it accrues, references in this Schedule to the disposal on which the gain accrues, to the asset disposed of on that disposal and to the time of that disposal shall be construed disregarding that subsection.
- (5) It shall be immaterial for the purposes of this paragraph—
- (a) that the time of the charged disposal or, as the case may be, the time of the actual disposal from which the gain accrues was before 6th April 1998; and
  - (b) that the time at which the charged disposal is treated as accruing is postponed on more than one occasion under an enactment specified in sub-paragraph (2) above.



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*Special rule for property settled by a company*

- 17 (1) No part of any chargeable gain accruing to the trustees of a settlement on the disposal of any asset shall be treated as a gain on the disposal of a business asset if—
- (a) the settlor is a company, and
  - (b) that company has an interest in the settlement at the time of the disposal.
- (2) Subject to the following provisions of this paragraph, a company which is a settlor in relation to any settlement shall be regarded as having an interest in a settlement if—
- (a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of that company or an associated company; or
  - (b) that company or an associated company enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- (3) This paragraph does not apply unless the settlor or an associated company is within the charge to corporation tax in respect of chargeable gains for the accounting period in which the chargeable gain accrues.
- (4) In this paragraph “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.
- (5) For the purposes of this paragraph a company is to be treated as another’s associated company at any time if at that time, or at another time within one year previously—
- (a) one of them has had control of the other; or
  - (b) both have been under the control of the same person or persons.
- (6) In this paragraph “settlor” has the meaning given by section 660G(1) and (2) of the Taxes Act.
- (7) This paragraph has effect subject to paragraph 20 below.

*Special rules for assets acquired in the reconstruction of mutual businesses etc.*

- 18 (1) Where—
- (a) shares in a company have been issued under any arrangements for the issue of shares in that company in respect of the interests of the members of a mutual company; and
  - (b) a person to whom shares were issued under those arrangements falls by virtue of subsection (3) of section 136 to be treated as having exchanged interests of his as a member of the mutual company for shares issued under those arrangements,
- paragraph 2 above shall have effect (notwithstanding that section) as if the time of that person’s acquisition of the shares were the time when they were issued to him.
- (2) Where—
- (a) a registered friendly society has been incorporated under the <sup>M312</sup>Friendly Societies Act 1992, and
  - (b) there has been a change under Schedule 4 to that Act as a result of which a member of the registered society, or of a branch of the registered society, has become a member of the incorporated society or of a branch of the incorporated society,

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paragraph 2 above shall have effect (notwithstanding anything in section 217B) in relation to the interests and rights in the incorporated society, or the branch of the incorporated society, which that person had immediately after the change, as if the time of their acquisition by him were the time of the change.

(3) In this paragraph—

'the incorporated society', in relation to the incorporation of a registered friendly society, means the society after incorporation;

'insurance company' has the meaning given by section 96(1) of the <sup>M313</sup>Insurance Companies Act 1982;

'mutual company' means—

(a) a mutual insurance company; or

(b) a company of another description carrying on a business on a mutual basis;

'mutual insurance company' means any insurance company carrying on a business without having a share capital;

'the registered society', in relation to the incorporation of a registered friendly society, means the society before incorporation.

#### *Special rule for ancillary trust funds*

19 (1) Use of an asset as part of an ancillary trust fund of a member of Lloyd's—

(a) shall not be regarded as a use in respect of which the asset is to be treated as a business asset at any time; but

(b) shall be disregarded in any determination for the purposes of paragraph 9 above of whether it was being put to a non-qualifying use at the same time as it was being used for purposes mentioned in paragraph 5(2) to (5) above.

(2) In this section "ancillary trust fund" has the same meaning as in Chapter III of Part II of the <sup>M314</sup>Finance Act 1993.

#### *General rules for settlements*

20 (1) Where, in the case of any settlement, the settled property originates from more than one settlor, this Schedule shall have effect as if there were a separate and distinct settlement for the property originating from each settlor, and references in this Schedule to an eligible beneficiary shall be construed accordingly.

(2) Subsections (1) to (5) of section 79 apply for the purposes of this paragraph as they apply for the purposes of that section.

#### *General rule for apportionments under this Schedule*

21 Where any apportionment falls to be made for the purposes of this Schedule it shall be made—

(a) on a just and reasonable basis; and

(b) on the assumption that an amount falling to be apportioned by reference to any period arose or accrued at the same rate throughout the period over which it falls to be treated as having arisen or accrued.

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### *Interpretation of Schedule*

#### 22 (1) In this Schedule—

'51 per cent. subsidiary' (except in paragraph 11 above) has the meaning given by section 838 of the Taxes Act;

'commercial association of companies' means a company together with such of its associated companies (within the meaning of section 416 of the Taxes Act) as carry on businesses which are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking;

'eligible beneficiary' shall be construed in accordance with paragraphs 7 and 20 above;

'full-time working officer or employee', in relation to any company, means an individual who—

- (a) is an officer or employee of that company or of that company and one or more other companies with which that company has a relevant connection; and
- (b) is required in that capacity to devote substantially the whole of his time to the service of that company, or to the service of those companies taken together;

'group of companies' means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries;

'holding company' means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares in one or more companies which are its 51 per cent. subsidiaries;

'office' and

'employment' have the same meanings as in the Income Tax Acts;

'qualifying office or employment', in relation to any time, means an office or employment with a person who was at that time carrying on a trade;

'qualifying company' shall be construed in accordance with paragraph 6 above;

'relevant period of ownership' shall be construed in accordance with paragraph 2 above;

'shares', in relation to a company, includes any securities of that company;

'trade' means (subject to section 241(3)) anything which—

- (a) is a trade, profession or vocation, within the meaning of the Income Tax Acts; and
- (b) is conducted on a commercial basis and with a view to the realisation of profits;

'trading company' means a company which is either—

- (a) a company existing wholly for the purpose of carrying on one or more trades; or
- (b) a company that would fall within paragraph (a) above apart from any purposes capable of having no substantial effect on the extent of the company's activities;

'trading group' means a group of companies the activities of which (if all the activities of the companies in the group are taken together) do not, or not to any substantial extent, include activities carried on otherwise than in the course of, or for the purposes of, a trade; and

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'transaction' includes any agreement, arrangement or understanding, whether or not legally enforceable, and a series of transactions.

- (2) For the purposes of this Schedule one company has a relevant connection with another company at any time when they are both members of the same group of companies or of the same commercial association of companies.
- (3) References in this Schedule to the acquisition of an asset that was provided, rather than acquired, by the person disposing of it are references to its provision.
- (4) References in this Schedule, in relation to a part disposal, to the asset disposed of are references to the asset of which there is a part disposal.”

**Marginal Citations**

M310 1992 c. 12.  
M311 1996 c. 8.  
M312 1992 c. 40.  
M313 1982 c. 50.  
M314 1993 c. 34.

**Marginal Citations**

M310 1992 c. 12.  
M311 1996 c. 8.  
M312 1992 c. 40.  
M313 1982 c. 50.  
M314 1993 c. 34.

SCHEDULE 21

Section 121.

AMENDMENTS IN CONNECTION WITH TAPER RELIEF

*Introductory*

- 1 The <sup>M315</sup>Taxation of Chargeable Gains Act 1992 shall be amended in accordance with the following provisions of this Schedule.

**Marginal Citations**

M315 1992 c. 12.

*Gains of trustees attributed to settlor*

- 2 In section 2 (persons and gains chargeable to capital gains tax), after subsection (3) there shall be inserted the following subsections—

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- “(4) Where any amount is treated by virtue of any of sections 77, 86, 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to any person in any year of assessment—
- (a) that amount shall be disregarded for the purposes of subsection (2) above; and
  - (b) the amount on which that person shall be charged to capital gains tax for that year (instead of being the amount given by that subsection) shall be the sum of the amounts specified in subsection (5) below.
- (5) Those amounts are—
- (a) the amount which after—
    - (i) making any deductions for which subsection (2) provides, and
    - (ii) applying any reduction in respect of taper relief under section 2A,is the amount given for the year of assessment by the application of that subsection in accordance with subsection (4)(a) above; and
  - (b) every amount which is treated by virtue of sections 77, 86, 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to the person in question in that year.”

*Annual exempt amount*

- 3 For subsection (5) of section 3 (definition of taxable amount) there shall be substituted the following subsections—

- “(5) For the purposes of this section an individual’s taxable amount for any year of assessment is the amount which, after—
- (a) making every deduction for which section 2(2) provides,
  - (b) applying any reduction in respect of taper relief under section 2A, and
  - (c) adding any amounts falling to be added by virtue of section 2(5)(b),
- is (apart from this section) the amount for that year on which that individual is chargeable to capital gains tax in accordance with section 2.
- (5A) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment is equal to or less than the exempt amount for that year, no deduction shall be made for that year in respect of—
- (a) any allowable losses carried forward from a previous year; or
  - (b) any allowable losses carried back from a subsequent year in which the individual dies.
- (5B) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment exceeds the exempt amount for the year, the deductions made for that year in respect of allowable losses falling within subsection (5A)(a) or (b) above shall not be greater than the excess.
- (5C) In subsections (5A) and (5B) above the references, in relation to any individual’s case, to the adjusted net gains for any year are references to the amount given in his case by—

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- (a) taking the amount for that year from which the deductions for which section 2(2)(a) and (b) provides are to be made;
- (b) deducting only the amounts falling to be deducted in accordance with section 2(2)(a); and
- (c) in a year in which any amount falls to be brought into account by virtue of section 2(5)(b), adding whichever is the smaller of the exempt amount for that year and the amount falling to be so brought into account.”

*Gains attributed to members of non-resident companies*

- 4 In section 13 (gains attributed to members of non-resident companies), after subsection (10) there shall be inserted the following subsection—

“(10A) A gain which is treated as accruing to any person by virtue of this section shall not be eligible for taper relief.”

*Carry back of losses on death*

- 5 In section 62 (general provisions about death), the following subsections shall be inserted after subsection (2)—

“(2A) Amounts deductible from chargeable gains for any year in accordance with subsection (2) above shall not be so deductible from any such gains so far as they are gains that are brought into account for that year by virtue of section 2(5)(b).

(2B) Where deductions under subsection (2) above fall to be made from the chargeable gains for any year, the provisions of this Act relating to taper relief shall have effect as if those deductions were deductions under section 2(2)(a) and (b) and, accordingly, as if—

- (a) those deductions were to be made (before the application of the relief) in computing for that year the excess (if any) mentioned in section 2A(1); and
- (b) for the purpose of determining the gains represented in that excess, the gains for that year from which those deductions are treated as made were to be ascertained in accordance with section 2A(6).”

*Gains attributed to settlors and beneficiaries*

- 6 (1) In section 77 (attribution of gains to settlor with an interest in the settlement), after subsection (6) there shall be inserted the following subsection—

“(6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of any amount that is treated under this section as an amount of chargeable gains accruing to the settlor, chargeable gains that are treated as accruing to the settlor under this section shall not be eligible for taper relief.”

- (2) In section 86 (attribution of gains to settlor with interest in non-resident or dual resident settlement), after subsection (4) there shall be inserted the following subsection—

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“(4A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of any amount that is treated under this section as an amount of chargeable gains accruing to the settlor, chargeable gains that are treated as accruing to the settlor under this section shall not be eligible for taper relief.”

(3) In section 87 (attribution of gains to beneficiaries), after subsection (6) there shall be inserted the following subsection—

“(6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of the amount of the trust gains for any year of assessment, chargeable gains that are treated as accruing to beneficiaries under this section shall not be eligible for taper relief.”

(4) In section 89(3) (application of provisions of section 87 in the cases of gains treated as accruing under section 89(2)), after “Subsections (5)” there shall be inserted “ , (6A) ”.

*Gains on assets deriving from reorganisation of body carrying on a mutual business etc.*

7 In Chapter IV of Part VI (special cases), before section 215 there shall be inserted the following section—

*“ Re-organisations of mutual businesses*

**214C Gains not eligible for taper relief.**

(1) A gain shall not be eligible for taper relief if—

- (a) it is a gain accruing on a disposal in connection with any relevant re-organisation; or
- (b) it is a gain accruing on anything which, in a case in which capital sums are received under or in connection with a relevant re-organisation, falls under section 22 to be treated as a disposal.

(2) In this section “a relevant re-organisation” means—

- (a) any scheme of reconstruction or amalgamation applying to a mutual company;
- (b) the transfer of the whole of a building society’s business to a company in accordance with section 97 and the other applicable provisions of the <sup>M316</sup>Building Societies Act 1986; or
- (c) the incorporation of a registered friendly society under the <sup>M317</sup>Friendly Societies Act 1992.

(3) In this section—

‘insurance company’ has the meaning given by section 96(1) of the <sup>M318</sup>Insurance Companies Act 1982;

‘mutual company’ means—

- (a) a mutual insurance company; or
- (b) a company of another description carrying on a business on a mutual basis;

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'mutual insurance company' means an insurance company carrying on a business without having a share capital; and  
 'scheme of reconstruction or amalgamation' has the same meaning as in section 136."

**Marginal Citations**

M316 1986 c. 53.

M317 1992 c. 40.

M318 1982 c. 50.

*Commercial letting of furnished holiday dwellings*

- 8 In section 241(3) (provisions for the purposes of which letting of furnished holiday dwellings is to be treated as a trade), for "Schedule 6" there shall be substituted "Schedule A1 and Schedule 6".

*Delayed remittances in respect of foreign assets*

- 9 In section 279(2)(a) (deductions in respect of unremitted gains), after "deducted" there shall be inserted " (before the application of any taper relief) ".

SCHEDULE 22

Section 131.

TRANSITIONAL PROVISION AND CONSEQUENTIAL AMENDMENTS FOR SECTION 131

*Introductory*

- 1 The <sup>M319</sup>Taxation of Chargeable Gains Act 1992 shall be amended as follows.

**Marginal Citations**

M319 1992 c. 12.

*Transitional for settlements created before 17th March 1998*

- 2 (1) In the words at the end of sub-paragraph (1) of paragraph 2 of Schedule 5 (which specifies the provisions to which that sub-paragraph is subject), after "(4) to (6)" there shall be inserted " and paragraph 2A ".
- (2) After that paragraph there shall be inserted the following paragraph—

*" Settlements created before 17th March 1998*

- 2A (1) In determining for the purposes of section 86(1)(d) whether the settlor has an interest at any time during any year of assessment in a settlement created before 17th March 1998, paragraphs (da) and (db) of paragraph 2(3) above, and the reference to those paragraphs in paragraph 2(3)(e), shall be disregarded unless—



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- (a) that year is a year in which one of the four conditions set out in the following provisions of this paragraph becomes fulfilled as regards the settlement; or
  - (b) one of those conditions became fulfilled as regards that settlement in any previous year of assessment ending on or after 5th April 1998.
- (2) The first condition is (subject to sub-paragraph (3) below) that on or after 17th March 1998 property or income is provided directly or indirectly for the purposes of the settlement—
  - (a) otherwise than under a transaction entered into at arm's length, and
  - (b) otherwise than in pursuance of a liability incurred by any person before that date.
- (3) For the purposes of the first condition, where the settlement's expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement's income for the year.
- (4) The second condition is that—
  - (a) the trustees become on or after 17th March 1998 neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 17th March 1998 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (5) The third condition is that on or after 17th March 1998 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.
- (6) The fourth condition is that—
  - (a) on or after 17th March 1998 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and
  - (b) the person concerned is not one who (looking only at the terms of the settlement immediately before 17th March 1998) would be capable of enjoying a benefit from the settlement on or after that date.
- (7) Each of the following persons falls within this sub-paragraph—
  - (a) any grandchild of the settlor or of the settlor's spouse;
  - (b) the spouse of any such grandchild;
  - (c) a company controlled by a person or persons falling within paragraph (a) or (b) above;
  - (d) a company controlled by any such person or persons together with any person or persons (not so falling) each of whom is for the purposes of paragraph 2(1) above a defined person in relation to the settlement;
  - (e) a company associated with a company falling within paragraph (c) or (d) above.

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- (8) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (9) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) In this paragraph—  
     'child' includes a step-child;  
     'grandchild' means a child of a child;  
     'participator' has the meaning given by section 417(1) of the Taxes Act.”
- (3) In construing section 86(1)(e) as regards any year of assessment and in relation to a settlement which—  
     (a) was created before 17th March 1998, and  
     (b) is a settlement in which the settlor has an interest during that year by virtue only of the fulfilment for the purposes of the paragraph inserted by sub-paragraph (2) above of one of the conditions set out in that paragraph,  
 no account shall be taken of disposals made before the relevant day (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (4) In sub-paragraph (3) above “the relevant day” means—  
     (a) for the year 1997-98, 17th March 1998; and  
     (b) for any other year of assessment, the 6th April which is the first day of that year.

*Consequential amendments of paragraphs 4 and 5 of Schedule 5 to the 1992 Act*

- 3 (1) In paragraphs 4(1)(a) and 5(1)(a) of Schedule 5 (disapplication of section 86 in certain cases where beneficiaries die), for “(d)” there shall be substituted “ (db) ”.
- (2) In paragraph 4(4) of that Schedule (disapplication of section 86 in certain cases where a beneficiary ceases to be married)—  
     (a) in paragraph (b), for “or (d)” there shall be substituted “ , (d) or (db) ”; and  
     (b) for “or child” there shall be substituted “ , child or grandchild ”.

*Consequential amendment of paragraph 9 of Schedule 5 to the 1992 Act*

- 4 (1) In sub-paragraph (7) of paragraph 9 of Schedule 5 (persons listed for the purpose of the conditions the fulfilment of which makes a pre-19th March 1991 settlement a qualifying settlement)—  
     (a) after paragraph (d) there shall be inserted the following paragraphs—  
         “(da) any grandchild of a settlor or of a settlor’s spouse;

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- (db) the spouse of any such grandchild;”and
  - (b) in paragraph (e), for “(d)” there shall be substituted “ (db) ”.
- (2) For sub-paragraph (11) of that paragraph there shall be substituted the following sub-paragraph—
- “(11) In this paragraph—
- 'child' includes a step-child;
  - 'grandchild' means a child of a child;
  - 'participator' has the meaning given by section 417(1) of the Taxes Act.”
- (3) Sub-paragraph (1) above shall be disregarded for the purpose of determining whether either of the conditions set out in sub-paragraphs (5) and (6) of that paragraph became fulfilled at any time before 17th March 1998.

*Consequential amendment of Schedule 5A*

- 5 (1) In paragraph 2(1) of Schedule 5A (returns in relation to dealings involving settlements created before 19th March 1991), in paragraph (a) for “19th March 1991” there shall be substituted “ 17th March 1998 ”.
- (2) This paragraph has effect in relation to transfers on or after 17th March 1998.

SCHEDULE 23

Section 132.

TRANSITIONAL PROVISION IN CONNECTION WITH SECTION 132

*Pre-6th April 1999 gains and losses of settlements that become qualifying*

- 1 (1) This paragraph applies to a settlement in the case of any person who is a settlor in relation to that settlement if that settlement—
- (a) is one created before 19th March 1991;
  - (b) is not a qualifying settlement in the year 1998-99; and
  - (c) is a qualifying settlement in the year 1999-00 without having been a protected settlement in relation to that settlor immediately after the beginning of 6th April 1999.
- (2) Subject to sub-paragraph (3) below, section 86 of the 1992 Act (attribution of gains to settlor of non-resident or dual resident trusts) shall have effect in relation to any settlement to which this paragraph applies—
- (a) as if any relevant gains or relevant losses accruing to the trustees of the settlement on or after 17th March 1998 and before 6th April 1999 were gains or losses accruing to those trustees on 6th April 1999; and
  - (b) where it is not the case, as if the trustees fulfilled the condition as to residence in the year 1999-00.
- (3) Where (apart from sub-paragraph (2)(b) above) the trustees of a settlement to which this paragraph applies do not fulfil the condition as to residence in the year 1999-00, section 86 of the 1992 Act shall have effect (without prejudice to any charge imposed otherwise than by virtue of that section) as if the only gains and losses accruing to

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the trustees of that settlement in that year were those which are treated as accruing to those trustees on 6th April 1999 by virtue of sub-paragraph (2)(a) above.

- (4) The gains and losses that are relevant gains or relevant losses for the purposes of this paragraph are those which (apart from this paragraph) accrue to the trustees of a settlement to which this paragraph applies in any year of assessment in which those trustees fulfil the condition as to residence.

*Pre-6th April 1999 gains and losses where there is a transfer to another settlement*

- 2 (1) This paragraph applies, subject to sub-paragraph (5) below, to any chargeable gain or loss accruing on the disposal of any asset by the trustees of a settlement ("the transferor settlement") if—
- (a) that settlement was created before 19th March 1991;
  - (b) the disposal on which the gain or loss accrues is one made—
    - (i) on or after 17th March 1998 and before 6th April 1999; and
    - (ii) in a year of assessment in which the trustees of the transferor settlement fulfil the condition as to residence but the settlement is not a qualifying settlement;
  - (c) a person who is a settlor in relation to the transferor settlement ("the chargeable settlor")—
    - (i) is domiciled in the United Kingdom at some time in the year 1999-00 and in the year of assessment in which the disposal is made;
    - (ii) is either resident in the United Kingdom during any part of each of those years or ordinarily resident in the United Kingdom during each of those years; and
    - (iii) is alive at the end of the year 1999-00;
  - (d) the asset disposed of is property originating from the chargeable settlor;
  - (e) the property comprised in another settlement ("the transferee settlement") at any time after the disposal and before 6th April 1999 is or includes (whether in consequence of the disposal or otherwise) the asset disposed of or any relevant property;
  - (f) the transferor settlement has a relevant connection with the transferee settlement; and
  - (g) the gain or loss in question is not one treated under paragraph 1 above as accruing on 6th April 1999 to the trustees of the transferor settlement.
- (2) If, in the case of the chargeable settlor, section 86 of the 1992 Act applies (apart from this paragraph) for the year 1999-00 in relation to the transferee settlement, that section shall apply for that year in relation to that settlement as if any chargeable gain or loss to which this paragraph applies—
- (a) were a gain or loss accruing on 6th April 1999 to the trustees of the transferee settlement; and
  - (b) so accrued on the disposal by those trustees of any asset that was property originating from the chargeable settlor.
- (3) Where sub-paragraph (2) above does not apply, section 86 of the 1992 Act shall have effect in relation to the chargeable settlor as if—
- (a) in the year 1999-00 the conditions specified in paragraphs (a) to (d) and (f) of subsection (1) of that section were fulfilled in his case in relation to the transferee settlement;

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- (b) any gain or loss to which this paragraph applies—
    - (i) were a gain or loss accruing on 6th April 1999 to the trustees of the transferee settlement; and
    - (ii) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor;and
  - (c) any chargeable gains and losses accruing to the trustees of the transferee settlement which are not gains or losses to which this paragraph applies were to be disregarded for the purposes of that section.
- (4) Where (but for this sub-paragraph) the same gain or loss would fall to be treated by virtue of sub-paragraph (2) or (3) above as a gain or loss accruing to the trustees of more than one settlement—
- (a) that gain or loss shall be apportioned between those settlements in such manner as may be just and reasonable; and
  - (b) only such part of the gain or loss as on that apportionment is attributable to a particular settlement shall be treated in accordance with that sub-paragraph as accruing to that settlement.
- (5) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if, for the year of assessment in which that disposal is made, section 86 of the 1992 Act would, on the relevant assumption, have been prevented by virtue of paragraph 3, 4 or 5 of Schedule 5 to that Act—
- (a) from applying in the case of the chargeable settlor in relation to the transferor settlement; or
  - (b) from applying in his case in relation to the transferee settlement.
- (6) The relevant assumption for the purposes of sub-paragraph (5) above is that section 86 of the 1992 Act would have applied in the case of the chargeable settlor apart from paragraphs 3 to 5 of Schedule 5 to that Act.
- (7) In this paragraph “relevant property”, in relation to any disposal made by the trustees of the transferor settlement, means any property (not being the asset disposed of) which—
- (a) is or represents property or income originating from the chargeable settlor;
  - (b) has been comprised in, or has arisen to, the transferor settlement at any time after the time of that disposal; and
  - (c) is property or income of the trustees of the transferee settlement acquired or otherwise deriving, directly or indirectly, from the trustees of the transferor settlement.
- (8) For the purposes of this paragraph the transferor settlement has, in relation to a disposal by its trustees, a relevant connection with the transferee settlement if—
- (a) immediately before the time of the disposal, the beneficiaries of the transferor settlement are or include persons who are defined persons in relation to that settlement at that time;
  - (b) the transferor settlement is not a protected settlement at that time in relation to the chargeable settlor;
  - (c) at the beginning of 6th April 1999, the beneficiaries of the transferee settlement are or include persons who—
    - (i) have attained the age of eighteen; and
    - (ii) have been defined persons in relation to the transferor settlement;

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and

- (d) the property comprised in the transferee settlement in respect of which some or all of the persons mentioned in paragraph (c) above are beneficiaries of that settlement at the beginning of 6th April 1999 is or includes anything which, in relation to either that settlement or the transferor settlement, is property or income originating from the chargeable settlor.
- (9) For the purposes of this paragraph a person is a defined person in relation to a settlement at a time if he would fall at that time to be treated, by reference to the chargeable settlor, as a defined person in relation to that settlement for the purposes of paragraph 2 of Schedule 5 to the 1992 Act.
- (10) Sub-paragraph (3)(c) above is without prejudice to any charge imposed otherwise than by virtue of this paragraph.

*Pre-6th April 1999 gains and losses where there is a transfer to a foreign institution*

- 3 (1) This paragraph applies, subject to sub-paragraphs (4) and (6) below, to a chargeable gain or loss accruing on the disposal of any asset by the trustees of a settlement ("the transferor settlement") if—
- (a) that settlement was created before 19th March 1991;
  - (b) the disposal on which the gain or loss accrues is one made—
    - (i) on or after 17th March 1998 and before 6th April 1999; and
    - (ii) in a year of assessment in which the trustees of the transferor settlement fulfil the condition as to residence but the settlement is not a qualifying settlement;
  - (c) a person who is a settlor in relation to the transferor settlement ("the chargeable settlor")—
    - (i) is domiciled in the United Kingdom at some time in the year 1999-00 and in the year of assessment in which the disposal is made;
    - (ii) is either resident in the United Kingdom during any part of each of those years or ordinarily resident in the United Kingdom during each of those years; and
    - (iii) is alive at the end of the year 1999-00;
  - (d) the asset disposed of is property originating from the chargeable settlor;
  - (e) the property comprised in a foreign institution ("the transferee institution") at any time after the disposal and before 6th April 1999 is or includes (whether in consequence of the disposal or otherwise) the asset disposed of or any relevant property;
  - (f) the transferor settlement has a relevant connection with the transferee institution; and
  - (g) the gain or loss in question is neither—
    - (i) a gain or loss treated under paragraph 1 above as accruing on 6th April 1999 to the trustees of any settlement; nor
    - (ii) a gain or loss to which paragraph 2 above applies.
- (2) If, in the case of the chargeable settlor, section 86 of the 1992 Act applies (apart from this paragraph) for the year 1999-00 in relation to the transferor settlement, that section shall apply for that year in relation to that settlement as if any chargeable gain or loss to which this paragraph applies—

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- (a) were a gain or loss accruing on 6th April 1999 to the trustees of the transferor settlement; and
  - (b) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor.
- (3) Where sub-paragraph (2) above does not apply, section 86 of the 1992 Act shall have effect in relation to the chargeable settlor as if—
  - (a) (where it is not the case) the transferor settlement existed in the year 1999-00;
  - (b) that settlement were a settlement in relation to which all the conditions specified in paragraphs (a) to (d) and (f) of subsection (1) of that section were fulfilled in the case of the chargeable settlor in that year;
  - (c) any gain or loss to which this paragraph applies—
    - (i) were a gain or loss accruing on 6th April 1999 to the trustees of the transferor settlement; and
    - (ii) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor;and
  - (d) any chargeable gains and losses which are not gains or losses to which this paragraph applies were to be disregarded for the purposes of that section.
- (4) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if, for the year of assessment in which that disposal is made, section 86 of the 1992 Act would, on the relevant assumption, have been prevented by virtue of paragraph 3, 4 of 5 of Schedule 5 to that Act from applying in the case of the chargeable settlor in relation to the transferor settlement.
- (5) The relevant assumption for the purposes of sub-paragraph (4) above is that section 86 of the 1992 Act would have applied in the case of the chargeable settlor apart from paragraphs 3 to 5 of Schedule 5 to that Act.
- (6) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if the chargeable settlor stands in such a relationship to the foreign institution that if—
  - (a) that institution were a settlement,
  - (b) property of the institution were property comprised in the settlement, and
  - (c) income arising to the institution were income arising under the settlement,paragraph 4 or 5 of Schedule 5 to the 1992 Act would (assuming that nothing else did) prevent section 86 of that Act from applying in the case of the chargeable settlor in relation to that settlement for the year of assessment in which that disposal is made.
- (7) In this paragraph “relevant property”, in relation to any disposal made by the trustees of the transferor settlement, means any property which—
  - (a) is or represents property or income originating from the chargeable settlor;
  - (b) has been comprised in, or has arisen to, the transferor settlement at any time after the time of that disposal; and
  - (c) is property or income of the transferee institution acquired or otherwise deriving, directly or indirectly, from the trustees of the transferor settlement.
- (8) For the purposes of this paragraph the transferor settlement has, in relation to a disposal by its trustees, a relevant connection with the transferee institution if—
  - (a) immediately before the time of the disposal, the beneficiaries of the transferor settlement are or include persons who are defined persons in relation to that settlement at that time;

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- (b) the transferor settlement is not a protected settlement at that time in relation to the chargeable settlor; and
  - (c) the transferee institution is—
    - (i) one in which a relevant defined person is a participator at the beginning of 6th April 1999;
    - (ii) one which is under the control of a company in which, or two or more companies in any of which, a relevant defined person is a participator at that time; or
    - (iii) one whose relevant property or relevant income includes property or income in which a relevant defined person has an interest at that time.
- (9) For the purposes of this paragraph a person is a relevant defined person at any time if he—
- (a) has attained the age of eighteen; and
  - (b) has been, by reference to the chargeable settlor, a defined person in relation to the transferor settlement.
- (10) For the purposes of this paragraph a person has an interest in any property or income of a foreign institution at any time if—
- (a) there are any circumstances whatever in which that property or income is or will or may become applicable for his benefit or payable to him;
  - (b) there are any circumstances whatever in which income which is or may arise from that property or income is or will or may become applicable for his benefit or payable to him;
  - (c) he enjoys a benefit directly or indirectly from that property or income or from any income arising from that property or income.
- (11) For the purposes of this paragraph a person is a defined person in relation to a settlement at a time if he would fall at that time to be treated, by reference to the chargeable settlor, as a defined person in relation to that settlement for the purposes of paragraph 2 of Schedule 5 to the 1992 Act.
- (12) In this paragraph—
- “foreign institution” means any company or other institution resident outside the United Kingdom;
  - “participator” has the meaning given (for the purposes of Part XI of the Taxes Act 1988 (close companies)) by section 417(1) of that Act;
  - “relevant income”, in relation to a foreign institution, means any income of that institution which, if that institution were a settlement, would be treated for the purposes of Schedule 5 to the 1992 Act as originating from the chargeable settlor;
  - “relevant property”, in relation to a foreign institution, means any property of that institution which, if that institution were a settlement, would be treated for the purposes of Schedule 5 to the 1992 Act as originating from the chargeable settlor.
- (13) Sub-paragraph (3)(d) above is without prejudice to any charge imposed otherwise than by virtue of this paragraph.



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*Rule to prevent a double charge*

- 4 (1) This paragraph applies, in the case of a person who is a settlor in relation to any settlement (“the relevant settlement”), to so much (if any) of the amount falling in his case within section 86(1)(e) of the 1992 Act for the year 1999-00 as (apart from this paragraph) would be treated by virtue only of the preceding provisions of this Schedule, as gains accruing to him in that year.
- (2) Where there is an excess of the relevant chargeable amounts for the transitional period over the amount of the section 87 pool on 17th March 1998, only so much (if any) of the amount to which this paragraph applies as exceeds that excess shall fall in accordance with this Schedule to be, or (as the case may be) to be included in, the amount treated as accruing to the settlor in the year 1999-00.
- (3) In sub-paragraph (2) above, the reference to the relevant chargeable amounts for the transitional period is (subject to sub-paragraph (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax under section 87 or 89(2) of the 1992 Act for any year of assessment ending after 17th March 1998 and before 6th April 1999 in respect of capital payments received by them.
- (4) In sub-paragraph (2) above, the reference to the section 87 pool on 17th March 1998 is (subject to sub-paragraph (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of section 87 of the 1992 Act, would have fallen in relation to the relevant settlement to be carried forward from the year 1997-98 to be included in the amount of the trust gains for the year 1998-99 if—
- (a) the year 1997-98 had ended with 16th March 1998; and
  - (b) the year 1998-99 had begun with 17th March 1998.
- (5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or of any amount that would have been carried forward in accordance with section 87(2) of the 1992 Act as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of sub-paragraphs (3) and (4) above.
- (6) Where any reduction falls to be made by virtue of sub-paragraph (2) above in the amount to be attributed in accordance with this Schedule to any settlor for the year 1999-00, the reduction to be treated as made for that year in accordance with section 87(3) of the 1992 Act in the case of the settlement in question shall not be made until—
- (a) the reduction (if any) falling to be made by virtue of that sub-paragraph has been made in the case of every settlor to whom any amount is so attributed; and
  - (b) effect has been given to any reduction required to be made under paragraph 5(1) below.
- (7) In this paragraph “the transitional period” means the period beginning with 17th March 1998 and ending with 5th April 1999.
- 5 (1) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with paragraph 4(2) above) any amount or amounts falling in accordance with this Schedule to be attributed for the year 1999-00 to settlors of the settlement, the amount or (as the case may be) aggregate amount falling in accordance with this Schedule to be so attributed shall be applied in reducing the

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amount which (after any reductions in accordance with section 86A(6A) of that Act) is carried forward to that year in accordance with section 87(2) of that Act.

- (2) Where an amount or aggregate amount has been applied, in accordance with sub-paragraph (1) above, in reducing the amount which in the case of any settlement is carried forward to the year 1999-00 in accordance with section 87(2) of the 1992 Act, that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year in the case of that settlement for making the reduction under section 87(3) of that Act.

### *Interpretation of Schedule*

- 6 (1) In this Schedule—
- “the 1992 Act” means the <sup>M320</sup>Taxation of Chargeable Gains Act 1992;
- “qualifying settlement”, in relation to any year of assessment, means a settlement that is a qualifying settlement in that year for the purposes of section 86 of and Schedule 5 to the 1992 Act;
- “settlor”, in relation to a settlement, has the same meaning as in Schedule 5 to the 1992 Act.
- (2) In this Schedule “protected settlement”, in relation to any time and any settlor, means (subject to sub-paragraph (3) below)—
- (a) a settlement that is a protected settlement at that time, within the meaning given by sub-paragraph (10A) of paragraph 9 of Schedule 5 to the 1992 Act, or
- (b) a settlement that would be such a settlement at that time if that settlor were the only settlor of the settlement.
- (3) For the purposes of construing, in accordance with sub-paragraph (2) above, the references in paragraphs 2(8) and 3(8) above to a protected settlement, paragraph 9(10A)(a) of Schedule 5 to the 1992 Act shall be deemed to have effect with the omission of the words “or who were under that age at the end of the immediately preceding year of assessment”.
- (4) References in this Schedule to the condition as to residence are references to the condition set out in section 86(2) of the 1992 Act.
- (5) For the purposes of this Schedule a person is a beneficiary of a settlement if—
- (a) there are any circumstances whatever in which property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
- (b) there are any circumstances whatever in which income which arises or may arise from property comprised in the settlement is or will or may become applicable for his benefit or payable to him;
- (c) he enjoys a benefit directly or indirectly from any property comprised in the settlement or any income arising from any such property;
- and references in this paragraph to the property comprised in the settlement in respect of which a person is a beneficiary shall be construed accordingly.
- (6) For the purposes of this paragraph, paragraph 8 of Schedule 5 to the 1992 Act shall apply for determining if property is property originating from any person as it applies for the purposes of that Schedule.

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(7) Expressions used in this Schedule and in the 1992 Act have the same meanings in this Schedule as in that Act.

**Marginal Citations**

M320 1992 c. 12.

SCHEDULE 24

Section 137.

RESTRICTIONS ON SETTING LOSSES AGAINST PRE-ENTRY GAINS

The Schedule inserted after Schedule 7A to the <sup>M321</sup>Taxation of Chargeable Gains Act 1992 is as follows:—

“SCHEDULE 7AA

RESTRICTIONS ON SETTING LOSSES AGAINST PRE-ENTRY GAINS

*Introductory*

- 1 (1) This Schedule applies in the case of any company (“the relevant company”) in relation to any accounting period (“the gain period”) in which a pre-entry gain has accrued to that company.
- (2) Subject to sub-paragraph (3) below, references in this Schedule to a pre-entry gain are references to any chargeable gain accruing to a company in an accounting period in which that company joins a group of companies after the gain has accrued to it.
- (3) References in this Schedule to a company joining a group of companies—
  - (a) are references to its becoming a member of any group of companies of which it was not a member immediately before becoming a member; but
  - (b) do not include references to a company becoming a member of a group of companies at any time before 17th March 1998.
- (4) Nothing in section 170(10) shall prevent all the companies of one group from being treated for the purposes of this Schedule as joining another group of companies when the principal company of the first group becomes a member of the other group.

*Restriction on setting off losses*

- 2 (1) Notwithstanding anything in section 8 or Schedule 7A, the amount to be included in respect of chargeable gains in the relevant company’s total profits for the gain period shall be computed by adding together—
  - (a) the adjusted amounts of the pre-entry gains accruing to the relevant company in the gain period; and
  - (b) the amount which, in accordance with that section and (where applicable) that Schedule, would fall to be included in respect of chargeable gains in those profits if the amounts specified in sub-paragraph (2) below were disregarded.
- (2) The amounts to be disregarded as mentioned in sub-paragraph (1)(b) above are—

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- (a) all the pre-entry gains accruing to the relevant company in the gain period; and
- (b) so much of any amount falling within subsection (1)(a) or (b) of section 8 as is applied in accordance with paragraph 3 below in reducing the amount of any such pre-entry gain;

and, accordingly, amounts which are applied in accordance with paragraph 3 below in reducing the amount of any pre-entry gain accruing in the gain period shall not be available to be carried forward for the purposes of section 8(1)(b) or paragraph 6 of Schedule 7A to any subsequent accounting period.

*Adjustment of pre-entry gains*

- 3 (1) For the purposes of paragraph 2 above the adjusted amount of any pre-entry gain accruing to the relevant company in the gain period is the amount of that gain after any amount that may be set against it under this paragraph has been applied in reducing it.
- (2) Subject to sub-paragraphs (3) and (4) below, the whole or any part of any amount which under paragraph 4 below is a qualifying loss in relation to a pre-entry gain may be set against that gain, except so far as it has been set against another pre-entry gain.
- (3) Nothing in this Schedule shall authorise the reduction of a pre-entry gain by the deduction of the whole or any part of any amount to which paragraph 7 of Schedule 7A applies (pre-entry losses) unless that gain is a gain from which that amount is deductible in accordance with that paragraph.
- (4) Nothing in this Schedule shall authorise the reduction of a pre-entry gain by the deduction of any amount which section 18(3) prevents from being deductible from that gain.

*Meaning of “qualifying losses”*

- 4 (1) Any amount which, in the case of the relevant company, would fall within section 8(1)(b) for the gain period is a qualifying loss in relation to any pre-entry gain accruing to the relevant company in that period.
- (2) Any allowable loss accruing to the relevant company in the gain period is a qualifying loss in relation to a pre-entry gain accruing to that company in that period if—
- (a) the time when the loss accrued is the same as or before the time when the gain accrued; or
  - (b) the loss having accrued after the time when the gain accrued, there is no time falling within sub-paragraph (3) below between—
    - (i) the time when the gain accrued; and
    - (ii) the time immediately after the time when the loss accrued.
- (3) A time falls within this sub-paragraph, in relation to any allowable loss, if—
- (a) it is a time at which the relevant company joined a group of companies; and
  - (b) the relevant asset was not in relevant ownership immediately before that time.
- (4) For the purposes of sub-paragraph (3) above the relevant asset was in relevant ownership at the time immediately before the relevant company joined a group of companies if, and only if, it was at that time held by the relevant company or by another company which—
- (a) joined that group of companies (“the new group”) at the same time as the relevant company; and

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- (b) had been a member of the same group of companies as the relevant company immediately before joining the new group.
- (5) In this paragraph “relevant asset”, in relation to an allowable loss, means the asset on the disposal of which that loss accrued.

*Special rule for disposal of pooled assets*

- 5 (1) This paragraph applies where—
- (a) any holding of securities falls by virtue of any provision of Chapter I of Part IV to be treated as a single asset;
  - (b) one or more disposals of securities comprised in that holding is made by the relevant company in the gain period at or after the relevant entry time for that company; and
  - (c) an allowable loss accrues to the relevant company on that disposal or, as the case may be, on one or more of them.
- (2) The extent to which any allowable loss falling within sub-paragraph (1)(c) above is to be treated for the purposes of paragraph 4(4) above as a loss accruing on the disposal of an asset held at any entry time for the relevant company shall be determined—
- (a) by computing the notional net pre-entry loss accruing to the relevant company in the gain period;
  - (b) by setting allowable losses falling within sub-paragraph (1)(c) above against that notional net pre-entry loss in the order in which those losses accrued; and
  - (c) by treating the allowable loss as accruing on the disposal of an asset held at the entry time to the extent only that there is or remains an amount against which it can be set under paragraph (b) above.
- (3) For the purposes of this paragraph the notional net pre-entry loss accruing to the relevant company in the gain period shall be determined—
- (a) by computing all the chargeable gains and allowable losses that, on the relevant assumptions, would have accrued to the relevant company on the disposals falling within sub-paragraph (4) below;
  - (b) in a case where the aggregate amount of those gains is equal to or exceeds the aggregate amount of those losses, taking nil as the amount of the notional net pre-entry loss; and
  - (c) in any other case, taking the amount by which the aggregate of those losses exceeds the aggregate of those gains as the amount of the notional net pre-entry loss.
- (4) A disposal falls within this sub-paragraph to the extent that—
- (a) it is made by the relevant company in the gain period at or after the relevant entry time for that company; and
  - (b) on the relevant assumptions, it would be taken to be a disposal of securities that are pre-entry securities in relation to the relevant entry time for that company.
- (5) For the purposes of this paragraph the relevant assumptions, in relation to any company, are—
- (a) that securities which are pre-entry securities in relation to the relevant entry time for that company are not to be regarded as part of a single asset with any securities which are post-entry securities in relation to that time;

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- (b) that securities disposed of in the gain period at or after that time are identified with securities that are pre-entry securities in relation to that time, rather than with securities which are post-entry securities in relation to that time; and
  - (c) subject to paragraphs (a) and (b) above, that securities disposed of in the gain period are identified in accordance with the provisions applicable apart from paragraphs (a) and (b) above.
- (6) For the purpose of applying the relevant assumptions in relation to any disposal of securities by the relevant company, it shall be further assumed—
- (a) that the relevant assumptions applied to every previous disposal in the gain period of securities by one company to another company in the same group of companies;
  - (b) that (subject to paragraph (c) below) securities disposed of by one member of a group of companies to another member of that group retain the same status (as pre-entry securities or as post-entry securities) in relation to a particular time as they had before the disposal; and
  - (c) that securities acquired by the relevant company at or after the relevant entry time for that company are to be taken to be pre-entry securities in relation to that time only if they fall within sub-paragraph (7) below.
- (7) Securities fall within this sub-paragraph if, on the relevant assumptions and the assumptions set out in sub-paragraph (6)(a) and (b) above, they fall to be identified with securities which—
- (a) were held by the relevant company or any associated company of the relevant company at the time which is the relevant entry time for the relevant company; and
  - (b) have not, between that time and the time when they are disposed of by the relevant company, been disposed of otherwise than by a disposal made by one company in a group of companies to another company in the same group.
- (8) Where anything is treated by virtue of section 127 as the same asset as any securities comprised in any holding of securities falling to be regarded as a single asset by virtue of any provision of Chapter I of Part IV, so much of that section as determines the time at which anything comprised in the asset is taken to have been acquired shall be disregarded in determining for the purposes of this paragraph whether securities comprised in the asset are pre-entry securities or post-entry securities.
- (9) Subject to sub-paragraphs (6) to (8) above, in this paragraph—
- 'associated company' means a company which—
    - (a) at the time which is the relevant entry time in the case of the relevant company joined the group of companies that was also joined at that time by the relevant company; and
    - (b) had been a member of the same group of companies as the relevant company immediately before that time;
  - 'entry time', in relation to a company, means any time in the gain period at which the company joins a group of companies;
  - 'pre-entry securities', in relation to an entry time, means such securities acquired by the company in question before that time as have not already been disposed of before that time;
  - 'post-entry securities', in relation to an entry time, means securities acquired by the company in question at or after that time;
  - 'the relevant entry time' in relation to any company means—

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- (a) if there is only one entry time for that company, that time; and
  - (b) if there is more than one such time, the earlier or earliest such time.
- 'securities' has the meaning given for the purposes of section 104 by subsection (3) of that section.

*Special rule for losses on disposal of certain assets acquired at different times*

- 6 (1) This paragraph applies in relation to any allowable loss accruing to the relevant company in the gain period on the disposal of the whole or any part of an asset if—
- (a) the asset is one falling within sub-paragraph (2) below;
  - (b) the disposal is one made at or at any time after an entry time; and
  - (c) the loss is not one in relation to which paragraph 5(2) above applies.
- (2) An asset falls within this sub-paragraph if it is—
- (a) an asset treated as a single asset but comprising assets only some of which were held immediately before the entry time by the relevant company or by an associated company; or
  - (b) an asset which is treated as held immediately before the entry time by the relevant company or by an associated company by virtue of a provision requiring an asset which was not held immediately before that time to be treated as the same as an asset which was so held.
- (3) Only such proportions of the loss as fall within sub-paragraph (4) below shall be taken for the purposes of paragraph 4(4) above to have accrued on the disposal of an asset held at the entry time.
- (4) Those proportions are—
- (a) the proportion of the loss which, on a just and reasonable apportionment, is properly attributable to assets in fact held at the entry time; and
  - (b) such proportion of the loss not falling within paragraph (a) above as represents the loss that would have accrued if the asset disposed of had been the asset in fact held at that time.
- (5) In this paragraph—
- 'associated company', in relation to any entry time, means a company which—
- (a) at that time joined the group of companies that was also joined at that time by the relevant company; and
  - (b) had been a member of the same group of companies as the relevant company immediately before that time;
- 'entry time' means any time in the gain period at which the relevant company joins a group of companies.

*Special rule for gains and losses on deemed annual disposal*

- 7 Where—
- (a) a chargeable gain or allowable loss is treated as accruing at the end of a company's accounting period by virtue of section 213(1)(c) or 214A(2)(b), and
  - (b) that accounting period is one in which that company has joined a group of companies,

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this Schedule shall have effect as if the gain or loss had accrued before the time or, as the case may be, the earliest time at which the company joined a group of companies in that period.”

**Marginal Citations**

M321 1992 c. 12.

**Marginal Citations**

M321 1992 c. 12.

SCHEDULE 25

Section 142.

PROPERTY OF HISTORIC INTEREST ETC

*Meaning of “the 1984 Act”*

1 In this Schedule “the 1984 Act” means the <sup>M322</sup>Inheritance Tax Act 1984.

**Marginal Citations**

M322 1984 c. 51.

*Claims for designation*

2 (1) In section 30 of the 1984 Act (conditionally exempt transfers), after subsection (3B) there shall be inserted the following subsection—

“(3BA) A claim under subsection (1) above must be made no more than two years after the date of the transfer of value to which it relates or, in the case of a claim with respect to a potentially exempt transfer, the date of the death, or (in either case) within such longer period as the Board may allow.”

(2) This paragraph has effect in relation to any transfer of value or death on or after 17th March 1998.

3 (1) In section 78 of the 1984 Act (conditionally exempt occasions), after subsection (1) there shall be inserted the following subsection—

“(1A) A claim under subsection (1) above must be made no more than two years after the date of the transfer or other event in question or within such longer period as the Board may allow.”

(2) This paragraph has effect in relation to transfers of property made, and other events occurring, on or after 17th March 1998.



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### *Property capable of designation*

- 4 (1) In section 31 of the 1984 Act, in subsection (1) (property capable of designation under that section), for paragraph (a) there shall be substituted the following paragraphs—
- “(a) any relevant object which appears to the Board to be pre-eminent for its national, scientific, historic or artistic interest;
  - (aa) any collection or group of relevant objects which, taken as a whole, appears to the Board to be pre-eminent for its national, scientific, historic or artistic interest;”.
- (2) In subsections (2) and (3) of that section, for “(1)(a)”, wherever occurring, there shall be substituted “(1)(a) or (aa)”.
- (3) For subsection (5) of that section, there shall be substituted the following subsection—
- “(5) In this section—
- ‘national interest’ includes interest within any part of the United Kingdom; and
  - ‘relevant object’ means—
- (a) a picture, print, book, manuscript, work of art or scientific object, or
  - (b) anything not falling within paragraph (a) above that does not yield income;
- and in determining under subsection (1)(a) or (aa) above whether an object or a collection or group of objects is pre-eminent, regard shall be had to any significant association of the object, collection or group with a particular place.”
- (4) This paragraph has effect in relation to the making of any designation on a claim made on or after the day on which this Act is passed.

### *Access to designated property*

- 5 (1) In section 31 of the 1984 Act (designation of property and requisite undertakings), after subsection (4F) there shall be inserted the following subsection—
- “(4FA) For the purposes of this section, the steps agreed for securing reasonable access to the public must ensure that the access that is secured is not confined to access only where a prior appointment has been made.”
- (2) This paragraph has effect in relation to the giving of any undertaking on or after the day on which this Act is passed.

### *Publication of information about designated property*

- 6 (1) In section 31 of the 1984 Act (designation of property and requisite undertakings), after the subsection (4FA) of that section inserted by paragraph 5 above there shall be inserted the following subsection—
- “(4FB) Subject to subsection (3) above, where the steps that may be set out in any undertaking include steps for securing reasonable access to the public to any property, the steps that may be agreed and set out in that undertaking may also include steps involving the publication of—

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- (a) the terms of any undertaking given or to be given for any of the purposes of this Act with respect to the property; or
- (b) any other information relating to the property which (apart from this subsection) would fall to be treated as confidential;

and references in this Act to an undertaking for access to any property shall be construed as including references to so much of any undertaking as provides for the taking of steps involving any such publication.”

- (2) This paragraph has effect in relation to the giving of any undertaking on or after the day on which this Act is passed.

*Undertakings on death, disposal of property, etc.*

- 7 (1) In section 32 of the 1984 Act (chargeable events in relation to conditionally exempt transfers), in subsection (2), for “subsection (5)(b)” there shall be substituted “subsection (5AA)”.

- (2) In subsection (5) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) the condition specified in subsection (5AA) below is satisfied with respect to the property.”

- (3) After that subsection there shall be inserted the following subsection—

“(5AA) The condition referred to in subsection (5)(b) above is satisfied if—

- (a) the requisite undertaking described in section 31 above is given with respect to the property by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where the property is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property by such person or persons as the Board think appropriate in the circumstances of the case.”

- (4) In section 32A of the 1984 Act (chargeable events in relation to associated properties), in subsection (6), for the words from “unless” to “case; and” there shall be substituted—

“unless—

- (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) not disposed of by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where any of the property or part not disposed of is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to that property (or that part) by such person or persons as the Board think appropriate in the circumstances of the case;

and”.

- (5) In subsection (8) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) the condition specified in subsection (8A) below is satisfied with respect to the property (or part) concerned.”

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(6) After that subsection there shall be inserted the following subsection—

“(8A) The condition referred to in subsection (8)(b) above is satisfied if—

- (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where any of the property or part is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property (or part) by such person or persons as the Board think appropriate in the circumstances of the case.”

(7) For subsection (9) of that section there shall be substituted the following subsection—

“(9) If the whole or part of any property is disposed of by sale and—

- (a) the requisite undertaking described in section 31 above is given with respect to the property (or part) by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where any of the property or part is an area of land within section 31(1)(d) above) the requisite undertakings described in that section are given with respect to the property (or part) by such person or persons as the Board think appropriate in the circumstances of the case,

the disposal is a chargeable event only with respect to the whole or part actually disposed of (if it is a chargeable event with respect to such whole or part apart from this subsection).”

(8) In Schedule 5 to the 1984 Act, for paragraph 5 (undertaking capable of preventing disposal from being chargeable in cases where death occurred before 7th April 1976) there shall be substituted the following paragraph—

“5 (1) The further undertaking referred to in paragraph 1 above is the requisite undertaking described in section 31(2) of this Act given with respect to the object in question by such person as the Board think appropriate in the circumstances of the case.

(2) Subsection (3) of section 31 of this Act shall apply in relation to documents which are designated as objects to which section 31 of the <sup>M323</sup>Finance Act 1975 applies as that subsection applies in relation to documents designated under section 31(1)(a) of this Act.

(3) The further undertaking referred to in paragraph 3 above is—

- (a) the requisite undertaking described in subsection (4) of section 31 of this Act given with respect to the property in question by such person as the Board think appropriate in the circumstances of the case, or
- (b) (where applicable) the requisite undertakings described in subsections (4) and (4A) of that section given with respect to the property in question by such person or persons as the Board think appropriate in the circumstances of the case.”

(9) This paragraph has effect in relation to the giving of any undertaking on or after the day on which this Act is passed.

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#### Marginal Citations

M323 1975 c. 7.

#### *Variation of undertakings*

8 (1) After section 35 of the 1984 Act there shall be inserted the following section—

##### **“35A Variation of undertakings.**

- (1) An undertaking given under section 30, 32 or 32A above or paragraph 5 of Schedule 5 to this Act may be varied from time to time by agreement between the Board and the person bound by the undertaking.
- (2) Where a Special Commissioner is satisfied that—
  - (a) the Board have made a proposal for the variation of such an undertaking to the person bound by the undertaking,
  - (b) that person has failed to agree to the proposed variation within six months after the date on which the proposal was made, and
  - (c) it is just and reasonable, in all the circumstances, to require the proposed variation to be made,
 the Commissioner may direct that the undertaking is to have effect from a date specified by him as if the proposed variation had been agreed to by the person bound by the undertaking.
- (3) The date specified by the Special Commissioner must not be less than sixty days after the date of his direction.
- (4) A direction under this section shall not take effect if, before the date specified by the Special Commissioner, a variation different from that to which the direction relates is agreed between the Board and the person bound by the undertaking.”

(2) After section 79 of the 1984 Act there shall be inserted the following section—

##### **“79A Variation of undertakings.**

- (1) An undertaking given under section 78 or 79 above may be varied from time to time by agreement between the Board and the person bound by the undertaking.
- (2) Where a Special Commissioner is satisfied that—
  - (a) the Board have made a proposal for the variation of such an undertaking to the person bound by the undertaking,
  - (b) that person has failed to agree to the proposed variation within six months after the date on which the proposal was made, and
  - (c) it is just and reasonable, in all the circumstances, to require the proposed variation to be made,
 the Commissioner may direct that the undertaking is to have effect from a date specified by him as if the proposed variation had been agreed to by the person bound by the undertaking.

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- (3) The date specified by the Special Commissioner must not be less than sixty days after the date of his direction.
- (4) A direction under this section shall not take effect if, before the date specified by the Special Commissioner, a variation different from that to which the direction relates is agreed between the Board and the person bound by the undertaking.”
- (3) In Schedule 4 to the 1984 Act (maintenance funds for historic buildings), in paragraph 3, after sub-paragraph (3) there shall be inserted the following sub-paragraph—
- “(3A) Section 35A of this Act shall apply in relation to an undertaking given under sub-paragraph (3) above as it applies in relation to an undertaking given under section 30 of this Act.”
- (4) Subject to paragraph 10 below, this paragraph has effect in relation to undertakings given on or after the day on which this Act is passed.
- 9 (1) In section 258 of the <sup>M324</sup>Taxation of Chargeable Gains Act 1992 (disposal of works of art), after subsection (8) there shall be inserted the following subsection—
- “(8A) Section 35A of the 1984 Act (variation of undertakings) shall have effect in relation to an undertaking given under this section as it has effect in relation to an undertaking given under section 30 of that Act.”
- (2) Subject to paragraph 10 below, this paragraph has effect in relation to undertakings given on or after the day on which this Act is passed.

#### Marginal Citations

M324 1992 c. 12.

- 10 (1) Section 35A of the 1984 Act applies in relation to a relevant undertaking given with respect to any property before the day on which this Act is passed except in a case where there has been a chargeable event with respect to that property at any time after the giving of the undertaking but before that day.
- (2) In its application to such a relevant undertaking, section 35A of the 1984 Act applies with the modifications set out in sub-paragraphs (3) and (4) below.
- (3) The first modification is the substitution, for paragraph (a) of subsection (2), of the following paragraph—
- “(a) the Board have made a proposal to the person bound by such an undertaking for the undertaking to be varied so as to include (where it does not already do so) an extended access requirement or a publication requirement (or both those requirements),”.
- (4) The second modification is the insertion, after subsection (4), of the following subsections—
- “(5) For the purposes of subsection (2)(a) above—
- (a) an extended access requirement is a requirement for the taking of steps ensuring that the access to the public that is secured is not

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confined to access only where a prior appointment has been made;  
and

- (b) a publication requirement is a requirement for the taking of steps involving the publication of any matter mentioned in paragraph (a) or (b) of section 31(4FB) above.

(6) In determining for the purposes of subsection (2)(a) above whether an undertaking already includes an extended access requirement, there shall be disregarded so much of the undertaking as includes provision for the property with respect to which the undertaking was given to be made available temporarily for the purposes of special exhibitions.”

(5) In this paragraph “relevant undertaking” means any of the following—

- (a) an undertaking given under section 30, 32, 32A, 78 or 79 of the 1984 Act;  
(b) an undertaking given under paragraph 3(3) of Schedule 4 to the 1984 Act or paragraph 5(2) of Schedule 5 to that Act;  
(c) an undertaking given under section 76, 78, 81 or 82 of the <sup>M325</sup>Finance Act 1976;  
(d) an undertaking given under section 34(2) of the <sup>M326</sup>Finance Act 1975;  
(e) an undertaking given under section 258 of the <sup>M327</sup>Taxation of Chargeable Gains Act 1992.

(6) In this paragraph “chargeable event”, in relation to any property means—

- (a) an event which under section 32 or 32A of the 1984 Act is a chargeable event with respect to that property; or  
(b) an event which under either of those sections would be such an event if (where it is not the case) the undertaking in question had been given under section 30 of that Act.

#### Marginal Citations

<sup>M325</sup> 1976 c. 40.

<sup>M326</sup> 1975 c. 7.

<sup>M327</sup> 1992 c. 12.

## SCHEDULE 26

Section 160.

### NATIONAL LOANS

#### Commencement Information

**I24** Sch. 26 has effect in accordance with Sch. 26 para. 3.

*Status:* Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 15/11/1999

*Amendment of National Loans Act 1968 (c.13)*

- 1 (1) The National Loans Act 1968 shall be amended as follows.  
(2) After section 20 there shall be inserted—

*“ The Debt Management Account*

**20A The Debt Management Account.**

Schedule 5A to this Act (the Debt Management Account) shall have effect.”

- (3) After Schedule 5 there shall be inserted—

“SCHEDULE  
5A

THE DEBT MANAGEMENT ACCOUNT

*The account*

- 1 (1) The Treasury shall establish an account to be known as the Debt Management Account.  
(2) The Treasury shall operate the Debt Management Account with the objects of—  
(a) securing over time that sums are available to meet any daily shortfalls in the National Loans Fund and that any daily surpluses in that Fund are used to the best advantage;  
(b) facilitating the raising of money under section 12 of this Act;  
(c) promoting the liquidity, stability and efficiency of the market in securities issued under section 12 of this Act and the market in Treasury bills issued under the <sup>M328</sup>Treasury Bills Act 1877;  
(d) providing a facility by which public bodies may exercise their powers to acquire and transfer such securities and bills;  
(e) securing the general management of debt so far as it takes the form of such securities and bills.

*General powers*

- 2 (1) For the purposes of exercising their functions with regard to the Debt Management Account the Treasury may—  
(a) exercise the powers conferred by the following provisions of this Schedule;  
(b) generally manage the Account in the way the Treasury consider the most efficient.  
(2) Any sums held by the Treasury for the purposes of the Debt Management Account may be held in sterling or in any other currency or medium of

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exchange, whether national or international; and sums may be changed into any currency or medium.

- (3) The Treasury may exercise any power with regard to the Debt Management Account with a view to promoting one or more of the objects mentioned in paragraph 1(2) above, and it is immaterial if a particular object is not promoted or is not promoted as fully as it might be.

#### *Financial instruments*

- 3 (1) For the purposes of exercising their functions with regard to the Debt Management Account the Treasury may—
- (a) acquire (and arrange to acquire) and hold securities issued under section 12 of this Act, Treasury bills issued under the <sup>M329</sup>Treasury Bills Act 1877, and other financial instruments (by whatever person issued);
  - (b) transfer (and arrange to transfer) such securities, bills and other instruments.
- (2) Acquisitions under sub-paragraph (1)(a) above may be made on issue or otherwise.
- (3) Acquisitions, transfers and arrangements under sub-paragraph (1)(a) and (b) above may be made on such terms as the Treasury think fit.

#### *Borrowing*

- 4 (1) If the Treasury consider it expedient to raise money for the purpose of exercising their functions with regard to the Debt Management Account they may raise it in such manner and on such terms as they think fit, and money so raised shall be paid into the Account.
- (2) For the purpose of raising money under this paragraph the Treasury may—
- (a) create and issue such securities as they think fit;
  - (b) create and issue them at such rates of interest and subject to such conditions as to repayment, redemption and other matters as they think fit.
- (3) The power to raise money under this paragraph extends to raising money either within or outside the United Kingdom and either in sterling or in any other currency or medium of exchange, whether national or international.
- (4) The power to raise money under this paragraph extends to raising money by the issue of Treasury bills under the <sup>M330</sup>Treasury Bills Act 1877.
- (5) The following shall be charged on and paid out of the Debt Management Account with recourse to the National Loans Fund and then to the Consolidated Fund—
- (a) the principal of and interest on any money borrowed under this paragraph (whether by the issue of securities or otherwise);
  - (b) any other sums to be paid by the Treasury in accordance with the terms on which they borrow under this paragraph.



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- (6) Section 5 of the <sup>M331</sup>Treasury Bills Act 1877 (principal of and interest on Treasury bills) shall not apply in the case of Treasury bills issued by virtue of this paragraph.
- (7) Any expenses incurred in connection with the raising of money under this paragraph (including expenses in connection with the issue, repayment or redemption of securities or Treasury bills) shall be charged on and paid out of the National Loans Fund with recourse to the Consolidated Fund.
- 5 Section 14 of this Act shall have effect for the purposes of paragraph 4 above as if—
- (a) the references in subsections (1) and (2) to section 12 were references to paragraph 4;
  - (b) the references in subsections (8) and (9) to the National Loans Fund were references to the Debt Management Account.

#### *Lending*

- 6 (1) The Treasury may—
- (a) lend sums from the Debt Management Account for the purpose of exercising their functions with regard to the Account;
  - (b) lend from the Debt Management Account sums not immediately needed for any other purpose.
- (2) The power to lend under this paragraph includes power to lend to the National Loans Fund; and sums lent to the Fund and for the time being outstanding shall be a liability of the Fund to the Debt Management Account.
- (3) Loans under this paragraph may be made at such times and on such terms as the Treasury think fit.

#### *Borrowing and lending: general*

- 7 The powers under paragraphs 4 to 6 above may be exercised by means (or partly by means) of automatic devices programmed to respond to events as they arise.

#### *Cap on borrowing*

- 8 (1) The Treasury shall secure that the position at the end of any given day is such that the total of relevant debts does not exceed the total of relevant deposits.
- (2) A relevant debt is the principal outstanding of any money raised under paragraphs 4 and 5, but excluding money raised from the National Loans Fund.
- (3) A relevant deposit is the principal outstanding of any sum standing to the credit of the Debt Management Account in the National Loans Fund or at the Bank of England.
- (4) For the purposes of this paragraph a debt or deposit not designated in sterling must be expressed in sterling, and the exchange rate or rates used

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to calculate the sterling equivalent of debts and deposits must be such as the Treasury consider prudent.

#### *National Loans Fund*

- 9 (1) If securities issued under section 12 of this Act or Treasury bills are acquired on issue under paragraph 3(1)(a) above the Treasury shall pay from the Debt Management Account into the National Loans Fund a sum of such amount as the Treasury may determine to be appropriate.
- (2) A payment under this paragraph—
- (a) may be made before, at or after issue;
  - (b) may be made in instalments, any of which may be paid before, at or after issue.
- 10 (1) The Treasury may lend to the Debt Management Account from the National Loans Fund such sums as they think fit, at such times and on such terms as they think fit; and section 5 of this Act shall not apply in the case of such a loan.
- (2) The Treasury may repay from the Debt Management Account to the National Loans Fund sums lent under this paragraph.
- (3) Sums lent under this paragraph and for the time being outstanding shall be a liability of the Debt Management Account to the National Loans Fund.
- 11 (1) Any excess for the time being of the liabilities of the Debt Management Account over its assets shall be a liability of the National Loans Fund to the Account.
- (2) Any excess for the time being of the assets of the Debt Management Account over its liabilities shall be a liability of the Account to the National Loans Fund.
- (3) The Treasury may pay from the Debt Management Account to the National Loans Fund an amount representing all or any of any excess mentioned in subparagraph (2) above, and if they do the liability there mentioned shall be extinguished or reduced accordingly.
- 12 The Treasury shall exercise their powers under paragraphs 10 and 11 above so as to secure that the external liabilities of the Debt Management Account at any given time can be met; and the external liabilities of the Account are its liabilities other than those in favour of the National Loans Fund.

#### *Interest*

- 13 (1) The Treasury shall from time to time pay out of the National Loans Fund into the Debt Management Account sums (if any) which the Treasury consider appropriate to compensate the Account in respect of payments of interest made from the Account.
- (2) Payments to be made out of the National Loans Fund under subparagraph (1) above shall be treated for the purposes of section 15 of this Act as charges on that Fund for the service of national debt.

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- (3) The Treasury may from time to time pay out of the Debt Management Account into the National Loans Fund sums (if any) which the Treasury consider appropriate in respect of interest received or earned by the Account.

#### *Redemption*

- 14 (1) Any securities issued by or on behalf of the Treasury and for the time being held by the Treasury for the purposes of the Debt Management Account may be redeemed by the Treasury before maturity at market prices determined in such manner as the Treasury think fit.
- (2) Any expenses incurred by the Treasury in connection with the redemption of securities under this paragraph shall be paid out of the National Loans Fund.

#### *Accounts*

- 15 (1) For each financial year in which the Debt Management Account operates the Treasury shall prepare in such form as they may prescribe an account relating to the transactions, assets and liabilities of the Account.
- (2) The Treasury shall send the account to the Comptroller and Auditor General not later than the end of November following the end of the financial year to which it relates.
- (3) The Comptroller and Auditor General shall examine, certify and report on the account and lay a copy of it, together with his report, before each House of Parliament.”

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

C25 Sch. 5A modified (25.10.1999) by S.I. 1999/2908, art. 7(1)(2)

#### **Marginal Citations**

M328 1877 c. 2.

M329 1877 c. 2.

M330 1877 c. 2.

M331 1877 c. 2.

VALID FROM 15/11/1999

#### *Amendment of Finance Act 1993 (c.34)*

- 2 Section 211 of the Finance Act 1993 (National Debt Commissioners: securities) shall cease to have effect.

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### Commencement

- 3 (1) The amendments made by this Schedule shall have effect in accordance with provision made by the Treasury by an order (or orders) made by statutory instrument.
- (2) Different provision may be made—
- (a) for different amendments;
  - (b) for different purposes of the same amendment.
- (3) In particular, provision may be made for the Debt Management Account to begin operating at different times with regard to different objects (as set out in paragraph 1(2) of Schedule 5A to the <sup>M332</sup>National Loans Act 1968).
- (4) Any order may include such supplementary, incidental, consequential, transitional or saving provisions as appear to the Treasury to be necessary or expedient.
- (5) In particular, any order may—
- (a) provide that any liability of the National Debt Commissioners to the National Loans Fund arising for the purposes of accountancy practice by virtue of section 211 of the <sup>M333</sup>Finance Act 1993 shall be treated as discharged in circumstances prescribed by the order;
  - (b) confer power to acquire, hold or transfer securities issued under section 12 of the <sup>M334</sup>National Loans Act 1968 or Treasury bills issued under the <sup>M335</sup>Treasury Bills Act 1877;
  - (c) impose on the National Debt Commissioners a duty to transfer securities issued under section 12 of the <sup>M336</sup>National Loans Act 1968 at such price as the Treasury may determine;
  - (d) confer power to advance sums from the National Loans Fund.

#### Subordinate Legislation Made

P7 Sch. 26 para. 3 power fully exercised (25.10.1999): 15.11.1999 appointed by S.I. 1999/2908, art. 2(2) (with arts. 5-7)

#### Marginal Citations

M332 1968 c. 13.

M333 1993 c. 34.

M334 1968 c. 13.

M335 1877 c. 2.

M336 1968 c. 13.

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## SCHEDULE 27

### REPEALS

#### PART I

##### EXCISE DUTIES

###### (1)

###### DRAWBACK OF DUTY ON BEER

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1979 c. 4.	The Alcoholic Liquor Duties Act 1979.	Section 42.
1991 c. 31.	The Finance Act 1991.	In Schedule 2, paragraph 9.
1993 c. 34.	The Finance Act 1993.	In section 4(2), paragraphs (c) and (d).

These repeals have effect in accordance with section 5(2) of this Act.

###### (2)

###### HYDROCARBON OIL DUTY

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1979 c. 5.	The Hydrocarbon Oil Duties Act 1979.	In section 6(1)(b), the words from “and delivered” to “above”.

This repeal has effect in accordance with section 6(3) of this Act.

###### (3)

###### VEHICLE EXCISE DUTY: RATES WHERE POLLUTION REDUCED

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1994 c. 22.	The Vehicle Excise and Registration Act 1994.	In Schedule 1, paragraphs 6(3A), 7(4), (5) and (6), 9(5) and 11(5).
1995 c. 4.	The Finance Act 1995.	In Schedule 4, paragraph 12.

These repeals have effect in accordance with paragraph 17(1) of Schedule 1 to this Act.

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## (4)

## VEHICLE EXCISE AND REGISTRATION: NIL LICENCES

Chapter	Short title	Extent of repeal
1994 c. 22.	The Vehicle Excise and Registration Act 1994.	In section 22(2A)(a), the word “and” immediately before paragraph (b).

## (5)

## ASSESSMENTS FOR EXCISE DUTY PURPOSES

Chapter	Short title	Extent of repeal
1992 c. 48.	The Finance (No. 2) Act 1992.	In section 2(3), paragraph (b) and the word “and” immediately preceding it.
1994 c. 9.	The Finance Act 1994.	At the end of section 12A(3) (b) the word “or”.

These repeals have effect in accordance with an order made under paragraph 12 of Schedule 2 to this Act.

## PART II

## VALUE ADDED TAX

Chapter	Short title	Extent of repeal
1994 c. 23.	The Value Added Tax Act 1994.	In section 36(1)(a), the words “for a consideration in money”.

This repeal has effect in accordance with section 23(7) of this Act.

## PART III

## INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

## (1)

## RELIEF FOR QUALIFYING MAINTENANCE PAYMENTS

Chapter	Short title	Extent of repeal
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1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 347B(5A), the words after paragraph (b).
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This repeal has effect for the year 1999-00 and subsequent years of assessment.

(2)

ADVANCE CORPORATION TAX

Chapter	Short title	Extent of repeal
1968 c. 2.	The Provisional Collection of Taxes Act 1968.	In section 1(1), the words “(including advance corporation tax)”.
1970 c. 9.	The Taxes Management Act 1970.	Section 10(4).  Insection 87, in subsection (1), the words “13 or”, in subsection (2), paragraph (a), in subsection (6), the words “13 or” and, in subsection (7), the words “advance corporation tax and”.  Section 87A(4), (4B) and (7).  Section 94(8).  In section 98, in the second column of the Table, the words “Schedule 13;” and “Schedule 13A, paragraphs 11, 12 and 13;”.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 14(1) and (3) to (5).  Insection 75(2), the words “group income”.  Insection 116(2), paragraph (d).  Sections 238 to 241.  Sections 245, 245A, 245B and 246.  In section 247— (a) subsections (1), (2) and (3), (b) in subsection (5), the words “and shall not apply to a dividend” onwards,

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(c) in subsection (6), paragraph (a) and the words “advance corporation tax ought to have been paid or”, “as the case may be”, “paying or”, “receiving or” and “the advance corporation tax had been duly paid or”,  
(d) in subsection (7), the words “paying or” and “receiving or”, and  
(e) in subsection (10), the words “dividends or”, and “and references to “group income” shall be construed accordingly”.

In section 248, in subsections (2) and (3), the words “dividends or other”.

In section 252(1), paragraph (a).

In section 253, in subsection (1), paragraph (b) and the words “and to Schedule 13”, subsection (2) and, in subsection (3)(a), the words “advance corporation tax or”.

Section 255.

Section 434(3), (6) and (8).

Section 434C.

In section 490(1), the words “(including group income)”.

Sections 497 to 499.

Section 703(4) to (6).

In section 704, in paragraph A, sub-paragraph (d).

Section 705(6) to (8).

Section 797(4) and (5).

In section 802(2)(a), the words “and group income”.

In section 813(6), paragraph (b).

Section 826(2A), (7), (7AA) and (7CA).



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		In section 832(1), the definitions of “franked payment”, “group income”, “the rate of advance corporation tax” and “surplus of franked investment income”.
		Schedules 13 and 13A.
		In Schedule 24, in paragraph 6, sub-paragraph (1)(a) and, in sub-paragraph (2), the words “dividends or”, and paragraph 7.
		In Schedule 26, paragraph 2.
		In Schedule 29, paragraphs 10(4)(c) and (7).
1989 c. 26.	The Finance Act 1989.	Section 97.
		Section 98.
		Section 99(2).
		Section 149(3)(c).
1990 c. 29.	The Finance Act 1990.	Section 45(6).
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 10, paragraph 14(15).
1993 c. 34.	The Finance Act 1993.	Section 78.
		Section 81.
		In Schedule 6, paragraphs 12 and 16.
		In Schedule 14, paragraphs 4(1) and 10(1), (3), (5) and (6).
1994 c. 9.	The Finance Act 1994.	In Schedule 16, paragraphs 2, 3(1) to (4), (11) and (13) and 20(3).
1995 c. 4.	The Finance Act 1995.	In Schedule 8, paragraphs 18, 19(3) and 22.
		In Schedule 24, paragraphs 9 and 12(1), (2), (4) and (5).
1996 c. 8.	The Finance Act 1996.	Section 139.
		In Schedule 14, paragraphs 1(2) and 48(2).
		In Schedule 23, paragraphs 1 to 3, 5 and 7 to 9.

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1997 c. 58.	The Finance (No. 2) Act 1997.	Schedule 25. Section 50(2).  In Schedule 3, paragraph 3(3), (4), (6) and (7).  In Schedule 4, paragraphs 8, 9, 18 and 23.
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These repeals have effect in accordance with Schedule 3 to this Act.

### (3)

#### INTEREST ON GILT-EDGED SECURITIES

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In the Table in section 98, in the entry in the second column relating to the Taxes Act 1988, the words “regulations under section 51B;”.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 51B.  In Schedule 19AB, in paragraph 3(1C) (as inserted by Schedule 34 to the Finance Act 1996), paragraph (c) and the word “or” immediately preceding it.
1995 c. 4.	The Finance Act 1995.	Section 78.
1996 c. 8.	The Finance Act 1996.	In Schedule 6, paragraph 4.
1997 c. 58.	The Finance (No. 2) Act 1997.	In section 37— (a) subsection (6); and (b) in subsection (11), the word “51B”.

These repeals have effect in accordance with section 37(3) of this Act.

### (4)

#### RENTS AND OTHER RECEIPTS FROM LAND

Chapter	Short title	Extent of repeal
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1970 c. 9.	The Taxes Management Act 1970.	<p>In section 42(7), the reference to section 579(4) of the Taxes Act 1988.</p> <p>In the second column of the Table in section 98, the reference to section 41(2) of the Taxes Act 1988.</p>
1988 c. 1.	The Income and Corporation Taxes Act 1988.	<p>Section 15(2).</p> <p>In section 24—</p> <p>(a) in subsection (6), paragraph (c) and the word “and” preceding it;</p> <p>(b) subsection (7).</p> <p>Section 25.</p> <p>In section 26—</p> <p>(a) in subsection (1)(a), the words “at a full rent (not being a tenant’s repairing lease)”;</p> <p>(b) subsection (2)(a).</p> <p>Sections 28 and 29.</p> <p>Section 31.</p> <p>Section 33.</p> <p>Sections 33A and 33B.</p> <p>Section 40(5).</p> <p>Section 41.</p> <p>Section 42A(8).</p> <p>Section 65(2A) and (2B).</p> <p>In section 82(6), the words from “and shall be treated” to the end.</p> <p>Section 87(10).</p> <p>In section 96(11), the words from “or to any profits” to the end.</p> <p>Section 401(1B).</p> <p>Section 404(6)(c).</p> <p>Section 434E(3).</p> <p>Section 488(3).</p> <p>Section 494(4) and (5).</p>

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		In section 577(1) and (9), the words "Schedule A or".
		In section 577A(1) and (1A), the words "Schedule A or".
		Section 579(4).
		Section 588(4A).
		Section 589A(9A).
		Schedule 1.
1990 c. 1.	The Capital Allowances Act 1990.	Section 15(2), (2A) and (3).
		Section 15A.
		Section 28A(2).
		In section 29—
		(a) in subsection (1), the words "Subject to subsection (1A) below,";
		(b) subsection (1A).
		In section 53(1)(b), the words "or for leasing otherwise than in the course of a trade".
		Section 61(6).
		Section 67(2), (3) and (3A).
		In section 73—
		(a) subsection (1A); and
		(b) in subsection (2), the words "and section 67(3)".
		In section 159(1A), the words from "or to any such activities" to the end.
		In Schedule 1, paragraph 8(3).
1990 c. 29.	The Finance Act 1990.	In Schedule 14, paragraph 2(a) and (b).
1991 c. 31.	The Finance Act 1991.	In Schedule 15, paragraphs 13 and 26.
1992 c. 48.	The Finance (No. 2) Act 1992.	Sections 57 and 58.
1995 c. 4.	The Finance Act 1995.	Section 39.
		Section 41.
		In Schedule 6, paragraphs 1, 4 to 7, 9 to 16, 20 to 25, 29, 30, 32 and 34 to 37.

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1996 c. 8.	The Finance Act 1996.	In Schedule 14, paragraph 32(4). In Schedule 20, paragraph 30. In Schedule 39, in paragraph 1— (a) sub-paragraph (2); (b) in sub-paragraph (4), the words from the beginning to “passed, and”.
1997 c. 16.	The Finance Act 1997.	In Schedule 12, paragraphs 3(6), 6(9)(b), 8, 13(7) and 20(b). In Schedule 15, paragraphs 2(2), 5(1) and (2) and 6.
1997 c. 58.	The Finance (No. 2) Act 1997.	In Schedule 7, paragraph 3.

These repeals have effect in accordance with section 38(2) and (3) of this Act.

(5)

LAND MANAGED AS ONE ESTATE ETC.

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Sections 26 and 27.
1998 c. 36.	The Finance Act 1998.	In Schedule 5, paragraphs 6 and 7.

These repeals have effect in accordance with section 39 of this Act.

(6)

COMPUTATION OF PROFITS OF TRADE, PROFESSION OR VOCATION

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In the heading to Chapter VI of Part IV, the words “AND CHANGE OF BASIS OF COMPUTATION”. In the sidenote to section 104, the words “or change of basis”. Section 104(4), (5) and (7).

*Status: Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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Section 105(4).

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These repeals apply to a change of accounting basis taking effect on or after 6th April 1999.

**(7)**

CONSTRUCTION WORKERS SUPPLIED BY AGENCIES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 134, subsection (5) (c) and the word "or" immediately preceding it.
1995 c. 4.	The Finance Act 1995.	In Schedule 27, paragraph 1(1).

These repeals have effect in accordance with section 55(3) of this Act.

**(8)**

SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 566(2)(c), the words "by inspectors".

**(9)**

PAYMENTS AND OTHER BENEFITS IN CONNECTION WITH TERMINATION OF EMPLOYMENT ETC.

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	Section 35.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In the second column of the Table in section 98, the entry relating to section 148(7) of the Taxes Act 1988.
1988 c. 39.	The Finance Act 1988.	Section 74.
1990 c. 1.	The Capital Allowances Act 1990.	In Schedule 1, paragraph 8(39).
1996 c. 8.	The Finance Act 1996.	In Schedule 21, paragraph 24.

**Status:** Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

These repeals apply where section 58 of this Act applies.

(10)

TRAVELLING EXPENSES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 158— (a) in subsection (6), the words “Subject to subsection (7) below,”; (b) subsection (7). Section 198A.
1997 c. 16.	The Finance Act 1997.	Section 62(1) to (3).

These repeals have effect for the year 1998-99 and subsequent years of assessment.

(11)

FOREIGN EARNINGS DEDUCTION

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 19(1), in Case I of Schedule E, the words from “and to section 193(1)” to the end. Section 193(1). In Schedule 12, paragraphs 3(2A) and 7.
1988 c. 39.	The Finance Act 1988.	Section 67.
1991 c. 31.	The Finance Act 1991.	Section 45.

These repeals have effect in relation to emoluments in relation to which subsections (1) to (4) of section 63 have effect: see subsections (5) and (6) of that section.

(12)

PAYE: APPLICATION TO NON-CASH BENEFITS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 203H, subsection (2).

*Status: Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.*

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In section 203K, subsections (1) to (3).

1. The repeal of section 203H(2) of the Taxes Act 1988 has effect in accordance with section 68(4)(b) of this Act.

2. The repeal of section 203K(1) to (3) of that Act has effect in relation to assets provided and non-cash vouchers received at any time on or after 6th April 1998 and in relation to any use of a credit-token on or after that date.

### (13)

#### THE ENTERPRISE INVESTMENT SCHEME AND VENTURE CAPITAL TRUSTS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 842AA(14), the word "preferential", in the second place where it occurs.  In Schedule 15B, in paragraph 6(1), the word "preferential", in the second place where it occurs.  In Schedule 28B, in paragraph 5(5), the word "and" at the end of the definition of "associate".
1994 c. 9.	The Finance Act 1994.	In Schedule 15, paragraph 25(d).

1. The repeals in section 842AA of, and Schedule 15B to, the Taxes Act 1988 have effect in accordance with section 73 of this Act.

2. The repeal in the Finance Act 1994 has effect in accordance with section 71(5) of this Act.

### (14)

#### OTHER CHANGES TO EIS ETC.

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 289(7), the word "preferential", in the second place where it occurs.  Section 290A.  In section 291(2), the words "and sections 291A and 291B".



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	<p>In section 291A(5), the words “and the reference to a trade previously carried on includes part of such a trade”.</p> <p>In section 293, in subsection (6), the words “it is shown that”, and subsection (7).</p> <p>In section 297(1), the words “Subject to section 298(7) below”.</p> <p>In section 299, subsections (7) and (8)(a).</p> <p>In section 306(3A), the words “but section 289B(5) shall not apply for the purposes of this subsection”.</p> <p>In section 310(2), the words “or payment”.</p> <p>In section 312, in subsection (1), the definition of “new consideration”, in subsection (1A), the words “(disregarding section 289B(5))” and, in subsection (1B)(c), the words “dealt in on the Unlisted Securities Market or”.</p>	<p>In section 150, in subsection (8), the word “eligible” and, in subsection (8A)(a), the word “preferential”, in the second place where it occurs.</p> <p>In section 150A, in subsections (1) and (2), the word “eligible” and, in subsection (8A)(a), the word “preferential”, in the second place where it occurs.</p> <p>In section 150B(1), the word “eligible”.</p> <p>In Schedule 5B, paragraph 3(2).</p>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	

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1. The repeals in sections 293(6) and 310(2) of the Taxes Act 1988 and in section 150(8) of the Taxation of Chargeable Gains Act 1992 have effect in relation to events occurring on or after 6th April 1998.
2. The repeal of section 299(7) of the Taxes Act 1988, and the repeals in sections 150A(1) and (2) and 150B(1) of the Taxation of Chargeable Gains Act 1992, have effect in relation to disposals made on or after that date.
3. The repeals in sections 150(8A) and 150A(8A) of the Taxation of Chargeable Gains Act 1992 have effect in relation to new shares (within the meaning of the provision in question) issued on or after that date.
4. The other repeals have effect in relation to shares issued on or after that date.

## (15)

### INDIVIDUAL SAVINGS ACCOUNTS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 333(3)(b), the words “and minimum periods for which investments are to be held”.
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 151— (a) in subsection (2), the words “(personal equity plans)”; and (b) in subsection (2A), the words “personal equity plans:”.

## (16)

### RELIEF FOR LOSSES ON UNLISTED SHARES IN TRADING COMPANIES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 576(5), in the definition of “trading group”, the words “or not resident in the United Kingdom”.

The above repeal has effect in relation to shares issued on or after 6th April 1998.

## (17)

### CARRY FORWARD OF NON-TRADING DEFICIT ON LOAN RELATIONSHIPS

Chapter	Short title	Extent of repeal
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*Status:* Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

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1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 797(3B)(b), the words “or in accordance with subsection (3) of that section”.  In section 797A(5), paragraph (c) and the word “and” preceding it.  In Schedule 28A— (a) in paragraph 6(db), the words “(dc) or”; (b) paragraph 11(2)(a); (c) in paragraph 13(1)(eb), the words “(ec) or”.
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These repeals have effect in accordance with section 82(3) of this Act.

(18)

CAPITAL ALLOWANCES

Chapter	Short title	Extent of repeal
1990 c. 1.	The Capital Allowances Act 1990.	Section 76(3).
1997 c. 58.	The Finance (No. 2) Act 1997.	Section 42(6) and (7).

1. The repeal of section 76(3) of the Capital Allowances Act 1990 has effect in relation to every chargeable period ending on or after 12th May 1998.

2. The repeal of section 42(6) and (7) of the Finance (No. 2) Act 1997 has effect in accordance with section 84(3) of this Act.

(19)

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 547, in subsection (1)(a), the words from “(including” to “1964)” and subsection (3).

These repeals have effect in accordance with Schedule 14 to this Act.

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*Changes to legislation:* Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## (20)

## RETIREMENT BENEFIT SCHEMES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 591C(3), the words “in his capacity as such”.

## (21)

## PERSONAL PENSION SCHEMES

**Commencement Information**

**I25** Sch. 27 Pt. III(21) wholly in force; Sch. 27 Pt. III(21) in force for specified purposes at Royal Assent, see s. 96(4); Sch. 27 Pt. III(21) in force insofar as not already in force at 1.10.2000 by S.I. 2000/2319, art. 2

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 98, in the Table, the entry relating to section 652 of the Taxes Act 1988.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 652.

Subsection (4) of section 96 of this Act applies in relation to these repeals as it applies in relation to subsections (2) and (3)(b) of that section.

## (22)

## ACCRUED INCOME

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 717— (a) in subsection (1), the words “or (4)”; (b) subsections (4) and (5).

## (23)

## DEALERS IN SECURITIES ETC

Chapter	Short title	Extent of repeal
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**Status:** Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

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1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 470(1) and (3).  Section 471. Section 472. In section 473(2), the words after paragraph (b).
1989 c. 26.	The Finance Act 1989.	Section 80.
1996 c. 8.	The Finance Act 1996.	In Schedule 21, paragraphs 12 and 13.

1. The repeal of section 471 of the Taxes Act 1988, the words after paragraph (b) in section 473(2) of that Act and paragraph 12 of Schedule 21 to the Finance Act 1996 has effect in accordance with section 101(3) of this Act.

2. The repeal of section 472 of the Taxes Act 1988 and paragraph 13 of Schedule 21 to the Finance Act 1996 has effect in accordance with section 101(4) of this Act.

(24)

DISTRIBUTIONS AND MANUFACTURED DIVIDENDS: MISCELLANEOUS AMENDMENTS

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 737D(2), the words “manufactured dividend”.  In Schedule 23A— (a) in paragraph 2, in sub-paragraph (3), paragraph (a), sub-paragraphs (4) and (5) and, in sub-paragraph (6), paragraph (b) and the word “and” immediately preceding it; (b) in paragraph 2A, in sub-paragraph (1), the words “together with an amount equal to the notional ACT” and sub-paragraph (3).

These repeals have effect in accordance with section 102 of this Act.

(25)

TRANSFER PRICING ETC

Chapter	Short title	Extent of repeal
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1970 c. 9.	The Taxes Management Act 1970.	In the Table in section 98— (a) in the first column, the entry relating to section 772(1) and (3) of the Taxes Act 1988; and (b) in the second column, the entry relating to section 772(6) of that Act.
1990 c. 1.	The Capital Allowances Act 1990.	In Schedule 1, paragraph 8(32).
1990 c. 29.	The Finance Act 1990.	In Schedule 14, paragraph 12.

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These repeals have effect in accordance with section 108(5) of this Act.

## (26)

### DIRECTIONS BY THE BOARD

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1993 c. 34.	The Finance Act 1993	In section 135(1), paragraph (d), and the word “and” immediately preceding that paragraph.  In section 136— (a) paragraph (d) of subsection (1) and the word “and” immediately preceding that paragraph; and (b) in each of subsections (5) and (9), the words after paragraph (b).  In section 136A, in each of subsections (3) and (7), the words after paragraph (b).  In section 137(1), paragraph (d), and the word “and” immediately preceding that paragraph.
1994 c. 9.	The Finance Act 1994.	In section 167(2), paragraph (b), and the word “and” immediately preceding that paragraph.

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These repeals have effect in accordance with section 109(4) of this Act.

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## (27)

## CONTROLLED FOREIGN COMPANIES

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	<p>In section 747(1), the words “the Board have reason to believe that” and “and the Board so direct,”.</p> <p>Section 748(2).</p> <p>In section 751(1)(b), the words “not being the subject of an earlier direction under section 747(1)”.</p> <p>Section 753.</p> <p>Section 754(4).</p> <p>Section 755.</p> <p>In Schedule 24, paragraph 4(2A), in paragraph 9, in sub-paragraph (1) the words “Subject to sub-paragraph (2) below” and sub-paragraphs (2), (5) and (6) and paragraphs 11 and 11A(3) and (6).</p> <p>In Schedule 26, in paragraph 1, in sub-paragraph (1), paragraph (c) and the word “and” immediately preceding it, and the words “or, as the case may be, of the excess of it referred to in paragraph (c) above” and sub-paragraphs (4) and (6).</p>
1996 c. 8.	The Finance Act 1996.	In Schedule 36, in paragraph 3, sub-paragraph (6)(b) and the word “and” immediately preceding it and sub-paragraph (7).

These repeals have effect in accordance with paragraph 37 of Schedule 17 to this Act.

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## (28)

## COMPANY TAX RETURNS ETC.

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1970 c. 9.	The Taxes Management Act 1970.	<p>Section 10.</p> <p>Section 11.</p> <p>Sections 11AA to 11AE.</p> <p>In section 12(2), the words “or section 11”.</p> <p>In section 12B(1), the words “, 11”.</p> <p>In section 19A(1), the words “, 11AB(1)”.</p> <p>In section 28A—</p> <p>(a) in subsection (1), the words “or 11AB(1)”;</p> <p>(b) in subsection (7B), paragraph (b) and the word “and” preceding it;</p> <p>(c) subsection (7C).</p> <p>Sections 28AA and 28AB.</p> <p>Sections 28D, 28E and 28F.</p> <p>In section 29—</p> <p>(a) in subsection (3)(b), the words “in the case of a return under section 8 or 8A,”;</p> <p>(b) subsection (10).</p> <p>In section 30—</p> <p>(a) in subsection (2)(a), the words “or 825”;</p> <p>(b) subsection (2A);</p> <p>(c) in subsection (3), the words “or corporation tax”;</p> <p>(d) subsections (3A) and (4A).</p> <p>Section 33(5)(c).</p> <p>In section 33A(1), the words “under section 9 or 11AA of this Act”.</p> <p>Sections 41A, 41B and 41C.</p> <p>In section 42—</p> <p>(a) in subsections (2), (9) and (11)(a), the words “, 11”;</p>



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		(b) subsections (4) and (4A); (c) in subsection (5), the words from “and the reference in subsection (4)” to the end; (d) subsection (13)(c).
		In section 46(2), the words “and in particular save as provided by section 29 of this Act”.
		In section 65(3), the words from “for the recovery of” to the end of paragraph (b).
		Section 94.
		Section 96.
		In section 97A, paragraph (b) and the word “or” preceding it.
1987 c. 51.	The Finance (No.2) Act 1987.	Sections 82 and 83.
		Section 88.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 7— (a) in subsection (2), the words “by an assessment made”; (b) subsections (5) to (7).
		In section 11(3), the words “by an assessment made”.
		In section 419(4), the words “by discharge or repayment”.
		In Schedule 13A— (a) in paragraph 14(1), the words from “(which correspond” to “Management Act”); (b) in paragraph 14(8), the words from “against an amendment” to the end.
		Schedule 17A.
		In Schedule 29, in paragraph 10— (a) in sub-paragraph (3), the words “and (3A)”; and (b) sub-paragraph (7).
1988 c. 39.	The Finance Act 1988.	Section 121.

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1990 c. 1.	The Capital Allowances Act 1990.	Section 145A.  Schedule A1.
1990 c. 29.	The Finance Act 1990.	Section 91. Section 95. Section 98(3). Section 100. Section 102. Schedules 15 and 16.
1993 c. 34.	The Finance Act 1993.	In Schedule 14, paragraphs 1, 2 and 6.
1994 c. 9.	The Finance Act 1994.	Sections 181 to 183. Section 195. Section 197. In Schedule 19, paragraphs 8(1), 10, 14 to 16, 17(3) and 19.
1995 c. 4.	The Finance Act 1995.	Section 104(5). Section 107(5) and (6).
1996 c. 8.	The Finance Act 1996.	Section 121(5). Section 170. In Schedule 19, in paragraph 2, the words "11AB(1)", In Schedule 20, paragraph 28(5). In Schedule 24, paragraphs 2 to 4, 6, 7, 8(2) and 13. In Schedule 34, paragraph 1(8).
1997 c. 58.	The Finance (No.2) Act 1997.	In Schedule 4, paragraph 3.
1998 c. 36.	The Finance Act 1998.	In Schedule 3, paragraph 5. In Schedule 5, paragraph 33.

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These repeals have effect in relation to accounting periods ending on or after the self-assessment appointed day within the meaning of section 117 of this Act.

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(29)

CHARGEABLE GAINS: APPLICABLE RATE

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 4(1), the words “and section 5”. Section 5.
1993 c. 34.	The Finance Act 1993.	In Schedule 6, paragraph 23.

These repeals have effect in accordance with section 120(2) of this Act.

(30)

CHARGEABLE GAINS: OFFSHORE SETTLEMENTS

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 87(1), the words from “if the settlor” to the end of the subsection. In section 88(1), paragraph (c) and the word “and” immediately preceding it. In Schedule 5, paragraph 9(2) and (8).

1. The repeals in sections 87 and 88 of the Taxation of Chargeable Gains Act 1992 have effect in accordance with section 130 of this Act.

2. The repeal of paragraph 9(2) of Schedule 5 to that Act has effect in accordance with section 132(2) of this Act.

3. The repeal of paragraph 9(8) of that Schedule has effect in accordance with section 131(4) of this Act.

(31)

RETIREMENT RELIEF

<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	Sections 163 and 164. In section 165, in subsection (3), paragraphs (a) and (b) and, in

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		subsection (6), the words “and (in appropriate cases) Schedule 6”.
		In section 241(3), the words “and Schedule 6”.
		In section 260(5), the words from “or, if part of the gain” to the end.
		Schedule 6.
		In Schedule 7, paragraph 8.
1993 c. 34.	The Finance Act 1993.	In Schedule 7, paragraphs 1(2) and 2.
1994 c. 9.	The Finance Act 1994.	Section 92.
1996 c. 8.	The Finance Act 1996.	Section 176.
		In Schedule 20, paragraph 66.
		In Schedule 21, paragraph 44.
		In Schedule 39, paragraph 7.

The above repeals have effect in relation to disposals in the year 2003-04 and subsequent years of assessment.

### (32)

#### ABOLITION OF CERTAIN CGT RELIEFS

Chapter	Short title	Extent of repeal
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Part V, Chapter IA.  Sections 254 and 255.

1. The repeal of Chapter IA of Part V of the Taxation of Chargeable Gains Act 1992 has effect in relation to acquisitions made on or after 6th April 1998.

2. The other repeals have effect in relation to loans made on or after 17th March 1998.

### PART IV

#### INHERITANCE TAX

Chapter	Short title	Extent of repeal
1984 c. 51.	The Inheritance Tax Act 1984.	Section 26.  In section 76—

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		(a) paragraph (d) of subsection (1) and the word "or" immediately preceding it; and (b) subsection (2).
1986 c. 41.	The Finance Act 1986.	Section 102(5)(g).
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	Section 258(1).  Section 260(2)(b)(ii).

1. The repeal of section 26 of the Inheritance Tax Act 1984 has effect in accordance with section 143(1) of this Act and the repeals in section 76 of that Act have effect in accordance with section 143(5) of this Act.

2. The other repeals have effect in relation to any disposal on or after 17th March 1998.

## PART V

### OTHER TAXES

#### (1)

##### INSURANCE PREMIUM TAX

Chapter	Short title	Extent of repeal
1994 c. 9.	The Finance Act 1994.	In section 52A(9), the definition of "tour operator" and "travel agent".

This repeal has effect in accordance with section 147 of this Act.

#### (2)

##### STAMP DUTY

Chapter	Short title	Extent of repeal
1920 c. 67.	The Government of Ireland Act 1920.	Section 29.

#### (3)

##### ABOLITION OF GAS LEVY

Chapter	Short title	Extent of repeal
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1981 c. 3.	The Gas Levy Act 1981.	The whole Act.
1986 c. 44.	The Gas Act 1986.	In section 60— (a) in subsection (1), paragraph (b) and the word “and” immediately preceding it; and (b) subsection (4).  Schedule 6.
1990 c. 29.	The Finance Act 1990.	Section 123.
1992 c. 48.	The Finance (No. 2) Act 1992.	Section 78.
1993 c. 34.	The Finance Act 1993.	Section 209.
1995 c. 45.	The Gas Act 1995.	In Schedule 5, in paragraph 11, sub-paragraph (b) and the word “and” immediately preceding it.

1. Subject to note 2 below, these repeals do not have effect in relation to gas levy for the year 1997-98 or any previous year.

2. The repeal of section 209(3) of the Finance Act 1993 does not affect any case in which the cessation of liability to gas levy was before the end of the year 1997-98.

#### (4)

#### DUMPING AND SUBSIDIES

Chapter	Short title	Extent of repeal
1969 c. 16.	The Customs Duties (Dumping and Subsidies) Act 1969.	The whole Act.
1978 c. 42.	The Finance Act 1978.	In section 6, subsections (5), (6), (7) and (9).  Schedule 1.  In Schedule 12, paragraph 26.
1979 c. 2.	The Customs and Excise Management Act 1979.	In paragraph 12 of Schedule 4, in Part I of the Table, the entries for the Customs Duties (Dumping and Subsidies) Act 1969.

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**Status:** Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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## PART VI

### MISCELLANEOUS

#### (1)

#### TREASURY BILLS

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<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1992 c. 48.	The Finance (No. 2) Act 1992.	Section 79.

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This repeal has effect in accordance with section 159 of this Act.

#### (2)

#### SECURITIES

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<b>Chapter</b>	<b>Short title</b>	<b>Extent of repeal</b>
1993 c. 34.	The Finance Act 1993.	Section 211.

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This repeal has effect in accordance with an order made under paragraph 3 of Schedule 26 to this Act.

**Status:**

Point in time view as at 01/01/1999. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Finance Act 1998 is up to date with all changes known to be in force on or before 10 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.