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SCHEDULES

SCHEDULE 26

TRANSFERS: TAX

PART VI

TRANSFERS OF FRANCHISE ASSETS

Interpretation

- 30 In this Part of this Schedule—
- “relevant transfer” means a transfer of property, rights or liabilities by virtue of a scheme under paragraph 2 of Schedule 21 under which the property, rights or liabilities are transferred from a person which is, or has been, a franchise company,
 - “transferee”, in relation to a relevant transfer, means the person to whom the property, rights or liabilities are transferred, and
 - “transferor”, in relation to a relevant transfer, means the person from whom the property, rights or liabilities are transferred.
- Chargeable gains: disposals not to be treated as made at market value*
- 31 (1) Section 17 of the 1992 Act (disposals and acquisitions treated as made at market value) is not to have effect in relation to—
- (a) a disposal constituted by a relevant transfer or a disposal by virtue of provision made under paragraph 5 of Schedule 21, or
 - (b) the acquisition made by the person to whom the disposal is made.
- (2) But sub-paragraph (1) does not apply—
- (a) if the person making the disposal is connected with the person making the acquisition, or
 - (b) in the case of a disposal by virtue of provision made under paragraph 5 of Schedule 21, if the disposal is made by or to a person other than the transferor or the transferee.
- (3) If sub-paragraph (1) applies to the disposal of an asset, the disposal is to be taken (in relation to the person making the acquisition as well as the person making the disposal) to be—
- (a) in a case where consideration in money or money’s worth is given by the person making the acquisition or on his behalf in respect of the vesting of the asset in him, for a consideration equal to the amount or value of that consideration, or
 - (b) in a case where no such consideration is given, for a consideration of nil.

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Chargeable gains: groups

- 32 (1) Sub-paragraph (2) applies if a company (“the degrouped company”)—
- (a) acquired an asset from another company at any time when both were members of the same group of companies (“the old group”), and
 - (b) ceases by virtue of a relevant transfer to be a member of the old group.
- (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
- (3) If sub-paragraph (2) applies to an asset, that section is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”), otherwise than by virtue of a qualifying transfer, as if the degrouped company and the company from which it acquired the asset had been members of the new group at the time of acquisition.
- (4) If, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the 1992 Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies by virtue of a qualifying transfer, it is to be regarded for those purposes as so doing by virtue of the qualifying transfer and not by virtue of any preparatory transactions.
- (5) In this paragraph “preparatory transaction” means anything done under or by virtue of this Part of this Act for the purpose of initiating, advancing or facilitating the qualifying transfer in question.
- (6) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

Chargeable gains: disposal of debts

- 33 (1) Sub-paragraph (2) applies if in the case of a relevant transfer—
- (a) a debt owed to the transferor is transferred to the transferee, and
 - (b) the transferor would, apart from this paragraph, be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts).
- (2) The 1992 Act is to have effect as if the transferee (and not the transferor) were the original creditor for those purposes.

Capital allowances: actual consideration to be the disposal value

- 34 (1) Sub-paragraphs (2) to (5) apply for the purposes of Part I of the 1990 Act, and the other provisions of that Act which are relevant to that Part, if there is a disposal by virtue of a relevant transfer of the relevant interest in—
- (a) an industrial building or structure, or
 - (b) a qualifying hotel or a commercial building or structure.
- (2) The disposal is to be treated as a sale of that relevant interest.
- (3) The sale moneys in respect of that sale are to be taken—

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- (a) if a capital sum is received by the transferor or a person connected with the transferor by way of consideration or compensation in respect of the disposal, to be an amount equal to that capital sum, or
 - (b) if no such capital sum is received, to be nil.
- (4) The sale moneys in respect of that sale are to be taken, as respects the transferee only, to include in addition an amount equal to any capital sum received by a person other than the transferor or a person connected with the transferor by way of consideration or compensation in respect of the acquisition of the relevant interest by the transferee.
- (5) Sections 157 and 158 of that Act (sales between connected persons or without change of control) are not to have effect in relation to that sale.
- (6) Sub-paragraph (7) applies for determining, in the case of machinery or plant which is treated for the purposes of the Capital Allowances Acts as disposed of by virtue of a relevant transfer, the amount which (in consequence of that disposal) is to be brought into account as the disposal value of that machinery or plant for the purposes of section 24 of the 1990 Act (balancing adjustments).
- (7) The amount is, subject to section 26(2) and (3) of that Act (disposal value of machinery or plant not to exceed capital expenditure incurred on its provision) to be taken—
 - (a) if a capital sum is received by the transferor or a person connected with the transferor by way of consideration or compensation in respect of the disposal, to be an amount equal to that capital sum, or
 - (b) if no such capital sum is received, to be nil.
- (8) Sub-paragraph (9) applies if, in consequence of a disposal by virtue of a relevant transfer, a fixture is treated by section 57(2) of the 1990 Act as ceasing to belong to a person at any time.
- (9) The amount which, in consequence of that disposal, is to be brought into account as the disposal value of the fixture for the purposes of section 24 of that Act is, subject to section 26(2) and (3) of that Act, to be taken—
 - (a) if a capital sum is received by the transferor or a person connected with the transferor by way of consideration or compensation in respect of the disposal, to be an amount equal to that portion of that capital sum which falls (or, if the person to whom the disposal is made were entitled to an allowance, would fall) to be treated for the purposes of Part II of that Act as expenditure incurred by that person on the provision of the fixture, or
 - (b) if no such capital sum is received, to be nil.
- (10) Sub-paragraphs (3), (4), (7) and (9) have effect despite any other provision of the Capital Allowances Acts.

Loan relationships

- 35
- (1) Paragraph 11 of Schedule 9 to the ^{M1}Finance Act 1996 is not to have effect in a case where, as a result of a relevant transfer, the transferee replaces the transferor as a party to a loan relationship.
 - (2) Expressions used in this paragraph and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this paragraph as in that Chapter.

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Marginal Citations

M1 1996 c. 8.

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