

SCHEDULES

SCHEDULE 29

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

PART 13

SUPPLEMENTARY PROVISIONS

Treatment of grants and other contributions to expenditure

- 102 (1) This paragraph applies where a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.
- (2) A gain recognised in the company's profit and loss account in respect of the grant or other payment is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset.
- (3) This paragraph does not apply to a grant within paragraph 103 (grants to be left out of account for tax purposes).

Grants to be left out of account for tax purposes

- 103 (1) This paragraph applies to—
- (a) grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants); and
 - (b) grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part.

These are referred to below in this paragraph as “exempt grants”.

- (2) Any gain recognised in the company's profit and loss account in respect of an exempt grant shall be disregarded for the purposes of this Schedule.
- (3) Where as a result of an exempt grant being brought into account by a company there is a reduction—
- (a) in the amount of a loss recognised in the company's profit and loss account, or
 - (b) in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes,
- the amount of the reduction shall be added back for the purposes of this Schedule.

Finance leasing etc

- 104 (1) The Treasury may make provision by regulations as to the application of this Schedule in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease.

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- (2) The regulations may provide—
- (a) that, notwithstanding that the asset is accounted for by the finance lessor as a financial asset, this Schedule shall apply as if the asset were an intangible fixed asset of the lessor and not a financial asset;
 - (b) that this Schedule shall apply as if the amount at which the asset is recognised in the finance lessor's balance sheet were capitalised expenditure on an intangible fixed asset, but that—
 - (i) no election may be made under paragraph 10 (election for writing down on fixed rate basis) in respect of that amount; and
 - (ii) that amount is not to be treated as capitalised expenditure for the purposes of paragraph 39(1)(b) (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets);
 - (c) that where an asset formerly recognised by the lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and accordingly comes to be accounted for as a financial asset) the value of the asset so created is recognised as realisation proceeds of the intangible fixed asset on the change of accounting treatment;
 - (d) that assets partially excluded from this Schedule by paragraph 78 to 81 (assets excluded except as regards royalties) are entirely excluded from this Schedule as regards the finance lessor if they are subject to a finance lease and are accounted for by the lessor as financial assets;
 - (e) for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which he is within the charge to income tax;
 - (f) that an intangible asset counts as an existing asset in the hands of the finance lessor if the finance lessee is—
 - (i) a company for whom the asset was the whole or part of an existing asset, or
 - (ii) a person who is a related party in relation to such a company.
- (3) The regulations may contain such consequential, supplementary, incidental and transitional provision, including provision modifying the operation of other provisions of the Corporation Tax Acts, as appears to the Treasury to be appropriate.
- (4) References in this paragraph to a finance lease—
- (a) have the meaning they have for accounting purposes, and
 - (b) include hire-purchase, conditional sale or other arrangements if they are of a similar character to a finance lease.
- (5) References to the finance lessor or finance lessee have a corresponding meaning.
- (6) Regulations under this paragraph may be made so as to have effect from 1st April 2002.

Assets acquired or realised together

- 105 (1) Any reference in this Schedule to the acquisition or realisation of an asset includes the acquisition or realisation of that asset together with other assets.
- (2) For the purposes of this Schedule assets acquired or realised as a result of one bargain are treated as acquired or realised together even though—

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- (a) separate prices are, or purport to be, agreed for separate assets, or
 - (b) there are, or purport to be, separate acquisitions or realisations of separate assets.
- (3) Where assets are acquired together—
- (a) any values allocated to particular assets by the company in accordance with generally accepted accounting practice shall be accepted for the purposes of this Schedule;
 - (b) if no such values are allocated by the company, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as referable to that asset.
- (4) Where assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as proceeds of the realisation of that asset.

Deemed market value acquisition: adjustment of amounts in case of nil accounting value

- 106 (1) This paragraph applies where a company is treated for the purposes of this Schedule as acquiring an asset at market value but the accounting value of the asset transferred, in the hands of the transferee, is nil.
- (2) Where this paragraph applies—
- (a) any reference in this Schedule to—
 - (i) the cost of the asset recognised for accounting purposes,
 - (ii) the accounting value of the asset, or
 - (iii) the amount of any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,shall be read as references to the cost, value or loss that would have been recognised if the asset had been acquired at market value; and
 - (b) any revaluation of the asset (as defined in paragraph 15) shall be disregarded.

Treatment of fungible assets

- 107 (1) For the purposes of this Schedule fungible assets of the same kind held by the same person in the same capacity shall be treated as indistinguishable parts of a single asset, growing or diminishing as additional assets of the same kind are created or acquired or some of the assets are realised.
- (2) In this Schedule “fungible assets” here means assets of a nature to be dealt in without identifying the particular assets involved.

Asset ceasing to be chargeable intangible asset: deemed realisation at market value

- 108 (1) Where an asset ceases to be a chargeable intangible asset in relation to a company—
- (a) on the company ceasing to be resident in the United Kingdom, or
 - (b) in the case of a company that is not resident in the United Kingdom, in any circumstances not involving the realisation of the asset by the company, or
 - (c) on the asset beginning to be held for the purposes of a mutual trade or business,

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this Schedule has effect as if the company had, immediately before the asset ceased to be a chargeable intangible asset in relation to it, realised the asset for its market value at that time and immediately reacquired it at that value.

- (2) Sub-paragraph (1) has effect subject to paragraph 109 (postponement of gain in certain cases).

Asset ceasing to be chargeable intangible asset: postponement of gain in certain cases

109 (1) Where—

- (a) paragraph 108 (asset ceasing to be chargeable asset: deemed realisation at market value) applies by reason of a company (“company A”) ceasing to be resident in the United Kingdom,
- (b) immediately before company A ceases to be resident in the United Kingdom the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a branch or agency,
- (c) the proceeds of the deemed realisation of the asset exceed the original cost of the asset recognised for tax purposes,
- (d) immediately after company A ceases to be resident in the United Kingdom it is a 75% subsidiary of another company (“company B”) that is resident in the United Kingdom, and
- (e) company A and company B so elect by notice given to the Inland Revenue not later than two years after the date when company A ceased to be resident in the United Kingdom,

this Schedule has effect as if the proceeds of the deemed realisation of the asset were reduced by the amount of the excess referred to in paragraph (c).

The amount of the reduction is referred to below in this paragraph as “the postponed gain”.

- (2) If company A subsequently realises the asset before the end of the period of six years after the date on which the company ceased to be resident in the United Kingdom, company B shall bring into account for tax purposes a credit equal to the postponed gain or, in the case of a part realisation, the appropriate proportion of the postponed gain.

The appropriate proportion is given by:

$$\frac{\text{Old Value} - \text{New Value}}{\text{Old Value}}$$

where—

Old Value is the market value of the asset immediately before the part realisation, and

New Value is the market value of the asset immediately after the part realisation.

- (3) Sub-paragraph (2) does not apply—

- (a) to the extent that the postponed gain has already been brought into account on a previous part realisation, or
- (b) if the postponed gain has already been brought into account under sub-paragraph (4).

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- (4) If at any time after company A ceases to be resident in the United Kingdom—
- (a) it ceases to be a 75% subsidiary of company B on the disposal by that company of ordinary shares of company A, or
 - (b) after it has ceased to be such a subsidiary otherwise than on such a disposal, company B disposes of such shares, or
 - (c) company B ceases to be resident in the United Kingdom,
- company B shall bring into account for tax purposes a credit equal to the postponed gain.

This sub-paragraph does not apply if, or to the extent that, the postponed gain has already been brought into account under sub-paragraph (2).

- (5) Any credit falling to be brought into account under sub-paragraph (4)(c) shall be brought into account immediately before company B ceases to be resident in the United Kingdom.
- (6) A credit brought into account by company B under this paragraph is treated as a non-trading credit for the purposes of Part 6 (how debits and credits are given effect).

Asset becoming chargeable intangible asset

- 110 (1) This paragraph applies where an asset becomes a chargeable intangible asset in relation to a company—
- (a) on the company becoming resident in the United Kingdom, or
 - (b) in the case of a company that is not resident in the United Kingdom, on beginning to be held for the purposes of a trade carried on by it in the United Kingdom through a branch or agency, or
 - (c) on the asset ceasing to be held for the purposes of a mutual trade or business.
- (2) Where this paragraph applies this Schedule has effect as if the company had acquired the asset, immediately after it became a chargeable intangible asset in relation to the company, for its accounting value at that time.

Tax avoidance arrangements to be disregarded

- 111 (1) Tax avoidance arrangements shall be disregarded in determining—
- (a) whether debits are to be brought into account under paragraph 9 (writing down on accounting basis) or the amount of such debits, or
 - (b) whether a credit is to be brought into account under Part 4 (realisation) or the amount of any such credit.
- (2) Arrangements are “tax avoidance arrangements” if their main object or one of their main objects is to enable a company—
- (a) to obtain a debit under paragraph 9 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
 - (b) to avoid having to bring a credit into account under Part 4 or to reduce the amount of any such credit.
- (3) In this paragraph—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and

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“brought into account” means brought into account for tax purposes.

Debits not allowed in respect of expenditure not generally deductible for tax purposes

- 112 (1) No debit may be brought into account for tax purposes under this Schedule in respect of expenditure that is not generally deductible for tax purposes.
- (2) Expenditure is “not generally deductible for tax purposes” if, or to the extent that, revenue expenditure of that description incurred for the purposes of a trade would be non-deductible by virtue of—
- (a) section 577 of the Taxes Act 1988 (expenditure on business entertainment or gifts),
 - (b) section 577A of that Act (crime-related expenditure),
 - (c) section 578A of that Act (expenditure on expensive hired cars), or
 - (d) section 76(1) to (3) of the Finance Act 1989 (c. 26) (expenditure on providing non-approved non-taxable retirement benefits).

Delayed payment of emoluments

- 113 (1) Where—
- (a) a debit in respect of emoluments is recognised by a company for accounting purposes, and
 - (b) the emoluments are not paid until after the end of the period of nine months beginning with the end of the period of account in which the debit is recognised,
- the emoluments shall be brought into account for the purposes of this Schedule only when they are paid.
- (2) For the purposes of this paragraph—
- (a) “emoluments” means emoluments allocated either—
 - (i) in respect of particular offices or employments (or both), or
 - (ii) generally in respect of offices or employments (or both); and
 - (b) emoluments are paid when they are treated as received (applying the rules in section 202B of the Taxes Act 1988 as for the purposes of section 202A(1) (a) of that Act (receipts basis of assessment for Schedule E)).
- (3) This paragraph applies to potential emoluments as it applies to emoluments.
- For this purpose—
- (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming emoluments, and
 - (b) potential emoluments are regarded as paid when they become emoluments that are paid.
- (4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.
- (5) If a calculation for tax purposes has to be made before the end of the period of nine months mentioned in sub-paragraph (1)(b) and emoluments have not been paid—

- (a) it shall be assumed for the purpose of making the calculation that they will not be paid before the end of that period, but
- (b) the calculation shall be adjusted if the emoluments are subsequently paid before the end of that period and a claim is made.

Any such claim to adjust a calculation must be made to the Inland Revenue before the end of the period of two years beginning with the end of the period of account concerned.

Delayed payment of pension contributions

- 114 (1) This paragraph applies where—
- (a) a debit in respect of pension contributions is recognised by a company for accounting purposes, and
 - (b) the contributions are not paid until after the end of the period of account in which the debit is recognised.
- (2) Where this paragraph applies, the contributions shall be brought into account for the purposes of this Schedule only when they are paid.
- (3) For the purposes of this paragraph “pension contributions” means—
- (a) sums paid by an employer by way of contributions under a scheme to which section 592 of the Taxes Act 1988 applies (exempt approved schemes),
 - (b) sums paid to the trustees of such a scheme that are treated for the purposes of that section as employer’s contributions (see subsection (6A) of that section), or
 - (c) expenses within section 76(5) or (6) of the Finance Act 1989 (c. 26) (expenses of providing benefits under non-approved retirement benefit scheme).
- (4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.

Bad debts etc

- 115 (1) For the purposes of this Schedule a debt shall be brought into account on the assumption that the amount payable will be paid in full when it becomes due, except to the extent that—
- (a) the debt is bad,
 - (b) the debt is estimated to be bad, or
 - (c) the debt is released as part of a statutory insolvency arrangement.
- (2) In sub-paragraph (1)(c) a “statutory insolvency arrangement” means—
- (a) a voluntary arrangement that has taken effect under or by virtue of the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19)), or
 - (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985 (c. 6) or Article 418 of the Companies (Northern Ireland) Order 1986 (SI 1986/1032 (N.I. 6)).

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- (3) Where a debt is released as mentioned in sub-paragraph (1)(c) any gain in respect of the release brought into account for accounting purposes by the debtor shall be disregarded for the purposes of this Schedule.
- (4) Any other gain in respect of an unpaid debt in respect of an intangible fixed asset that is brought into account by the debtor for accounting purposes is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset.
- (5) Any adjustment required by this paragraph of an accounting gain or loss that is partly referable to an amount affected by this paragraph and partly to other matters shall be made on a just and reasonable basis.

Assumptions for computing chargeable profits of controlled foreign companies

- 116 (1) In computing the amount mentioned in section 747(6) of the Taxes Act 1988 (chargeable profits of controlled foreign company) the following assumptions shall be made for the purpose of applying the provisions of this Schedule.
- (2) It shall be assumed that any intangible fixed asset acquired or created by the company before the beginning of the first accounting period—
 - (a) in respect of which an apportionment under section 747(3) falls to be made, or
 - (b) which is an ADP exempt period,
 was acquired or created by the company at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
 - (3) Notwithstanding paragraph 4(1) of Schedule 24 of the Taxes Act 1988 (assumption that all available reliefs have been claimed), it shall be assumed that the company has not claimed any relief under Part 7 (roll-over relief in case of reinvestment) or made any provisional declaration of entitlement to such relief.

But this assumption does not apply, if notice is given in accordance with paragraph 4(2) of that Schedule requesting that it should not apply, to such claims, and to such extent, as may be specified in the notice.
 - (4) Expressions used in this paragraph that are defined for the purposes of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies) have the same meaning in this paragraph.
 - (5) The assumption in sub-paragraph (2) above does not affect the determination of the question whether this Schedule applies to an asset in accordance with paragraph 118 (application of Schedule to assets created or acquired after commencement).