Finance Act 2006

2006 CHAPTER 25

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

INCOME TAX AND CORPORATION TAX: CHARGE AND RATE BANDS

Income tax

23 Charge and rates for 2006-07

Income tax shall be charged for the year 2006-07, and for that year—

(a) the starting rate shall be 10%;
(b) the basic rate shall be 22%;
(c) the higher rate shall be 40%.

Corporation tax

24 Charge and main rate for financial year 2007

Corporation tax shall be charged for the financial year 2007 at the rate of 30%.

25 Small companies' rate and fraction for financial year 2006

For the financial year 2006—

(a) the small companies' rate shall be 19%, and
(b) the fraction mentioned in section 13(2) of ICTA (marginal relief for small companies) shall be 11/400ths.

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

26 Abolition of corporation tax starting rate and non-corporate distribution rate

(1) Section 13AA of ICTA (corporation tax starting rate) shall cease to have effect.

(2) Section 13AB of ICTA (the non-corporate distribution rate), and Schedule A2 to that Act (supplementary provisions in relation to that rate), shall cease to have effect.

(3) In section 13A of ICTA (close investment-holding companies), in subsection (1) (meaning of "close investment-holding company" for purposes of sections 13(1) and 13AA(8)), omit "or 13AA(8)".

(4) In section 468 of ICTA (authorised unit trusts), in subsection (1A) (rate of corporation tax in relation to such trusts), for "and sections 13, 13AA and 13AB shall not apply" substitute " and section 13 shall not apply ".

(5) In section 468A of ICTA (open-ended investment companies), in subsection (1) (rate of corporation tax in relation to such companies), for "(and sections 13, 13AA and 13AB shall not apply)" substitute " (and section 13 shall not apply) ".

(6) In paragraph 1(a) of Schedule 12 to FA 1989 (provision of information for the purposes of close companies provisions), for "13 to 13A" substitute " 13, 13ZA, 13A ".

(7) In paragraph 8(1) of Schedule 18 to FA 1998 (tax calculation in company tax return), in the second step, omit "or 13AA(2)">.

(8) The amendments made by this section have effect for the financial year 2006 and subsequent financial years (but see also subsections (9) to (11)).

(9) In the case of an accounting period (a "straddling period")—
   (a) beginning before 1st April 2006, and
   (b) ending on or after that date,

   sections 13AA and 13AB of, and Schedule A2 to, ICTA ("the repealed provisions") apply as if the different parts of the straddling period falling in the different financial years were separate accounting periods.

(10) Where the rate of corporation tax charged on a company's basic profits for any such separate accounting period ending with 31st March 2006 is determined in accordance with any of the repealed provisions, section 13 of ICTA (small companies' relief) also so applies.

(11) For the purpose of treating different parts of the straddling period as separate accounting periods in accordance with subsections (9) and (10), the profits and basic profits of the straddling period are to be apportioned between those separate accounting periods.

CHAPTER 2

RELIEFS FOR BUSINESS

Group relief

27 Group relief where surrendering company not resident in UK

Schedule 1 (which makes provision in relation to group relief where the surrendering company is not resident in the United Kingdom) has effect.

Research and development

[F1]28 Relief for research and development: subjects of clinical trials

. . . . . .

Textual Amendments

F1 S. 28 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

29 Claims for relief for research and development

Schedule 3 (which amends Schedule 18 to FA 1998 in connection with claims for tax relief for expenditure on research and development) has effect.

Capital allowances

[F2]30 Temporary increase in amount of first-year allowances for small enterprises

. . . . . .

Textual Amendments

F2 S. 30 omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), **s. 75(4)(b)**

CHAPTER 3

FILMS AND SOUND RECORDINGS

Modifications etc. (not altering text)

C1 Pt. 3 Ch. 3 applied (with modifications) (29.3.2007) by The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 (S.I. 2007/1050), **reg. 3-12** (with effect reg. 1(2)) (as amended by Corporation Tax Act 2009 (c. 4), Sch. 2 para. 131)

C2 Pt. 3 Ch. 3 power to apply (with modifications) conferred (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 2 para. 130** (with Sch. 2 Pts. 1, 2)

Introductory

F3 31 Meaning of "film" and related expressions

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 32 Meaning of "film production company"

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 33 Meaning of "film-making activities" etc

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 34 Meaning of "production expenditure" and related expressions

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 35 Meaning of "UK expenditure"

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 36 Meaning of "qualifying co-production" and "co-producer"

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Taxation of activities of film production company

F3 37 Taxation of activities of film production company

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Film tax relief

F3 38 Films qualifying for film tax relief

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F3 39 Conditions of relief: intended theatrical release

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

[F3]40 Conditions of relief: British film

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

[F3]41 Conditions of relief: UK expenditure

. . . . . .

Textual Amendments

F3 Ss. 31-41 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 676, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

42 Film tax relief: further provisions

(1) Schedule 5 to this Act contains further provisions about film tax relief.

(2) In that Schedule—

[F4] . . . . . .

Part 2 provides for the certification of British films for the purposes of the relief;

Part 3 makes provision for claims for the relief;

[F4] . . . . . .

Textual Amendments

F4 Words in s. 42(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 677(a), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Film losses

[F5]43 Films: restriction on use of losses while film in production

. . . . . .

Textual Amendments

F5 Ss. 43-45 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 678, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

[F5]44 Films: use of losses in later periods

. . . . . .

Textual Amendments

F5 Ss. 43-45 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 678, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

[F5]45 Films: terminal losses

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Textual Amendments

F5 Ss. 43-45 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 678, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Films: withdrawal of existing reliefs

46 Films: withdrawal of existing reliefs (corporation tax)

(1) Sections 40A to 40D of F(No.2)A 1992 (treatment of expenditure on production or acquisition of film) do not apply—

(a) to production expenditure on a film that commences principal photography on or after **[**[F6]1st January 2007**]**;

(b) to acquisition expenditure—

(i) on a film that commences principal photography on or after **[**[F6]1st January 2007**]**, or

(ii) that is incurred on or after 1st October 2007 on a film (whenever made).

(2) Section 41 of that Act (preliminary expenditure) does not apply to expenditure incurred after the date on which this Act is passed.

(3) Section 42 of that Act and section 48 of F(No.2)A 1997 (special reliefs for British films) do not apply—

(a) to production expenditure on a film that commences principal photography on or after **[**[F6]1st January 2007**]**;

(b) to acquisition expenditure—

(i) on a film that commences principal photography on or after **[**[F6]1st January 2007**]**, or

(ii) that is incurred on or after 1st October 2007.

(4) References in this section to expenditure on the acquisition of a film, or to sums received from the disposal of a film, are to expenditure on the acquisition of, or sums received from the disposal of, the original master version of the film.

(5) For this purpose—

(a) "original master version" means the original negative, tape or disc;

(b) references to the original master version of a film include the original master version of the film soundtrack (if any);

(c) references to the original master version include any rights in the original master version that are held or acquired with it.

[[F7](6) The provisions of sections 1181 to 1187 of CTA 2009 apply for the purposes of this section as if this section were contained in Part 15 of that Act.**]**

Textual Amendments

F6 Words in s. 46(1)(a)(b)(i),(3)(a)(b)(i) substituted (29.12.2006) by The Finance Act 2006, Section 53(2) (Films and Sound Recordings: Power to alter Dates) Order 2006 (S.I. 2006/3265), {art. 2}

F7 S. 46(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 679** (with Sch. 2 Pts. 1, 2)

47 Films: withdrawal of existing reliefs (income tax)

(1) Sections 134 and 135 of ITTOIA 2005 (treatment of expenditure on production or acquisition of film) do not apply—

(a) to production expenditure on a film that commences principal photography on or after **[**[F8]1st January 2007**]** ;

(b) to acquisition expenditure—

(i) on a film that commences principal photography on or after **[**[F8]1st January 2007**]**, or

(ii) that is incurred on or after 1st October 2007 on a film (whenever made).

(2) Section 137 of that Act (preliminary expenditure) does not apply to expenditure incurred after the date on which this Act is passed.

(3) Sections 138 to 144 of that Act (special reliefs for British films) do not apply—

(a) to production expenditure on a film that commences principal photography on or after **[**[F8]1st January 2007**]**;

(b) to acquisition expenditure—

(i) on a film that commences principal photography on or after **[**[F8]1st January 2007**]**, or

(ii) that is incurred on or after 1st October 2007.

(4) References in this section to expenditure on the acquisition of a film, or to sums received from the disposal of a film, are to expenditure on the acquisition of, or sums received from the disposal of, the original master version of the film.

(5) For this purpose—

(a) "original master version" means the original negative, tape or disc;

(b) references to the original master version of a film include the original master version of the film soundtrack (if any);

(c) references to the original master version include any rights in the original master version that are held or acquired with it.

[[F9](6) The provisions of sections 1181 to 1187 of CTA 2009 apply for the purposes of this section as if this section were contained in Part 15 of that Act.**]**

Textual Amendments

F8 Words in s. 47(1)(a)(b)(i)(3)(a)(b)(i) substituted (29.12.2006) by The Finance Act 2006, Section 53(2) (Films and Sound Recordings: Power to alter Dates) Order 2006 (S.I. 2006/3265), {art. 2}

F9 S. 47(6) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 679** (with Sch. 2 Pts. 1, 2)

Corporation tax treatment of sound recordings

F10 48 Sound recordings: revenue nature of expenditure

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Textual Amendments

F10 Ss. 48-50 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 680, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F10 49 Sound recordings: allocation of expenditure

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Textual Amendments

F10 Ss. 48-50 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 680, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F10 50 Sound recordings: interpretation

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Textual Amendments

F10 Ss. 48-50 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 680, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Supplementary provisions

F11 51 Corporation tax: films and sound recordings as intangible fixed assets

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Textual Amendments

F11 S. 51 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

[F12]52 Films: application of provisions to certain films already in production

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Textual Amendments

F12 S. 52 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 681, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

53 Films and sound recordings: commencement and power to alter dates

(1) The provisions of this Chapter come into force on such day as the Treasury may appoint by order.

[F13](2) . . . . . .

Subordinate Legislation Made

P1 S. 53(1) power fully exercised: 1.1.2007 appointed by {S.I. 2006/3399}, art. 2

Textual Amendments

F13 S. 53(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 682, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

CHAPTER 4

CHARITIES

54 Transactions with substantial donors

(1) After section 506 of ICTA insert—

"506A Transactions with substantial donors

(1) This section applies to the following transactions—

(a) the sale or letting of property by a charity to a substantial donor,

(b) the sale or letting of property to a charity by a substantial donor,

(c) the provision of services by a charity to a substantial donor,

(d) the provision of services to a charity by a substantial donor,

(e) an exchange of property between a charity and a substantial donor,

(f) the provision of financial assistance by a charity to a substantial donor,

(g) the provision of financial assistance to a charity by a substantial donor, and

(h) investment by a charity in the business of a substantial donor.

(2) For the purposes of this section a person is a substantial donor to a charity in respect of a chargeable period if—

(a) the charity receives relievable gifts of at least £25,000 from him in a period of 12 months in which the chargeable period wholly or partly falls, or

(b) the charity receives relievable gifts of at least £100,000 from him in a period of six years in which the chargeable period wholly or partly falls;

and if a person is a substantial donor to a charity in respect of a chargeable period by virtue of paragraph (a) or (b), he is a substantial donor to the charity in respect of the following five chargeable periods.

(3) A payment made by a charity to a substantial donor in the course of or for the purposes of a transaction to which this section applies shall be treated for the purposes of section 505 as non-charitable expenditure.

(4) If the terms of a transaction to which this section applies are less beneficial to the charity than terms which might be expected in a transaction at arm's length, the charity shall be treated for the purposes of section 505 as incurring non-charitable expenditure equal to that amount which the Commissioners for Her Majesty's Revenue and Customs determine as the cost to the charity of the difference in terms.

(5) A payment by a charity of remuneration to a substantial donor shall be treated for the purposes of section 505 as non-charitable expenditure unless it is remuneration, for services as a trustee, which is approved by—

(a) the Charity Commission,

(b) another body with responsibility for regulating charities by virtue of legislation having effect in respect of any Part of the United Kingdom, or

(c) a court.

506B Section 506A: exceptions

(1) Section 506A shall not apply to a transaction within section 506A(1)(b) or (d) if the Commissioners for Her Majesty's Revenue and Customs determine that the transaction—

(a) takes place in the course of a business carried on by the substantial donor,

(b) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and

(c) is not part of an arrangement for the avoidance of any tax.

(2) Section 506A shall not apply to the provision of services to a substantial donor if the Commissioners determine that the services are provided—

(a) in the course of the actual carrying out of a primary purpose of the charity, and

(b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.

(3) Section 506A shall not apply to the provision of financial assistance to a charity by a substantial donor if the Commissioners determine that the assistance—

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

(a) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and
(b) is not part of an arrangement for the avoidance of any tax.

(4) Section 506A shall not apply to investment by a charity in the business of a substantial donor where the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.

(5) A disposal at an undervalue to which section 587B applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(6) A disposal at an undervalue to which section 257(2) of the 1992 Act (gifts of chargeable assets) applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(7) In the application of section 506A payments by a charity, or benefits arising to a substantial donor from a transaction, shall be disregarded in so far as they—
(a) relate to a donation by the donor, and
(b) do not exceed the relevant limit in relation to the donation for the purposes of section 339 or section 25 of the Finance Act 1990.

(8) A company which is wholly owned by a charity within the meaning of section 339(7AB) shall not be treated as a substantial donor in relation to the charity which owns it (or any of the charities which own it).

(9) A registered social landlord or housing association shall not be treated as a substantial donor in relation to a charity with which it is connected; and for that purpose—
(a) "registered social landlord or housing association" means a body entered on a register maintained under—
(i) section 1 of the Housing Act 1996,
(ii) section 57 of the Housing (Scotland) Act 2001, or
(iii) Article 14 of the Housing (Northern Ireland) Order 1992, and
(b) a body and a charity are connected if (and only if)—
(i) the one is wholly owned, or subject to control, by the other, or
(ii) both are wholly owned, or subject to control, by the same person.

506C Sections 506A and 506B: supplemental

(1) A gift is "relievable" for the purposes of section 506A(2) if relief is available in respect of it under—
(a) section 83A,
(b) section 339,
(c) sections 587B and 587C,
(d) section 25 of the Finance Act 1990 (individual gift aid),
(e) section 257 of the 1992 Act (gifts of chargeable assets),
(f) section 63 of the Capital Allowances Act (gifts of plant and machinery),
(g) sections 713 to 715 of ITEPA 2003 (payroll giving),

(h) section 108 of ITTOIA 2005 (gifts of trading stock), or

(i) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts).

(2) A charity is treated as incurring expenditure in accordance with section 506A(4) at such time (or times) as the Commissioners determine.

(3) Section 506A applies to a transaction entered into in a chargeable period with a person who is a substantial donor in respect of that period, even if it was not until after the transaction was entered into that he first satisfied the definition of "substantial donor" in respect of that period.

(4) Either or both of subsections (3) and (4) of section 506A may be applied to a single transaction; but any amount of non-charitable expenditure which a charity is treated as incurring under section 506A(3) in respect of a transaction shall be deducted from any amount which it would otherwise be treated as incurring under section 506A(4) in respect of the transaction.

(5) Two or more connected charities shall be treated as a single charity for the purposes of section 506A and 506B and this section; and for this purpose "connected" means connected in a matter relating to the structure, administration or control of a charity.

(6) Where remuneration is paid otherwise than in money, section 506A(5) shall apply as to a payment in money of the amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.

(7) In sections 506A and 506B and this section—

(a) a reference to a substantial donor or other person includes a reference to a person connected with him within the meaning of section 839,

(b) "financial assistance" includes, in particular—

(i) the provision of a loan, guarantee or indemnity, and

(ii) entering into alternative finance arrangements within the meaning of section 46 of the Finance Act 2005, and

(c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.

(8) On an appeal against an assessment the Special Commissioners may review a decision of the Commissioners in connection with section 506A.

(9) The Treasury may by regulations vary a sum, or a period of time, specified in section 506A(2)."

(2) This section shall have effect in relation to transactions occurring on or after 22nd March 2006; and for that purpose a person may satisfy the definition of "substantial donor" by reference to gifts made at any time.

(3) But this section shall not have effect in relation to a transaction entered into in pursuance of a contract made before 22nd March 2006 (otherwise than in pursuance of a variation on or after that date).

55 Non-charitable expenditure

(1) For section 505(3) to (8) of ICTA (charities: exemption: non-qualifying expenditure) substitute—

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

"(3) In subsections (4) to (7)—

(a) "charitable expenditure" has the meaning given by section 506,

(b) "relief" means relief or exemption under—

(i) subsection (1) above,

(ii) section 56(3)(c) above,

(iii) section 761(6) below,

(iv) section 256 of the 1992 Act (charities), or

(v) section 46 of the Finance Act 2000 (small trades),

(c) "relievable income and gains" means income and gains which would be eligible for relief or exemption under any of those provisions (disregarding subsections (4) to (6)), and

(d) "total income and gains" means the aggregate of—

(i) relievable income and gains,

(ii) income and gains, other than relievable income and gains, chargeable to tax, and

(iii) donations, legacies and other similar receipts that are not chargeable to tax.

(4) If a charity incurs (or is treated as incurring) non-charitable expenditure in a chargeable period, relief shall be disallowed in respect of such amount of relievable income and gains as equals the amount of the non-charitable expenditure.

(5) If in a chargeable period a charity's non-charitable expenditure exceeds its total income and gains the excess shall be treated as non-charitable expenditure of the previous period for the purposes of subsection (4); and any necessary adjustments shall be made, whether by making assessments or otherwise.

(6) Subsection (5) may apply to a chargeable period wholly or partly as a result of the application of that subsection in respect of a later period; but no excess of non-charitable expenditure shall be treated as non-charitable expenditure of a chargeable period which ended more than six years before the end of the period in which the expenditure was actually incurred.

(7) Where an amount of a charity's relievable income and gains is disallowed for relief by subsection (4) (whether or not as a result of the application of subsection (5))—

(a) the charity may by notice to the Board specify which items of income or gains are to be disallowed, but

(b) if the Board requires the charity to give a notice under paragraph (a) and the charity fails to comply within the period of 30 days beginning with the date on which the requirement is imposed, the Board shall determine which items to disallow."

(2) In section 506 of ICTA (section 505: supplemental)—

(a) in subsection (1) for the definitions of "qualifying expenditure" and "non-qualifying expenditure" substitute—

""charitable expenditure" means (subject to subsections (3) to (5) below) expenditure which is exclusively for charitable purposes.",

(b) in subsection (2) omit "and subsection (1) above,"

(c) in subsection (3) for "qualifying expenditure" substitute " charitable expenditure ",

(d) in subsection (4) for "non-qualifying expenditure" substitute " non-charitable expenditure ",

(e) in subsection (5) for "non-qualifying expenditure" substitute " non-charitable expenditure ",

(f) omit subsection (6), and

(g) for the heading, substitute " Charitable and non-charitable expenditure ".

(3) Part III of Schedule 20 to ICTA (apportionment of non-qualifying expenditure to earlier chargeable periods) shall cease to have effect.

(4) In section 256(1) of TCGA 1992 (charities) for "section 505(3)" substitute " section 505(4) ".

(5) This section shall have effect in relation to chargeable periods beginning on or after 22nd March 2006; and—

(a) section 505(5) and (6) of ICTA as substituted by subsection (1) above may cause an amount to be treated as non-charitable expenditure of a chargeable period beginning before that date, but

(b) the amount of relief or exemption to be disallowed in respect of a chargeable period beginning before that date shall not exceed the amount which would have been disallowed in respect of that period if sections 505 and 506 of ICTA (and Part III of Schedule 20) had not been amended by this section.

56 Trade profits

(1) In section 505 of ICTA (charities: exemptions) after subsection (1A) insert—

"(1B) For the purpose of subsection (1)(e)—

(a) where a trade is exercised partly in the course of the actual carrying out of a primary purpose of the charity and partly otherwise, each part shall be treated as a separate trade (for which purpose reasonable apportionment of expenses and receipts shall be made), and

(b) where the work in connection with the trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried on by beneficiaries and the other part shall be treated as separate trades (for which purpose reasonable apportionment of expenses and receipts shall be made)."

(2) Subsection (1) shall have effect in respect of chargeable periods beginning on or after 22nd March 2006.

57 Gift aid relief for companies wholly owned by one or more charities

(1) Section 339 of ICTA (charges on income: donations to charity) is amended as follows.

(2) In subsection (1)(a) (distributions, other than those within section 209(4), not qualifying donations) after "distribution" insert " (but see subsections (1A) and (1B) below) ".

(3) After subsection (1) insert—

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

"(1A) In determining whether a payment is to be regarded as a distribution for the purposes of subsection (1)(a) above, the words in section 209(5) from "; and any amount" to the end are to be disregarded.

(1B) A payment (other than a dividend) made by a company which is wholly owned by a charity is not to be regarded as a distribution for the purposes of subsection (1)(a) above.".

(4) The amendments made by this section have effect in relation to payments made on or after 1st April 2006.

58 Extension of restrictions on gift aid payments by close companies

(1) Section 339 of ICTA (charges on income: donations to charity) is amended as follows.

(2) In subsection (3B) (payment made by a close company not qualifying donation if subject to repayment etc) for "close company" substitute " company ".

(3) In subsection (3E) (payment made by a close company not qualifying donation if it involves acquisition of property by charity, otherwise than by way of gift, from the company or a connected person) for "close company" substitute " company ".

(4) The amendments made by this section have effect in relation to payments made on or after 1st April 2006.

CHAPTER 5

PERSONAL TAXATION

Cars

59 Cars with a CO_2 emissions figure

(1) Section 139 of ITEPA 2003 (car with a CO_2 emissions figure: the appropriate percentage) is amended as follows.

(2) In subsection (1) (appropriate percentage dependent on whether emissions figure exceeds lower threshold) for the words from "whether" to the end of the subsection substitute "whether—

(a) the car is a qualifying low emissions car for that year, or

(b) the car's CO_2 emissions figure exceeds the lower threshold for that year."

(3) After subsection (1) insert—

"(1A) A car is a qualifying low emissions car for any year if—

(a) it has a low CO_2 emissions figure for that year, and

(b) it is not an electrically propelled vehicle, within the meaning of section 140.

(1B) If the car is a qualifying low emissions car for the year, the appropriate percentage is 10%.".

(4) For subsection (2) (emissions figure does not exceed lower threshold) substitute—

"(2) If—

(a) the car is not a qualifying low emissions car for the year, but

(b) its CO_2 emissions figure does not exceed the lower threshold for the year,

the appropriate percentage for the year is 15% ("the basic percentage").".

(5) After subsection (3) insert—

"(3A) A car has a low CO_2 emissions figure for a year if its CO_2 emissions figure does not exceed the limit for that year in the following Table—

TABLE

Tax year	***Limit (in g/km)***
2008-09 and subsequent tax years	120".

[F14](6) . . . . . .

(7) After subsection (5) (rounding down of emissions figures to nearest multiple of 5) insert—

"(5A) Subsection (5) does not apply for the purpose of determining whether a car has a low CO_2 emissions figure for a year.".

(8) In section 170 of ITEPA 2003 (orders etc relating to the Chapter) before subsection (3) (order varying lower threshold) insert—

"(2A) The Treasury may by order provide for a limit different from that specified in the Table in section 139(3A) (car with a low CO_2 emissions figure) to apply for tax years beginning on or after 6th April 2009 or such later date as may be specified in the order.".

(9) If a qualifying low emissions car is a car which, within the meaning of regulations under section 170(4) of ITEPA 2003,—

(a) is capable of being propelled by petrol and road fuel gas,

(b) is capable of being propelled by electricity and petrol, or

(c) is propelled solely by road fuel gas,

no reduction in the appropriate percentage is to be made by virtue of any such regulations made before 22nd March 2006.

(10) Subsections (2) to (5) and (7) to (9) have effect for the tax year 2008-09 and subsequent tax years.

Textual Amendments

F14 S. 59(6) omitted (with effect in accordance with s. 47(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), **s. 47(2)(b)**

Mobile telephones and computers

60 Mobile telephones

(1) In section 266(2) of ITEPA 2003 (exemption of non-cash vouchers for exempt benefits), insert at the end "or

(d) section 319 (mobile telephones)."

(2) In section 267(2) of that Act (exemption of credit-tokens used for exempt benefits), after paragraph (f) insert—

"(g) section 319 (mobile telephones)."

(3) For section 319 of that Act (employment income: exemption for mobile telephones) substitute—

"**319 Mobile telephones**

(1) No liability to income tax arises by virtue of section 62 (general definition of earnings) or Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision of one mobile telephone for an employee without any transfer of property in it.

(2) In this section "mobile telephone" means telephone apparatus which—

(a) is not physically connected to a land-line, and

(b) is not used only as a wireless extension to a telephone which is physically connected to a land-line,

or any thing which may be used in such apparatus for the purpose of gaining access to, or using, a public electronic communications service.

(3) In this section the reference to the provision of a mobile telephone includes a reference to the provision, together with the mobile telephone provided, of access to, or the use of, a public electronic communications service by means of one mobile telephone number.

(4) For the purposes of subsection (2) "telephone apparatus" means wireless telegraphy apparatus designed or adapted for the primary purpose of transmitting and receiving spoken messages and used in connection with a public electronic communications service."

(4) This section has effect for the year 2006-07 and subsequent years of assessment.

(5) But the amendment made by subsection (3) does not cause any liability to income tax to arise in respect of the provision of a mobile telephone for an employee, or a member of an employee's family or household, if the mobile telephone was first provided to him before 6th April 2006.

61 Computer equipment

(1) Omit section 320 of ITEPA 2003 (employment income: limited exemption for computer equipment).

(2) This section has effect for the year 2006-07 and subsequent years of assessment.

(3) But it does not cause any liability to income tax to arise in respect of the provision of computer equipment by making it available to an employee, or a member of an employee's family or household, if the computer equipment was first made available to him before 6th April 2006.

Eye care

62 Exemption for employees' eye tests and special glasses

(1) Part 4 of ITEPA 2003 (employment income: exemptions) is amended as follows.

(2) In Chapter 11 (miscellaneous exemptions), before section 321 (and the cross-heading "*Awards and gifts*") insert—

"Eye tests and special corrective appliances

320A **Eye tests and special corrective appliances**

(1) No liability to income tax arises in respect of the provision for an employee of—
  (a) an eye and eyesight test, or
  (b) special corrective appliances that an eye and eyesight test shows are necessary,
  if conditions A and B are met.

(2) Condition A is that the provision of the test or appliances is required by regulations made under the Health and Safety at Work etc. Act 1974.

(3) Condition B is that tests and appliances of the kind mentioned in subsection (1) are made available generally to those employees of the employer in question for whom they are required to be provided by the regulations."

(3) In section 266 (exemption of non-cash vouchers for exempt benefits), at the end of subsection (3) insert ", or
  (f) section 320A (eye tests and special corrective appliances)."

(4) In section 267 (exemption of credit-tokens used for exempt benefits), at the end of subsection (2) insert ", and
  (h) section 320A (eye tests and special corrective appliances)."

(5) This section has effect for the year 2006-07 and subsequent years of assessment.

Vouchers and tokens

63 Power to exempt use of vouchers or tokens to obtain exempt benefits

In Chapter 4 of Part 3 of ITEPA 2003 (taxable benefits: vouchers and credit-tokens), after section 96 insert—

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

"**96A Power to exempt use of non-cash vouchers or credit-tokens to obtain exempt benefits**

(1) The Treasury may by regulations provide for exemption from any liability that would otherwise arise by virtue of this Chapter in respect of—

(a) non-cash vouchers which are or can be used to obtain specified exempt benefits, or which evidence an employee's entitlement to specified exempt benefits;

(b) credit-tokens which are used to obtain specified exempt benefits.

(2) In this section—

"exempt benefit" means a benefit the direct provision of which is exempted from liability to income tax by a provision of Part 4 (employment income: exemptions), and

"specified" means specified in the regulations.

(3) Regulations under this section may operate by amending section 266 (exemption of non-cash vouchers for exempt benefits) or section 267 (exemption of credit-tokens used for exempt benefits)."

Holocaust victims

64 Payments to or in respect of victims of National-Socialist persecution

(1) In section 369 of ITTOIA 2005 (charge to tax on interest), in subsection (3) (non-exhaustive list of exemptions), in paragraph (e) (exemptions under sections 749 to 756)—

(a) for "756" substitute " 756A ", and

(b) for "and interest on certain foreign currency securities)" substitute " , certain foreign currency securities and interest on certain deposits of victims of National-Socialist persecution) ".

(2) After section 756 of ITTOIA 2005 (which securities and loans are foreign currency ones for section 755) insert—

"**756A Interest on certain deposits of victims of National-Socialist persecution**

(1) No liability to income tax arises in respect of interest which is paid—

(a) to or in respect of a victim of National-Socialist persecution,

(b) under a qualifying compensation scheme, and

(c) for a qualifying purpose in respect of a qualifying deposit of the victim.

(2) A scheme is a qualifying compensation scheme if—

(a) it is constituted (whether under the law of any part of the United Kingdom or elsewhere) by an instrument in writing, and

(b) the purpose of the scheme, or one of its purposes, is to make payments of interest to or in respect of victims of National-Socialist persecution for qualifying purposes in respect of qualifying deposits.

(3) Interest is paid for a qualifying purpose in respect of a deposit if—
  (a) it is paid for meeting a liability in respect of interest on the deposit, or
  (b) it is paid for compensating for the effects of inflation on the deposit.

(4) In relation to a victim of National-Socialist persecution, a deposit is a qualifying deposit if it was made—
  (a) by, or on behalf of, the victim, and
  (b) on or before 5th June 1945.

(5) In this section "deposit" has the meaning given by section 481(3) of ICTA.".

(3) In section 783 of ITTOIA 2005 (general disregard of exempt income for income tax purposes)—
  (a) for subsection (2) (exception to general disregard) substitute—

"(2) There are exceptions to this in the following cases.

(2A) Interest on deposits in ordinary accounts with the National Savings Bank which is exempt under this Part from every charge to income tax is not to be ignored for the purpose of providing information.

(2B) Interest paid to or in respect of victims of National-Socialist persecution which is so exempt is not to be ignored for the purposes of sections 17 and 18 of TMA 1970 (information provisions relating to interest).", and

  (b) in subsection (3) (subsection (2) without prejudice to other exceptions) for "This express exception to subsection (1) is" substitute " These express exceptions to subsection (1) are ".

(4) After section 268 of TCGA 1992 (decorations for valour or gallant conduct) insert—

"**268A Victims of National-Socialist persecution**

(1) A gain accruing on a disposal is not a chargeable gain if it accrues on—
  (a) a disposal of the right to receive the whole or any part of a qualifying payment in respect of National-Socialist persecution, or
  (b) a disposal of an interest in any such right.

(2) A payment is a qualifying payment in respect of National-Socialist persecution if it is payable as mentioned in paragraphs (a) to (c) of section 756A(1) of ITTOIA 2005 (income tax exemption for payments to or in respect of victims of National-Socialist persecution).

(3) In this section "interest", in relation to any right, means an interest as a co-owner of the right.

(4) It does not matter—
  (a) whether the right is owned jointly or in common, or
  (b) whether or not the interests of the co-owners are equal.".

(5) If at any time before claims could have been made under any qualifying compensation scheme—
  (a) a person beneficially entitled to a qualifying deposit has died, and

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

(b) no information in respect of that deposit was contained in any account relating to that deceased person under any provision of IHTA 1984,

that deposit is to be ignored for all purposes of IHTA 1984.

(6) For this purpose "qualifying compensation scheme" and "qualifying deposit" have the same meaning as in section 756A of ITTOIA 2005.

(7) Subsection (2) has effect (and is deemed always to have had effect)—

(a) for the year 1996-97, and

(b) subsequent years of assessment.

(8) Subsection (4) has effect (and is deemed always to have had effect) in relation to disposals made on or after 6th April 1996; but no loss accruing on a disposal made before 6th April 2006 is, as a result of that subsection, to cease to be an allowable loss.

(9) In relation to any time before 6th April 2005 (the commencement of ITTOIA 2005)—

(a) the section inserted by subsection (2) is to be treated as if it were inserted into ICTA (and as if, in subsection (5) of that section, "of ICTA" were omitted), and

(b) any reference to that section in any enactment is to be read accordingly.

(10) In relation to the year 2005-06 or any earlier year of assessment, all such adjustments are to be made as are required to give effect to the exemptions conferred as a result of this section.

(11) But the adjustments are to be made only if the person entitled to the exemption makes a claim for the exemption on or before 31st January 2012.

(12) The adjustments may be made by discharge or repayment of tax, the making of an assessment or otherwise.

CHAPTER 6

THE LONDON OLYMPIC GAMES AND PARALYMPIC GAMES

65 London Organising Committee

(1) In this section "LOCOG" means the private company limited by guarantee incorporated on 22nd October 2004 with the Company Number 05267819 and with the name The London Organising Committee of the Olympic Games Limited.

(2) LOCOG shall be exempt from corporation tax.

(3) **[**[F15]The duties to deduct under Chapters 6, 7, 10 and 14 of Part 15 of ITA 2007 (deduction of income tax at source)**]** shall not apply to payments to LOCOG.

(4) A claim may be made for any repayment of income tax required as a result of an exemption conferred by this section.

(5) The Treasury may by regulations provide for subsections (2) to (4) to apply to a wholly-owned subsidiary of LOCOG (within the meaning of section 736 of the Companies Act 1985 (c. 6)) as they apply to LOCOG.

(6) Subsection (7) applies if it appears to the Treasury—

(a) that LOCOG has been or may have been, or is or may be, directly or indirectly connected with another person, or

(b) has been or may have been, or is or may be, acting in association or co-operation with another person (whether by virtue of part-ownership, partnership, membership of a group or consortium or in any other way).

(7) The Treasury may make regulations—

(a) restricting the application of a provision of this section to a specified extent;

(b) removing or restricting an exemption or relief under an enactment relating to corporation tax, income tax or capital gains tax;

(c) preventing a loss or expense of a specified kind from being used or treated in a specified way for purposes of corporation tax, income tax or capital gains tax;

(d) wholly or to a specified extent preventing an allowance from being claimed for purposes of corporation tax, income tax or capital gains tax;

(e) providing for a transfer of property to be disregarded, or treated in a specified way, for purposes of corporation tax, income tax or capital gains tax;

(f) providing for specified action taken by LOCOG or the other person to have, or not to have, a specified effect for purposes of corporation tax, income tax or capital gains tax;

(g) providing for an enactment relating to the treatment of groups of companies for purposes of corporation tax, income tax or capital gains tax to be wholly or partly disapplied or to be applied with modifications;

(h) making any other provision which appears to the Treasury to be expedient for the purpose of preventing this section from being used or relied upon otherwise than in connection with the functions of LOCOG under the Host City Contract;

and provision made under any of paragraphs (b) to (h) may relate to LOCOG or to the other person mentioned in subsection (6).

(8) If it appears to the Treasury that LOCOG has undertaken, is undertaking or may undertake activities other than in pursuance of the Host City Contract, the Treasury may make regulations restricting the application of a provision of this section to a specified extent.

(9) Regulations under subsection (5) may include provision of a kind similar to that which may be made under subsection (7) or (8).

Textual Amendments

F15 Words in s. 65(3) substituted (6.4.2007 with effect as mentioned in s. 1034(1)) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 612** (with transitional provisions and savings in Sch. 2)

66 Section 65: supplementary

(1) Regulations under section 65(5) to (8)—

(a) may make provision which applies generally or only in specified cases or circumstances,

(b) may make different provision for different cases or circumstances,

(c) may have retrospective effect, and

(d) may include incidental, consequential or transitional provision.

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

(2) Regulations under section 65 shall be made by statutory instrument.

(3) Regulations under section 65(5)—

(a) shall be subject to annulment in pursuance of a resolution of the House of Commons, or

(b) if they include provision by virtue of section 65(9), may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(4) Regulations under section 65(7) or (8) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(5) In section 65 "the Host City Contract" has the meaning given by section 1 of the London Olympic Games and Paralympic Games Act 2006.

(6) Section 65 shall be treated as having come into force on 22nd October 2004.

(7) The Treasury may by order made by statutory instrument repeal section 65 and this section.

67 International Olympic Committee

(1) The Treasury may make regulations—

(a) providing for the International Olympic Committee to be treated for the purposes of corporation tax as not having a permanent establishment in the United Kingdom;

(b) providing for the International Olympic Committee not to be chargeable to income tax or capital gains tax;

(c) disapplying **[**[F16]the duties to deduct under Chapters 3, 6, 7, 10 and 14 of Part 15 of ITA 2007 (deduction of income tax at source)**]** to payments to the International Olympic Committee.

(2) The Treasury may make regulations—

(a) providing for a specified person or class of person appearing to the Treasury to be owned or controlled by the International Olympic Committee to be treated for the purposes of corporation tax as not having a permanent establishment in the United Kingdom;

(b) providing for a specified person or class of person appearing to the Treasury to be owned or controlled by the International Olympic Committee not to be chargeable to income tax or capital gains tax;

(c) disapplying **[**[F17]the duties to deduct under Chapters 3, 6, 7, 10 and 14 of Part 15 of ITA 2007 (deduction of income tax at source)**]** to payments to a specified person or class of person appearing to the Treasury to be owned or controlled by the International Olympic Committee.

(3) Regulations under this section—

(a) may make provision which applies generally or only in specified cases or circumstances,

(b) may make different provision for different cases or circumstances,

(c) may have retrospective effect, and

(d) may include incidental, consequential or transitional provision.

(4) Regulations under this section—

(a) shall be made by statutory instrument, and
(b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

(5) A claim may be made for any repayment of income tax required as a result of an exemption conferred under this section.

Textual Amendments

F16 Words in s. 67(1)(c) substituted (6.4.2007 with effect as mentioned in s. 1034(1)) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 613(a)** (with transitional provisions and savings in Sch. 2)

F17 Words in s. 67(b)(c) substituted (6.4.2007 with effect as mentioned in s. 1034(1)) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 613(b)** (with transitional provisions and savings in Sch. 2)

68 Competitors and staff

(1) The Treasury may make regulations—
(a) exempting specified classes of person from income tax in respect of specified classes of income arising from participation in London Olympic events;
(b) providing for specified classes of activity undertaken in connection with London Olympic events to be disregarded for purposes of corporation tax, income tax or capital gains tax;
(c) providing for specified classes of activity in connection with London Olympic events to be disregarded in determining for fiscal purposes whether a person has a permanent establishment in the United Kingdom;
(d) disapplying **[**[F18]the duties to deduct under Chapters 6, 7, 10 and 14 of Part 15 of ITA 2007 (deduction of income tax at source)**]** in consequence of provision made under paragraphs (a) to (c) above.

(2) The regulations may specify classes of person wholly or partly by reference to—
(a) residence outside the United Kingdom, determined in such manner as the regulations may provide;
(b) documents issued or authority given by such persons exercising functions in connection with the London Olympics as the regulations may provide.

(3) Regulations under this section—
(a) may make provision which applies generally or only in specified cases or circumstances,
(b) may make different provision for different cases or circumstances, and
(c) may include incidental, consequential or transitional provision.

(4) Regulations under this section—
(a) shall be made by statutory instrument, and
(b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

(5) In this section "London Olympic event" and "the London Olympics" have the meaning given by section 1 of the London Olympic Games and Paralympic Games Act 2006.

Textual Amendments

F18 Words in s. 68(1)(d) substituted (6.4.2007 with effect as mentioned in s. 1034(1)) by Income Tax Act 2007 (c. 3), ss. 1027, 1034, **Sch. 1 para. 614** (with transitional provisions and savings in Sch. 2)

CHAPTER 7

CHARGEABLE GAINS

Capital losses

69 . . . . . .

F19 . . . . . .

Textual Amendments

F19 S. 69 repealed (with effect in accordance with s. 27 of the amending Act) by Finance Act 2007 (c. 11), **s. 114**, {Sch. 27 Pt. 2(2) Note}

70 Restrictions on companies buying losses or gains

(1) TCGA 1992 is amended as follows.

(2) After section 184 insert—

"Restrictions on buying losses or gains etc

184A Restrictions on buying losses: tax avoidance schemes

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if—

(a) at any time ("the relevant time") there is a qualifying change of ownership in relation to a company ("the relevant company") (see section 184C),

(b) a loss (a "qualifying loss") accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),

(c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage (see section 184D), and

(d) the advantage involves the deduction of a qualifying loss from any chargeable gains (whether or not it also involves anything else).

(2) A qualifying loss accruing to a company is not to be deductible from chargeable gains accruing to the company unless the gains accrue to the company on a disposal of a pre-change asset.

(3) In this section a "pre-change asset" means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).

(4) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) For the purposes of this section it does not matter—
- (a) whether a qualifying loss accrues before, after or at the relevant time,
- (b) whether a qualifying loss accrues at a time when there are no chargeable gains from which it could be deducted (or could otherwise have been deducted), or
- (c) whether the tax advantage is secured for the company to which a qualifying loss accrues or for any other company.

184B Restrictions on buying gains: tax avoidance schemes

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if—
- (a) at any time ("the relevant time") there is a qualifying change of ownership in relation to a company ("the relevant company") (see section 184C),
- (b) a gain (a "qualifying gain") accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),
- (c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage, and
- (d) the advantage involves the deduction of a loss from a qualifying gain (whether or not it also involves anything else).

(2) In the case of a qualifying gain accruing to a company, a loss accruing to the company is not to be deductible from the gain unless the loss accrues to the company on a disposal of a pre-change asset.

(3) In this section a "pre-change asset" means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).

(4) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) For the purposes of this section it does not matter—
- (a) whether a qualifying gain accrues before, after or at the relevant time,
- (b) whether a qualifying gain accrues at a time when there are no losses which could be deducted (or could otherwise have been deducted) from the gain, or
- (c) whether the tax advantage is secured for the company to which a qualifying gain accrues or for any other company.

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

184C Sections 184A and 184B: meaning of "qualifying change of ownership"

(1) For the purposes of sections 184A and 184B, there is a qualifying change of ownership in relation to a company at any time if any one or more of the following occur at that time—

(a) the company joins a group of companies (see subsections (2) to (5)),

(b) the company ceases to be a member of a group of companies,

(c) the company becomes subject to different control (see subsections (6) to (9)).

(2) Whether a company is a member of a group of companies at any time is determined in accordance with section 170.

(3) But, apart from in the excepted case, nothing in section 170(10) or (10A) is to prevent all the companies of one group from being regarded as joining another group when the principal company of the first group becomes a member of the other group at any time.

(4) The excepted case is the case where—

(a) the persons owning the shares of the principal company of the first group immediately before that time are the same as the persons owning the shares of the principal company of the other group immediately after that time,

(b) the principal company of the other group was not the principal company of any group immediately before that time, and

(c) immediately after that time the principal company of the other group had assets consisting entirely (or almost entirely) of shares of the principal company of the first group.

(5) For this purpose, references to shares of a company are to the shares comprised in the issued share capital of the company.

(6) The general rule is that a company becomes subject to different control at any time if any one or more of the following occur—

(a) a person has control of the company at that time (whether alone or together with one or more others) and the person did not previously have control of the company,

(b) a person has control of the company at that time together with one or more others and the person previously had control of the company alone,

(c) a person ceases to have control of the company at that time (whether the person had control alone or together with one or more others).

(7) The general rule is subject to the following exceptions.

(8) A company does not become subject to different control in any case where it joins a group of companies and the case is the excepted case mentioned above.

(9) A company ("the subsidiary") does not become subject to different control at any time in any case where—

(a) immediately before that time the subsidiary is the 75 per cent. subsidiary of another company, and

(b) (although there is a change in the direct ownership of the subsidiary) that other company continues immediately after that time to own it as a 75 per cent. subsidiary.

184D Sections 184A and 184B: meaning of "tax advantage"

For the purposes of sections 184A and 184B, "tax advantage" means—

(a) relief or increased relief from corporation tax,

(b) repayment or increased repayment of corporation tax,

(c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or

(d) the avoidance of a possible assessment to corporation tax.

184E Sections 184A and 184B: "pre-change assets": basic rules

(1) If—

(a) a company other than the relevant company makes a disposal of an asset, and

(b) the asset has been disposed of at any time after the relevant time by a disposal to which section 171(1) does not apply (a "non-section 171(1) transfer"),

the asset ceases to be regarded as a pre-change asset for the purposes of sections 184A and 184B (but see also subsections (10) and (11)).

(2) But (without affecting the generality of the provision made by the following subsection) if, on a non-section 171(1) transfer,—

(a) an asset would cease to be regarded as a pre-change asset as a result of subsection (1), and

(b) the company making the non-section 171(1) transfer retains any interest in or over the asset,

that interest is to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(3) If—

(a) the relevant company or any other company holds an asset ("the new asset") at or after the relevant time,

(b) the value of the new asset derives in whole or in part from a pre-change asset, and

(c) the new asset is not acquired by the company concerned as a result of a non-section 171(1) transfer,

the new asset is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(4) For this purpose the cases in which the value of an asset may be derived from any other asset include any case where—

(a) assets have been merged or divided,

(b) assets have changed their nature, or

(c) rights or interests in or over assets have been created or extinguished.

(5) If a pre-change asset is "the old asset" for the purposes of section 116 (reorganisations, conversions and reconstructions), "the new asset" for the

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purposes of that section is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(6) If a pre-change asset is the "original shares" for the purposes of sections 127 to 131 (reorganisation or reduction of share capital), the "new holding" for the purposes of those sections is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(7) The following subsection applies if, as a result of the application of a relevant deferral provision in the case of a disposal of a pre-change asset ("the original disposal"),—

(a) a gain or loss that would otherwise accrue to a company does not so accrue, or

(b) any part of any such gain is treated as forming part of a single chargeable gain which does not accrue to the company on the original disposal,

and a gain or loss does, wholly or partly in consequence of the application of that provision in the case of the original disposal, accrue to the company or any other company on a subsequent occasion.

(8) So much of the gain or loss accruing on the subsequent occasion as accrues in consequence of the application of the relevant deferral provision in the case of the original disposal is to be regarded for the purposes of sections 184A and 184B as accruing on a disposal of a pre-change asset (so far as it would not otherwise be so regarded).

(9) A "relevant deferral provision" means any of the following—

(a) section 139 (reconstruction involving transfer of business),

(b) section 140 (postponement of charge on transfer of assets to non-resident company),

(c) section 140A (transfer of a UK trade),

(d) section 140E (merger leaving assets within UK tax charge),

(e) sections 152 and 153 (replacement of business assets),

(f) section 187 (postponement of charge on deemed disposal under section 185).

(10) If—

(a) a pre-change asset of the relevant company is transferred to another company ("the transferee company"),

(b) any of sections 139, 140A and 140E apply to the companies in the case of the asset, and

(c) the transfer of the asset is made directly or indirectly in consequence of, or otherwise in connection with, the arrangements mentioned in section 184A or 184B,

the asset is to be regarded as a "pre-change asset" in the hands of the transferee company for the purposes of sections 184A and 184B.

(11) In such a case, subsection (1) applies as if the reference in paragraph (a) of that subsection to the relevant company were to the transferee company.

184F Sections 184A and 184B: "pre-change assets": pooling rules

(1) This section applies, in the case of any pre-change asset of the relevant company or any pre-change asset of any company which is acquired on a disposal to which section 171(1) applies, if—

(a) the pre-change asset consists of a holding of securities which falls as a result of any provision of Chapter 1 of Part 4 to be regarded as a single asset ("the pre-change pooled asset"), and

(b) as a result of any disposal or acquisition at any time after the relevant time, any securities ("the other securities") would (but for this section) be regarded as forming part of the pre-change pooled asset.

(2) None of the other securities are to be regarded for the purposes of this Act as forming part of the pre-change pooled asset.

(3) But this does not prevent the other securities from being regarded, as a result of any provision of that Chapter, as forming part of or constituting a different, single asset ("the other pooled asset").

(4) Securities of the same class as the other securities which are disposed of at or after the relevant time—

(a) are to be identified first with the other securities or securities forming part of the other pooled asset,

(b) are to be identified next with securities forming part of the pre-change pooled asset (if the number of securities disposed of exceeds the number identified in accordance with paragraph (a)), and

(c) subject to paragraphs (a) and (b), are to be identified in accordance with the provisions applicable apart from those paragraphs.

(5) The above identification rules apply even if 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 are not to be identified with securities which it holds, or can dispose of, only in some other capacity.

(6) Chapter 1 of Part 4 has effect subject to this section.

(7) In this section—

"pre-change asset" means an asset which is pre-change asset for the purposes of section 184A or 184B,

"securities" does not include relevant securities as defined in section 108 but, subject to that, means—

(a) shares or securities of a company, and

(b) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

(8) For the purposes of this section, shares or securities of a company are not to be treated as being of the same class unless—

(a) they are so treated by the practice of a recognised stock exchange, or

(b) they would be so treated if dealt with on a recognised stock exchange.”.

(3) In Schedule 7A (restriction on set-off of pre-entry losses), in paragraph 1(1) (application of Schedule), at the end insert “ , but this Schedule shall have no effect in any case where section 184A (restrictions on buying losses: tax avoidance schemes) has effect in relation to those losses ”.

(4) Section 177B and Schedule 7AA (restrictions on setting losses against pre-entry gains) shall cease to have effect.

(5) In section 213 (insurance companies: spreading of gains and losses under section 212) —

(a) in subsection (8H) for “that the net amount is” to the end substitute “ that the net amount would still arise even if losses accruing after the date on which the company or transferee joined the group of companies were disregarded ”, and

(b) in subsection (8I) for “paragraph 1” to the end substitute “ section 184C as if those references were contained in that section; and in subsection (8A)(b) above “group” has the same meaning as in that section ”.

The amendments made by this subsection have effect where the accounting period for which the net amount represents an excess of losses over gains is an accounting period ending on or after 5th December 2005.

(6) The amendments made by this section, other than subsection (5), have effect for calculating the amount to be included in respect of chargeable gains in a company's total profits for any accounting period ending on or after 5th December 2005.

(7) But, in respect of any such accounting period, those amendments do not have effect in relation to the deduction of any loss from chargeable gains that accrue on any disposal made before 5th December 2005 unless that loss accrues on a disposal made on or after that date.

(8) For the purposes of those amendments, it does not matter whether a qualifying change of ownership in relation to a company occurs—

(a) before 5th December 2005, or

(b) on or after that date.

(9) **[**[F20]Subsections (10) to (12) apply**]** so long as each of the following conditions is met—

(a) at any time (“the relevant time”) before 5th December 2005 there is a qualifying change of ownership in relation to a company (“the relevant company”) for the purposes of section 184A [F21]. . . of TCGA 1992,

(b) the change of ownership occurs because the relevant company ceases to be a member of a group of companies at the relevant time (whether or not it also occurs for any other reason),

(c) the principal company of that group has control of the relevant company at the relevant time and at **[**[F22]immediately afterwards,**]**

[[F23](ca) no qualifying change of ownership occurs at any time in relation to the principal company of that group for the purposes of section 184A of TCGA 1992 directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage falling within subsection (1)(d) of that section, and**]**

(d) [F24]. . . . . .

(e) a qualifying loss for the purposes of section 184A of TCGA 1992 [F25]. . . accrues to the relevant company or any other company on a disposal made before 5th December 2005.

[[F26](10) Subsection (2) of that section has effect in relation to that qualifying loss subject to the following modifications.

(11) That subsection has effect as if there were inserted at the end of it unless the gains accrue to the company on a disposal of a pre-change asset.

(12) That subsection (modified as mentioned above) has effect as if the reference to a pre-change asset included an asset held before the relevant time by any company—

(a) which, immediately before that time, was a member of the same group of companies as the relevant company, and

(b) which, throughout the period beginning with that time and ending immediately after the making of the disposal referred to in that subsection, has remained under the control of the company which was the principal company of that group at the relevant time.

(13) Expressions which are used in subsections (9) to (12) have the same meaning as in sections 184A and 184C of TCGA 1992.]

Textual Amendments

F20 Words in s. 70(9) substituted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), **s. 32(5)(a)**

F21 Words in s. 70(9)(a) repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), **ss. 32(5)(b)**, 114, {Sch. 27 Pt. 2(4) Note}

F22 Words in s. 70(9)(c) substituted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), **s. 32(5)(c)**

F23 S. 70(9)(ca) inserted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), **s. 32(5)(d)**

F24 S. 70(9)(d) and following word repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), **ss. 32(5)(e)**, 114, {Sch. 27 Pt. 2(4) Note}

F25 Words in s. 70(9)(e) repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), **ss. 32(5)(f)**, 114, {Sch. 27 Pt. 2(4) Note}

F26 S. 70(10)-(13) substituted (with effect as mentioned in s. 32(9) of the amending Act) for s. 70(10)(11) by Finance Act 2007 (c. 11), **s. 32(6)**

71 Other avoidance involving losses accruing to companies

(1) After section 184F of TCGA 1992 (as inserted by section 70 above) insert—

"184G Avoidance involving losses: schemes converting income to capital

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.

(2) Condition A is that—

(a) any receipt arises to a company ("the relevant company") on a disposal of an asset, and

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(b) the receipt arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements.

(3) Condition B is that—

(a) a chargeable gain (the "relevant gain") accrues to the relevant company on the disposal, and

(b) losses accrue (or have accrued) to the relevant company on any other disposal of any asset (whether before or after or as part of the arrangements).

(4) Condition C is that, but for the arrangements, an amount would have fallen to be taken into account wholly or partly instead of the receipt in calculating the income chargeable to corporation tax—

(a) of the relevant company, or

(b) of a company which, at any qualifying time, is a member of the same group as the relevant company.

(5) Condition D is that—

(a) the main purpose of the arrangements, or

(b) one of the main purposes of the arrangements,

is to secure a tax advantage that involves the deduction of any of the losses from the relevant gain (whether or not it also involves anything else).

(6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the relevant company a notice in respect of the arrangements (but see also section 184I).

(7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the relevant company at any time is to be deductible from the relevant gain.

(8) A notice under this section must—

(a) specify the arrangements,

(b) specify the accounting period in which the relevant gain accrues, and

(c) inform the relevant company of the effect of this section.

(9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.

(10) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"group", in relation to companies, means a group determined in accordance with section 170,

"qualifying time", in relation to any arrangements, means any time which falls in the period—

(a) beginning with the time at which the arrangements are made, and

(b) ending with the time at which the matters (other than any tax advantage) intended to be secured by the arrangements are secured,

"tax advantage" has the meaning given by section 184D.

184H Avoidance involving losses: schemes securing deductions

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.

(2) Condition A is that—
- (a) a chargeable gain (the "relevant gain") accrues to a company ("the relevant company") directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
- (b) losses accrue (or have accrued) to the relevant company on any disposal of any asset (whether before or after or as part of the arrangements).

(3) Condition B is that the relevant company, or a company connected with the relevant company, incurs any expenditure—
- (a) which is allowable as a deduction in calculating its total profits chargeable to corporation tax but which is not allowable as a deduction in computing its gains under section 38, and
- (b) which is incurred directly or indirectly in consequence of, or otherwise in connection with, the arrangements.

(4) Condition C is that the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage that involves both—
- (a) the deduction of the expenditure in calculating total profits, and
- (b) the deduction of any of the losses from the relevant gain,

whether or not it also involves anything else.

(5) Condition D is that the arrangements are not excluded arrangements. For this purpose arrangements are excluded arrangements if—
- (a) the arrangements are made in respect of land or any estate or interest in land,
- (b) the arrangements fall within section 779(1) or (2) of the Taxes Act (sale and lease-back: limitation on tax reliefs),
- (c) the person to whom the payment mentioned in that subsection is payable is not a company connected with the relevant company, and
- (d) the arrangements are made between persons dealing at arm's length.

(6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the company a notice in respect of the arrangements (but see also section 184I).

(7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the company at any time is to be deductible from the relevant gain.

(8) A notice under this section must—
- (a) specify the arrangements,
- (b) specify the accounting period in which the relevant gain accrues, and
- (c) inform the relevant company of the effect of this section.

(9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.

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(10) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"tax advantage" has the meaning given by section 184D.

(11) For the purposes of this section it does not matter whether the tax advantage is secured for the relevant company or for any other company.

184I Notices under sections 184G and 184H

(1) Subsection (2) applies if—

(a) the Board give a notice under section 184G or 184H (a "relevant notice") to a company that specifies an accounting period, and

(b) the notice is given before the company has made its company tax return for that accounting period.

(2) If the company makes its return for that period before the end of the applicable 90 day period (see subsection (12)), it may—

(a) make a return that disregards the notice, and

(b) at any time after making the return and before the end of the applicable 90 day period, amend the return for the purpose of complying with the provision referred to in the notice.

(3) If a company has made a company tax return for an accounting period, the Board may give the company a relevant notice in relation to that period only if a notice of enquiry has been given to the company in respect of its return for that period.

(4) After any enquiries into the return for that period have been completed, the Board may give the company a relevant notice only if requirements A and B are met.

(5) Requirement A is that at the time the enquiries into the return were completed, the Board could not have been reasonably expected, on the basis of information made available—

(a) to them before that time, or

(b) to an officer of theirs before that time,

to have been aware that the circumstances were such that a relevant notice could have been given to the company in relation to that period.

(6) For the purposes of requirement A, paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 (information made available) applies as it applies for the purposes of paragraph 44(1).

(7) Requirement B is that—

(a) the company or any other person was requested to produce or provide information during an enquiry into the return for that period, and

(b) if the request had been duly complied with, the Board could reasonably have been expected to give the company a relevant notice in relation to that period.

(8) If—

(a) a company makes a company tax return for an accounting period, and
(b) the company is subsequently given a relevant notice that specifies that period,

it may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the applicable 90 day period.

(9) If the relevant notice is given to the company after it has been given a notice of enquiry in respect of its return for the period, no closure notice may be given in relation to its company tax return until—
(a) the end of the applicable 90 day period, or
(b) the earlier amendment of its company tax return for the purpose of complying with the provision referred to in the notice.

(10) If the relevant notice is given to the company after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the chargeable gain to which the notice relates until—
(a) the end of the applicable 90 day period, or
(b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.

(11) Subsections (2)(b) and (8) do not prevent a company tax return for a period becoming incorrect if—
(a) a relevant notice is given to the company in relation to that period,
(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the provision referred to in the notice, and
(c) the return ought to have been so amended.

(12) In this section—

"the applicable 90 day period", in relation to a relevant notice, means the period of 90 days beginning with the day on which the notice is given,

"closure notice" means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998,

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of that Schedule, as read with paragraph 4 of that Schedule,

"discovery assessment" means an assessment under paragraph 41 of that Schedule,

"notice of enquiry" means a notice under paragraph 24 of that Schedule.".

(2) In Schedule 18 to FA 1998 (company tax returns, assessments, etc), in paragraph 25(1) (scope of enquiry), after "relief)" insert " or a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses) ".

(3) In paragraph 42 of that Schedule (restrictions on power to make discovery assessment etc), in sub-paragraph (2A), after "1988" insert " or section 184G or 184H of the Taxation of Chargeable Gains Act 1992 ".

(4) The amendments made by this section have effect in relation to chargeable gains accruing on any disposal that is made on or after 5th December 2005.

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72 Repeal of s.106 of TCGA 1992

(1) Section 106 of TCGA 1992 (disposal of shares and securities by company within prescribed period of acquisition) shall cease to have effect.

(2) In consequence of that repeal—

(a) in section 104(2)(b) of TCGA 1992 (share pooling: general interpretative provisions) omit “, 106”,

(b) in section 105 of that Act (disposal on or before day of acquisition of shares and other unidentified assets)—

(i) in subsection (2)(b) for “any of the provisions of section 106 or” substitute “ section ”, and

(ii) in subsection (2)(c) omit “106,”,

(c) in section 108(8) of that Act (identification of relevant securities) omit “shall have effect subject to section 106 but”,

(d) in section 110(1)(b) of that Act (section 104 holdings: indexation allowance) for “sections 105 and 106” substitute “ section 105 ”, and

(e) in Schedule 15 to FA 2000 (corporate venture scheme), in paragraph 93(6) (identification of shares on a disposal), for “Sections 104 to 106” substitute “ Sections 104, 105 ”.

(3) The amendments made by this section have effect in relation to any disposal that is made on or after 5th December 2005.

Insurance policies and annuities

73 Policies of insurance and non-deferred annuities

(1) TCGA 1992 is amended as follows.

(2) For section 204 (policies of insurance) substitute—

“**204 Policies of insurance and non-deferred annuities**

(1) A gain accruing on a disposal of, or of an interest in, the rights conferred by a non-life policy of insurance is not a chargeable gain (but see subsection (2)).

(2) If a disposal is of, or of an interest in, the rights conferred by a non-life policy of insurance of the risk of—

(a) any kind of damage to assets, or

(b) the loss or depreciation of assets,

the exemption under subsection (1) does not apply so far as those rights relate to chargeable assets.

(3) For this purpose “chargeable assets” means assets on the disposal of which a chargeable gain—

(a) may accrue, or

(b) might have accrued.

(4) Nothing in subsections (1) and (2) prevents sums received under a non-life policy of insurance of the risk of—

(a) any kind of damage to assets, or

(b) the loss or depreciation of assets,

from being sums derived from the assets for the purposes of this Act (and, in particular, for the purposes of section 22).

(5) A gain accruing on a disposal of, or of an interest in, the rights conferred by a contract for an annuity is not a chargeable gain if the annuity is—

(a) a non-deferred annuity, or

(b) an annuity granted (or deemed to be granted) under the Government Annuities Act 1929.

(6) If any investments or other assets are, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder—

(a) the policy holder's acquisition of the assets, and

(b) the disposal of the assets to the policy holder,

are to be taken for the purposes of this Act to be for a consideration equal to the market value of the assets.

(7) In this section "interest", in relation to any rights, means an interest as a co-owner of the rights.

(8) It does not matter—

(a) whether the rights are owned jointly or in common, or

(b) whether or not the interests of the co-owners are equal.

(9) In this section a "non-deferred annuity" means an annuity—

(a) which is not granted under a contract for a deferred annuity, and

(b) which is granted in the ordinary course of a business of granting annuities on the life of any person,

and it does not matter whether the annuity includes instalments of capital.

(10) In this section a "non-life policy of insurance" means—

(a) a contract made in the course of a capital redemption business, as defined in section 458(3) of the Taxes Act, and

(b) any other policy of insurance which is not a policy of insurance on the life of any person.".

(3) In section 237 (superannuation funds, annuities and annual payments)—

(a) at the end of paragraph (a), insert " or ", and

(b) omit paragraph (b) (exemption for disposals of non-deferred annuities etc).

(4) The amendments made by this section have effect in relation to disposals made on or after 5th December 2005.

Capital gains tax

74 Exception to "bed and breakfasting" rules etc

(1) TCGA 1992 is amended as follows.

(2) In section 106A (identification of securities: general rules for capital gains tax), after subsection (5) (acquisition of securities within 30 days after disposing of securities of same class) insert—

"(5A) Subsection (5) above shall not require securities to be identified with securities which the person making the disposal acquires at a time when—

(a) he is neither resident nor ordinarily resident in the United Kingdom, or

(b) he is resident or ordinarily resident in the United Kingdom but is Treaty non-resident.".

(3) In section 288 (interpretation), after subsection (7A) (meaning of "surrender" in application of Act to Scotland) insert—

"(7B) For the purposes of this Act, a person is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.".

(4) In consequence of the amendment made by subsection (3)—

(a) in section 10A (temporary non-residents), omit subsection (9A) (meaning of "Treaty non-resident"), and

(b) in section 83A (trustees both resident and non-resident in a year of assessment), omit subsection (5) (meaning of "Treaty non-resident").

(5) The amendment made by subsection (2) has effect in relation to any acquisition made at any time on or after 22nd March 2006.

(6) The amendments made by subsections (3) and (4) have effect in relation to any time on or after 22nd March 2006.

CHAPTER 8

AVOIDANCE: MISCELLANEOUS

Film partnerships

75 Interest relief: film partnership

F27 . . . . . .

Textual Amendments

F27 S. 75 repealed (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1027, 1031, Sch. 1 para. 615, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

Financial instruments

76 Avoidance involving financial arrangements

Schedule 6 (which makes provision in relation to tax avoidance involving financial arrangements) has effect.

Intangible fixed assets

[F28]77 Treating assets as "existing assets" etc

. . . . . .

Textual Amendments

F28 S. 77 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

International matters

78 Controlled foreign companies and treaty non-resident companies

(1) Section 90 of FA 2002 (controlled foreign companies and treaty non-resident companies) is amended as follows.

(2) In subsection (2) (application of subsection (1), which inserted section 747(1B) of ICTA (disregard of section 249 of FA 1994 for most purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies))), for paragraph (b) (exclusion for companies which were non-resident immediately before 1st April 2002) substitute—

"(b) does not apply to a company ("the non-resident company") that—

(i) by virtue of section 249 of the Finance Act 1994 was treated as resident outside the United Kingdom, and not resident in the United Kingdom, immediately before that date, and

(ii) has not subsequently ceased to be so treated,

unless condition A or B is met in relation to the non-resident company at any time on or after 22nd March 2006.".

(3) After that subsection insert—

"(3) Condition A is met in relation to the non-resident company at any time on or after 22nd March 2006 if—

(a) immediately before 22nd March 2006 the non-resident company does not own directly or indirectly any company as a subsidiary company, and

(b) at any time on or after that date the non-resident company becomes the direct or indirect owner of a UK resident company as a subsidiary company.

(4) Condition B is met in relation to the non-resident company at any time on or after 22nd March 2006 if—

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(a) immediately before 22nd March 2006 the non-resident company owns directly or indirectly any company as a subsidiary company (which may be a UK resident company),

(b) at any time ("the relevant time") on or after that date the non-resident company becomes the direct or indirect owner of any UK resident company as a subsidiary company (or, as the case may be, another UK resident company), and

(c) directly or indirectly in consequence of, or otherwise in connection with, the ownership mentioned in paragraph (b) there is a qualifying change in activities.

(5) There is a qualifying change in activities if, at the relevant time or any subsequent time,—

(a) there is a major change in the nature, conduct or scale of the non-resident company's activities, or

(b) there is a major change in the nature, conduct or scale of the activities of the group of companies of which the non-resident company is a member.

(6) In this section references to directly or indirectly owning a company are references to owning it—

(a) directly or through another company or companies, or

(b) partly directly and partly through another company or companies.

(7) In this section references to ownership are to be read as references to beneficial ownership.

(8) In this section "UK resident company", in relation to any time, means any company which is resident in the United Kingdom at that time.".

79 Transfer of assets abroad

Schedule 7 (which makes amendments of, or relating to, Chapter 3 of Part 17 of ICTA (transfer of assets abroad)) has effect.

Pre-owned assets

80 Restriction of exemption from charge to income tax

(1) Schedule 15 to FA 2004 (charge to income tax on benefits received by former owner of property) is amended as follows.

(2) In paragraph 11 (exemptions from charge)—

(a) in sub-paragraph (9) (meaning of "the relevant property") for "sub-paragraphs (1) to (8)" substitute " this paragraph ", and

(b) at the end insert—

"(11) Sub-paragraph (12) applies where at any time—

(a) the relevant property has ceased to be comprised in a person's estate for the purposes of IHTA 1984, or

(b) he has directly or indirectly provided any consideration for the acquisition of the relevant property,

and at any subsequent time the relevant property or any derived property is comprised in his estate for the purposes of IHTA 1984 as a result of section 49(1) of that Act (treatment of interests in possession).

(12) Where this sub-paragraph applies, the relevant property and any derived property—

(a) are not to be treated for the purposes of sub-paragraphs (1) and (2) as comprised in his estate at that subsequent time, and

(b) are not to be treated as falling within sub-paragraph (5) in relation to him at that subsequent time.

(13) For the purposes of sub-paragraphs (11) and (12) references, in relation to the relevant property, to any derived property are to other property—

(a) which derives its value from the relevant property, and

(b) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property.”.

(3) In paragraph 21 (election for application of inheritance tax provisions where paragraph 3 (land) or 6 (chattels) would otherwise apply)—

(a) in sub-paragraph (2)(b) (application of the gifts with reservation rules), in sub-paragraph (i) at the end insert “ , but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property ”,

(b) in sub-paragraph (2)(b) for sub-paragraph (ii) and the “and” before it substitute—

“(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property, and

(iii) if the chargeable person is beneficially entitled to an interest in possession in the property, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to the chargeable proportion of the property.”, and

(c) in sub-paragraph (3) (meaning of “the chargeable proportion”), after paragraph (a)(ii) insert—

“(iii) in the case of property in which the chargeable person is beneficially entitled to an interest in possession, to the date of his death or (if his interest comes to an end on an earlier date) that earlier date, and”.

(4) In paragraph 22 (election for application of inheritance tax provisions where paragraph 8 (intangible property) would otherwise apply), in sub-paragraph (2)(b) (application of the gifts with reservation rules)—

(a) in sub-paragraph (i) at the end insert “ , but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned ”, and

(b) for sub-paragraph (ii) and the “and” before it substitute—

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

"(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned, and

(iii) if the chargeable person is beneficially entitled to an interest in possession in the property concerned, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to that property.".

(5) The amendments made by this section have effect—

(a) for the part of the year 2005-06 beginning with 5th December 2005, and

(b) for the year 2006-07 and subsequent years of assessment.

(6) If—

(a) paragraph 11 of Schedule 15 to FA 2004 ceases, in consequence of the amendments made by this section, to apply to a person in relation to any property, and

(b) that person dies before the day on which this Act is passed without making an election under paragraph 21 or 22 of that Schedule in relation to that property,

his personal representatives (within the meaning of IHTA 1984) may make any election under paragraph 21 or 22 of that Schedule that he might have made.

(7) If—

(a) in consequence of the amendments made by this section a person makes an election under paragraph 21 or 22 of Schedule 15 to FA 2004,

(b) that person dies before the day on which this Act is passed, and

(c) an amount of inheritance tax would (but for this subsection) fall due before that day,

that amount is to be treated instead as falling due at the end of the period of 14 days beginning with that day.

(8) This section is deemed to have come into force on 5th December 2005.

CHAPTER 9

MISCELLANEOUS PROVISIONS

Leasing of plant or machinery

81 Leases of plant or machinery

(1) Schedule 8 (which makes provision in relation to leases of plant or machinery) has effect.

(2) Schedule 9 (which makes miscellaneous amendments relating to such leases) has effect.

Sale of lessors

82 Sale etc of lessor companies etc

Schedule 10 (which makes provision about the sale etc of lessor companies etc) has effect.

83 Restrictions on use of losses etc: leasing partnerships

(1) In section 403 of ICTA (amounts which may be surrendered by way of group relief), in subsection (4) (section 403 subject to certain exceptions), at the end insert " and section 785ZA (restrictions on use of losses: leasing partnerships) ".

(2) After section 785 of ICTA (meaning of expressions for purposes of sections 781 to 784 (assets leased to traders and others)) insert—

"**785ZA Restrictions on use of losses: leasing partnerships**

(1) This section applies for corporation tax purposes if—
- (a) a company carries on a business in respect of which the company is within the charge to corporation tax,
- (b) the company carries on the business in partnership with other persons in an accounting period of the partnership,
- (c) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,
- (d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and
- (e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).

(2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.

(3) The condition is met if, for the purposes of section 114(2),—
- (a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and
- (b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.

(4) For the purposes of this condition "profits" does not include chargeable gains.

(5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances ("the restricted part of the loss").

(6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

(7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.

(8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.

(9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.

785ZB Section 785ZA: definitions

(1) This section applies for the purposes of section 785ZA.

(2) "Business of leasing plant or machinery" has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).

(3) "Lease" has the same meaning as in section 785A.

(4) "Notional business", in relation to a company, means the business—
   (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
   (b) which is treated under that provision as carried on alone by the company for those purposes.

(5) "Plant or machinery" has the same meaning as in Part 2 of the Capital Allowances Act.

(6) "Relevant capital allowance" means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

(7) "Relevant leasing income" means any income of the company's notional business deriving from any lease—
   (a) which is a lease of plant or machinery, and
   (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.

(8) "Relevant loss relief provision" means any of the following provisions—
   (a) section 392A (Schedule A losses),
   (b) section 392B (losses from overseas property businesses),
   (c) section 393 (trade losses),
   (d) section 396 (Case VI losses).".

(3) After section 261 of CAA 2001 (special leasing: life assurance business) insert—

"**261A Special leasing: leasing partnerships**

(1) This section applies for corporation tax purposes if—
   (a) a company carries on a business in partnership with other persons in a chargeable period of the partnership,

(b) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,

(c) the company is entitled to an allowance under section 19 (special leasing of plant or machinery) for any chargeable period comprised (wholly or partly) in the chargeable period of the partnership, and

(d) the interest of the company in the leasing business during the chargeable period of the partnership is not determined on an allowable basis.

(2) Subsections (3) to (6) of section 260 do not apply in relation to the allowance.

(3) For the purposes of this section—

(a) "business of leasing plant or machinery" has the same meaning as in Part 3 of Schedule 10 to FA 2006 (sale etc of lessor companies etc), and

(b) section 785ZA of ICTA applies for determining whether the interest of the company in the leasing business during the chargeable period of the partnership is determined on an allowable basis.".

(4) The amendments made by this section have effect in relation to any business carried on by a company in partnership in any accounting period of the partnership ending on or after 5th December 2005.

(5) But, in relation to any accounting period of the partnership beginning before 5th December 2005 and ending on or after that date, those amendments have effect only if—

(a) the company starts to carry on the business in partnership on or after that date, or

(b) a relevant change in the interest of the company in the business occurs on or after that date.

(6) A relevant change in the interest of the company in the business occurs at any time if—

(a) immediately before that time its interest in the business during any accounting period of the partnership is determined on an allowable basis (within the meaning given by section 785ZA of ICTA), and

(b) immediately after that time its interest in the business during that period is not so determined.

84 Disposal of plant or machinery subject to lease where income retained

(1) CAA 2001 is amended as follows.

(2) In section 66 (list of provisions outside Chapter 5 of Part 2 about disposal values), after the entry relating to section 222 of CAA 2001, insert—

"sections 228K to 228M	Disposal of plant or machinery subject to lease where income retained".

(3) After section 228J (plant or machinery subject to further operating lease) insert—

"Disposal of plant or machinery subject to lease where income retained

228K Disposal of plant or machinery subject to lease where income retained

(1) This section applies for corporation tax purposes if—

(a) on any day ("the relevant day") a person ("the lessor") carries on a business of leasing plant or machinery (the "leasing business"),

(b) on the relevant day the lessor sells or otherwise disposes of any relevant plant or machinery subject to a lease to another person,

(c) the lessor remains entitled immediately after the disposal to some or all of the rentals under the lease in respect of the plant or machinery which are payable on or after the relevant day, and

(d) the lessor is required to bring a disposal value of the plant or machinery into account under this Part.

(2) The disposal value to be brought into account is determined as follows.

(3) If the amount or value of the consideration for the disposal exceeds the limit that would otherwise be imposed on the amount of the disposal value by section 62 (general limit) or 239 (limit on disposal value where additional VAT rebate)—

(a) that limit is not to apply, and

(b) the whole of the amount or value of the consideration for the disposal is to be the disposal value to be brought into account.

(4) In any other case, the disposal value to be brought into account is the sum of—

(a) the amount or value of the consideration for the disposal, and

(b) the value of the rentals under the lease in respect of the plant or machinery (see subsections (7) and (8)) which are payable on or after the relevant day and to which the lessor remains entitled immediately after the disposal,

but subject to the limit imposed on the amount of the disposal value by section 62 or 239.

(5) If—

(a) any of the rentals under the lease are receivable by the lessor on or after the relevant day, and

(b) the value of any of those rentals is represented in the amount of the disposal value under subsection (4)(b),

the amount of those rentals that is equal to their value as so represented is left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

(6) If, in determining under subsection (5) the amount of any rental to be so left out of account, it is necessary to apportion the amount of the rental, the apportionment is to be made on a just and reasonable basis.

(7) For the purposes of this section, the value of any rentals under the lease in respect of the plant or machinery is taken to be the amount of the net present value of the rentals (see section 228L).

(8) If any land or other asset which is not plant or machinery is subject to the lease, the value of any rentals under the lease in respect of the plant or machinery is taken to be so much of the amount of the net present value of the rentals as, on a just and reasonable basis, relates to the plant or machinery.

(9) This section is supplemented by—
   (a) section 228L (which provides rules for determining the net present value of the rentals), and
   (b) section 228M (which defines other expressions used in this section).

228L Determining the net present value of the rentals for purposes of s.228K

(1) For the purposes of section 228K, the amount of the net present value of the rentals is calculated as follows—

Step 1

Find the amount ("RI") of each rental payment—
   (a) which is payable at any time during the term of the lease, and
   (b) which is payable on or after the relevant day.

Step 2

For each rental payment find the day ("the payment day") on which it becomes payable.

Step 3

For each rental payment find the number of days in the period ("P") which—
   (a) begins with the relevant day, and
   (b) ends with the payment day.

Step 4

Calculate the net present value of each payment ("NPVRI") by applying the following formula—

$$\frac{RI}{(1+T)^{i}}$$

where—

T is the temporal discount rate, and

i is the number of days in P divided by 365.

Step 5

Add together each amount of NPVRI determined under step 4.

(2) For the purposes of this section the "term" of a lease has the meaning given in Chapter 6A of this Part.

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(3) For the purposes of this section the "temporal discount rate" is 3.5% or such other rate as may be specified by regulations made by the Treasury.

(4) The regulations may make such provision as is mentioned in subsection (3) (b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).

(5) Subsection (5) of that section (power of Commissioners to specify rate by order in certain circumstances) applies in relation to regulations under this section as it applies in relation to regulations under that section.

228M Other definitions for the purposes of s.228K

(1) This section applies for the purposes of section 228K.

(2) "Business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).

(3) "Lease" includes—

(a) an underlease, sublease, tenancy or licence, and

(b) an agreement for any of those things.

(4) "Relevant plant or machinery", in relation to a business of leasing plant or machinery, means plant or machinery on whose provision expenditure is incurred wholly or partly for the purposes of the business.".

(4) In Schedule 1 (abbreviations and defined expressions), in Part 1 (abbreviations), insert at the end—

"FA 2006	The Finance Act 2006 (c. 25)".

(5) The amendments made by this section have effect in relation to any disposal made on or after 5th December 2005.

(6) But any rentals that are receivable by the lessor before 22nd March 2006 are to be left out of account in calculating the income of the lessor's leasing business for corporation tax purposes.

85 Restrictions on effect of elections under section 266 of CAA 2001

(1) CAA 2001 is amended as follows.

(2) In section 266 (election where predecessor and successor are connected persons), in subsection (7) (sections 104, 108 and 265 not to apply if election is made), at the end insert " (but see section 267A) ".

(3) In section 267 (effect of election), at the end insert—

"(6) This section is subject to section 267A.".

(4) After that section insert—

"**267A Restriction on effect of election**

(1) This section applies for corporation tax purposes if—

(a) on any day ("the relevant day") a person ("the predecessor") carries on a business of leasing plant or machinery,

(b) on the relevant day another person ("the successor") succeeds to the business, and

(c) the predecessor and the successor make an election under section 266.

(2) Neither—

(a) section 266(7), nor

(b) the provisions of section 267,

have effect in relation to any plant or machinery which, in determining whether the business is a business of leasing plant or machinery on the relevant day, is qualifying leased plant or machinery.

(3) In this section "business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to FA 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), or

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership).".

(5) The amendments made by this section have effect in relation to any succession occurring on or after 5th December 2005.

Insurance companies and policyholders

86 Insurance companies

Schedule 11 (which makes provision about insurance companies) has effect.

87 Qualifying policies: altering method for calculating benefits

(1) Schedule 15 to ICTA (provisions for determining whether an insurance policy is a "qualifying policy" for the purposes of the Tax Acts) is amended as follows.

(2) In paragraph 18 (variations), in sub-paragraph (3) (paragraph does not apply by reason of certain variations), at the end insert ", or

(d) any variation which alters the method for calculating the benefits secured by the policy.".

(3) In paragraph 22 (certificates from body issuing policy), in sub-paragraph (3) (sub-paragraph (2) does not apply by reason of certain variations), at the end insert "; or

(c) any variation which alters the method for calculating the benefits secured by the policy.".

(4) In the case of a variation effected as part of, or in connection with, an insurance business transfer scheme, the amendments made by this section are deemed always to have had effect.

(5) In any other case, the amendments made by this section have effect in relation to variations effected on or after 7th October 2005.

(6) In this section an "insurance business transfer scheme" means—

(a) a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8),

(b) a scheme sanctioned by a court under Part 1 of Schedule 2C to the Insurance Companies Act 1982 (c. 50), or

(c) a scheme sanctioned by a court under section 49 of that Act or under any earlier enactment corresponding to that section,

and for the purposes of this subsection any reference to an enactment is a reference to the enactment as it had effect from time to time.

Settlements

88 Settlements, etc: chargeable gains

Schedule 12 (which amends TCGA 1992 in respect of settlors and trustees of settlements and makes other minor and consequential amendments) shall have effect.

89 Settlements, etc: income

Schedule 13 (which amends ICTA and ITTOIA 2005 in respect of settlors and trustees of settlements and makes other minor and consequential amendments) shall have effect.

90 Special trusts tax rates not to apply to social landlords' service charge income

F29 . . . . . .

Textual Amendments

F29 S. 90 repealed (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1031, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

Investment reliefs

91 Venture capital schemes

(1) Schedule 14 contains amendments of the provisions relating to—

F30 . . .

F31 . . .

the corporate venturing scheme.

(2) Those amendments have effect as mentioned in that Schedule.

Textual Amendments

F30 Words in s. 91(1) repealed (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1031, **Sch. 3 Pt. 2** (with transitional provisions and savings in Sch. 2)

F31 Words in s. 91(1) repealed (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1031, **Sch. 3 Pt. 1** (with transitional provisions and savings in Sch. 2)

Employment-related securities

92 Avoidance using options etc

(1) Section 420 of ITEPA 2003 (meaning of securities etc) is amended as follows.

(2) In subsection (1)(f), insert at the beginning " options and ".

(3) In subsection (5)(e), insert at the beginning " securities ".

(4) In subsection (8), in the definition of "securities option", after "acquire securities" insert " other than a right to acquire securities which is acquired pursuant to a right or opportunity made available under arrangements the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions ".

(5) This section has effect in relation to options acquired on or after 2nd December 2004; but subsection (4) also has effect in relation to an option acquired before that date where something is done on or after that date as part of the arrangements under which it was made available.

[F32]93 Corporation tax relief for shares acquired under EMI option

. . . . . .

Textual Amendments

F32 S. 93 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

PAYE

94 PAYE: retrospective notional payments

(1) ITEPA 2003 is amended as follows.

(2) In section 222 (payments by employer on account of tax where deduction not possible) —

(a) in subsection (1)(c), for "date on which the employer is treated as making the notional payment" substitute " relevant date ",

(b) in subsection (2), for "date mentioned in subsection (1)(c)" substitute " relevant date ", and

(c) after subsection (3) insert—

"(4) In this section "the relevant date" means—

(a) if the employer is treated by virtue of any Act as making the notional payment before the date on which the Act is passed, that date, and

(b) in any other case, the date on which the employer is treated as making the notional payment."

(3) In section 684(2) (PAYE regulations), in item 1—

(a) for "time of the payment" substitute " relevant time ", and

(b) after paragraph (b) insert—

""The relevant time" is—

(a) if the payment is a notional payment for the purposes of section 710 and the person is treated by virtue of any Act as making it at a time before the date on which the Act is passed, that date, and

(b) in any other case, the time when the payment is made."

(4) In section 710 (notional payments: accounting for tax)—

(a) in subsection (7), after "means" insert " (subject to subsection (7A)) ", and

(b) after that subsection insert—

"(7A) In a case where the notional payment is treated by virtue of any Act as made before the date on which the Act is passed—

(a) the reference in sub-paragraph (i) of paragraph (a) of subsection (7) to the time when the notional payment is made is to the date on which the Act is passed,

(b) the reference in sub-paragraph (ii) of that paragraph to any occasion falling within the same income tax period is to any occasion falling before the end of the income tax period next after that in which that date falls, and

(c) the reference in paragraph (b) of that subsection to the income tax period in which the notional payment was made is to the income tax period next after that in which that date falls."

(5) The provisions of ITEPA 2003 amended by this section have effect in relation to notional payments treated by virtue of this Act as made before the date on which this Act is passed as if for the references to the date on which the Act is passed in—

(a) section 222(4)(a),

(b) paragraph (a) of the definition of "the relevant time" in section 684(2), and

(c) section 710(7A)(a), (b) and (c),

there were substituted references to such date as the Commissioners for Her Majesty's Revenue and Customs may by order made by statutory instrument appoint.

Subordinate Legislation Made

P2 S. 94(5) power fully exercised: 6.4.2007 appointed by {S.I. 2007/1081}, art. 2

Alternative finance arrangements

95 Profit share agency

(1) In section 46(1) of FA 2005 (alternative finance arrangements: definition) for "or 49." substitute " , 49 or 49A. "

(2) In section 49 of FA 2005 (profit share return)—

(a) for subsection (2) substitute—

"(2) Amounts paid or credited as mentioned in subsection (1)(c) by a financial institution under arrangements falling within this section are profit share return for the purposes of this Chapter.", and

(b) in the heading for "profit share return" substitute " deposit ".

(3) After section 49 of FA 2005 insert—

"**49A Alternative finance arrangements: profit share agency**

(1) Subject to section 52, arrangements fall within this section if they are arrangements under which—

(a) a person ("the principal") appoints a financial institution as his agent,

(b) the agent uses money provided by the principal with a view to producing a profit,

(c) the principal is entitled, to a specified extent, to profits resulting from the use of the money,

(d) the agent is entitled to any additional profits resulting from the use of the money (and may also be entitled to a fee to be paid by the principal), and

(e) payments in pursuance of the entitlement specified in paragraph (c) equate, in substance, to the return on an investment of the money at interest.

(2) Amounts paid or credited by a financial institution in accordance with an entitlement of the kind specified in subsection (1)(c) are profit share return for the purposes of this Chapter.

(3) The principal shall not be treated for the purposes of the Tax Acts as entitled to profits to which the agent is entitled in accordance with subsection (1)(d)."

(4) After section 50(2) of FA 2005 (treatment of alternative finance arrangements: companies) insert—

"(2A) Where a company is a party to arrangements falling within section 49A, Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to the arrangements as if—

(a) the arrangements were a loan relationship to which the company is a party,

(b) the amount provided under the arrangements were—

(i) in relation to a company which is the principal under the arrangements, the amount of a loan made by the company to the agent, and

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(ii) in relation to a company which is the agent under the arrangements, the amount of a loan made to it by the principal, and

(c) profit share return payable to or by the company under the arrangements were interest payable under that loan relationship."

(5) In section 52 of FA 2005 (provision not at arm's length)—

(a) in subsection (1)(a) for "or section 49," substitute " , 49 or 49A, ",

(b) in subsection (3) for "or section 49." substitute " , 49 or 49A. ", and

(c) in subsection (5) for "49," substitute " 49 or 49A, ".

(6) In the heading to section 54 of FA 2005 "Section 49" becomes "Sections 49 and 49A".

(7) In the definition of "profit share return" in section 57 of FA 2005 for "section 49(2)" substitute " sections 49(2) and 49A(2) ".

(8) In paragraph 1(b) of Schedule 2 to FA 2005 after "49" insert " or 49A ".

(9) In section 148 of FA 2003 (meaning of "permanent establishment") after subsection (5A) insert—

"(5B) Where profit share return is paid, in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the arrangements by the other party to the arrangements or by any other person acting for the company in relation to the arrangements."

(10) In section 127(1) of FA 1995 (persons not treated as UK representatives) renumber paragraph (cc) as paragraph (ca) and insert after it—

"(cb) where the income consists of profit share return in accordance with arrangements to which section 49A of FA 2005 applies (alternative finance arrangements: profit share agency), the other party to the arrangements or any other person acting for the non-resident in relation to the arrangements;".

(11) Section 56 of FA 2005 (commencement and transitional) shall have effect in relation to the commencement of this section—

(a) as if references to Chapter 5 of Part 2 of that Act were references to this section,

(b) as if references to 6th April 2005 were references to—

(i) 1st April 2006 in relation to corporation tax, and

(ii) 6th April 2006 in relation to income tax, and

(c) as if references to section 49 were references to section 49A.

96 Diminishing shared ownership

(1) In section 46(1) of FA 2005 (alternative finance arrangements: definition) after "47" insert " , 47A, ".

(2) In section 47 of FA 2005 (alternative finance return)—

(a) omit subsection (5),

(b) in subsections (6) and (7) after "is to be taken" insert " for the purposes of this Chapter ", and

(c) in the heading for "alternative finance return" substitute " purchase and resale ".

(3) After section 47 of FA 2005 insert—

"**47A Alternative finance arrangements: diminishing shared ownership**

(1) Subject to section 52, arrangements fall within this section if under them—

(a) a financial institution acquires a beneficial interest in an asset, and

(b) another person ("the eventual owner")—

(i) also acquires a beneficial interest in the asset,

(ii) is to make payments to the financial institution amounting in aggregate to the consideration paid for the acquisition of its beneficial interest,

(iii) is to acquire the financial institution's beneficial interest (whether or not in stages) as a result of those payments,

(iv) is to make other payments to the financial institution (whether in pursuance of a lease forming part of the arrangements, or otherwise),

(v) has the exclusive right to occupy or otherwise use the asset,

(vi) is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, any increase in the asset's value).

(2) For the purposes of subsection (1)(a) it is immaterial—

(a) whether or not the financial institution acquires its beneficial interest from the eventual owner,

(b) whether the eventual owner or another person other than the financial institution also has a beneficial interest in the asset, and

(c) whether or not the financial institution also has a legal interest in the asset.

(3) Subsection (1)(b)(v) does not prevent the eventual owner from granting an interest or right in relation to the asset to someone other than—

(a) the financial institution,

(b) a person controlled by the financial institution within the meaning of section 840 of ICTA, and

(c) a person controlled by a person who also controls the financial institution, in each case within the meaning of section 840 of ICTA;

provided that the grant is not required by the financial institution or by arrangements to which the financial institution is party.

(4) Subsection (1)(b)(vi) does not prevent the financial institution from having responsibility for, or a share in any loss arising out of, any reduction in the asset's value (and subsection (1)(b)(ii) is subject to this subsection).

(5) Payments by the eventual owner under arrangements to which this section applies are alternative finance return for the purposes of this Chapter except in so far as they amount to—

(a) payments of the kind described in subsection (1)(b)(ii), or

(b) payments in respect of any arrangement fee or legal or other costs or expenses which the eventual owner is required under the arrangements to pay.

(6) Arrangements to which this section applies shall not be treated as a partnership for the purposes of the Taxes Acts (within the meaning of the Taxes Management Act 1970)."

(4) In section 50 of FA 2005 (treatment of alternative finance arrangements: companies)—

(a) in subsection (1) after "section 47" insert " or 47A ",

(b) at the beginning of subsection (1)(b) add " in the case of arrangements within section 47, ", and

(c) after subsection (1)(b) insert—

"(ba) in the case of arrangements within section 47A, the consideration paid by the financial institution for the acquisition of its beneficial interest were the amount of a loan made (as the case requires) to the company by, or by the company to, the other party to the arrangements,".

(5) In section 52 of FA 2005 (provision not at arm's length)—

(a) in subsection (1)(a) after "47" insert " , 47A ",

(b) in subsection (3) after "47" insert " , 47A ", and

(c) in subsection (4) for "47," substitute " 47 or 47A, ".

(6) In section 53 of FA 2005 (sale and purchase of asset)—

(a) in subsection (1) after "47" insert " or 47A ",

(b) after subsection (2) add—

"(3) In the application of this section to section 47A a reference to the effective return is a reference to the alternative finance return.", and

(c) in the heading after "47" insert " or 47A ".

(7) In the definition of "alternative finance return" in section 57 of FA 2005 for "section 47(5)" substitute " sections 47(6) and (7) and 47A(5) ".

(8) This section shall have effect in relation to alternative finance arrangements entered into on or after—

(a) 1st April 2006 in relation to corporation tax, and

(b) 6th April 2006 in relation to income tax.

97 Beneficial loans to employees

(1) For the purposes of Chapter 7 of Part 3 of ITEPA 2003 (taxable benefits: loans) a reference to a loan includes a reference to an arrangement which—

(a) is an alternative finance arrangement to which section 47 or 47A FA 2005 **[**[F33]or section 503 or 504 of CTA 2009**]** applies, or

(b) would be an alternative finance arrangement to which one of those sections applied if one of the parties were a financial institution.

(2) In the application of that Chapter by virtue of subsection (1)—

(a) a reference to interest shall be treated as including a reference to alternative finance return, and

(b) a reference to the amount outstanding shall be taken to be—

(i) in the case of arrangements to which section 47 **[**[F34]of FA 2005 or section 503 of CTA 2009**]** applies, a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return, and

(ii) in the case of arrangements to which section 47A **[**[F35]of FA 2005 or section 504 of CTA 2009**]** applies, a reference to the amount of the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return.

(3) This section shall have effect in relation to arrangements entered into on or after 22nd March 2006.

Textual Amendments

F33 Words in s. 97(1)(a) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 683(a)** (with Sch. 2 Pts. 1, 2)

F34 Words in s. 97(2)(b)(i) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 683(b)** (with Sch. 2 Pts. 1, 2)

F35 Words in s. 97(2)(b)(ii) inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 683(c)** (with Sch. 2 Pts. 1, 2)

98 [[F36]Orders amending Chapter 5 of Part 2 of FA 2005]

[[F37](1) The Treasury may by order amend Chapter 5 of Part 2 of FA 2005 (alternative finance arrangements).

(1A) The amendments that may be made by an order under subsection (1) include—

(a) the variation of provision already included in Chapter 5, and

(b) the introduction into Chapter 5 of new provision relating to alternative finance arrangements.**]**

(2) An order under subsection (1) may, in particular—

(a) include provision of a kind similar to provision already made by Chapter 5 of Part 2;

(b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies;

(c) make provision generally or only in relation to specified cases or circumstances;

(d) make different provision for different cases or circumstances;

(e) include consequential provision (which may include provision amending a provision of the Tax Acts);

(f) include incidental or transitional provision.

[[F38](3) An order under this section shall be made by statutory instrument.

(4) If a statutory instrument containing an order under this section—

(a) introduces into Chapter 5 of Part 2 of FA 2005 new provision relating to alternative finance arrangements, or

(b) amends an enactment which is not contained in that Chapter, but is contained in an Act,

it shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.

(5) In any other case, a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

(6) In this section " alternative finance arrangements " means arrangements which in the Treasury's opinion—

(a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, and

(b) achieve a similar effect without including provision for the payment of interest.**]**

Textual Amendments

F36 S. 98 heading substituted (21.7.2008) by Finance Act 2008 (c. 9), **s. 156(2)**

F37 S. 98(1)(1A) substituted for s. 98(1) (21.7.2008) by Finance Act 2008 (c. 9), **s. 156(3)**

F38 S. 98(3)-(6) substituted for s. 98(3) (21.7.2008) by Finance Act 2008 (c. 9), **s. 156(4)**

Nuclear decommissioning

99 Amendment of section 29 of the Energy Act 2004

(1) Section 29 of the Energy Act 2004 (c. 20) (disregard for tax purposes of cancellation etc of decommissioning provisions) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "relevant company" substitute " BNFL company ";

(b) for paragraphs (b) and (c) substitute—

"(b) that provision—

(i) relates to decommissioning or cleaning-up which the NDA acquires or has acquired responsibility for securing by virtue of a direction under section 3, but

(ii) is not provision recognised in order to reflect the terms or effect of a management contract between the company and the NDA;

and

(c) the responsibility referred to in paragraph (b)(i)—

(i) includes the financial responsibility under section 21, or

(ii) would do so but for the fact that the amount of the financial responsibility is for the time being subject to a limit imposed by a capping agreement."

(3) For subsections (3) and (4) substitute—

"(3) This subsection applies to a credit or debit if it arises from—

(a) the recognition in the accounts of the company for a relevant period beginning on or after 1st April 2005 of—

(i) the relevant provision, or

(ii) an asset that, in accordance with generally accepted accounting practice, is recognised in connection with the relevant provision in order to reflect the acquisition of financial responsibility referred to in subsection (1) (a "matching asset");

(b) an adjustment made in the accounts of the company for such a period of—

(i) the relevant provision, or

(ii) a matching asset;

or

(c) the removal from the accounts of the company for such a period of—

(i) the relevant provision,

(ii) a matching asset, or

(iii) an asset or liability recognised in order to reflect the terms or effect of a contract falling within subsection (3A).

(3A) A contract falls within this subsection if—

(a) it is a contract made before 1st April 2005 and having effect between two or more BNFL companies under which a party to the contract assumed responsibility for securing decommissioning or cleaning-up; and

(b) the rights and obligations under the contract are extinguished by reason of a transfer made under a nuclear transfer scheme."

(4) In subsection (5)—

(a) for the definition of "BNFL company" substitute—

""BNFL company" means—

(a) BNFL,

(b) a company that immediately before 1st April 2005 was a wholly-owned subsidiary of BNFL, or

(c) a wholly-owned subsidiary of a company falling within paragraph (b);";

(b) after that definition insert—

""capping agreement" means an agreement under subsection (9) of section 21, entered into on 1st April 2005, the sole or main effect of which is to impose a limit on the NDA's financial responsibility under that section;

"management contract" has the same meaning as in section 27;";

(c) for the definition of "relevant company" substitute—

""relevant period", in relation to a company, means an accounting period during the whole of which the company is publicly owned;".

(5) After that subsection insert—

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

"(5A) Where a company ceases to be publicly owned otherwise than at the end of an accounting period—

(a) the accounting period during which it ceases to be publicly owned is treated for the purposes of corporation tax as ending when it so ceases; and

(b) its profits and losses are to be computed accordingly for those purposes."

(6) The amendments made by this section have effect in relation to accounting periods of a BNFL company ending on or after 22nd March 2006.

"BNFL company" has the same meaning as in section 29 of the Energy Act 2004 (c. 20) as amended by this section.

100 Amendment of section 30 of the Energy Act 2004

(1) Section 30 of the Energy Act 2004 (disregard for tax purposes of decommissioning provisions recognised by Nuclear Decommissioning Authority) is amended as follows.

(2) In subsection (1)—

(a) for paragraph (b) substitute—

"(b) that responsibility—

(i) includes the financial responsibility under section 21, or

(ii) would do so but for the fact that the amount of the financial responsibility is for the time being subject to a limit imposed by a capping agreement;";

(b) in paragraph (c) omit "on the coming into force of the direction mentioned in paragraph (a),";

(c) at the end of that paragraph insert "; and

(d) the provision is recognised—

(i) in order to reflect the coming into force of the direction mentioned in paragraph (a), or

(ii) in consequence of the variation or removal of a limit on the NDA's financial responsibility under section 21 imposed by a capping agreement."

(3) For subsection (3) substitute—

"(3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with—

(a) the recognition made in the accounts of the NDA of—

(i) the relevant provision, or

(ii) an asset that, in accordance with generally accepted accounting practice, is recognised in order to reflect a limit on the NDA's financial responsibility under section 21 imposed by a capping agreement;

(b) any adjustment made in those accounts (including the removal from the accounts of an asset falling within paragraph (a)(ii)) in

consequence of a variation or removal of the limit mentioned in paragraph (a)(ii).”

(4) In subsection (4), for the words after “in connection with” substitute “ an adjustment not falling within paragraph (b) of that subsection ”.

(5) In subsection (5), after the definition of “BNFL company” insert—

““capping agreement” has the same meaning as in section 29;”.

(6) The amendments made by this section have effect in relation to accounting periods of the Nuclear Decommissioning Authority ending on or after 22nd March 2006.

Accounting practice

101 Securitisation companies

(1) Section 83 of FA 2005 (application of accounting standards to securitisation companies) is amended as follows.

(2) In subsection (1)(b) (periods of account in relation to which old UK GAAP is to apply) for “1st January 2007” substitute “ 1st January 2008 ”.

(3) In subsection (3) (meaning of “note-issuing company”)—
- (a) omit “and” at the end of paragraph (c);
- (b) after paragraph (d) insert—

“, and

(e) if it has any business apart from the activity mentioned in paragraph (a) (and any incidental activities) it consists in one or both of the following—
- (i) acquiring, holding and managing assets forming the whole or part of the security for the capital market arrangement;
- (ii) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.”.

(4) In subsection (5) (meaning of “intermediate borrowing company”)—
- (a) in paragraph (a) after “asset-holding company”, and
- (b) in paragraph (b) after “note-issuing company”,

insert “ (or another intermediate borrowing company) ”.

(5) In section 84 of that Act (power to make provision as to application of Corporation Tax Acts in relation to securitisation companies)—
- (a) in subsection (3)(d)—
  - (i) at the end of sub-paragraph (i) insert “ , and ”, and
  - (ii) omit sub-paragraph (ii) and the word “and” following it;
- (b) in subsection (5), omit paragraph (a).

Status: *Point in time view as at 01/04/2009.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2006, Part 3. (See end of Document for details)*

(6) The amendments in this section shall be deemed always to have had effect, subject as follows.

(7) A company that would have been a securitisation company for the purposes of section 83 of FA 2005 if the amendments in this section had not been made, being either—

(a) a note-issuing company that—

(i) had become party as debtor to the capital market investment before 22nd March 2006, or

(ii) had before that date entered into a binding arrangement to become a party as debtor to the capital market investment, or

(b) another description of securitisation company by virtue of its connection with a company within paragraph (a),

may elect to be taxed as if the amendments in subsection (3) had not been made.

(8) Any such election must be made not later than 31st March 2007 and has effect for all relevant periods of account.

102 Accountancy change: spreading of adjustment

(1) Schedule 15 to this Act (accountancy change: spreading of adjustment) has effect.

(2) In that Schedule—

Part 1 makes provision for income tax purposes, and

Part 2 makes provision for corporation tax purposes.

(3) In section 21B of ICTA (corporation tax: application to Schedule A business of other rules applicable to Case 1 of Schedule D) for "section 44 of and Schedule 6 to the Finance Act 1998" substitute " section 64 of and Schedule 22 to the Finance Act 2002 ".

Status:
Point in time view as at 01/04/2009.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2006, Part 3.