



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 1 **U.K.**

#### INTRODUCTION

#### 1 Overview of Act **U.K.**

- (1) Part 2 of this Act contains basic provisions about the charge to corporation tax including—
  - (a) the imposition of the charge to corporation tax on the income and chargeable gains of companies (referred to collectively as “profits”), (see section 2),
  - (b) the exclusion of income and chargeable gains subject to corporation tax from income tax and capital gains tax (see sections 3 and 4),
  - (c) provision about the territorial scope of the charge to corporation tax (see section 5 and Chapter 4),
  - (d) provision about how corporation tax is charged and assessed, in particular its charging and assessment by reference to accounting periods (see section 8),
  - (e) provision about accounting periods (see Chapter 2), and
  - (f) rules for determining the residence of companies (see Chapter 3).
- (2) Under section 2(4) the charge to corporation tax on income has effect in accordance with the provisions of the Corporation Tax Acts that deal with its application, the main provisions of this Act that do so being—
  - (a) Part 3 (trading income),
  - (b) Part 4 (property income),
  - (c) Parts 5 and 6 (profits arising from loan relationships),
  - (d) Part 7 (profits arising from derivative contracts),
  - (e) Part 8 (gains in respect of intangible fixed assets),
  - (f) Part 9 (profits arising from disposals of know-how and sales of patent rights), and
  - (g) Part 10 (miscellaneous income).

*Status: Point in time view as at 22/04/2009.*

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- (3) Part 7 also applies the charge to corporation tax on chargeable gains to certain profits arising from derivative contracts.
- (4) Parts 5 to 8 also deal with how deficits or losses arising from, or in respect of, the matters to which they relate are brought into account for corporation tax purposes.
- (5) The following Parts provide relief for particular types of expenditure—
  - (a) Part 11 (relief for particular employee share acquisition schemes),
  - (b) Part 12 (other relief for employee share acquisitions),
  - (c) Part 13 (additional relief for expenditure on research and development),
  - (d) Part 14 (remediation of contaminated land), and
  - (e) Part 15 (film production).
- (6) The following Parts contain special rules for particular cases—
  - (a) Part 15 (film production),
  - (b) Part 16 (companies with investment business),
  - (c) Part 17 (partnerships), and
  - (d) Part 18 (unremittable income).
- (7) The following Parts contain provisions of general application—
  - (a) Part 19 (general exemptions),
  - (b) Part 20 (general calculation rules), and
  - (c) Part 21 (other general provisions, including definitions for the purposes of the Act).
- (8) For abbreviations and defined expressions used in this Act, see section 1312 and Schedule 4.

## PART 2 **U.K.**

### CHARGE TO CORPORATION TAX: BASIC PROVISIONS

## CHAPTER 1 **U.K.**

### THE CHARGE TO CORPORATION TAX

#### *Charge to tax on profits*

## 2 **Charge to corporation tax** **U.K.**

- (1) Corporation tax is charged on profits of companies for any financial year for which an Act so provides.
- (2) In this Part “profits” means income and chargeable gains, except in so far as the context otherwise requires.
- (3) In this Act “the charge to corporation tax on income” means the charge under subsection (1) so far as relating to income.

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- (4) The charge to corporation tax on income has effect in accordance with the provisions of the Corporation Tax Acts that deal with its application.

### **3 Exclusion of charge to income tax U.K.**

- (1) The provisions of the Income Tax Acts relating to the charge to income tax do not apply to income of a company if—
- (a) the company is UK resident, or
  - (b) the company is not UK resident and the income is within its chargeable profits as defined by section 19.
- (2) Subsection (1) does not apply to income accruing to a company in a fiduciary or representative capacity.

### **4 Exclusion of charge to capital gains tax U.K.**

Capital gains tax is not charged on gains accruing to a company in respect of which the company is chargeable to corporation tax, or would be so chargeable but for an exemption.

#### *General scheme of corporation tax*

### **5 Territorial scope of charge U.K.**

- (1) A UK resident company is chargeable to corporation tax on all its profits wherever arising.
- (2) A non-UK resident company is within the charge to corporation tax only if it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (3) A non-UK resident company which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom is chargeable to corporation tax on all its profits wherever arising that are chargeable profits as defined in section 19 (profits attributable to its permanent establishment in the United Kingdom).
- (4) Subsections (1) and (3) are subject to any exceptions provided for by the Corporation Tax Acts.

### **6 Profits accruing in fiduciary or representative capacity U.K.**

- (1) A company is not chargeable to corporation tax on profits which accrue to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in the profits.
- (2) The exception under subsection (1) from chargeability does not apply to profits arising in the winding up of the company.

### **7 Profits accruing under trusts U.K.**

Profits that accrue for the benefit of a company under a trust are treated for the purposes of the charge to corporation tax under section 2(1) as accruing directly to the company.

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## 8 How tax is charged and assessed **U.K.**

- (1) Corporation tax for a financial year is charged on profits arising in the year.
- (2) Corporation tax is calculated and chargeable, and assessments to corporation tax are made, by reference to accounting periods.
- (3) Corporation tax which is assessed and charged for an accounting period of a company is assessed and charged on the full amount of profits arising in the accounting period.
- (4) Subsection (3) is subject to any contrary provision in the Corporation Tax Acts.
- (5) If a company's accounting period falls within more than one financial year, the amount of the profits arising in the accounting period that is chargeable to corporation tax must be apportioned between the financial years in which the accounting period falls.

## CHAPTER 2 **U.K.**

### ACCOUNTING PERIODS

## 9 Beginning of accounting period **U.K.**

- (1) An accounting period of a company begins—
  - (a) when the company comes within the charge to corporation tax, or
  - (b) immediately after the end of the previous accounting period of the company, if the company is still within the charge to corporation tax.
- (2) For the purposes of this section a UK resident company is treated as coming within the charge to corporation tax when it starts to carry on business, if it would not otherwise be within the charge to corporation tax.
- (3) If a chargeable gain or allowable loss accrues to a company at a time which is not (ignoring this subsection) within an accounting period of the company—
  - (a) an accounting period of the company begins at that time, and
  - (b) the gain or loss accrues in that accounting period.
- (4) This section does not apply if section 12 (companies being wound up) applies.
- (5) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to begin at a different time.

## 10 End of accounting period **U.K.**

- (1) An accounting period of a company comes to an end on the first occurrence of any of the following—
  - (a) the ending of 12 months from the beginning of the accounting period,
  - (b) an accounting date of the company,
  - (c) if there is a period for which the company does not make up accounts, the end of that period,
  - (d) the company starting or ceasing to trade,
  - (e) if the company carries on only one trade, coming, or ceasing to be, within the charge to corporation tax in respect of that trade,



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- (f) if the company carries on more than one trade, coming, or ceasing to be, within the charge to corporation tax in respect of all the trades it carries on,
  - (g) the company becoming, or ceasing to be, UK resident,
  - (h) the company ceasing to be within the charge to corporation tax,
  - (i) the company entering administration, and
  - (j) the company ceasing to be in administration.
- (2) If subsection (1)(i) applies, the accounting period is treated as having ended immediately before the day on which the company enters administration.
- (3) For the purposes of this section a company enters administration—
- (a) when it enters administration under Schedule B1 to the Insolvency Act 1986 (c. 45), or
  - (b) when it is subject to a corresponding procedure, other than one under that Act.
- (4) For the purposes of this section a company ceases to be in administration—
- (a) when it ceases to be in administration under Schedule B1 to the Insolvency Act 1986, or
  - (b) when a corresponding event occurs, other than under that Act.
- (5) This section does not apply if section 12 (companies being wound up) applies.
- (6) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to end at a different time.

## **11 Companies with more than one accounting date** **U.K.**

- (1) This section applies if a company carrying on more than one trade—
- (a) does not have the same accounting date for each of the trades, and
  - (b) does not make up general accounts for the whole of the company's activities.
- (2) The company may choose which of the accounting dates for the trades is to be used for the purpose of section 10(1)(b).
- (3) But if an officer of Revenue and Customs thinks, on reasonable grounds, that the date chosen by the company is inappropriate, the officer may give notice to the company directing one of the other accounting dates to be used for that purpose instead.

## **12 Companies being wound up** **U.K.**

- (1) This section applies if a company is being wound up.
- (2) An accounting period of the company ends immediately before the winding up starts.
- (3) An accounting period of the company begins when the winding up starts.
- (4) After the winding up starts, an accounting period of the company ends—
- (a) at the end of the period of 12 months beginning on the first day of the accounting period, or
  - (b) if earlier, when the winding up is completed.

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- (5) After the winding up starts, an accounting period of the company begins immediately after the end of the previous accounting period of the company, if the winding up has not been completed.
- (6) This section is subject to any provision of the Corporation Tax Acts which provides for an accounting period of a company to which this section applies to begin or end at a different time.
- (7) For the purposes of this section a winding up of a company starts—
  - (a) when the company passes a resolution for the winding up of the company,
  - (b) when a petition for the winding up of the company is presented, if the company has not already passed such a resolution and a winding up order is made on the petition, or
  - (c) when an act is done in relation to the company for a similar purpose, if the winding up is not under the Insolvency Act 1986 (c. 45).

## CHAPTER 3 U.K.

### COMPANY RESIDENCE

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

- C1** Pt. 2 Ch. 3 applied by 1970 c. 9, s. 109A (as 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. 308** (with Sch. 2 Pts. 1, 2))
- C2** Pt. 2 Ch. 3 applied by 1992 c. 12, s. 286A (as 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. 384** (with Sch. 2 Pts. 1, 2))
- C3** Pt. 2 Ch. 3 applied by 2007 c. 3, s. 835A (as 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. 706** (with Sch. 2 Pts. 1, 2))

## 13 **Overview of Chapter** U.K.

- (1) This Chapter contains rules for determining the residence of companies.
- (2) Section 14 gives the main rule for companies incorporated in the United Kingdom (including SEs and SCEs incorporated in the United Kingdom).
- (3) Section 15 deals with companies which have been UK resident under the rules of common law and provides for their continued residence when certain circumstances arise.
- (4) Sections 16 and 17 deal with SEs and SCEs which transfer their registered office to the United Kingdom.
- (5) Section 18 contains a special rule for companies treated as non-UK resident under double taxation arrangements.

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#### **14 Companies incorporated in the United Kingdom U.K.**

- (1) A company which is incorporated in the United Kingdom is UK resident for the purposes of the Corporation Tax Acts.
- (2) Accordingly, even if a different place of residence is given by a rule of law, the company is not resident in that place for the purposes of the Corporation Tax Acts.

#### **15 Continuation of residence established under common law U.K.**

- (1) This section applies to a company which is neither—
  - (a) incorporated in the United Kingdom, nor
  - (b) resident in the United Kingdom by virtue of section 16 or 17.
- (2) If the company—
  - (a) is no longer carrying on a business, and
  - (b) was UK resident for the purposes of the Corporation Tax Acts immediately before it ceased to carry on business,the company continues to be UK resident for the purposes of the Corporation Tax Acts.
- (3) If the company—
  - (a) is being wound up outside the United Kingdom, and
  - (b) was UK resident for the purposes of the Corporation Tax Acts immediately before any of its activities came under the control of a foreign liquidator,the company continues to be UK resident for the purposes of the Corporation Tax Acts.
- (4) In subsection (3) “foreign liquidator” means a person exercising functions which, in the United Kingdom, would be exercisable by a liquidator.

#### **16 SEs which transfer registered office to the United Kingdom U.K.**

- (1) This section applies to an SE which transfers its registered office to the United Kingdom in accordance with Article 8 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (Societas Europaea).
- (2) The SE is UK resident for the purposes of the Corporation Tax Acts from the time of its registration in the United Kingdom.
- (3) Accordingly, even if a different place of residence is given by a rule of law, the SE is not resident in that place for the purposes of the Corporation Tax Acts.
- (4) The SE does not cease to be UK resident merely because it later transfers its registered office from the United Kingdom.

#### **17 SCEs which transfer registered office to the United Kingdom U.K.**

- (1) This section applies to an SCE which transfers its registered office to the United Kingdom in accordance with Article 7 of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE).
- (2) The SCE is UK resident for the purposes of the Corporation Tax Acts from the time of its registration in the United Kingdom.

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- (3) Accordingly, even if a different place of residence is given by a rule of law, the SCE is not resident in that place for the purposes of the Corporation Tax Acts.
- (4) The SCE does not cease to be UK resident merely because it later transfers its registered office from the United Kingdom.

## 18 Companies treated as non-UK resident under double taxation arrangements **U.K.**

- (1) This section applies to a company which is treated as—
  - (a) resident in a territory outside the United Kingdom, and
  - (b) non-UK resident,
 for the purposes of any double taxation arrangements.
- (2) For the purposes of the Corporation Tax Acts the company is—
  - (a) resident outside the United Kingdom, and
  - (b) non-UK resident.
- (3) Subsection (2) applies even if the company would otherwise be UK resident for the purposes of the Corporation Tax Acts by virtue of section 14, 15, 16 or 17 or another rule of law.
- (4) To decide whether a company is treated as mentioned in subsection (1)(a) and (b) for the purposes of any double taxation arrangements, assume that—
  - (a) the company has made a claim for relief under the arrangements, and
  - (b) in consequence of the claim it falls to be decided whether the company is to be treated as mentioned in subsection (1)(a) and (b) for the purposes of the arrangements.

## CHAPTER 4 **U.K.**

### NON-UK RESIDENT COMPANIES: CHARGEABLE PROFITS

#### *Chargeable profits*

## 19 Chargeable profits **U.K.**

- (1) This section applies if a non-UK resident company carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (2) The company's chargeable profits are its profits that are—
  - (a) of a type mentioned in subsection (3), and
  - (b) attributable to the permanent establishment in accordance with sections 20 to 32.
- (3) The types of profits referred to in subsection (2)(a) are—
  - (a) trading income arising directly or indirectly through or from the establishment,
  - (b) income from property or rights used by, or held by or for, the establishment, and

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- (c) chargeable gains falling within section 10B of TCGA 1992 (non-resident company with United Kingdom permanent establishment)—
  - (i) as a result of assets being used in or for the purposes of the trade carried on by the company through the establishment, or
  - (ii) as a result of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.

## 20 Profits attributable to permanent establishment: introduction **U.K.**

- (1) Sections 21 to 32 apply for the purpose of determining the amount of profits of a non-UK resident company that are attributable to a permanent establishment of the company in the United Kingdom.
- (2) Sections 21 to 28 contain provision about the separate enterprise principle.
- (3) See also paragraph 5A of Schedule 26 to FA 2003 (non-resident companies: transactions through broker, investment manager or Lloyd's agent), which provides for profits of certain investment transactions to be disregarded in determining the amount of profits attributable to a permanent establishment.

### *The separate enterprise principle*

## 21 The separate enterprise principle **U.K.**

- (1) The profits of the non-UK resident company that are attributable to the permanent establishment are those that the establishment would have made if it were a distinct and separate enterprise which—
  - (a) engaged in the same or similar activities under the same or similar conditions, and
  - (b) dealt wholly independently with the non-UK resident company.
- (2) In applying subsection (1) assume that—
  - (a) the permanent establishment has the same credit rating as the non-UK resident company, and
  - (b) the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.
- (3) In sections 22 to 28 the principle in subsection (1) (read with subsection (2)) is called “the separate enterprise principle”.

## 22 Transactions treated as being on arm's length terms **U.K.**

In accordance with the separate enterprise principle, transactions between the permanent establishment and any other part of the non-UK resident company are treated as taking place on such terms as would have been agreed between parties dealing at arm's length.

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### 23 Provision of goods or services for permanent establishment **U.K.**

- (1) This section applies if the non-UK resident company provides the permanent establishment with goods or services.
- (2) If the goods or services are of a kind that the company supplies, in the ordinary course of its business, to third parties dealing with it at arm's length, the matter is dealt with as a transaction to which the separate enterprise principle applies.
- (3) If not, the matter is dealt with as an expense incurred by the non-UK resident company for the purposes of the permanent establishment (see section 29).

### 24 Application to insurance companies **U.K.**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision about the application of section 21(1) to insurance companies.
- (2) The regulations may, in particular, make provision in place of section 21(2)(b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom.
- (3) In this section “insurance company” has the meaning given by section 431(2) of ICTA.

*The separate enterprise principle: application to non-UK resident banks*

### 25 Non-UK resident banks: introduction **U.K.**

- (1) Sections 26 to 28 contain provision in relation to the application of the separate enterprise principle if the non-UK resident company is a bank.
- (2) Nothing in sections 26 to 28 is to be read as preventing similar principles to those provided for in those sections from applying when the separate enterprise principle is applied to a non-UK resident company that is not a bank.
- (3) In this section and those sections “bank” has the meaning given by section 840A of ICTA.

### 26 Transfer of financial assets **U.K.**

- (1) This section applies if—
  - (a) the non-UK resident company is a bank, and
  - (b) there is a transfer of a loan or other financial asset between the permanent establishment and any other part of the company.
- (2) In accordance with the separate enterprise principle, the transfer is recognised only if it would have taken place between independent enterprises.
- (3) The transfer is not recognised if it cannot reasonably be considered that it is carried out for valid commercial reasons.
- (4) For this purpose the obtaining of a tax advantage is not a valid commercial reason.

### 27 Loans: attribution of financial assets and profits arising **U.K.**

- (1) This section applies if the non-UK resident company—

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- (a) is a bank, and
  - (b) makes a loan or has another financial asset.
- (2) In accordance with the separate enterprise principle, the loan or other financial asset, and profits arising from it, are attributed to the permanent establishment so far as they can reasonably be regarded as having been generated by the activities of the permanent establishment.
- (3) For the purposes of subsection (2), particular account is to be taken of the extent to which the permanent establishment is responsible for—
- (a) obtaining the offer of new business,
  - (b) establishing the potential borrower's credit rating and the risk involved in providing credit,
  - (c) negotiating the terms of the loan with the borrower, and
  - (d) deciding whether, and if so on what conditions, to make or extend the loan.
- (4) For those purposes, account may also be taken of the extent to which the permanent establishment is responsible for—
- (a) concluding the loan agreement and disbursing the proceeds of the loan, and
  - (b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.
- (5) References in this section to a financial asset include any financial risk in relation to a loan, or potential loan, if—
- (a) the financial risk is capable of giving rise to fees or other receipts, and
  - (b) the holding of capital is required for the financial risk (or would be required if the transaction were between parties at arm's length).

## **28 Borrowing: permanent establishment acting as agent or intermediary** **U.K.**

- (1) This section applies if—
- (a) the non-UK resident company is a bank, and
  - (b) the permanent establishment borrows funds for the purposes of another part of the company and (in relation to that borrowing) acts only as an agent or intermediary.
- (2) In accordance with the separate enterprise principle—
- (a) the profits attributable to the permanent establishment, and
  - (b) the capital attributable to the permanent establishment under section 21(2)(b),
- are to be those appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.

### *Rules about deductions*

## **29 Allowable deductions** **U.K.**

- (1) A deduction is allowed for any allowable expenses incurred for the purposes of the permanent establishment.



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- (2) Expenses incurred for the purposes of the permanent establishment include executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.
- (3) It does not matter whether the expenses are incurred by, or reimbursed by, the permanent establishment.
- (4) The amount of expenses to be taken into account under subsection (1) is the actual cost to the non-UK resident company.
- (5) “Allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a UK resident company.

**30 Restriction on deductions: costs U.K.**

No deduction is allowed for costs in excess of those which would have been incurred on the assumptions in section 21(2).

**31 Restriction on deductions: payments in respect of intangible assets U.K.**

- (1) No deduction is allowed for royalties paid, or other similar payments made, by the permanent establishment to any other part of the non-UK resident company in respect of the use of intangible assets held by the company.
- (2) This does not prevent a deduction for any contribution by the permanent establishment to the costs of creation of an intangible asset.
- (3) In this section “intangible asset” has the meaning it has for accounting purposes, and includes any intellectual property (as defined in section 712(3)).

**32 Restriction on deductions: interest or other financing costs U.K.**

- (1) No deduction is allowed for payments of interest or other financing costs by the permanent establishment to any other part of the non-UK resident company.
- (2) But the restriction in subsection (1) does not apply to interest or other financing costs that are payable in respect of borrowing by the permanent establishment in the ordinary course of a financial business carried on by it.
- (3) In subsection (2) “financial business” means any of the following—
  - (a) banking, deposit-taking, money-lending or debt-factoring, or a business similar to any of those, and
  - (b) dealing in commodity or financial futures.

**CHAPTER 5 U.K.**

SUPPLEMENTARY

**33 Trade includes office U.K.**

In this Part, except in so far as the context otherwise requires—

- (a) references to a trade include an office, and



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- (b) references to carrying on a trade include holding an office.

## **PART 3** U.K.

### TRADING INCOME

## **CHAPTER 1** U.K.

### INTRODUCTION

## **34 Overview of Part** U.K.

- (1) This Part applies the charge to corporation tax on income to—
  - (a) the profits of a trade (see Chapter 2), and
  - (b) post-cessation receipts arising from a trade (see Chapter 15).
- (2) Chapters 3 to 14 contain rules relevant to tax under this Part.
- (3) Chapter 16 contains rules that give priority to provisions outside this Part in relation to certain matters that fall within it.
- (4) This Part needs to be read with Parts 19 (general exemptions) and 20 (general calculation rules).

## **CHAPTER 2** U.K.

### INCOME TAXED AS TRADE PROFITS

#### *Charge to tax on trade profits*

## **35 Charge to tax on trade profits** U.K.

The charge to corporation tax on income applies to the profits of a trade.

#### *Trades and trade profits*

## **36 Farming and market gardening** U.K.

- (1) Farming or market gardening in the United Kingdom is treated for corporation tax purposes as the carrying on of a trade or part of a trade (whether or not the land is managed on a commercial basis and with a view to the realisation of profits).
- (2) All farming in the United Kingdom carried on by a company, other than farming carried on as part of another trade, is treated for corporation tax purposes as one trade.
- (3) This section does not apply to farming or market gardening by an insurance company on land which is an asset of the company's long-term insurance fund.
- (4) In the case of farming carried on by a company as a member of a firm, this rule is explained by section 1270(1).

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### 37 Commercial occupation of woodlands **U.K.**

- (1) The commercial occupation of woodlands in the United Kingdom is not a trade or part of a trade for any corporation tax purpose.
- (2) For this purpose the occupation of woodlands is commercial if the woodlands are managed—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) See also sections 208 and 980 (which, when read with this section, secure that profits or losses from the commercial occupation of woodlands in the United Kingdom are ignored for corporation tax purposes).

### 38 Commercial occupation of land other than woodlands **U.K.**

- (1) The commercial occupation of land in the United Kingdom is treated for corporation tax purposes as the carrying on of a trade or part of a trade.
- (2) For this purpose the occupation of land is commercial if the land is managed—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) This section does not apply—
  - (a) to farming or market gardening (which is dealt with by section 36),
  - (b) if the land is being prepared for forestry purposes,
  - (c) if the land comprises woodlands (which is dealt with by section 37), or
  - (d) to the occupation by an insurance company of land which is an asset of the company's long-term insurance fund.

### 39 Profits of mines, quarries and other concerns **U.K.**

- (1) Profits or losses arising out of land in the case of a concern to which this section applies are calculated as if the concern were a trade.
- (2) Any profits arising out of the land are treated for the purposes of clause 35 as profits of a trade.
- (3) Any losses arising out of the land are treated for the purposes of Chapters 2 and 4 of Part 10 of ICTA (loss relief and group relief) as losses of a trade carried on in the United Kingdom.
- (4) The concerns to which this section applies are—
  - (a) mines and quarries (including gravel pits, sand pits and brickfields),
  - (b) ironworks, gasworks, salt springs or works, alum mines or works, waterworks and streams of water,
  - (c) canals, inland navigation, docks and drains or levels,
  - (d) rights of fishing,
  - (e) rights of markets and fairs, tolls, bridges and ferries,
  - (f) railways and other kinds of way, and
  - (g) a concern of the same kind as one specified in paragraph (b), (c), (d) or (e).
- (5) But this section does not apply to a concern—

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- (a) if it is carried on by an insurance company on land which is an asset of the company's long-term insurance fund, or
- (b) if section 38 (commercial occupation of land other than woodlands) applies to the occupation of the land out of which the profits or losses arise.

#### 40 Credit unions **U.K.**

- (1) If a credit union—
  - (a) makes loans to its members, or
  - (b) invests its surplus funds (by placing them on deposit or otherwise),that is not treated, in calculating the credit union's income, as the carrying on of a trade or part of a trade.
- (2) In this section “surplus funds” means funds not immediately required for the credit union's purposes.

*Starting and ceasing to trade*

#### 41 Effect of company starting or ceasing to be within charge to corporation tax **U.K.**

- (1) This section applies if a company starts or ceases to be within the charge to corporation tax in respect of a trade.
- (2) The company is treated for the purposes of this Part—
  - (a) as starting to carry on the trade when it starts to be within the charge, or
  - (b) as ceasing to carry on the trade when it ceases to be within the charge.

*Trading income and property income*

#### 42 Tied premises **U.K.**

- (1) This section applies if —
  - (a) in the course of carrying on a trade a company (“the trader”) supplies, or is concerned in the supply of, goods sold or used on premises occupied by another person,
  - (b) the trader has an estate or interest in the premises,
  - (c) the estate or interest is dealt with as property employed for the purposes of the trade, and
  - (d) receipts and expenses in connection with the premises would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) Both the receipts and the expenses are instead brought into account in calculating the profits of the trade.
- (3) Any apportionment of receipts or expenses that is necessary because—
  - (a) the receipts or expenses do not relate only to the premises, or
  - (b) the above conditions are met only in relation to part of the premises,is to be made on a just and reasonable basis.

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#### 43 Caravan sites where trade carried on **U.K.**

- (1) This section applies if—
  - (a) a company (“the trader”) carries on material activities connected with the operation of a caravan site,
  - (b) the activities are, or are part of, a trade, and
  - (c) receipts from, and expenses of, lettings of caravans or pitches for caravans on the site would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and the expenses into account in calculating the profits of the trade.
- (3) But if the conditions in subsection (1)(a) and (b) are met for only part of an accounting period of the trader, subsection (2) applies only to the receipts and expenses that would otherwise be brought into account in calculating the profits of the property business for that part of the accounting period.
- (4) In this section—
 

“caravan site” means—

  - (a) land on which a caravan is stationed for the purposes of human habitation, and
  - (b) land which is used in conjunction with land on which a caravan is so stationed, and

“letting” includes a licence to occupy.

#### 44 Surplus business accommodation **U.K.**

- (1) This section applies if—
  - (a) a company (“the trader”) carrying on a trade obtains receipts from a letting of business accommodation that is temporarily surplus to requirements (see subsections (3) and (4)),
  - (b) the accommodation is not held as trading stock,
  - (c) the receipts are in respect of part of a building of which another part is used to carry on the trade,
  - (d) the receipts are relatively small, and
  - (e) the receipts, and the expenses of the letting, would otherwise be brought into account in calculating the profits of a property business of the trader.
- (2) The trader may instead bring both the receipts and the expenses into account in calculating the profits of the trade.
- (3) Accommodation is temporarily surplus to requirements only if—
  - (a) it has been used within the last 3 years to carry on the trade or acquired within the last 3 years,
  - (b) the trader intends to use it to carry on the trade at a later date, and
  - (c) the letting is for a term of not more than 3 years.
- (4) If accommodation is temporarily surplus to requirements at the beginning of an accounting period, it continues to be temporarily surplus to requirements until the end of that period.

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- (5) If under this section any of the receipts from and expenses of a letting are brought into account in calculating the profits of the trade, all subsequent receipts from and expenses of the letting must be dealt with in the same way (but only so long as this section continues to apply).
- (6) In this section “letting” includes a licence to occupy.

## 45 Payments for wayleaves **U.K.**

- (1) This section applies if—
- a company (“the trader”) carries on a trade on some or all of the land to which a wayleave relates,
  - rent is receivable, or expenses are incurred, by the trader in respect of the wayleave, and
  - apart from any rent or expenses in respect of a wayleave, no other receipts or expenses in respect of any of the land are brought into account in calculating the profits of any property business of the trader.
- (2) If—
- the trader would otherwise be liable to tax under Chapter 8 of Part 4 in respect of the rent for the wayleave (rent receivable for UK electric-line wayleaves), or
  - expenses incurred by the trader in respect of the wayleave would otherwise be brought into account in calculating profits charged under that Chapter,
- the trader may instead bring both the rent and the expenses into account in calculating the profits of the trade.
- (3) If—
- rent for the wayleave would otherwise be brought into account in calculating the profits of a property business of the trader, or
  - expenses incurred by the trader in respect of the wayleave would otherwise be so brought into account,
- the trader may instead bring both the rent and the expenses into account in calculating the profits of the trade.
- (4) In this section “rent” includes—
- a receipt mentioned in section 207(3), and
  - any other receipt in the nature of rent.
- (5) In this section “wayleave” means an easement, servitude or right in or over land which is enjoyed in connection with—
- an electric, telegraph or telephone wire or cable,
  - a pipe for the conveyance of any thing, or
  - any apparatus used in connection with such a pipe.
- (6) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
- a pole or pylon supporting such a wire or cable, or
  - apparatus used in connection with such a wire or cable.

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## CHAPTER 3 U.K.

### TRADE PROFITS: BASIC RULES

#### 46 Generally accepted accounting practice U.K.

- (1) The profits of a trade must be calculated in accordance with generally accepted accounting practice, subject to any adjustment required or authorised by law in calculating profits for corporation tax purposes.
- (2) This does not—
  - (a) require a company to comply with the requirements of the Companies Act 2006 (c. 46) or subordinate legislation made under that Act except as to the basis of calculation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section does not affect any provisions of the Corporation Tax Acts—
  - (a) relating to the calculation of the profits of—
    - (i) Lloyd's underwriters, or
    - (ii) the life assurance business of insurance companies, or
  - (b) otherwise laying down special rules for the calculation of the profits of a particular description of business.

#### 47 Losses calculated on same basis as profits U.K.

- (1) The same rules apply for corporation tax purposes in calculating losses of a trade as apply in calculating profits.
- (2) This is subject to any express provision to the contrary.

#### 48 Receipts and expenses U.K.

- (1) In the Corporation Tax Acts, in the context of the calculation of the profits of a trade, references to receipts and expenses are to any items brought into account as credits or debits in calculating the profits.
- (2) It follows that references in that context to receipts or expenses do not imply that an amount has actually been received or paid.
- (3) This section is subject to any express provision to the contrary.

#### 49 Items treated as receipts and expenses U.K.

The rules for calculating the profits of a trade need to be read with—

- (a) the provisions of CAA 2001 which treat allowances as expenses of a trade,
- (b) the provisions of CAA 2001 which treat charges as receipts of a trade,
- (c) section 297 (credits and debits in respect of a loan relationship to which a company is a party for the purposes of a trade it carries on treated as receipts and expenses of the trade),
- (d) section 573 (credits and debits in respect of a derivative contract to which a company is a party for the purposes of a trade it carries on treated as receipts and expenses of the trade),

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- (e) section 747 (credits and debits in respect of an intangible fixed asset held by a company for the purposes of a trade it carries on treated as receipts and expenses of the trade), and
- (f) section 749 (credits and debits in respect of an intangible fixed asset held by a company for the purposes of a section 39(4) concern which it carries on treated as receipts and expenses of the concern).

## 50 Animals kept for trade purposes **U.K.**

- (1) Animals or other living creatures kept for the purposes of a trade are treated as trading stock if they are not kept wholly or mainly—
  - (a) for the work they do in connection with the carrying on of the trade,
  - (b) for public exhibition, or
  - (c) for racing or other competitive purposes.
- (2) But they are not treated as trading stock if they are part of a herd in relation to which a herd basis election has effect (see Chapter 8).
- (3) This section applies to shares in animals or other living creatures as it applies to the creatures themselves.

## 51 Relationship between rules prohibiting and allowing deductions **U.K.**

- (1) Any relevant permissive rule in this Part—
  - (a) has priority over any relevant prohibitive rule, but
  - (b) is subject to—
    - (i) section 56 (car or motor cycle hire),
    - (ii) section 1288 (unpaid remuneration),
    - (iii) section 1290 (employee benefit contributions),
    - (iv) section 1304 (crime-related payments).
- (2) In this section “any relevant permissive rule in this Part” means any provision of—
  - (a) Chapter 5 (trade profits: rules allowing deductions), apart from sections 62 to 67,
  - (b) Chapter 7 (trade profits: gifts to charities etc),
  - (c) Chapter 9 (trade profits: other specific trades), or
  - (d) Chapter 12 (deductions from profits: unremittable amounts),which allows a deduction in calculating the profits of a trade.
- (3) In this section “any relevant prohibitive rule”, in relation to any deduction, means any provision of this Part or Chapter 1 of Part 20 (apart from those mentioned in subsection (1)(b)) which might otherwise be read as—
  - (a) prohibiting or deferring the deduction, or
  - (b) restricting the amount of the deduction.

## 52 Apportionment etc of profits and losses to accounting period **U.K.**

- (1) This section applies if a period of account of a trade does not coincide with an accounting period.



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- (2) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the accounting period—
  - (a) apportioning the profits or losses of a period of account to the parts of that period falling in different accounting periods, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (3) The steps must be taken by reference to the number of days in the periods concerned.

## CHAPTER 4 **U.K.**

### TRADE PROFITS: RULES RESTRICTING DEDUCTIONS

#### 53 **Capital expenditure** **U.K.**

- (1) In calculating the profits of a trade, no deduction is allowed for items of a capital nature.
- (2) Subsection (1) is subject to provision to the contrary in the Corporation Tax Acts.

#### 54 **Expenses not wholly and exclusively for trade and unconnected losses** **U.K.**

- (1) In calculating the profits of a trade, no deduction is allowed for—
  - (a) expenses not incurred wholly and exclusively for the purposes of the trade, or
  - (b) losses not connected with or arising out of the trade.
- (2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.

#### 55 **Bad debts** **U.K.**

- (1) This section applies to non-money debts to which neither Part 7 (derivative contracts) nor Part 8 (intangible fixed assets) applies.
- (2) In calculating the profits of a company's trade, no deduction is allowed in respect of a non-money debt owed to the company, except—
  - (a) by way of impairment loss, or
  - (b) so far as the debt is released wholly and exclusively for the purposes of the trade as part of a statutory insolvency arrangement.
- (3) In this section “non-money debt” means a debt which is not a money debt for the purposes of Part 5 (loan relationships).

#### 56 **Car or motor cycle hire** **U.K.**

- (1) Subsection (2) applies if, in calculating the profits of a trade, a deduction is allowed for expenses incurred on the hiring of a car or motor cycle—
  - (a) which is not a qualifying hire car or motor cycle (see section 57(2)), and
  - (b) the retail price of which when new exceeds £12,000.



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- (2) The amount of the deduction which would otherwise be allowable is reduced by multiplying the amount by the fraction—

$$\frac{\text{£ } 12,000 + \text{RP}}{2 \times \text{RP}}$$

where RP is the retail price of the car or motor cycle when new.

- (3) Subsection (4) applies if a deduction is reduced as a result of subsection (2), or a corresponding provision, and subsequently—
- (a) there is a rebate (however described) of the hire charges, or
  - (b) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement.
- (4) The amount that, as a result of the rebate or release—
- (a) is brought into account as a receipt of the trade, or
  - (b) is treated as a post-cessation receipt under section 193 (debts released after cessation),
- is reduced by multiplying it by the fraction in subsection (2).
- (5) In this section “corresponding provision” means—
- (a) section 1251(2) (car or motor cycle hire: expenses of management),
  - (b) section 48(2) of ITTOIA 2005 (car or motor cycle hire: trade profits and property income), or
  - (c) section 76ZN(2) of ICTA (car or motor cycle hire: expenses of insurance companies).
- (6) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(b) or (2).

## 57 Car or motor cycle hire: supplementary **U.K.**

- (1) In section 56 “car or motor cycle” means a mechanically propelled road vehicle other than one—
- (a) of a construction primarily suited for the conveyance of goods or burden of any description, or
  - (b) of a type not commonly used as a private vehicle and unsuitable for such use.
- (2) In section 56 “a qualifying hire car or motor cycle” means a car or motor cycle which—
- (a) is hired under a hire-purchase agreement (see subsection (3)) under which there is no option to purchase,
  - (b) is hired under a hire-purchase agreement under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1% of the retail price of the car or motor cycle when new, or
  - (c) is a qualifying hire car for the purposes of Part 2 of CAA 2001 (under section 82 of CAA 2001).

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- (3) For this purpose “hire-purchase agreement” means an agreement under which—
- (a) goods are bailed (or in Scotland hired) in return for periodical payments by the person to whom they are bailed or hired, and
  - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following events occurs,
- but does not include a conditional sale agreement (see subsection (5)).
- (4) The events are—
- (a) the exercise of an option to purchase by that person,
  - (b) the doing of any other specified act by any party to the agreement, and
  - (c) the happening of any other specified event.
- (5) A “conditional sale agreement” means an agreement for the sale of goods under which—
- (a) the purchase price or part of it is payable by instalments, and
  - (b) the goods are to remain the property of the seller (even though they are to be in the possession of the buyer) until specified conditions as to the payment of instalments or otherwise are met.
- (6) In this section and section 56 “new” means unused and not second-hand.

**58 Hiring cars (but not motor cycles) with low CO<sub>2</sub> emissions before 1 April 2013 U.K.**

- (1) Section 56 does not apply to expenses incurred on the hiring of—
- (a) a car with low CO<sub>2</sub> emissions, or
  - (b) an electrically-propelled car,
- if the period of hire began before 1 April 2013 under a contract entered into before that date.
- (2) For this purpose—
- “car with low CO emissions” has the meaning given by section 45D of CAA 2001, and
- “electrically-propelled car” has the meaning given by that section.

**59 Patent royalties U.K.**

In calculating the profits of a trade, no deduction is allowed for royalties or other sums paid for the use of patents.

**60 Expenditure on integral features U.K.**

Section 33A(3) of CAA 2001 provides that no deduction is allowed in respect of certain expenditure on an integral feature of a building or structure (within the meaning of that section).

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## CHAPTER 5 U.K.

### TRADE PROFITS: RULES ALLOWING DEDUCTIONS

#### *Pre-trading expenses*

#### 61 Pre-trading expenses U.K.

- (1) This section applies if a company incurs expenses for the purposes of a trade before (but not more than 7 years before) the date on which the company starts to carry on the trade (“the start date”).
- (2) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowed for the expenses, but
  - (b) a deduction would be allowed for them if they were incurred on the start date, the expenses are treated as if they were incurred on the start date (and therefore a deduction is allowed for them).
- (3) This section does not apply to any expenses in relation to which—
  - (a) any debit falls, or
  - (b) any debit would fall but for section 330 (loan relationships: debits in respect of pre-trading expenditure),to be brought into account for the purposes of Part 5 (loan relationships).

#### *Tenants under taxed leases*

#### 62 Tenants under taxed leases: introduction U.K.

- (1) Sections 63 to 67 apply if land used in connection with a trade is subject to a taxed lease.
- (2) Section 63 (tenants occupying land for purposes of trade treated as incurring expenses) applies in calculating the profits of a trade carried on by the tenant under the taxed lease for the purpose of making deductions for the expenses of the trade.
- (3) But any deduction for an expense under section 63 is subject to the application of any provision of Chapter 4 of this Part.
- (4) In this section and sections 63 to 67 the following expressions have the same meaning as in Chapter 4 of Part 4 (profits of property businesses: lease premiums etc)—
  - “receipt period” (see section 228(6)),
  - “taxed lease” (see section 227(4)),
  - “taxed receipt” (see section 227(4)), and
  - “unreduced amount” (see section 230(2)).
- (5) Section 230(3) and (4) (unreduced amount of taxed receipt under section 217 as a result of section 218) applies for the purposes of sections 63 to 67.
- (6) In the application of sections 66 and 67 to Scotland—
  - (a) references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and
  - (b) references to the lease so granted are to be read as references to the sublease.

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**63 Tenants occupying land for purposes of trade treated as incurring expenses U.K.**

- (1) The tenant under the taxed lease is treated as incurring an expense of a revenue nature in respect of the land subject to the taxed lease for each qualifying day.
- (2) If there is more than one taxed receipt, this section applies separately in relation to each of them.
- (3) A day is a “qualifying day”, in relation to a taxed receipt, if it is a day—
  - (a) that falls within the receipt period of the taxed receipt, and
  - (b) on which the tenant occupies the whole or part of the land subject to the taxed lease for the purposes of carrying on a trade.
- (4) If on the qualifying day the tenant occupies the whole of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt.

- (5) If on the qualifying day the tenant occupies part of the land subject to the taxed lease for the purposes of the trade, the amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{F \times A}{\text{TRP}}$$

where—

F is the fraction of the land that is so occupied calculated on a just and reasonable basis, and

A and TRP have the same meaning as in subsection (4).

- (6) This section is subject to section 64 (limit on deductions if tenant entitled to mineral extraction allowance).

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#### **64 Limit on deductions if tenant entitled to mineral extraction allowance** **U.K.**

- (1) This section applies if the tenant under the taxed lease has become entitled, in respect of expenditure on the acquisition of an interest in the land subject to the taxed lease, to an allowance for an accounting period under Part 5 of CAA 2001 (mineral extraction allowances) in respect of expenditure falling within section 403 of that Act (qualifying expenditure on acquiring a mineral asset).
- (2) If the allowance is in respect of the whole of the expenditure, no deduction is allowed for expenses under section 63 for a qualifying day falling within that or a later accounting period.
- (3) If the allowance is in respect of only part of the expenditure (“the allowable part”) the amount of the deduction for expenses under section 63 for a qualifying day falling within that or a later accounting period is calculated by multiplying the amount that, apart from this section, would be the amount of the deduction for the qualifying day by—

$$\frac{WE - AP}{WE}$$

where—

WE is the whole of the expenditure, and

AP is the allowable part of the expenditure.

#### **65 Tenants dealing with land as property employed for purposes of trade** **U.K.**

- (1) This section applies if the tenant under the taxed lease—
  - (a) does not occupy the land subject to the taxed lease, or a part of it, but
  - (b) deals with its interest in the land, or the part of it, as property employed for the purposes of carrying on a trade.
- (2) Section 63 applies as if the land or the part of it were occupied by the tenant for the purposes of the trade.
- (3) But the tenant is not treated as incurring an expense in respect of the land for a qualifying day as a result of this section so far as the tenant is treated as incurring an expense under section 232 (tenants under taxed leases treated as incurring expenses) in respect of the land for the day in calculating the profits of the tenant's property business.
- (4) This section is subject to sections 66 and 67 (restrictions on section 63 expenses where the additional calculation rule is relevant).

#### **66 Restrictions on section 63 expenses: lease premium receipts** **U.K.**

- (1) This section applies if a lease has been granted out of the taxed lease and—

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- (a) in calculating the amount of a receipt of a property business under Chapter 4 of Part 4 (profits of property businesses: lease premiums etc) in respect of the lease, there is a reduction under section 228 (the additional calculation rule) by reference to the taxed receipt, or
- (b) in calculating the amount of a receipt of a property business under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc) in respect of the lease, there is a reduction under section 288 of that Act (the additional calculation rule) by reference to the taxed receipt.

In this section and section 67 the receipt that is so reduced is referred to as a “lease premium receipt”.

- (2) Subsections (3) to (5) provide for the application of section 63 as a result of section 65 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 63 as a result of section 65 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.
- (4) If the condition in subsection (3) is met, the amount of that expense for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt period of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—  
 the “daily amount” of the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt, and the “daily reduction” of a lease premium receipt is given by the formula—

$$\frac{\text{AR}}{\text{RRP}}$$

where—

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AR is the reduction under section 228 below or section 288 of ITTOIA 2005 by reference to the taxed receipt, and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) In this section references to a reduction under section 228 below or section 288 of ITTOIA 2005 by reference to a taxed receipt have the same meaning as in Chapter 4 of Part 4 (see section 230(6)).
- (8) Section 67 explains how this section operates if the lease does not extend to the whole of the premises subject to the taxed lease.

## **67 Restrictions on section 63 expenses: lease of part of premises** **U.K.**

- (1) This section applies if—
  - (a) section 66 applies, and
  - (b) the lease granted out of the taxed lease does not extend to the whole of the premises subject to the taxed lease.
- (2) Subsections (3) to (5) apply for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) Sections 63, 65 and 66 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (4) If—
  - (a) more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - (b) the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,sections 63, 65 and 66 apply separately in relation to each part of the premises subject to a lease to which such a lease premium receipt relates and to the remainder of the premises.
- (5) Where sections 63, 65 and 66 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (6) This fraction is calculated on a just and reasonable basis.

### *Renewals*

## **68 Replacement and alteration of trade tools** **U.K.**

- (1) This section applies if—
  - (a) expenses are incurred on replacing or altering any tool used for the purposes of a trade, and
  - (b) a deduction for the expenses would not otherwise be allowable in calculating the profits of the trade because (and only because) they are items of a capital nature.
- (2) In calculating the profits of the trade, a deduction is allowed for the expenses.

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- (3) In this section “tool” means any implement, utensil or article.

### *Payments for restrictive undertakings*

## 69 **Payments for restrictive undertakings** U.K.

- (1) In calculating the profits of a trade, a deduction is allowed for a payment—
- (a) which is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and
  - (b) which is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by the company carrying on the trade.
- (2) The deduction is allowed for the accounting period in which the payment—
- (a) is made, or
  - (b) is treated as made for the purposes of section 226 of ITEPA 2003.

### *Seconded employees*

## 70 **Employees seconded to charities and educational establishments** U.K.

- (1) This section applies if a company carrying on a trade (“the employer”) makes the services of a person employed for the purposes of the trade available to—
- (a) a charity, or
  - (b) an educational establishment,
- on a basis that is stated and intended to be temporary.
- (2) In calculating the profits of the trade, a deduction is allowed for expenses of the employer that are attributable to the employee's employment during the period of the secondment.
- (3) In this section—
- “educational establishment” means—
- (a) in England and Wales, any of the bodies mentioned in section 71(1),
  - (b) in Scotland, any of the bodies mentioned in section 71(2),
  - (c) in Northern Ireland, any of the bodies mentioned in section 71(3), and
  - (d) any other educational body which is for the time being approved for the purposes of this section by the Secretary of State or, in Northern Ireland, the Department of Education, and
- “the period of the secondment” means the period for which the employee's services are made available to the charity or educational establishment.

## 71 **Educational establishments** U.K.

- (1) A body in England and Wales is an educational establishment for the purposes of section 70 if it is—
- (a) a local education authority,
  - (b) an educational institution maintained or otherwise supported by a local education authority,



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- (c) an independent school within the meaning of the Education Act 1996 (c. 56) registered under section 161 of the Education Act 2002 (c. 32), or
  - (d) an institution within the further education sector, or the higher education sector, within the meaning of the Further and Higher Education Act 1992 (c. 13).
- (2) A body in Scotland is an educational establishment for the purposes of section 70 if it is—
- (a) an education authority within the meaning of the Education (Scotland) Act 1980 (c. 44),
  - (b) an educational establishment within the meaning of the Education (Scotland) Act 1980 managed by an education authority within the meaning of that Act,
  - (c) a public or grant-aided school within the meaning of the Education (Scotland) Act 1980,
  - (d) an independent school within the meaning of the Education (Scotland) Act 1980,
  - (e) a central institution within the meaning of the Education (Scotland) Act 1980 (c. 44),
  - (f) an institution within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992 (c. 37), or
  - (g) a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992.
- (3) A body in Northern Ireland is an educational establishment for the purposes of section 70 if it is—
- (a) an education and library board within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)),
  - (b) a college of education, a grant-aided school or an independent school within the meaning of the Education and Libraries (Northern Ireland) Order 1986, or
  - (c) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)).

#### *Contributions to agents' expenses*

## **72 Payroll deduction schemes: contributions to agents' expenses** **U.K.**

- (1) This section applies if—
- (a) a company carrying on a trade (“the employer”) is liable to make payments to an individual,
  - (b) income tax falls to be deducted from those payments as a result of PAYE regulations, and
  - (c) the employer withholds sums from those payments in accordance with an approved scheme and pays the sums to an approved agent.
- (2) In calculating the profits of the employer's trade, a deduction is allowed for expenses incurred by the employer in making a payment to the agent for expenses which—
- (a) have been incurred, or
  - (b) are to be incurred,
- by the agent in connection with the agent's functions under the scheme.

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- (3) In this section “approved agent” and “approved scheme” have the same meaning as in section 714 of ITEPA 2003.

### *Counselling and retraining expenses*

#### 73 **Counselling and other outplacement services** **U.K.**

- (1) In calculating the profits of a trade, a deduction is allowed for counselling expenses if—
- (a) the company carrying on the trade (“the employer”) incurs the expenses,
  - (b) the expenses are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
  - (c) the relevant conditions are met.
- (2) In this section “counselling expenses” means expenses incurred—
- (a) in the provision of services to the employee in connection with the cessation of the office or employment,
  - (b) in the payment or reimbursement of fees for such provision, or
  - (c) in the payment or reimbursement of travelling expenses in connection with such provision.
- (3) In this section “the relevant conditions” means—
- (a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and
  - (b) in the case of travel expenses, condition E for those purposes.

#### 74 **Retraining courses** **U.K.**

- (1) In calculating the profits of a trade, a deduction is allowed for retraining course expenses if—
- (a) the company carrying on the trade (“the employer”) incurs the expenses,
  - (b) they are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer for the purposes of the trade, and
  - (c) the relevant conditions are met.
- (2) In this section—
- “retraining course expenses” means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and
- “the relevant conditions” means—
- (a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and
  - (b) in the case of travel expenses, the conditions in subsection (5) of that section.

#### 75 **Retraining courses: recovery of tax** **U.K.**

- (1) This section applies if—

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- (a) an employer's liability to corporation tax for an accounting period is determined on the assumption that a deduction for expenditure is allowed under section 74, and
  - (b) the deduction would not otherwise have been allowed.
- (2) If, subsequently—
- (a) the condition in section 311(4)(a) of ITEPA 2003 is not met because of the employee's failure to begin the course within the period of one year after ceasing to be employed, or
  - (b) the condition in section 311(4)(b) of ITEPA 2003 is not met because of the employee's continued employment or re-employment,
- an assessment of an amount or further amount of corporation tax due as a result of the condition not being met may be made under paragraph 41 of Schedule 18 to FA 1998.
- (3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the accounting period in which the failure to meet the condition occurred.
- (4) If subsection (2) applies, the employer must give an officer of Revenue and Customs a notice containing particulars of—
- (a) the employee's failure to begin the course,
  - (b) the employee's continued employment, or
  - (c) the employee's re-employment,
- within 60 days of coming to know of it.
- (5) If an officer of Revenue and Customs has reason to believe that the employer has failed to give such a notice, the officer may by notice require the employer to provide such information as the officer may reasonably require for the purposes of this section about—
- (a) the failure to begin the course,
  - (b) the continued employment, or
  - (c) the re-employment.
- (6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

#### *Redundancy payments etc*

## **76 Redundancy payments and approved contractual payments** **U.K.**

- (1) Sections 77 to 79 apply if—
- (a) a company (“the employer”) makes a redundancy payment or an approved contractual payment to another person (“the employee”), and
  - (b) the payment is in respect of the employee's employment wholly in the employer's trade or partly in the employer's trade and partly in one or more other capacities.
- (2) For the purposes of this section and sections 77 to 81 “redundancy payment” means a redundancy payment payable under—
- (a) Part 11 of the Employment Rights Act 1996 (c. 18), or

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- (b) Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

- (3) For the purposes of this section and those sections—

“contractual payment” means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is “approved” if, in respect of that agreement, an order is in force under—

- (a) section 157 of the Employment Rights Act 1996, or  
 (b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

## 77 **Payments in respect of employment wholly in employer's trade** **U.K.**

- (1) This section applies if—

- (a) the payment is in respect of the employee's employment wholly in the employer's trade, and  
 (b) no deduction would otherwise be allowable for the payment.

- (2) In calculating the profits of the trade, a deduction is allowed under this section for the payment.

- (3) The deduction under this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.

- (4) If the payment is made after the employer has permanently ceased to carry on the trade, it is treated as made on the last day on which the employer carried on the trade.

- (5) If there is a partnership change, subsection (4) does not apply so long as a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.

- (6) The reference in subsection (5) to a partnership change is to a change in the persons carrying on the trade in circumstances where the trade is carried on by persons in partnership immediately before or immediately after the change (or at both those times).

- (7) The deduction under this section is allowed for the accounting period in which the payment is made (or treated under subsection (4) as made).

## 78 **Payments in respect of employment in more than one capacity** **U.K.**

- (1) This section applies if the payment is in respect of the employee's employment with the employer—

- (a) partly in the employer's trade, and  
 (b) partly in one or more other capacities.

- (2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—

- (a) the employment in the trade, and  
 (b) the employment in the other capacities.

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- (3) The part of the payment apportioned to the employment in the trade is treated as a payment in respect of the employee's employment wholly in the trade for the purposes of section 77.

## 79 Additional payments **U.K.**

- (1) This section applies if the employer permanently ceases to carry on a trade or part of a trade and makes a payment to the employee in addition to—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (2) If, in calculating the profits of the trade—
  - (a) no deduction would otherwise be allowable for the additional payment, but
  - (b) a deduction would be allowable for it if the employer had not permanently ceased to carry on the trade or the part of the trade,a deduction is allowed under this section for the additional payment.
- (3) The deduction under this section is limited to 3 times the amount of—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (4) If the payment is made after the employer has permanently ceased to carry on the trade or the part of the trade, it is treated as made on the last day on which the employer carried on the trade or the part of the trade.
- (5) The deduction under this section is allowed for the accounting period in which the payment is made (or treated under subsection (4) as made).

## 80 Application of section 79 in cases involving partnerships **U.K.**

- (1) This section deals with the application of section 79 in circumstances where—
  - (a) there is a change in the persons carrying on a trade, and
  - (b) the trade is carried on by persons in partnership before or after the change (or at both those times).
- (2) The employer is treated for the purposes of section 79 as permanently ceasing to carry on the trade unless a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.

## 81 Payments made by the Government **U.K.**

- (1) This section applies if, in respect of a redundancy payment or an approved contractual payment payable by an employer—
  - (a) the Secretary of State makes a payment under section 167 of the Employment Rights Act 1996 (c. 18), or
  - (b) the Department for Employment and Learning makes a payment under Article 202 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

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- (2) So far as the employer reimburses the Secretary of State or Department for the payment, sections 77 to 80 apply as if the payment were—
- (a) a redundancy payment, or
  - (b) an approved contractual payment,
- made by the employer.

*Contributions to local enterprise organisations or urban regeneration companies*

## 82 Contributions to local enterprise organisations or urban regeneration companies **U.K.**

- (1) This section applies if a company carrying on a trade (“the contributor”) incurs expenses in making a contribution (whether in cash or in kind)—
- (a) to a local enterprise organisation (see section 83), or
  - (b) to an urban regeneration company (see section 86),
- and a deduction would not otherwise be allowable for the expenses in calculating the profits of the trade.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the expenses.
- (3) But if, in connection with the making of the contribution, the contributor or a connected person—
- (a) receives a disqualifying benefit of any kind, or
  - (b) is entitled to receive such a benefit,
- the amount of the deduction is restricted to the amount of the expenses less the value of the benefit.
- (4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit—
- (a) from the local enterprise organisation or urban regeneration company concerned, or
  - (b) from anyone else.
- (5) Subsection (6) applies if—
- (a) a deduction has been made under this section, and
  - (b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.
- (6) An amount equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction)—
- (a) is brought into account in calculating the profits of the trade, as a receipt arising in the accounting period in which the benefit is received, or
  - (b) if the contributor has permanently ceased to carry on the trade before the benefit is received, is treated as a post-cessation receipt (see Chapter 15).
- (7) In this section “disqualifying benefit” means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be allowable as a deduction in calculating the profits of the trade.

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### **83 Meaning of “local enterprise organisation” U.K.**

- (1) For the purposes of section 82 “local enterprise organisation” means—
  - (a) a local enterprise agency,
  - (b) a training and enterprise council,
  - (c) a Scottish local enterprise company, or
  - (d) a business link organisation.
- (2) “Local enterprise agency” means a body for the time being approved as a local enterprise agency for the purposes of section 82 by the relevant national authority, that is to say by—
  - (a) the Secretary of State (in relation to England or Northern Ireland),
  - (b) the Scottish Ministers (in relation to Scotland), or
  - (c) the Welsh Ministers (in relation to Wales).

For further provision about approvals by the relevant national authority, see sections 84 and 85.

- (3) “Training and enterprise council” means a body with which the Secretary of State has an agreement under which the body is to carry out the functions of a training and enterprise council.
- (4) “Scottish local enterprise company” means a company with which—
  - (a) Scottish Enterprise, or
  - (b) Highlands and Islands Enterprise,has an agreement under which the company is to carry out the functions of a local enterprise company.
- (5) “Business link organisation” means a person authorised by or on behalf of the Secretary of State to use a trade mark designated by the Secretary of State for the purposes of this subsection.

### **84 Approval of local enterprise agencies U.K.**

- (1) The relevant national authority may approve a body as a local enterprise agency for the purposes of section 82 only if conditions A and B are met.
- (2) But if those conditions are met, the body may be approved—
  - (a) whatever its status or structure, and
  - (b) even if it is not described as a local enterprise agency.
- (3) Condition A is that the relevant national authority is satisfied—
  - (a) that the body's sole aim is the promotion or encouragement of local enterprise, or
  - (b) that one of the body's main aims is the promotion or encouragement of local enterprise and that it has or is about to have a separate fund for the sole purpose of pursuing that aim.
- (4) For this purpose “local enterprise” means industrial and commercial activity or enterprise in a particular area in the United Kingdom, with particular reference to encouraging the formation and development of small businesses.
- (5) Condition B is that the body is precluded from paying or transferring any of its income or profit directly or indirectly—



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- (a) to any of its members, or
  - (b) to any person charged with the control and direction of its affairs.
- (6) The payment of—
- (a) reasonable remuneration for goods, labour or power supplied or for services provided,
  - (b) reasonable interest on money lent, or
  - (c) reasonable rent for premises,
- does not count as a payment or transfer of income or profit for the purposes of subsection (5).

## 85 Supplementary provisions with respect to approvals **U.K.**

- (1) This section applies for the purposes of section 84.
- (2) The relevant national authority may give a body approval that is conditional on its compliance with such requirements as to—
  - (a) accounts,
  - (b) provision of information, and
  - (c) other matters,
 as the relevant national authority considers appropriate.
- (3) If the relevant national authority approves a body on the basis that it has or is about to have a separate fund (see section 84(3)(b))—
  - (a) the approval must specify the fund, and
  - (b) section 82 applies only to a contribution to the body made wholly to or for the purposes of the fund.
- (4) The relevant national authority must withdraw the approval of a body as a local enterprise agency if—
  - (a) condition A or B in section 84 is no longer met, or
  - (b) the body is failing to comply with a requirement imposed as a condition of its approval.
- (5) The relevant national authority must give notice of withdrawal to the body concerned, specifying the date from which the withdrawal takes effect (which may be earlier than the date on which the notice is given).

## 86 Meaning of “urban regeneration company” **U.K.**

- (1) For the purposes of section 82 “urban regeneration company” means any body of persons which the Treasury by order designates as an urban regeneration company for the purposes of that section.
- (2) A body may be so designated only if—
  - (a) its sole or main function is to co-ordinate the regeneration of a specific urban area in the United Kingdom,
  - (b) it is expected to seek to perform that function by creating a plan for the development of that area and trying to secure that the plan is carried into effect, and



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- (c) in co-ordinating the regeneration of that area, it is expected to work together with some or all local or other public authorities which exercise functions in relation to the whole or part of that area.
- (3) An order under this section may be framed so as to take effect on a date earlier than the making of the order, but not earlier than 3 months before the date on which the order is made.

### *Scientific research*

## **87 Expenses of research and development U.K.**

- (1) If a company carrying on a trade incurs expenses of a revenue nature on research and development—
- (a) related to the trade, and
  - (b) directly undertaken by or on behalf of the company,
- a deduction is allowed for the expenses in calculating the profits of the trade.
- (2) For this purpose expenses incurred on research and development—
- (a) do not include expenses incurred in the acquisition of rights in, or arising out of, research and development, but
  - (b) subject to that, include all expenses incurred in carrying out, or providing facilities for carrying out, research and development.
- (3) The reference in this section to research and development related to a trade includes—
- (a) research and development which may lead to or facilitate an extension of the trade, and
  - (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade.
- (4) The same expenses may not be brought into account under this section in relation to more than one trade.
- (5) In this section “research and development” has the meaning given by section 837A of ICTA and includes oil and gas exploration and appraisal.

## **88 Payments to research associations, universities etc U.K.**

- (1) If a company carrying on a trade—
- (a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the appropriate class of trade, or
  - (b) pays to an approved university, college, research institute or other similar institution any sum to be used for scientific research related to the appropriate class of trade,
- a deduction is allowed for the sum in calculating the profits of the trade.
- (2) The deduction is allowed for the accounting period in which the payment is made.
- (3) In this section—

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- (a) “the appropriate class of trade” means the class of trade to which the trade carried on by the company belongs, and
  - (b) “scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.
- (4) For the purposes of this section a university, college research institute or other similar institution is approved if it is for the time being approved for the purposes of this section by the Secretary of State.
- (5) The reference in subsection (1)(b) to scientific research related to the appropriate class of trade includes—
- (a) scientific research which may lead to or facilitate an extension of trades of the appropriate class, and
  - (b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of the appropriate class.
- (6) If a question arises as to—
- (a) whether, or
  - (b) to what extent,
- any activities constitute or constituted scientific research, an officer of Revenue and Customs must refer the question for decision to the Secretary of State, whose decision is final.
- (7) The same expenses may not be brought into account under this section in relation to more than one trade.

*Expenses connected with patents, designs and trade marks*

**89 Expenses connected with patents** **U.K.**

In calculating the profits of a trade, a deduction is allowed for expenses incurred—

- (a) in obtaining for the purposes of the trade the grant of a patent or the extension of a patent's term, or
- (b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.

**90 Expenses connected with designs or trade marks** **U.K.**

In calculating the profits of a trade, a deduction is allowed for expenses incurred in obtaining for the purposes of the trade—

- (a) the registration of a design or trade mark,
- (b) the extension of a period for which the right in a registered design subsists, or
- (c) the renewal of registration of a trade mark.

*Export Credits Guarantee Department*

**91 Payments to Export Credits Guarantee Department** **U.K.**

In calculating the profits of a trade, a deduction is allowed for a sum payable by the company carrying on the trade to the Export Credits Guarantee Department—

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- (a) under an agreement entered into as a result of arrangements made under section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
- (b) with a view to entering into such an agreement.

#### *Levies under FISMA 2000*

### **92 Levies etc under FISMA 2000 U.K.**

- (1) In calculating the profits of a trade carried on by a company, a deduction is allowed for any sum—
  - (a) spent by the company in paying a levy, or
  - (b) paid by the company as a result of an award of costs under costs rules, so far as it is not otherwise allowable.
- (2) For the purposes of this section “costs rules” means—
  - (a) rules made under section 230 of FISMA 2000, or
  - (b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to FISMA 2000.
- (3) For the purposes of this section “levy” means—
  - (a) a payment required under rules made under section 136(2) of FISMA 2000,
  - (b) a levy imposed under the Financial Services Compensation Scheme,
  - (c) a payment required under rules made under section 234 of FISMA 2000,
  - (d) a payment required under the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000 in accordance with paragraph 15(1) of that Schedule, or
  - (e) a payment required in accordance with the standard terms fixed under paragraph 18 of that Schedule (other than a sum paid as a result of an award of costs under costs rules).

## **CHAPTER 6 U.K.**

### TRADE PROFITS: RECEIPTS

#### *Capital receipts*

### **93 Capital receipts U.K.**

- (1) Items of a capital nature must not be brought into account as receipts in calculating the profits of a trade.
- (2) But this does not apply to items which, as a result of any provision of the Corporation Tax Acts, are brought into account as receipts in calculating the profits of the trade.

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### *Debts released*

#### 94 Debts incurred and later released **U.K.**

- (1) This section applies if—
- (a) in calculating the profits of a trade, a deduction is allowed for the expense giving rise to a debt owed by the company carrying on the trade,
  - (b) all or part of the debt is released, and
  - (c) the release is not part of a statutory insolvency arrangement.
- (2) The amount released—
- (a) is brought into account as a receipt in calculating the profits of the trade, and
  - (b) is treated as arising in the accounting period in which the release is effected.

### *Amounts received following earlier cessation*

#### 95 Acquisition of trade: receipts from transferor's trade **U.K.**

- (1) This section applies if —
- (a) a person (“the transferor”) permanently ceased to carry on a trade at any time,
  - (b) at that time the transferor transferred to another person (“the transferee”) the right to receive sums arising from the carrying on of the trade, and
  - (c) the transferee subsequently carries on the transferor's trade.
- (2) Sums—
- (a) which the transferee receives as a result of the transfer, and
  - (b) which are not brought into account in calculating the profits of the transferor's trade for corporation or income tax purposes of any period before the cessation,
- are brought into account in calculating the profits of the transferee's trade in the accounting period in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the transferor has permanently ceased to carry on the trade are not post-cessation receipts (see Chapter 15).

### *Reverse premiums*

#### 96 Reverse premiums **U.K.**

- (1) For the purposes of sections 98 and 99 a payment or other benefit is a reverse premium if—
- (a) conditions A, B and C are met, and
  - (b) it is not excluded by section 97.
- (2) Condition A is that a company (“the recipient”) receives the payment or other benefit by way of inducement in connection with a transaction being entered into by—
- (a) the recipient, or
  - (b) a person connected with the recipient.

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- (3) Condition B is that the transaction (the “property transaction”) is one under which—
  - (a) the recipient, or
  - (b) the person connected with the recipient,becomes entitled to an estate, interest or right in or over land.
- (4) Condition C is that the payment or other benefit is paid or provided by—
  - (a) the person (“the grantor”) by whom the estate, interest or right is granted or was granted at an earlier time,
  - (b) a person connected with the grantor, or
  - (c) a nominee of, or a person acting on the directions of, the grantor or a person connected with the grantor.

#### 97 Excluded cases **U.K.**

- (1) A payment or other benefit is not a reverse premium so far as it is brought into account under section 532 of CAA 2001 (the general rule excluding contributions) to reduce the recipient's expenditure qualifying for capital allowances.
- (2) A payment or other benefit received in connection with a property transaction is not a reverse premium if—
  - (a) the person entering into the transaction is an individual, and
  - (b) the transaction relates to premises occupied or to be occupied by the individual as the individual's only or main residence.
- (3) A payment or other benefit is not a reverse premium so far as it is consideration for the transfer of an estate or interest in land which constitutes the sale in a sale and leaseback arrangement.
- (4) A “sale and leaseback arrangement” means any such arrangement as is described in section 779(1) or (2) or 780(1) of ICTA.

#### 98 Tax treatment of reverse premiums **U.K.**

- (1) A reverse premium is treated for corporation tax purposes as a receipt of a revenue nature.
- (2) If the recipient enters into the property transaction for the purposes of a trade carried on (or to be carried on) by the recipient, the reverse premium is brought into account in calculating the profits of the trade.
- (3) If subsection (2) does not apply, the reverse premium is charged to corporation tax in accordance with section 250 (reverse premium taxed as property business receipt).

#### 99 Arrangements not at arm's length **U.K.**

- (1) This section applies if—
  - (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.

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- (2) The terms of the property arrangements meet the condition in subsection (1)(b) if they differ to a significant extent from the terms which, at the time the arrangements were entered into, would be regarded as normal and reasonable—
  - (a) in the market conditions then prevailing, and
  - (b) between persons dealing with each other at arm's length in the open market.
- (3) The whole amount or value of the reverse premium brought into account under section 98 is brought into account in the first relevant period of account.
- (4) “The first relevant period of account” means the period of account in which the property transaction is entered into.
- (5) However if the recipient enters into the property transaction for the purposes of a trade—
  - (a) which is not then carried on by the recipient, but
  - (b) which the recipient subsequently starts to carry on,

“the first relevant period of account” means the first period of account in which the recipient carries on the trade.

## **100 Connected persons and property arrangements** **U.K.**

For the purposes of this section and sections 96 to 99—

- (a) persons are treated as connected with each other if they are connected at any time during the period when the property arrangements are entered into, and
- (b) “the property arrangements” means the property transaction and any arrangements entered into in connection with it (whether before it, at the same time as it or after it).

### *Other receipts*

## **101 Distribution of assets of mutual concerns** **U.K.**

- (1) This section applies if—
  - (a) a deduction has been made in calculating the profits of a trade for a payment to a mutual concern for the purposes of its mutual business,
  - (b) the concern is being or has been wound up or dissolved,
  - (c) a company (“the recipient”) which is carrying on the trade, or was doing so at the time of the payment, receives money or money's worth representing the concern's assets, and
  - (d) the assets in question represent profits of the mutual business conducted by the concern.
- (2) If the recipient is carrying on the trade at the time the money or money's worth is received, the amount or value of the money or money's worth is brought into account as a receipt in calculating the profits of the trade.
- (3) If the recipient—
  - (a) is not carrying on the trade at the time the money or money's worth is received, but
  - (b) was doing so at the time of the payment to the mutual concern,

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the amount or value of the money or money's worth is treated as a post-cessation receipt (see Chapter 15).

- (4) For the purposes of this section money or money's worth represents assets of a mutual concern if it—
  - (a) forms part of the assets of the concern,
  - (b) forms part of the consideration for the transfer of the assets of the concern as part of a scheme of amalgamation or reconstruction which involves its winding up, or
  - (c) consists of the consideration for a transfer or surrender of a right to receive anything falling within paragraph (a) or (b) and does not give rise to a charge to corporation tax on the company receiving it otherwise than as a result of this section.
- (5) If a transfer or surrender of a right to receive anything which—
  - (a) forms part of the assets of a mutual concern, or
  - (b) forms part of the consideration for the transfer of the assets of a mutual concern,is not at arm's length, the company making the transfer or surrender is treated as receiving consideration equal to the value of the right.
- (6) In this section references to a mutual concern are to a body corporate which has at any time carried on a trade which consists of or includes the conduct of mutual business (whether or not confined to the members of the body corporate).
- (7) For the purposes of this section a trade does not consist of or include the conduct of mutual business if all the profits of the trade are chargeable to corporation or income tax.

## 102 Industrial development grants **U.K.**

- (1) This section applies if a company carrying on a trade receives a payment by way of a grant under—
  - (a) section 7 or 8 of the Industrial Development Act 1982 (c. 52), or
  - (b) Article 7, 9 or 30 of the Industrial Development (Northern Ireland) Order 1982 (S.I. 1982/1083 (N.I. 15)).
- (2) The payment is brought into account as a receipt in calculating the profits of the trade unless—
  - (a) the grant is designated as made towards the cost of specified capital expenditure,
  - (b) the grant is designated as compensation for the loss of capital assets, or
  - (c) the grant is for all or part of a corporation tax liability (including one that has already been met).

## 103 Sums recovered under insurance policies etc **U.K.**

- (1) This section applies if—
  - (a) a deduction has been made for a loss or expense in calculating the profits of a trade,
  - (b) a company carrying on the trade recovers a sum under an insurance policy or a contract of indemnity in respect of the loss or expense, and



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- (c) the sum is not of a revenue nature.
- (2) The sum is brought into account as a receipt in calculating the profits of the trade (but only up to the amount of the deduction).

#### 104 Repayments under FISMA 2000 **U.K.**

- (1) This section applies if—
  - (a) a company carries on a trade, and
  - (b) a payment is made to the company as a result of a repayment provision.
- (2) The payment is brought into account as a receipt in calculating the profits of the trade.
- (3) For the purposes of this section “repayment provision” means—
  - (a) any provision made by virtue of section 136(7) or 214(1)(e) of FISMA 2000, or
  - (b) any provision made by scheme rules for fees to be refunded in specified circumstances.
- (4) In this section “scheme rules” means the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000.

### **CHAPTER 7 U.K.**

#### TRADE PROFITS: GIFTS TO CHARITIES ETC

##### *Relief for certain gifts*

#### 105 Gifts of trading stock to charities etc **U.K.**

- (1) This section applies if a company carrying on a trade (“the donor”) gives an article for the purposes of—
  - (a) a charity, a registered club or a body listed in subsection (4), or
  - (b) a designated educational establishment (see section 106),
 and the article is one manufactured, or of a class or description sold, by the donor in the course of the trade.
- (2) In calculating the profits of the trade, no amount is required to be brought into account as a receipt in consequence of the disposal of the article.
- (3) In this section “registered club” has the meaning given by paragraph 1 of Schedule 18 to FA 2002 (relief for community amateur sports clubs).
- (4) The bodies referred to in subsection (1)(a) are—
  - (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England, and
  - (c) the National Endowment for Science, Technology and the Arts.
- (5) This section needs to be read with section 108 (receipt of benefits by donor or connected person).

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## **106 Meaning of “designated educational establishment” U.K.**

- (1) For the purposes of section 105 “designated educational establishment” means an educational establishment designated, or within a category designated, in regulations made—
  - (a) for England and Scotland, by the Secretary of State,
  - (b) for Wales, by the Welsh Ministers, and
  - (c) for Northern Ireland, by the Department of Education.
- (2) The regulations may make different provision for different areas.
- (3) If any question arises as to whether an educational establishment is within a category designated in the regulations, an officer of Revenue and Customs must refer the question for decision—
  - (a) in the case of an establishment in England or Scotland, to the Secretary of State,
  - (b) in the case of an establishment in Wales, to the Welsh Ministers, and
  - (c) in the case of an establishment in Northern Ireland, to the Department of Education.
- (4) The power of the Secretary of State or the Welsh Ministers to make regulations under this section is exercisable by statutory instrument.
- (5) A statutory instrument containing any regulations made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) A statutory instrument containing any regulations made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (7) Regulations made under this section by the Department of Education—
  - (a) are a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)), and
  - (b) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

## **107 Gifts of medical supplies and equipment U.K.**

- (1) This section applies if—
  - (a) a company carrying on a trade makes a gift from trading stock of medical supplies or medical equipment,
  - (b) it makes the gift for humanitarian purposes, and
  - (c) the supplies or equipment are for human use.
- (2) In calculating the profits of the trade, no amount is required to be brought into account as a receipt in consequence of the gift.
- (3) In calculating the profits of the trade, a deduction is allowed for any costs of transportation, delivery or distribution incurred by the company in making the gift.
- (4) The deduction is allowed for the accounting period in which the costs are incurred.

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- (5) The Treasury may by order provide that this section is not to have effect in relation to medical supplies or medical equipment of any description specified in the order.
- (6) This section needs to be read with section 108 (receipt of benefits by donor or connected person).

*Benefits associated with gifts*

**108 Receipt of benefits by donor or connected person U.K.**

- (1) This section applies if a company carrying on a trade makes a gift in relation to which relief is given under—
  - (a) section 105,
  - (b) section 107(2), or
  - (c) section 63(2) of CAA 2001 (gifts to charities etc of plant or machinery used in the trade),
 and the company, or a person connected with the company, receives a benefit which is in any way attributable to the making of the gift.
- (2) This section also applies if—
  - (a) relief is given under section 107(3) for costs of transportation, delivery or distribution incurred by a company carrying on a trade, and
  - (b) the company, or a person connected with the company, receives a benefit which is in any way attributable to the company's incurring of those costs.
- (3) An amount equal to the value of the benefit—
  - (a) is brought into account in calculating the profits of the trade, as a receipt of the trade arising in the accounting period in which the benefit is received, or
  - (b) if the company has permanently ceased to carry on the trade before the benefit is received, is treated as a post-cessation receipt (see Chapter 15).

**CHAPTER 8 U.K.**

TRADE PROFITS: HERD BASIS RULES

*Introduction*

**109 Election for application of herd basis rules U.K.**

- (1) A company, or a firm of which a company is a member, which keeps or has kept a production herd for the purposes of a trade may make an election under this Chapter (a “herd basis election”).
- (2) In calculating the profits of the trade, animals which are part of a production herd in relation to which a herd basis election has effect—
  - (a) are not treated as trading stock (see section 50), but
  - (b) are treated instead in accordance with sections 112 to 121 (“the herd basis rules”).

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- (3) This Chapter is expressed in terms of farmers but applies to any company, or firm of which a company is a member, which keeps or has kept a production herd for the purposes of a trade, whether or not the trade is farming.
- (4) References in this Chapter to keeping a production herd are to keeping it for the purposes of the trade.

## 110 Meaning of “animal”, “herd”, “production herd” etc **U.K.**

- (1) In this Chapter—
  - (a) “animal” means any animal or other living creature,
  - (b) “herd” includes a flock and any other collection of animals (however named), and
  - (c) “production herd” means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by the farmer wholly or mainly for the products obtainable from the living animal which the animals produce for the farmer to sell.
- (2) For this purpose “the products obtainable from the living animal” means—
  - (a) the young of the animal, or
  - (b) any other product obtainable from the animal without slaughtering it.
- (3) For the purposes of this Chapter the general rule is that immature animals kept in a production herd are not part of the herd.
- (4) There is an exception to this rule if—
  - (a) the nature of the land on which the herd is kept means that animals which die or cease to be part of the herd can be replaced only by animals bred and reared on the land,
  - (b) the immature animals in question are bred in the herd and are maintained in the herd for the purpose of replacing other animals, and
  - (c) it is necessary to maintain the immature animals for that purpose.
- (5) In that case the immature animals are part of the herd for the purposes of this Chapter, but only so far as they are required to prevent a fall in the numbers of the herd.
- (6) References in this Chapter to an animal being added to a herd include references to an immature animal that is not part of the herd reaching maturity.
- (7) This Chapter applies—
  - (a) in relation to animals kept singly as it applies in relation to herds, and
  - (b) in relation to shares in animals as it applies in relation to animals themselves.

## 111 Other interpretative provisions **U.K.**

- (1) This section applies for the purposes of this Chapter.
- (2) A production herd kept by a farmer is of the same class as another production herd only if—
  - (a) the animals kept in both herds are of the same species (irrespective of breed), and

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- (b) the products produced for the farmer to sell (for which the herds are wholly or mainly kept) are of the same kinds in both herds.
- (3) References to the sale of an animal include references to its death or destruction.
- (4) References to the sale proceeds of an animal include references to—
  - (a) money received from an insurer because of the animal's death or destruction,
  - (b) compensation money received because of the animal's death or destruction, and
  - (c) the sale proceeds of the animal's carcass or any part of its carcass.
- (5) Female animals become mature—
  - (a) in the case of laying birds, when they first lay, and
  - (b) in any other case, when they produce their first young.
- (6) 20% or more of a herd is a substantial part of the herd, but a lesser percentage than 20% is capable of being a substantial part of the herd depending on the circumstances of the case concerned.

#### *The herd basis rules*

### **112 Initial cost of herd and value of herd** U.K.

- (1) In calculating the profits of the trade, no deduction is allowed for the initial cost of the herd.
- (2) In calculating the profits of the trade, the value of the herd is not brought into account.

### **113 Addition of animals to herd** U.K.

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is added to the herd, unless it replaces another animal in the herd.
- (2) No deduction is allowed for the cost of the animal.
- (3) If, immediately before it was added to the herd, the animal was part of the farmer's trading stock, the balancing amount is brought into account as a receipt.
- (4) “The balancing amount” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.

### **114 Replacement of animals in herd** U.K.

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) an animal (“the old animal”) is sold from the herd or otherwise ceases to be part of the herd, and
  - (b) it is replaced in the herd by another animal (“the new animal”).
- (2) The sale proceeds (if any) of the old animal are brought into account as a receipt.

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- (3) But this needs to be read with—
  - (a) section 115 (amount of receipt if old animal slaughtered under disease control order),
  - (b) section 118 (acquisition of new herd begun within 5 years of sale), and
  - (c) section 120 (replacement of part sold begun within 5 years of sale).
- (4) Except so far as otherwise allowable, a deduction is allowed under this section for the cost of the new animal.
- (5) But if the new animal is of better quality than the old animal, the amount of the deduction must not exceed the amount that it would have been necessary to spend to replace the old animal with an animal of the same quality.

## **115 Amount of receipt if old animal slaughtered under disease control order** **U.K.**

- (1) This section applies for the purposes of section 114.
- (2) If—
  - (a) the old animal was slaughtered under a disease control order, and
  - (b) the new animal is of worse quality than the old animal,the amount brought into account as a receipt under section 114 must not exceed the equivalent amount for the new animal.
- (3) For this purpose “a disease control order” means an order made under the law relating to the diseases of animals by—
  - (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.
- (4) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (5) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

## **116 Sale of animals from herd** **U.K.**

- (1) This section applies for the purpose of calculating the profits of the trade if an animal is sold from the herd unless—
  - (a) it is replaced in the herd by another animal (see section 114), or
  - (b) it is sold as part of the sale of the whole or a substantial part of the herd that takes place all at once or over a period not longer than 12 months (see section 117).
- (2) A profit arising from the sale is brought into account as a receipt.
- (3) A deduction is allowed for a loss arising from the sale.

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- (4) The amount of the profit or loss is the difference between the sale proceeds of the animal and the deductible amount for the animal.
- (5) “The deductible amount for the animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity,
  - (b) in the case of an animal acquired by the farmer for valuable consideration, the sum of the initial cost to the farmer of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity, and
  - (c) in the case of an animal acquired by the farmer but not for valuable consideration, the sum of the market value of the animal when acquired and the cost (if any) incurred by the farmer in rearing the animal to maturity.

### 117 Sale of whole or substantial part of herd **U.K.**

- (1) This section applies for the purpose of calculating the profits of the trade if, either all at once or over a period not longer than 12 months, the herd or a substantial part of the herd is sold unless—
  - (a) section 118 applies (acquisition of new herd begun within 5 years of sale), or
  - (b) section 120 applies (replacement of part sold begun within 5 years of sale),
 but paragraph (a) is subject to subsection (5) of section 118 (so far as that section provides for a case in which this section is to apply).
- (2) A profit arising from the sale is not brought into account as a receipt.
- (3) No deduction is allowed for a loss arising from the sale.

### 118 Acquisition of new herd begun within 5 years of sale **U.K.**

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) either all at once or over a period not longer than 12 months, the herd (“the old herd”) is sold, and
  - (b) the farmer acquires or starts to acquire another production herd of the same class (“the new herd”) within 5 years of the sale.
- (2) Section 114 (replacement of animals in herd) applies as if a number of animals equal to—
  - (a) the number of animals in the old herd, or
  - (b) if smaller, the number of animals in the new herd,
 had been sold from the old herd and replaced in that herd (but see section 119 (sale for reasons outside farmer's control)).
- (3) For the purposes of section 114, the sale proceeds of an animal that is treated as a result of subsection (2) above as if it had been—
  - (a) sold from the old herd, and
  - (b) replaced in that herd by another animal (“the new animal”),
 are not brought into account as a receipt until the new animal is acquired.
- (4) If—
  - (a) the number of animals in the new herd is smaller than the number of animals in the old herd, and



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- (b) the difference is not substantial,  
section 116 (sale of animals from herd) applies as if a number of animals equal to the difference had been sold from the old herd.
- (5) If the number of animals in the new herd is smaller than the number of animals in the old herd and the difference is substantial—
  - (a) section 117 (sale of whole or substantial part of herd where replacement not begun within 5 years), or
  - (b) section 120 (sale of substantial part of herd where replacement begun within 5 years),applies as if a number of animals equal to the difference had been sold from the old herd.
- (6) If the number of animals in the new herd is larger than the number of animals in the old herd, section 113 (addition of animals to herd) applies as if a number of animals equal to the difference had been added to the old herd.
- (7) For the purposes of this section—
  - (a) if the difference between the number of animals in the new herd and the number of animals in the old herd is equal to 20% or more of the number of animals in the old herd, the difference is substantial, but
  - (b) a lesser percentage than 20% is capable of being a substantial difference depending on the circumstances of the case concerned.

#### **119 Section 118: sale for reasons outside farmer's control** U.K.

- (1) This section applies for the purposes of section 114, as applied by section 118(2).
- (2) If—
  - (a) the farmer was compelled to sell the old herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that is treated as a result of section 118(2) as if it replaced an animal sold (“the old animal”) is of worse quality than the old animal,the amount brought into account as a receipt under section 114 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

#### **120 Replacement of part sold begun within 5 years of sale** U.K.

- (1) This section applies for the purpose of calculating the profits of the trade if—
  - (a) either all at once or over a period not longer than 12 months, a substantial part of the herd is sold, and

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- (b) the farmer acquires or starts to acquire animals to replace the part sold within 5 years of the sale.
- (2) Section 114 (replacement of animals in herd) applies so far as the animals included in the part sold are replaced (but see section 121 (sale for reasons outside farmer's control)).
- (3) The sale proceeds of an animal included in the part sold are not brought into account as a receipt until the animal that replaces it in the herd is acquired.
- (4) If some of the animals included in the part sold are not replaced—
  - (a) a profit arising from their sale is not brought into account as a receipt, and
  - (b) no deduction is allowed for a loss arising from their sale.

## 121 Section 120: sale for reasons outside farmer's control **U.K.**

- (1) This section applies for the purposes of section 114, as applied by section 120(2).
- (2) If—
  - (a) the farmer was compelled to sell the part of the herd for reasons wholly outside the farmer's control, and
  - (b) an animal (“the new animal”) that replaces an animal sold (“the old animal”) is of worse quality than the old animal,
 the amount brought into account as a receipt under section 114 must not exceed the equivalent amount for the new animal.
- (3) If, immediately before it was added to the herd, the new animal was part of the farmer's trading stock, “the equivalent amount for the new animal” means—
  - (a) in the case of an animal bred by the farmer, the cost of breeding the animal and rearing it to maturity, and
  - (b) in any other case, the sum of the initial cost of acquiring the animal and the cost (if any) incurred by the farmer in rearing the animal to maturity.
- (4) Otherwise “the equivalent amount for the new animal” means the cost of the new animal.

### *Elections*

## 122 Herd basis elections **U.K.**

- (1) A herd basis election must specify the class of production herd to which it relates.
- (2) A herd basis election must be made—
  - (a) not later than two years after the end of the first relevant accounting period (if the farmer is not a firm), or
  - (b) on or before the first anniversary of the normal self-assessment filing date for the tax year in which the first relevant period of account ends (if the farmer is a firm).
- (3) For this purpose—
  - (a) “the first relevant accounting period” means the first accounting period in which the farmer making the election keeps a production herd of the class to which the election relates, and

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- (b) “the first relevant period of account” means the first period of account in which the firm making the election keeps a production herd of the class to which the election relates (but see subsection (8)).
- (4) A herd basis election cannot relate to more than one class of production herd, but separate elections may be made for different classes.
- (5) A herd basis election is irrevocable.
- (6) A herd basis election has effect in relation to all production herds of the class to which it relates, including any which the farmer—
  - (a) has ceased to keep before making the election, or
  - (b) first keeps after making the election.
- (7) A herd basis election has effect—
  - (a) for every accounting period in which the farmer carries on the trade and keeps a production herd of the class to which the election relates (if the farmer is not a firm), or
  - (b) for every period of account in which the farmer carries on the trade and keeps a production herd of the class to which the election relates (if the farmer is a firm).
- (8) If the farmer is a firm and there is a change in the persons who are partners in the firm—
  - (a) any herd basis election made by the old firm ceases to have effect, and
  - (b) in relation to the new firm, “the first relevant period of account” means the first period of account in which the new firm keeps a production herd of the class to which the election relates.

### **123 Five year gap in which no production herd kept** **U.K.**

- (1) This section applies if a farmer—
  - (a) keeps a production herd of a particular class, and
  - (b) ceases altogether to keep herds of that class for a period of at least 5 years.
- (2) If the farmer keeps a production herd of that class after the end of that period—
  - (a) the accounting period or (as the case may be) period of account in which the farmer starts to keep the herd is treated as the first accounting period or period of account in which the farmer keeps a production herd of that class, and
  - (b) any herd basis election previously made by the farmer in relation to production herds of that class ceases to have effect.

### **124 Slaughter under disease control order** **U.K.**

- (1) This section applies if—
  - (a) the whole or a substantial part of a production herd kept by a farmer is slaughtered under a disease control order, and
  - (b) the circumstances of the slaughter are such that compensation is payable in respect of the animals slaughtered.
- (2) The farmer may make a herd basis election in respect of the class of production herd involved in the slaughter as if the accounting period or (as the case may be) period of account —

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- (a) in which the compensation falls to be brought into account in calculating the profits of the trade, or
  - (b) in which it would (but for the election) fall to be so brought into account, were the first accounting period or period of account in which the farmer keeps a production herd of that class.
- (3) An election made as a result of this section has effect for that accounting period or period of account and every subsequent accounting period or period of account in which the farmer—
- (a) carries on the trade, and
  - (b) keeps a production herd of the class to which the election relates.
- (4) In this section “disease control order” means an order made under the law relating to the diseases of animals by—
- (a) central government,
  - (b) a devolved authority,
  - (c) a local authority, or
  - (d) another public authority.

*Preventing abuse of the herd basis rules*

**125 Preventing abuse of the herd basis rules** U.K.

- (1) This section applies if—
- (a) a person carrying on a trade (the “transferor”) transfers the whole or part of a production herd to another person (the “transferee”),
  - (b) the transfer is not by way of sale or is by way of sale but for a price other than that which the animals sold would have fetched if sold in the open market, and
  - (c) the control condition or herd basis benefit condition is met.
- (2) The control condition is met if—
- (a) the transferor is a body of persons over which the transferee has control,
  - (b) the transferee is a body of persons over which the transferor has control, or
  - (c) both the transferor and transferee are bodies of persons and another person has control over both of them.
- (3) For this purpose “body of persons” includes a firm.
- (4) The herd basis benefit condition is met if—
- (a) the transferor or transferee (or both) might (but for this section) have been expected to obtain a herd basis benefit as a result of the transfer or the transactions of which the transfer is one, and
  - (b) the herd basis benefit is the sole or main benefit, or one of the main benefits, that the person in question might have been expected to obtain.
- (5) For this purpose a “herd basis benefit” is a benefit resulting from—
- (a) the obtaining of a right to make a herd basis election,
  - (b) the herd basis rules applying or not applying, or
  - (c) the herd basis rules having a greater or lesser effect.
- (6) For the purpose of calculating the profits of—

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- (a) the trade carried on by the transferor, and
  - (b) any trade carried on by the transferee,
- the animals transferred are treated as having been sold at the price which they would have fetched if sold in the open market.

### *Supplementary*

#### **126 Information if election made U.K.**

- (1) An officer of Revenue and Customs may by notice require the person carrying on a trade in relation to which a herd basis election is made to deliver a return of such information about—
  - (a) the animals kept for the purposes of the trade, and
  - (b) the products of those animals,as may be required by the notice.
- (2) The return must be delivered to an officer of Revenue and Customs within the time specified in the notice.

#### **127 Further assessment etc if herd basis rules apply U.K.**

- (1) If the herd basis rules apply in calculating the profits of an accounting period after an assessment for that period has become final and conclusive, any assessment or repayment of tax that is necessary to give effect to the rules must be made.
- (2) But repayment of tax is due only if a claim for it is made.

## **CHAPTER 9 U.K.**

### TRADE PROFITS: OTHER SPECIFIC TRADES

#### *Dealers in securities etc*

#### **128 Taxation of amounts taken to reserves U.K.**

- (1) This section applies for the purpose of calculating the profits of a company's trade if—
  - (a) the company carries on a banking business, an insurance business or a business consisting wholly or partly of dealing in securities, and
  - (b) a profit on the sale of securities held by the company would be brought into account in calculating the trading profits of that business.
- (2) Profits and losses from the securities that in accordance with generally accepted accounting practice are—
  - (a) calculated by reference to the fair value of the securities, and
  - (b) recognised in the company's statement of recognised gains and losses or statement of changes in equity,are brought into account in calculating the profits of the trade.
- (3) But subsection (2) does not apply—

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- (a) to an amount so far as deriving from or otherwise relating to an amount brought into account under that subsection in an earlier period of account, or
  - (b) to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this section “securities” includes—
- (a) shares,
  - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992, and
  - (c) in the case of a company with no share capital, interests in the company possessed by members of the company,
- but does not include a loan relationship (within the meaning of Part 5).

## 129 Conversion etc of securities held as circulating capital **U.K.**

- (1) This section applies for the purpose of calculating the profits of a company's trade if—
- (a) the company carries on a banking business, an insurance business or a business consisting wholly or partly of dealing in securities,
  - (b) a transaction falling within subsection (2) occurs in relation to securities (“the original holding”), and
  - (c) a profit on the sale of the securities would be brought into account in calculating the trading profits of that business.
- (2) A transaction falls within this subsection if—
- (a) it results in a new holding being treated as the same as the original holding as a result of sections 126 to 136 of TCGA 1992 (roll-over relief in cases of conversion etc), or
  - (b) it is treated, as a result of section 134 of TCGA 1992 (compensation stock), as an exchange for a new holding which does not involve a disposal of the original holding.
- (3) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of the period of account, are taken into account in the period of account in which the transaction occurs.
- (4) The transaction is treated as not involving a disposal of the original holding and the new holding is treated as the same asset as the original holding.
- (5) But if, under the transaction, the company carrying on the trade—
- (a) receives consideration in addition to the new holding, or
  - (b) becomes entitled to receive such consideration,
- subsection (4) applies as if the references to the original holding were to the proportion of the original holding given by the following fraction.
- (6) The fraction is—

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$$\frac{NH}{NH + C}$$

where—

NH is the market value of the new holding at the time of the transaction, and

C is the market value of the consideration at the time of the transaction or (if the consideration is cash) the amount of the consideration.

- (7) In determining whether subsection (2)(a) applies as a result of section 135 or 136 of TCGA 1992, the reference to capital gains tax in section 137(1) of TCGA 1992 is to be read as a reference to income tax.
- (8) In this section “securities” includes—
- (a) shares,
  - (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of TCGA 1992, and
  - (c) in the case of a company with no share capital, interests in the company possessed by members of the company.

### 130 Traders receiving distributions etc **U.K.**

- (1) A receipt of a trade which is—
- (a) a UK distribution, or
  - (b) a payment representative of a UK distribution,
- is brought into account in calculating the profits of the trade.
- (2) Subsection (1) is an exception to section 1285(2) (under which UK company distributions are not generally taken into account in calculating income).
- (3) Subsection (4) applies if—
- (a) a payment made by a company carrying on a trade is representative of a UK distribution, and
  - (b) but for section 1305(1) (company's profits to be computed without any deduction for distributions), a deduction would be allowed for the payment in calculating the profits of the trade.
- (4) A deduction is allowed for the payment in calculating the profits of the trade (despite section 1305(1)).
- (5) Subsections (1) to (4) do not apply to receipts, or payments, in the course of insurance business or any category of insurance business.
- (6) In this section “UK distribution” means a distribution made by a UK resident company.



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### *Building societies*

#### **131 Incidental costs of issuing qualifying shares U.K.**

- (1) In calculating the profits of a trade carried on by a building society, a deduction is allowed for incidental costs of obtaining finance by means of issuing shares in the society if—
  - (a) the shares are qualifying shares for the purposes of section 117(4) of TCGA 1992, and
  - (b) the condition in subsection (2) is met.
- (2) The condition is that the amount of any—
  - (a) dividend or other distribution, or
  - (b) interest,
 payable in respect of the shares is deductible in calculating, for corporation tax purposes, the profits of the society's trade.
- (3) But a deduction is not allowed by virtue of subsection (1) so far as the costs fall to be brought into account as debits for the purposes of Part 5 (loan relationships).
- (4) “Incidental costs of obtaining finance” means expenses—
  - (a) which are incurred on fees, commissions, advertising, printing and other incidental matters, and
  - (b) which are incurred wholly and exclusively for the purpose of obtaining the finance, providing security for it or repaying it.
- (5) Expenses incurred wholly and exclusively for the purpose of—
  - (a) obtaining finance, or
  - (b) providing security for it,
 are incidental costs of obtaining the finance even if it is not in fact obtained.
- (6) But the following are not incidental costs of obtaining finance—
  - (a) sums paid because of losses resulting from movements in the rate of exchange between different currencies,
  - (b) sums paid for the purpose of protecting against such losses,
  - (c) the cost of repaying qualifying shares so far as attributable to their being repayable at a premium or having been issued at a discount, and
  - (d) stamp duty.

### *Industrial and provident societies*

#### **132 Dividends etc granted by industrial and provident societies U.K.**

- (1) This section applies if a trade is carried on by a registered industrial and provident society and—
  - (a) the society does not sell to persons who are not its members, or
  - (b) the number of shares in the society is not limited by the society's rules or practice.
- (2) In calculating the profits of the trade, a deduction is allowed for sums which meet conditions A and B.

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- (3) Condition A is that—
- (a) the sum represents a discount, rebate, dividend or bonus granted by the society to a member or other person (“the recipient”),
  - (b) the discount, rebate, dividend or bonus is in respect of—
    - (i) amounts paid or payable by the recipient, or
    - (ii) amounts paid or payable to the recipient, on account of the recipient's transactions with the society, and
  - (c) those transactions are taken into account in calculating the society's profits chargeable under this Part.
- (4) Condition B is that the sum mentioned in subsection (2) is calculated by reference to—
- (a) the amounts paid or payable by or to the recipient, or
  - (b) the size of the transactions,
- and not by reference to the amount of any share or interest in the capital of the society.
- (5) See also section 230A of ICTA (dividend or bonus to which this section applies is not treated as a distribution).

#### *Credit unions*

### **133 Annual payments paid by a credit union U.K.**

In calculating the profits of a credit union's trade, no deduction is allowed for annual payments made by the credit union.

#### *Dealers in land etc*

### **134 Purchase or sale of woodlands U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land.
- (2) If the company carrying on the trade buys woodlands in the United Kingdom in the course of the trade, the part of the cost of the woodlands which is attributable to trees or saleable underwood growing on the land is ignored.
- (3) If—
- (a) the woodlands are subsequently sold in the course of the trade, and
  - (b) any of the trees or underwood are still growing on the land at the time of the sale,
- the part of the price that is equal to the amount ignored under subsection (2) for those trees or that underwood is ignored.

### **135 Relief in respect of mineral royalties U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade carried on by a UK resident company in an accounting period if the receipts of the trade include mineral royalties—
- (a) which the company is entitled to receive under a mineral lease or agreement, and

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- (b) which are not chargeable to tax under Chapter 7 of Part 4 (rent receivable in connection with a UK section 39(4) concern) because of the priority rule in section 287.
- (2) The company is treated as entitled to receive only half of the total of the mineral royalties arising under the lease or agreement in the accounting period.
- (3) Sections 274 to 276 (meaning of “mineral lease or agreement” and “mineral royalties”) apply for the purposes of this section as they apply for the purposes of Chapter 7 of Part 4.
- (4) See also section 201 of TCGA 1992 (gains treated as accruing to a company entitled to receive mineral royalties).

### 136 Lease premiums etc: reduction of receipts U.K.

- (1) This section applies for the purpose of calculating the profits of a trade of dealing in land if a receipt of the trade falls within one of the following categories—
  - (a) lease premiums within section 217,
  - (b) sums within section 219 (sums payable instead of rent),
  - (c) sums within section 220 (sums payable for surrender of a lease),
  - (d) sums within section 221 (sums payable for variation or waiver of terms of lease),
  - (e) consideration for the assignment of a lease within section 222 (lease granted at an undervalue), and
  - (f) amounts received on the sale of an estate or interest in land within section 224 (sales with right to reconveyance) or section 225 (sale and leaseback transactions).
- (2) The receipt is reduced by the relevant amount.
- (3) The relevant amount is the amount which is treated as a receipt of a property business as a result of any of sections 217 to 225.
- (4) But if—
  - (a) the company carrying on the trade makes a claim under section 238 or 239, and
  - (b) as a result of the claim a repayment of tax is made to that company,
 the relevant amount is the amount which, for the purpose of determining the amount of the repayment of tax, is treated as brought into account as a receipt in calculating the profits of the property business.
- (5) If subsection (4) applies, any adjustment of liability to tax may be made—
  - (a) by assessment or otherwise, and
  - (b) at any time at which it could be made if it related only to tax for the accounting period in which the claim under section 238 or 239 is made.

### *Mineral exploration and access*

### 137 Mineral exploration and access U.K.

- (1) This section applies for the purpose of calculating the profits of a trade if—

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- (a) the company carrying on the trade incurs expenditure on mineral exploration and access in an area or group of sands, and
  - (b) the presence of mineral deposits in commercial quantities has already been established in that area or group of sands.
- (2) A deduction is allowed for the expenditure only if a deduction would have been allowed for it if the presence of mineral deposits in commercial quantities had not already been established in that area or group of sands.
- (3) In this section “mineral exploration and access” has the same meaning as in Part 5 of CAA 2001 (see section 396(1) of that Act).

#### *Companies liable to pool betting duty*

### **138 Payments by companies liable to pool betting duty** **U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade if—
  - (a) the company carrying on the trade is liable to pool betting duty,
  - (b) there is a reduction in that duty, and
  - (c) the company makes a qualifying payment in consequence of that reduction.
- (2) A qualifying payment is one—
  - (a) made in order to meet (directly or indirectly) capital expenditure incurred by any person in improving the safety or comfort of spectators at a ground to be used for the playing of association football, or
  - (b) made to trustees established mainly for the support of athletic sports or athletic games but with power to support the arts.
- (3) A deduction is allowed for the qualifying payment.

#### *Intermediaries treated as making employment payments*

### **139 Deduction for deemed employment payment** **U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade carried on by an intermediary which is treated as making a deemed employment payment in connection with the trade.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the intermediary in respect of it,may be made except in accordance with this section.

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- (5) In this section “deemed employment payment” and “intermediary” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003 (see sections 49 and 50 of that Act).

#### **140 Special rules for partnerships U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade carried on by a firm that is treated as making a deemed employment payment in connection with the trade.
- (2) The amount of the deduction allowed under section 139 is limited to the amount that reduces the profits of the firm of the period of account to nil.
- (3) The expenses of the firm in connection with the relevant engagements for any period of account are limited to the total of—
  - (a) 5% of the amount taken into account at Step 1 of the calculation in section 54(1) of ITEPA 2003 (calculation of deemed employment payment), and
  - (b) the amount deductible at Step 3 of that calculation.
- (4) In this section “deemed employment payment” and “the relevant engagements” have the same meaning as in Chapter 8 of Part 2 of ITEPA 2003 (see sections 49 and 50 of that Act).

#### *Managed service companies*

#### **141 Deduction for deemed employment payments U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade carried on by a managed service company (the “MSC”) which is treated as making a deemed employment payment in connection with the trade.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the MSC in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) If the MSC is a firm, the amount of the deduction allowed under subsection (2) is limited to the amount that reduces the profits of the firm of the period of account to nil.
- (5) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the MSC in respect of it,
 may be made except in accordance with this section.
- (6) In this section the following expressions have the same meanings as in Chapter 9 of Part 2 of ITEPA 2003—
  - “deemed employment payment” (see section 61D(2) of that Act),
  - “employer's national insurance contributions” (see section 61J(1) of that Act),

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“managed service company” (see section 61B of that Act).

### *Waste disposal*

#### **142 Deduction for site preparation expenditure** **U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade of a period of account in which waste materials are deposited on a waste disposal site if—
  - (a) the company carrying on the trade (“the trader”), or a predecessor, has incurred site preparation expenditure in relation to the site in the course of carrying on the trade, and
  - (b) at the time the trader first deposits waste materials on the site, the trader holds a waste disposal licence which is then in force.
- (2) A deduction is allowed for the amount of the site preparation expenditure allocated to the period of account under section 143.
- (3) For the purposes of this section “predecessor”, in relation to the trader, means a person who—
  - (a) has ceased to carry on the trade carried on by the trader or ceased to carry on a trade so far as relating to the site, and
  - (b) has transferred the whole of the site to the trader,and it does not matter for this purpose whether or not the estate or interest in the site transferred to the trader is the same as that held by that person.
- (4) For the purposes of this section and section 143, if site preparation expenditure has been incurred by a predecessor—
  - (a) the trade carried on by the trader is treated as the same as the trade carried on by the predecessor, and
  - (b) deductions are to be allowed to the trader (and not to the predecessor) as if everything done to or by the predecessor were done to or by the trader.
- (5) For—
  - (a) the meaning of “site preparation expenditure”, “waste disposal licence” and “waste disposal site”, and
  - (b) a rule about pre-trading expenditure,see section 144.

#### **143 Allocation of site preparation expenditure** **U.K.**

- (1) The amount of site preparation expenditure allocated to a period of account for the purposes of section 142(2) is the amount given by the formula—

$$RE \times \frac{WD}{SV + WD}$$

where—

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RE means residual expenditure (see subsection (2)),

WD means the volume of waste materials deposited on the waste disposal site during the period, and

SV means the volume of the waste disposal site not used up for the deposit of waste materials at the end of the period.

- (2) “Residual expenditure” means the total of all site preparation expenditure incurred by the trader in relation to the waste disposal site at any time before the end of the period, less—
- (a) any of that expenditure for which an allowance has been, or may be, made for corporation or income tax purposes under the enactments relating to capital allowances,
  - (b) any of that expenditure for which a deduction has been made in calculating for corporation or income tax purposes the profits of an earlier period of account, and
  - (c) if the trader started to carry on the trade before 6 April 1989, the excluded amount of any unrelieved old expenditure (see subsections (3) and (4)).
- (3) The excluded amount of unrelieved old expenditure is calculated by multiplying the unrelieved old expenditure (see subsection (4)) by the fraction—

$$\frac{WD}{SV + WD}$$

where—

WD means the volume of waste materials deposited on the site before 6 April 1989, and

SV means the volume of the site not used up for the deposit of waste materials immediately before that date.

- (4) “Unrelieved old expenditure” means site preparation expenditure which—
- (a) was incurred by the trader in relation to the waste disposal site before 6 April 1989, and
  - (b) does not fall within subsection (2)(a) or (b).

#### 144 Site preparation expenditure: supplementary **U.K.**

- (1) For the purposes of this section and sections 142 and 143 “waste disposal licence” means—
- (a) a disposal licence under Part 1 of the Control of Pollution Act 1974 (c. 40) or Part 2 of the Pollution Control and Local Government (Northern Ireland) Order 1978 (S.I. 1978/1049 (N.I. 19)),



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- (b) a waste management licence under Part 2 of the Environmental Protection Act 1990 (c. 43) or any corresponding provision for the time being in force in Northern Ireland,
  - (c) a permit under regulations under—
    - (i) section 2 of the Pollution Prevention and Control Act 1999 (c. 24), or
    - (ii) Article 4 of the Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 7)),
  - (d) an authorisation under the Radioactive Substances Act 1960 (c. 34) or the Radioactive Substances Act 1993 (c. 12) for the disposal of radioactive waste, or
  - (e) a nuclear site licence under the Nuclear Installations Act 1965 (c. 57).
- (2) For the purposes of this section and sections 142 and 143—
- “site preparation expenditure”, in relation to a waste disposal site, means expenditure incurred on preparing the site for the deposit of waste materials, and
- “waste disposal site” means a site used, or to be used, for the disposal of waste materials by their deposit on the site.
- (3) For the purposes of sections 142 and 143, expenditure incurred for the purposes of a trade by a company about to carry on the trade is treated as if it were incurred—
- (a) on the date on which the company starts to carry on the trade, and
  - (b) in the course of carrying it on.

#### **145 Site restoration payments** **U.K.**

- (1) This section applies for the purpose of calculating the profits of a trade if the company carrying on the trade makes a site restoration payment in the course of carrying it on.
- (2) A deduction is allowed for the unrelieved amount of the payment.
- (3) The deduction is allowed for the period of account in which the payment is made.
- (4) The unrelieved amount of a site restoration payment is the amount of the payment, less—
  - (a) any amount of the payment that represents expenditure for which an allowance has been, or may be, made under the enactments relating to capital allowances, and
  - (b) any amount of the payment that represents expenditure for which a deduction has been made in calculating the profits of the trade of an earlier period of account.
- (5) A “site restoration payment” means a payment made in connection with the restoration of a site (or part of a site) in order to comply with—
  - (a) a condition of a waste disposal licence (as defined in section 144(1)),
  - (b) a condition imposed on the grant of planning permission to use the site for the collection, treatment, conversion and final depositing of waste materials or for the carrying out of any of those activities, or
  - (c) a relevant planning obligation.
- (6) For this purpose “a relevant planning obligation” means—

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- (a) an obligation arising under an agreement made under section 106 of the Town and Country Planning Act 1990 (c. 8) (as originally enacted) or any corresponding provision for the time being in force in Northern Ireland,
- (b) an obligation arising under an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
- (c) a planning obligation entered into under section 106 of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991 (c. 34)) or any corresponding provision for the time being in force in Northern Ireland, or
- (d) a planning obligation entered into under section 299A of the Town and Country Planning Act 1990 or any corresponding provision for the time being in force in Northern Ireland.

### *Cemeteries and crematoria*

#### **146 Cemeteries and crematoria: introduction U.K.**

- (1) This section and sections 147 to 149 apply for the purpose of calculating the profits of a period of account (“the relevant period”) of a trade which consists of or includes—
  - (a) the carrying on of a cemetery, or
  - (b) the carrying on of a crematorium and, in connection with doing so, the maintenance of memorial garden plots,
 and the following provisions of this section apply for the interpretation of this section and those sections.
- (2) References to the sale of land in a cemetery include the sale of a right of interment in land in a cemetery.
- (3) References to the sale of land in a memorial garden include the appropriation of part of a memorial garden in return for a dedication fee or similar payment.
- (4) “Ancillary capital expenditure” means capital expenditure incurred for the purposes of the trade by the company carrying on the trade (“the trader”), or a predecessor, on—
  - (a) any building or structure (other than a dwelling-house) which is in the cemetery or memorial garden and is likely to have little or no value when the cemetery or memorial garden is full,
  - (b) the purchase of an interest in, or the preparation of, any land taken up by such a building or structure, or
  - (c) the purchase of an interest in, or the preparation of, any other land in the cemetery or memorial garden which is not suitable or adaptable for use for interments or memorial garden plots and which is likely to have little or no value when the cemetery or memorial garden is full.
- (5) “Predecessor”, in relation to the trader, means a person who carried on the trade at any time before the trader started to do so.
- (6) “Preparation”, in relation to land, means levelling or draining the land or making it suitable in some other way for use as a cemetery or memorial garden.

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#### 147 Deduction for capital expenditure **U.K.**

- (1) This section applies if, in the relevant period, an interest in land in the cemetery or memorial garden is sold with a view to the land being used—
  - (a) for the purpose of interments, or
  - (b) for memorial garden plots.
- (2) A deduction is allowed for—
  - (a) capital expenditure incurred by the trader, or a predecessor, on the purchase of an interest in the land or on the preparation of the land, and
  - (b) ancillary capital expenditure allocated to the relevant period under section 148 (allocation of ancillary capital expenditure).
- (3) But no expenditure is to be brought into account—
  - (a) under both paragraphs (a) and (b) of subsection (2), or
  - (b) under both subsection (2)(a) above and section 170(2)(b) of ITTOIA 2005 (relief for income tax purposes) or under both subsection (2)(b) above and section 170(2)(a) of ITTOIA 2005, whether for the same or different periods of account.
- (4) Any purchase price paid on a sale in connection with a change in the persons carrying on the trade is ignored in calculating the amount of the deduction.
- (5) No deduction is allowed for any expenditure which is excluded by section 149 (exclusion of expenditure met by subsidies).

#### 148 Allocation of ancillary capital expenditure **U.K.**

- (1) The amount of ancillary capital expenditure allocated to the relevant period for the purposes of section 147(2)(b) is the amount given by the formula—

$$RE \times \frac{PSR}{PAR + PSR}$$

where—

RE means residual expenditure (see subsection (2)),

PSR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold in the relevant period, and

PAR means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which are or could be made available for sale at the end of the relevant period.

- (2) “Residual expenditure” means the total of all ancillary capital expenditure incurred at any time before the end of the relevant period, less—
  - (a) ancillary capital expenditure incurred on buildings or structures which were destroyed before the beginning of the first sale period,

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- (b) the excluded amount of any remaining old expenditure (see subsection (3)),
  - (c) if, after the beginning of the first sale period and before the end of the relevant period, an asset representing ancillary capital expenditure was sold or destroyed, the net sale proceeds or the compensation, and
  - (d) any amount deducted under section 147(2)(b) above, or under section 170(2)(b) of ITTOIA 2005, for a period of account ending before the relevant period.
- (3) The excluded amount of remaining old expenditure is calculated by multiplying the remaining old expenditure by the fraction—

$$\frac{\text{PSB}}{\text{PAB} + \text{PSB}}$$

where—

PSB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden sold before the beginning of the basis period for the tax year 1954-55, and

PAB means the number of grave-spaces or memorial garden plots in the cemetery or memorial garden which were or could have been made available for sale immediately before the beginning of the basis period for that tax year.

- (4) In this section—
- “compensation”, in relation to the destruction of an asset, means—
    - (a) insurance money or other compensation received by the trader, or a predecessor, in respect of the destruction, and
    - (b) money received for the remains of the asset by the trader or predecessor,
  - “the first sale period” means—
    - (a) the period of account in which an interest in land in the cemetery or memorial garden was first sold for the purposes of the trade with a view to the land being used for the purpose of interments or for memorial garden plots, or
    - (b) if later, the basis period for the tax year 1954-55, and
  - “remaining old expenditure” means ancillary capital expenditure which—
    - (a) was incurred before the beginning of the basis period for the tax year 1954-55, and
    - (b) does not fall within subsection (2)(a).

#### 149 Exclusion of expenditure met by subsidies **U.K.**

- (1) Expenditure is excluded for the purposes of section 147 so far as it has been, or is to be, met (directly or indirectly) by—
- (a) the Crown,
  - (b) a government or local or other public authority (whether in the United Kingdom or elsewhere), or
  - (c) any person other than the person incurring the expenditure.

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- (2) This is subject to the following exceptions.
- (3) Expenditure is not excluded for the purposes of section 147 if it is met (directly or indirectly) by a grant—
  - (a) made under Northern Ireland legislation, and
  - (b) declared by the Treasury by an order under section 534 of CAA 2001 to correspond to a grant under Part 2 of the Industrial Development Act 1982 (c. 52).
- (4) Expenditure is not excluded for the purposes of section 147 if it is met (directly or indirectly) by—
  - (a) insurance money, or
  - (b) other compensation money,payable in respect of an asset which has been destroyed, demolished or put out of use.
- (5) Expenditure is not excluded for the purposes of section 147 if—
  - (a) it has been, or is to be, met (directly or indirectly) by a person other than the Crown or a government or local or other public authority, and
  - (b) no deduction is allowed for the expenditure in calculating for corporation or income tax purposes the profits of a trade carried on by that person.

#### *Sound recordings*

### **150 Revenue nature of expenditure** **U.K.**

- (1) If a company carrying on a trade incurs expenditure on the production or acquisition of the original master version of a sound recording, the expenditure is treated for corporation tax purposes as expenditure of a revenue nature.
- (2) If expenditure is treated under this section as revenue in nature, sums received by the company from the disposal of the original master version of the sound recording—
  - (a) are treated for corporation tax purposes as receipts of a revenue nature, and
  - (b) are brought into account in calculating the profits of the relevant period in which they are received.
- (3) For this purpose sums received from the disposal of the original master version include—
  - (a) sums received from the disposal of any interest or right in or over the original master version (including an interest or right created by the disposal), and
  - (b) insurance, compensation or similar money derived from the original master version.

### **151 Allocation of expenditure** **U.K.**

- (1) This section applies in calculating for corporation tax purposes the profits or losses of a company from a trade if—
  - (a) the trade consists of or includes the exploitation of original master versions of sound recordings, and
  - (b) the original master versions do not constitute trading stock of the trade as defined by section 163.

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- (2) Expenditure that—
- (a) is incurred on the production or acquisition of the original master version of a sound recording, and
  - (b) is of a revenue nature (whether as a result of section 150 or otherwise), must be allocated to relevant periods in accordance with this section.
- (3) The company must allocate to a relevant period so much of the expenditure as is just and reasonable having regard to—
- (a) the amount of the expenditure that remains unallocated at the beginning of the period,
  - (b) the proportion that the estimated value of the original master version of the sound recording that is realised in that period (whether by way of income or otherwise) bears to the total value so realised and the estimated remaining value of the original master version at the end of the period, and
  - (c) the need to bring the whole of the expenditure into account over the time during which the value of the original master version is expected to be realised.
- (4) The company may also allocate to a relevant period a further amount, so long as the total amount allocated does not exceed the value of the original master version of the sound recording realised in that period (whether by way of income or otherwise).

## 152 Interpretation of sections 150 and 151 **U.K.**

- (1) For the purposes of sections 150 and 151—
- (a) “sound recording” does not include a film soundtrack,
  - (b) “original master version” means the master tape or master audio disc of the recording,
  - (c) references to the original master version of a sound recording include any rights in the original master version that are held or acquired with it, and
  - (d) “relevant period” means—
    - (i) a period for which accounts of the trade are made up, or
    - (ii) if no accounts of the trade are made up for a period, an accounting period of the company.
- (2) In subsection (1)(a) “film” is to be read in accordance with section 1181.

*Reserves of marketing authorities etc*

## 153 Reserves of marketing authorities and certain other statutory bodies **U.K.**

- (1) This section applies to a statutory body if its object (or one of its objects) is—
- (a) marketing an agricultural product, or
  - (b) stabilising the price of an agricultural product.
- (2) Subsections (3) and (4) apply if the body is required, by or under an approved scheme or arrangement (“the scheme”), to pay the whole or part of any trading surplus into a reserve fund meeting the conditions specified in section 154.
- (3) Any sums which the body is required by or under the scheme to pay into the fund out of the profits of its trade are allowed as deductions in calculating the profits of the trade.

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- (4) Any sums withdrawn by the body from the fund are taken into account as trading receipts, except so far as—
- (a) they are required, by or under the scheme, to be paid to a Minister or department,
  - (b) they are distributed to producers of the product in question, or
  - (c) they are refunded to persons who pay any levy or duty.
- (5) In this section—
- “approved scheme or arrangement” means a scheme or arrangement approved by, or made with, a Minister or department,
  - “producers of the product” includes persons producing the product from another product,
  - “statutory body” means a body established by or under an enactment,
  - “trading surplus” means a surplus from the body's trading operations or other trade receipts.

#### **154 Conditions to be met by reserve fund** **U.K.**

- (1) These are the conditions to be met by the reserve fund (see section 153(2)).
- (2) The first condition is that no sum may be withdrawn from the fund without the authority or consent of a Minister or department.
- (3) The second condition is that if—
- (a) money has been paid to the body by a Minister or department—
    - (i) in connection with arrangements for maintaining guaranteed prices, or
    - (ii) in connection with the body's trading arrangements, and
  - (b) the money is repayable to the Minister or department,
- sums standing to the credit of the fund are required to be applied (in whole or in part) in repaying the money.
- (4) The requirement mentioned in subsection (3) must be imposed by or under the scheme or arrangement mentioned in section 153(2).
- (5) The third condition is that—
- (a) the fund is reviewed by a Minister at intervals fixed by or under the scheme or arrangement mentioned in section 153(2), and
  - (b) if the fund appears to the Minister to exceed what is reasonably required by the body, the excess is withdrawn from the fund.

#### **155 Interpretation of sections 153 and 154** **U.K.**

- (1) In sections 153 and 154 “Minister” means—
- (a) a Minister of the Crown,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers, or
  - (d) a Minister within the meaning of the Northern Ireland Act 1998 (c. 47).
- (2) In sections 153 and 154 “department” means—
- (a) a government department,



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- (b) a part of the Scottish Administration,
- (c) a part of the Welsh Assembly Government, or
- (d) a Northern Ireland department.

## CHAPTER 10 **U.K.**

### TRADE PROFITS: CHANGES IN TRADING STOCK

#### *Introduction*

#### **156**    **Meaning of “trading stock” **U.K.****

- (1) In this Chapter “trading stock”, in relation to a trade, means anything (whether land or other property)—
- (a) which is sold in the ordinary course of the trade, or
  - (b) which would be so sold if it were mature or its manufacture, preparation or construction were complete.
- (2) It does not include—
- (a) materials used in the manufacture, preparation or construction of any such thing,
  - (b) any services performed in the ordinary course of the trade, or
  - (c) any article produced, or any material used, in the performance of any such services.

#### *Transfers of trading stock between trade and trader*

#### **157**    **Trading stock appropriated by trader **U.K.****

- (1) This section applies if trading stock of a company's trade is appropriated by the company for any other purpose.
- (2) In calculating the profits of the trade—
- (a) the amount which the stock appropriated would have realised if sold in the open market at the time of the appropriation is brought into account as a receipt, and
  - (b) the value of anything in fact received for it is left out of account.
- (3) The receipt is treated as arising on the date of the appropriation.

#### **158**    **Trading stock supplied by trader **U.K.****

- (1) This section applies if something that—
- (a) belongs to a company carrying on a trade, but
  - (b) is not trading stock of the trade,
- becomes trading stock of the trade.
- (2) In calculating the profits of the trade—

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- (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time it became trading stock of the trade, and
  - (b) the value of anything in fact given for it is left out of account.
- (3) The cost is treated as being incurred on the date it became trading stock of the trade.

*Other disposals and acquisitions not made in the course of trade*

## **159 Disposals not made in the course of trade** **U.K.**

- (1) This section applies if—
  - (a) trading stock of a trade is disposed of otherwise than in the course of the trade, and
  - (b) section 157 does not apply.
- (2) In calculating the profits of the trade—
  - (a) the amount which the stock disposed of would have realised if sold in the open market at the time of the disposal is brought into account as a receipt, and
  - (b) any consideration obtained for it is left out of account.
- (3) The receipt is treated as arising on the date of the disposal.
- (4) This section is subject to section 161.

## **160 Acquisitions not made in the course of trade** **U.K.**

- (1) This section applies if—
  - (a) trading stock of a trade has been acquired otherwise than in the course of the trade, and
  - (b) section 158 does not apply.
- (2) In calculating the profits of the trade—
  - (a) the cost of the stock is taken to be the amount which it would have realised if sold in the open market at the time of the acquisition, and
  - (b) the value of anything in fact given for it is left out of account.
- (3) The cost is treated as being incurred on the date of the acquisition.
- (4) This section is subject to section 161.

*Relationship with transfer pricing rules*

## **161 Transfer pricing rules to take precedence** **U.K.**

- (1) Section 159 or 160 does not apply if the relevant consideration—
  - (a) falls to be adjusted for tax purposes under Schedule 28AA to ICTA, or
  - (b) falls within that Schedule without falling to be so adjusted.
- (2) For the purposes of subsection (1)(b), the relevant consideration falls within Schedule 28AA to ICTA without falling to be adjusted under that Schedule if the conditions in paragraph 1(1) of that Schedule are met, but either—
  - (a) the actual provision does not differ from the arm's length provision, or

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- (b) one of the exceptions mentioned in subsection (3) applies.
- (3) The exceptions are those in—
  - (a) section 447(5) (exchange gains or losses from loan relationships)
  - (b) section 694(8) (exchange gains or losses from derivative contracts),
  - (c) paragraph 10 of Schedule 28AA to ICTA (transactions and deemed transactions involving oil), and
  - (d) paragraph 13 of Schedule 28AA to ICTA (saving for provisions relating to capital allowances and capital gains).
- (4) In this section “relevant consideration” means—
  - (a) in relation to section 159, the consideration for the disposal of the trading stock, and
  - (b) in relation to section 160, the consideration for the acquisition of the trading stock.

## CHAPTER 11 U.K.

### TRADE PROFITS: VALUATION OF STOCK ON CESSATION OF TRADE

#### 162 Valuation of trading stock on cessation U.K.

- (1) If a company permanently ceases to carry on a trade, in calculating the profits of the trade—
  - (a) trading stock belonging to the trade at the time of the cessation must be valued, and
  - (b) the value must be determined in accordance with sections 164 to 167 (bases of valuation).
- (2) But no valuation of the stock is required under this Chapter if paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) has effect in relation to any provision which—
  - (a) is made or imposed in relation to the stock, and
  - (b) has effect in connection with the cessation.
- (3) If there is a partnership change, no valuation of the stock is required under this Chapter so long as a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (4) The reference in subsection (3) to a partnership change is to a change in the persons carrying on the trade in circumstances where the trade is carried on by persons in partnership immediately before or immediately after the change (or at both those times).

#### 163 Meaning of “trading stock” U.K.

- (1) In this Chapter “trading stock” means—
  - (a) any property (whether land or other property) which is sold in the ordinary course of the trade or would be so sold if it were mature or its manufacture, preparation or construction were complete, or

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- (b) materials used in the manufacture, preparation or construction of any property mentioned in paragraph (a).
- (2) In this Chapter “trading stock” includes also any services performed in the ordinary course of the trade—
  - (a) the performance of which is wholly or partly completed at the time of the cessation, and
  - (b) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,and any article produced, and any material used, in the performance of any such services.
- (3) In this Chapter references to the sale or transfer of trading stock include the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

#### **164 Basis of valuation of trading stock U.K.**

- (1) The value of trading stock belonging to the trade at the time of the cessation is determined as follows.
- (2) If the stock is sold to a person who—
  - (a) carries on, or intends to carry on, a trade, profession or vocation in the United Kingdom, and
  - (b) is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade, profession or vocation for corporation or income tax purposes,the value is determined in accordance with section 165 (sale to unconnected person), 166 (sale to connected person) or 167 (election by connected persons).
- (3) But if section 125 (preventing abuse of the herd basis rules) applies—
  - (a) the value is not determined in accordance with any of those sections, and
  - (b) the value is instead taken to be that given by section 125 (the price which the animals transferred would have fetched if sold in the open market at the time of the sale).
- (4) In any other case, the value is taken to be the amount which the stock would have realised if sold in the open market at the time of the cessation.

#### **165 Sale basis of valuation: sale to unconnected person U.K.**

- (1) The value of trading stock is determined in accordance with this section if—
  - (a) it is sold to a person who carries on, or intends to carry on, a trade, profession or vocation in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade, profession or vocation for corporation or income tax purposes, and
  - (b) the buyer is not connected with the seller.
- (2) The value is taken to be the amount in fact realised on the sale.
- (3) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

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### 166 Sale basis of valuation: sale to connected person **U.K.**

- (1) The value of trading stock is determined in accordance with this section if—
  - (a) it is sold to a person who carries on, or intends to carry on, a trade, profession or vocation in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade, profession or vocation for corporation or income tax purposes,
  - (b) the buyer is connected with the seller, and
  - (c) no election is made under section 167 (election by connected persons).
- (2) The value is taken to be the amount which would have been realised if the sale had been between independent persons dealing at arm's length.

### 167 Sale basis of valuation: election by connected persons **U.K.**

- (1) The value of trading stock is determined in accordance with this section if—
  - (a) it is sold to a person who carries on, or intends to carry on, a trade, profession or vocation in the United Kingdom and is entitled to deduct the cost of the stock as an expense in calculating the profits of that trade, profession or vocation for corporation or income tax purposes,
  - (b) the buyer is connected with the seller, and
  - (c) an election is made under this section.
- (2) The parties to the sale may make an election under this section if the value of the stock determined under section 166 exceeds both—
  - (a) its acquisition value, and
  - (b) the amount in fact realised on the sale.
- (3) If an election is made, the value is taken to be—
  - (a) its acquisition value, or
  - (b) if greater, the amount in fact realised on the sale.
- (4) An election under this section must be made by both parties not later than two years after the end of the accounting period in which the cessation occurred.
- (5) The “acquisition value” of trading stock means the amount which would have been deductible as representing its acquisition value, in calculating the profits of the trade, on the following assumptions—
  - (a) that the stock had been sold in the course of the trade, immediately before the cessation, for a price equal to the value of the stock determined under section 166, and
  - (b) that the period for which those profits were to be calculated began immediately before the sale.
- (6) If the stock is sold together with other assets, so much of the amount realised on the sale as, on a just and reasonable apportionment, is properly attributable to each asset is treated as the amount realised on the sale of that asset.

### 168 Connected persons **U.K.**

For the purposes of sections 164 to 167 two persons are connected with each other if any of the following tests is met—

- (a) they are connected with each other within the meaning of section 839 of ICTA,

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- (b) one of them is a firm and the other has a right to a share of the assets or income of the firm,
- (c) one of them is a body corporate and the other has control over that body,
- (d) both of them are firms and some other person has a right to a share of the assets or income of both of them, or
- (e) both of them are bodies corporate, or one of them is a firm and the other is a body corporate, and in either case some other person has control over both of them.

### **169 Cost to buyer of stock valued on sale basis of valuation** U.K.

- (1) This section applies for the purpose of calculating the profits of the trade carried on by the buyer of trading stock.
- (2) If the value of the stock is determined in accordance with—
  - (a) section 164(3) or sections 165 to 167 (sale basis of valuation), or
  - (b) section 175(3) or sections 176 to 178 of ITTOIA 2005 (corresponding income tax rules),the cost of the stock to the buyer is taken to be the value as so determined.

### **170 Meaning of “sale” and related expressions** U.K.

- (1) In sections 164 to 167 (except in section 167(5)) references to a sale include a transfer for valuable consideration.
- (2) In relation to a transfer which is not a sale—
  - “amount realised on the sale” means the value of the consideration given for the transfer,
  - “buyer” means the person to whom the transfer is made, and
  - “seller” means the person who makes the transfer.

### **171 Determination of questions** U.K.

Any question arising under section 164(3) or sections 165 to 167 (sale basis of valuation of trading stock) must be determined in the same way as an appeal.

## **CHAPTER 12** U.K.

### DEDUCTIONS FROM PROFITS: UNREMITTABLE AMOUNTS

### **172 Application of Chapter** U.K.

- (1) This Chapter applies if—
  - (a) an amount received by, or owed to, a company carrying on a trade (“the trader”) is brought into account as a receipt in calculating the profits of the trade,
  - (b) the amount is paid or owed in a territory outside the United Kingdom, and
  - (c) some or all of the amount is unremittable.

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- (2) An amount received is unremittable if it cannot be transferred to the United Kingdom merely because of foreign exchange restrictions.
- (3) An amount owed is unremittable if it cannot be paid in the United Kingdom and—
  - (a) it temporarily cannot be paid in the territory in which it is owed merely because of foreign exchange restrictions, or
  - (b) it can be paid in that territory but, if it were paid there, the amount paid would not be transferable to the United Kingdom merely because of foreign exchange restrictions.
- (4) “Foreign exchange restrictions” are restrictions imposed by any of the following—
  - (a) the laws of the territory where the amount is paid or owed,
  - (b) executive action of its government, and
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.
- (5) Section 464(1) (matters to be brought into account in the case of loan relationships) does not prevent any amount from being brought into account in accordance with section 173 or 175.

### 173 Relief for unremittable amounts **U.K.**

- (1) If—
  - (a) the trader has profits from the trade in a period of account, and
  - (b) an unremittable amount has been brought into account as a receipt for that period,
 a deduction of the amount is allowed from those profits (but see subsection (5)).
- (2) If the trader has profits from the trade in a period of account and the total of—
  - (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (3) from the previous period of account,
 exceeds the amount of those profits, the excess may be carried forward to the next period of account.
- (3) If the trader does not have profits from the trade in a period of account and an unremittable amount has been brought into account as a receipt for that period, the total of—
  - (a) any unremittable amounts brought into account as receipts for that period, and
  - (b) any amount carried forward under this subsection or subsection (2) from the previous period of account,
 may be carried forward to the next period of account.
- (4) If an amount is carried forward under this section to a period of account in which the trader has profits from the trade, a deduction of the amount is allowed from those profits (but see subsection (5)).
- (5) The total amount deducted under this section from the profits from a trade in a period of account must not exceed the amount of the profits.



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#### **174 Restrictions on relief** **U.K.**

- (1) No deduction is allowed under section 173 in relation to an amount so far as—
  - (a) it is used to finance expenditure or investment outside the United Kingdom, or
  - (b) it is applied outside the United Kingdom in another way.
- (2) No deduction is allowed under section 173 in relation to an amount owed so far as a payment under a contract of insurance has been received in relation to it.
- (3) No deduction is allowed under section 173 in relation to an amount brought into account in calculating profits if relief under section 1275 (unremittable income) may be claimed in relation to that amount.

#### **175 Withdrawal of relief** **U.K.**

- (1) This section applies if—
  - (a) some or all of an unremittable amount has been deducted from profits under section 173, and
  - (b) any of the following events occurs.
- (2) The events are that—
  - (a) the amount or part of it ceases to be unremittable,
  - (b) an allowable provision for impairment loss is made in respect of the amount or part of it,
  - (c) the amount or part of it is used to finance expenditure or investment outside the United Kingdom,
  - (d) the amount or part of it is applied outside the United Kingdom in another way,
  - (e) the amount or part of it is exchanged for, or discharged by, an amount that is not unremittable, and
  - (f) if the amount is an amount owed, a payment under a contract of insurance is received in relation to the amount or part of it.
- (3) The amount or the part of it in question is brought into account as a receipt in calculating the profits of the trade of the period of account in which the event occurs, but only so far as—
  - (a) it has been deducted from profits under section 173, and
  - (b) it has not already been brought into account as a receipt in calculating the profits of the trade as a result of this section.
- (4) If the event is the receipt of a payment under a contract of insurance, the amount brought into account as a receipt must not exceed the amount of the payment.
- (5) In subsection (2)(b) “allowable provision for impairment loss” means either—
  - (a) a debit in respect of the impairment of a financial asset (see section 476(1)) which is brought into account under Part 5 (loan relationships), or
  - (b) a provision in respect of which a deduction is allowable under section 55 (bad debts).

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## CHAPTER 13 **U.K.**

### DISPOSAL AND ACQUISITION OF KNOW-HOW

#### 176 **Meaning of “know-how” etc** **U.K.**

- (1) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
  - (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (2) For this purpose—
 

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and

“source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.
- (3) For the purposes of this Chapter any consideration received for giving, or wholly or partly fulfilling, an undertaking which—
  - (a) is given in connection with a disposal of know-how, and
  - (b) restricts, or is designed to restrict, any person's activities in any way,
 is treated as consideration received for the disposal of the know-how.
- (4) It does not matter whether or not the undertaking is legally enforceable.
- (5) For the purposes of this Chapter references to a sale of know-how include an exchange of know-how and any provision of this Chapter referring to a sale has effect with the necessary modifications.
- (6) Those modifications include, in particular, reading references to the proceeds of sale and to the price as including the consideration for the exchange.

#### 177 **Disposal of know-how if trade continues to be carried on** **U.K.**

- (1) This section applies if—
  - (a) a company carrying on a trade receives consideration for the disposal of know-how which has been used in the trade,
  - (b) the company continues to carry on the trade after the disposal, and
  - (c) neither section 178 (disposal of know-how as part of disposal of all or part of a trade) nor section 179 (seller controlled by buyer etc) applies.
- (2) The amount or value of the consideration is treated for corporation tax purposes as a trading receipt, except so far as it is brought into account under section 462 of CAA 2001 (disposal values).
- (3) If the know-how is sold together with other property, the net proceeds of the sale of the know-how are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to the know-how.

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- (4) For this purpose all property sold as a result of one bargain is treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.
- (5) Any question about the way in which a sum is to be apportioned under this section must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (6) For this purpose a question materially affects two or more taxpayers if, at the time when the question falls to be determined, it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

## **178 Disposal of know-how as part of disposal of all or part of a trade** **U.K.**

- (1) This section applies if—
  - (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and
  - (b) the know-how is disposed of as part of the disposal of all or part of the trade.
- (2) If the person disposing of the know-how is within the charge to corporation tax, the consideration is treated for corporation tax purposes as a capital receipt for goodwill.
- (3) If the person acquiring the know-how—
  - (a) is within the charge to corporation tax, and
  - (b) provided the consideration,the consideration is treated for corporation tax purposes as a capital payment for goodwill.
- (4) But the consideration is not treated for corporation tax purposes as a capital payment for goodwill if, before the acquisition, the trade was carried on wholly outside the United Kingdom.
- (5) If the person disposing of the know-how is within the charge to corporation tax—
  - (a) that person, and
  - (b) the person acquiring the know-how (whether or not within the charge to corporation tax),may jointly elect for this section not to apply (but see section 179).
- (6) The election must be made within two years of the disposal.
- (7) If—
  - (a) an election is made under section 194 of ITTOIA 2005 (corresponding income tax provision), and
  - (b) the person making the acquisition mentioned in that section is within the charge to corporation tax,the persons making the election under that section are treated as also making an election under this section (even though the person disposing of the know-how is not within the charge to corporation tax).

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## 179 Seller controlled by buyer etc **U.K.**

- (1) This section applies if a disposal of know-how is by way of sale and—
  - (a) the seller is a body of persons over which the buyer has control,
  - (b) the buyer is a body of persons over which the seller has control, or
  - (c) both the seller and the buyer are bodies of persons and another person has control over both of them.
- (2) In such a case—
  - (a) section 177 does not apply, and
  - (b) no election may be made under section 178.
- (3) For the purposes of this section “body of persons” includes a firm.

## CHAPTER 14 **U.K.**

### ADJUSTMENT ON CHANGE OF BASIS

#### *Adjustment on change of basis*

## 180 Application of Chapter **U.K.**

- (1) This Chapter applies if—
  - (a) a company carrying on a trade changes, from one period of account to the next, the basis on which profits of the trade are calculated for corporation tax purposes,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change.
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a trade should be calculated for corporation tax purposes.
- (3) A company changes the basis on which profits of a trade are calculated for corporation tax purposes if the company makes—
  - (a) a relevant change of accounting approach (see subsection (4)), or
  - (b) a change in the tax adjustments applied (see subsections (5) and (6)).
- (4) A “relevant change of accounting approach” means—
  - (a) a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment, or
  - (b) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts drawn up in accordance with international accounting standards.
- (5) A “tax adjustment” means any adjustment required or authorised by law in calculating profits of a trade for corporation tax purposes.
- (6) A “change in the tax adjustments applied”—

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- (a) does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but
- (b) includes a change resulting from a change of view as to what is required or authorised by law or as to whether any adjustment is so required or authorised.

## 181 Giving effect to positive and negative adjustments **U.K.**

- (1) An amount by way of adjustment must be calculated in accordance with section 182.
- (2) If the amount produced by the calculation is positive—
  - (a) the amount is brought into account as a receipt in calculating the profits of the trade, and
  - (b) the receipt is treated as arising on the first day of the first period of account for which the new basis is adopted.
- (3) If the amount produced by the calculation is negative—
  - (a) a deduction is allowed for the amount as an expense of the trade in calculating the profits of the trade, and
  - (b) the expense is treated as arising on the first day of the first period of account for which the new basis is adopted.
- (4) This section is subject to—
  - (a) section 183 (no adjustment for certain expenses previously brought into account),
  - (b) section 184 (cases where adjustment not required until assets realised or written off), and
  - (c) section 185 (change from realisation basis to mark to market).

## 182 Calculation of the adjustment **U.K.**

The amount of the adjustment is calculated as follows. *Step 1*

Add together any amounts representing the extent to which, comparing the two bases, profits were understated (or losses overstated) on the old basis.

The amounts are—

---

	<i>Amounts</i>
1	Receipts which on the new basis would have been brought into account in calculating the profits of a period of account before the change, so far as they were not so brought into account.
2	Expenses which on the new basis fall to be brought into account in calculating the profits of a period of account after the change, so far as they were brought into account in calculating the profits of a period of account before the change.
3	Deductions in respect of opening trading stock or opening work in progress in the

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first period of account on the new basis, so far as they—

- (a) are not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change, or
- (b) are calculated on a different basis that if used to calculate those credits would have given a higher figure.

4

Amounts recognised for accounting purposes in respect of depreciation in the last period of account before the change, so far as they were not the subject of an adjustment for corporation tax purposes, where such an adjustment would be required on the new basis.

### *Step 2*

Then deduct any amounts representing the extent to which, comparing the two bases, profits were overstated (or losses understated) on the old basis.

The amounts are—

### *Amounts*

1

Receipts which were brought into account in a period of account before the change, so far as they would not have been so brought into account if the profits had been calculated on the new basis.

2

Expenses which were not brought into account in calculating the profits of a period of account before the change, so far as they—

- (a) would have been brought into account for a period of account before the change if the profits had been calculated on the new basis, and
- (b) would have been brought into account for a period of account after the change if the profits had continued to be calculated on the old basis.

3

Credits in respect of closing trading stock or closing work in progress in the last period of account before the change, so far as they—

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- (a) are not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, or
- (b) are calculated on a different basis that if used to calculate those deductions would have given a lower figure.

An amount so deducted may not be deducted again in calculating the profits of a period of account.

*Expenses previously brought into account*

**183 No adjustment for certain expenses previously brought into account U.K.**

- (1) This section applies if, as a result of a change of basis, expenses brought into account before the change on the old basis would on the new basis be brought into account over more than one period of account after the change.
- (2) In such a case—
  - (a) no adjustment is made under this Chapter, and
  - (b) in calculating the profits of the trade no deduction is allowed for the expenses for any period of account after the change.

*Realising or writing off assets*

**184 Cases where adjustment not required until assets realised or written off U.K.**

- (1) This section applies if there is a change of basis resulting from a tax adjustment affecting the calculation of any of the following amounts.
- (2) The amounts are—
  - (a) any amount brought into account in respect of closing trading stock in the last period of account before the change of basis,
  - (b) any amount brought into account in respect of opening trading stock in the first period of account on the new basis, and
  - (c) any amount brought into account in respect of depreciation.
- (3) The receipt of the trade or (as the case may be) the expense of the trade is treated as arising only when the asset to which it relates is realised or written off.

*Mark to market*

**185 Change from realisation basis to mark to market U.K.**

- (1) This section applies if there is a change of basis from—
  - (a) not recognising a profit or loss on an asset until the asset is realised, to
  - (b) bringing assets into account in each period of account at a fair value.



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- (2) So far as—
- (a) a receipt within item 1 of Step 1 in section 182 represents the fair value of an asset that is trading stock, or
  - (b) an expense within item 2 of that step relates to such an asset,
- the receipt of the trade or (as the case may be) the expense of the trade is treated as not arising until the period of account in which the value of the asset is realised.
- (3) In the case of a receipt of the trade, this is subject to any election under section 186 (election for spreading).
- (4) In this section “trading stock” has the same meaning as in section 163.

**186 Election for spreading if section 185 applies U.K.**

- (1) If section 185 applies, the company carrying on the trade may elect for any receipt treated as arising under this Chapter to be spread over 6 periods of account.
- (2) The election must be made within 12 months of the end of the first accounting period to which the new basis applies.
- (3) If an election is made, an amount equal to one-sixth of the amount of the receipt—
  - (a) is treated as arising, and
  - (b) is brought into account in calculating the profits of the trade,
 in each of the 6 periods of account beginning with the first period to which the new basis applies.
- (4) But if, before the whole of the receipt has been so brought into account, the company permanently ceases to carry on the trade, the whole of the amount so far as not previously brought into account—
  - (a) is treated as arising, and
  - (b) is brought into account in calculating the profits of the trade,
 immediately before the cessation.

**187 Transfer of insurance business U.K.**

- (1) This section applies if—
  - (a) an asset to which section 185 or 186 applies is transferred from one insurance company to another,
  - (b) the transfer is made under an insurance business transfer scheme, and
  - (c) immediately after the transfer, the transferee is UK resident or the asset is held for the purposes of a business carried on by the transferee in the United Kingdom through a permanent establishment.
- (2) For the purposes of section 185, the asset is not to be treated as realised by the transferor merely because of its transfer under the scheme.
- (3) If the transfer is of the transferor's whole business, the transferee is responsible under section 185 or 186 for bringing into account any amount required to be brought into account after the transfer.

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## CHAPTER 15 U.K.

### POST-CESSATION RECEIPTS

#### *Charge to tax on post-cessation receipts*

#### 188 Charge to tax on post-cessation receipts U.K.

The charge to corporation tax on income applies to post-cessation receipts arising from a trade.

#### 189 Extent of charge to tax U.K.

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as it is not otherwise chargeable to corporation or income tax.
- (2) Accordingly, a post-cessation receipt arising from a trade is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the trade of any period.
- (3) A post-cessation receipt is not chargeable to tax under this Chapter if—
  - (a) it is received by or on behalf of a non-UK resident company which is beneficially entitled to it, and
  - (b) it represents income arising outside the United Kingdom.
- (4) A post-cessation receipt is not chargeable to tax under this Chapter if it arises from a trade carried on wholly outside the United Kingdom.

#### *Meaning of “post-cessation receipts”*

#### 190 Basic meaning of “post-cessation receipt” U.K.

- (1) In this Part “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a trade, and
  - (b) which arises from the carrying on of the trade before the cessation.
- (2) In this Chapter, except in sections 194 and 195, references to a person permanently ceasing to carry on a trade include—
  - (a) in the case of a company, the occurrence of an event treated under section 18 of ITTOIA 2005 (companies beginning or ceasing to be within charge to income tax) as the company permanently ceasing to carry on the trade, and
  - (b) in the case of a trade carried on by a person in partnership, the occurrence of an event treated under section 246(4) of ITTOIA 2005 (basic meaning of “post-cessation receipt”) as the person permanently ceasing to carry on the trade.

#### 191 Other rules about what counts as post-cessation receipts U.K.

- (1) The following provisions treat certain amounts as post-cessation receipts for the purposes of this Part—
  - section 82(6) (contributions to local enterprise organisations or urban regeneration companies),

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section 101(3) (distribution of assets of mutual concerns),  
 section 108(3) (receipt of benefits by donor or connected person),  
 section 192 (debts paid after cessation),  
 section 193 (debts released after cessation), as qualified, where appropriate, by  
 section 56(4) (car or motor cycle hire),  
 section 194 (transfer of rights if transferee does not carry on trade), and  
 section 1277 (income charged on withdrawal of relief after source ceases:  
 unremittable income).

- (2) Section 95 (acquisition of trade: receipts from transferor's trade) and section 194 (transfer of rights if transferee does not carry on trade) treat certain amounts as not being post-cessation receipts for the purposes of this Part.

*Sums treated as post-cessation receipts*

**192 Debts paid after cessation U.K.**

- (1) This section applies if, in calculating the profits of a trade for corporation or income tax purposes, a deduction is made in respect of a debt under—
- (a) section 55 (bad debts), or
  - (b) section 35 of ITTOIA 2005 (bad and doubtful debts),
- and a person permanently ceases to carry on the trade.
- (2) A sum received after the cessation is treated as a post-cessation receipt so far as the deduction is made.

**193 Debts released after cessation U.K.**

- (1) This section applies if—
- (a) in calculating the profits of a trade of any period for corporation or income tax purposes, a deduction is allowed for the expense giving rise to a debt owed by the person who carried on the trade,
  - (b) the person has permanently ceased to carry on the trade at or after the end of that period,
  - (c) after the cessation, all or part of the debt is released, and
  - (d) the release is not part of a statutory insolvency arrangement.
- (2) The amount released is treated as a post-cessation receipt.

**194 Transfer of rights if transferee does not carry on trade U.K.**

- (1) This section applies if—
- (a) a company (“the transferor”) permanently ceases to carry on a trade,
  - (b) the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of the trade, and
  - (c) the transferee does not subsequently carry on the trade.
- (2) The transferor is treated as receiving a post-cessation receipt.
- (3) The amount of the receipt is—

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- (a) the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
  - (b) the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.
- (4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the trade are not post-cessation receipts.
- (5) This section is subject to section 195 (transfer of trading stock).

*Sums that are not post-cessation receipts*

**195 Transfer of trading stock U.K.**

- (1) When a company permanently ceases to carry on a trade, a sum realised by the transfer of trading stock is not a post-cessation receipt if a valuation of the stock is brought into account in accordance with Chapter 11 (valuation of stock).
- (2) In this section “trading stock” has the meaning given by section 163.

*Deductions*

**196 Allowable deductions U.K.**

- (1) In calculating the amount on which tax is charged under this Chapter, deductions are allowed in accordance with—
- (a) this section, and
  - (b) section 197,
- from the amount which would otherwise be chargeable to tax under this Chapter.
- (2) A deduction is allowed for a loss, expense or debit which, if the person carrying on the trade had not permanently ceased to do so—
- (a) would have been deducted in calculating the profits of the trade for corporation or income tax purposes, or
  - (b) would have been deducted from or set off against the profits of the trade for corporation or income tax purposes,
- but no deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.
- (3) No deduction for an amount is allowed under this section if the amount has been allowed under any other provision of the Tax Acts.

**197 Further rules about allowable deductions U.K.**

- (1) An amount may not be deducted more than once under section 196.
- (2) A deduction under that section of a loss must be made from post-cessation receipts charged for an earlier accounting period in preference to those charged for a later accounting period.
- (3) But this does not authorise the deduction of a loss from post-cessation receipts charged for an accounting period before the accounting period in which the loss is made.

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### *Election to carry back*

#### **198 Election to carry back U.K.**

- (1) This section applies if a post-cessation receipt is received by a company in an accounting period beginning not later than 6 years after the company permanently ceased to carry on the trade.
- (2) The company may elect that the tax chargeable in respect of the receipt is to be charged as if the receipt had been received on the date of the cessation (but see sections 199 and 200).
- (3) The election must be made before the end of the period of two years beginning immediately after the end of the accounting period in which the receipt is received.

#### **199 Deductions already made are not displaced U.K.**

- (1) This section applies if—
  - (a) a company which has permanently ceased to carry on a trade makes an election under section 198 in respect of a post-cessation receipt (“the carried back receipt”), and
  - (b) a deduction in respect of a loss has already been made under section 196 for an accounting period later than that in which the cessation occurred.
- (2) Nothing in section 196 (read with section 197(2)) requires or permits a deduction in respect of that loss to be allowed, as a result of the election, for the accounting period in which the cessation occurred instead of the accounting period for which the deduction has already been made.
- (3) But if the deduction was made for the accounting period in which the carried back receipt was received, subsection (2) applies to the loss only so far as it has been deducted from post-cessation receipts other than the carried back receipt.

#### **200 Election given effect in accounting period in which receipt is received U.K.**

- (1) If a company makes an election under section 198, the additional tax is payable for the accounting period in which the receipt is received (and not for the accounting period in which the cessation occurred).
- (2) In subsection (1) “the additional tax” means an amount of tax equal to the difference between—
  - (a) the amount of tax that is chargeable on the company for the accounting period in which the cessation occurred (“amount A”), and
  - (b) the amount of tax that would have been chargeable on the company for that period if the election had not been made (“amount B”).
- (3) If—
  - (a) the company has made, under section 198, one or more other elections for receipts to be treated as received in the period in which the cessation occurred, and
  - (b) effect has been given to those elections,
 the effect of those elections is taken into account in determining amounts A and B.

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## CHAPTER 16 **U.K.**

### PRIORITY RULES

#### **201 Provisions which must be given priority over this Part **U.K.****

- (1) Any receipt or other credit item, so far as it falls within—
  - (a) Chapter 2 of this Part (receipts of trade), and
  - (b) Chapter 3 of Part 4 so far as it relates to a UK property business, is dealt with under Chapter 3 of Part 4.
- (2) Any receipt or other credit item, so far as it falls within—
  - (a) this Part, and
  - (b) Chapter 4 of Part 10 (income from holding an office), is dealt with under Chapter 4 of Part 10.

## PART 4 **U.K.**

### PROPERTY INCOME

## CHAPTER 1 **U.K.**

### INTRODUCTION

#### **202 Overview of Part **U.K.****

- (1) Chapter 2 contains definitions relevant to the application of the Part.
- (2) Chapter 3 applies the charge to corporation tax on income to the profits of a UK property business or an overseas property business and contains basic rules about the calculation of the profits of such a property business.
- (3) Chapter 4 provides for certain amounts of a capital nature to be brought into account as receipts in calculating the profits of a property business.
- (4) Chapter 5 contains additional rules about the calculation of the profits of a property business.
- (5) Chapter 6 explains what is meant by the commercial letting of furnished holiday accommodation.
- (6) Chapters 7, 8 and 9 apply the charge to corporation tax on income to—
  - (a) rent receivable in connection with a UK section 39(4) concern,
  - (b) rent receivable for UK electric-line wayleaves, and
  - (c) post-cessation receipts arising from a UK property business,and contain related rules.
- (7) Chapter 10 contains supplementary provisions including—
  - (a) rules that give priority to provisions outside this Part in relation to certain matters that fall within it, and

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- (b) rules that give priority to one Chapter of this Part in relation to certain matters that fall both within it and another Chapter of this Part.
- (8) This Part needs to be read with Parts 19 (general exemptions) and 20 (general calculation rules).

## CHAPTER 2 **U.K.**

### PROPERTY BUSINESSES

#### *Introduction*

#### **203 Overview of Chapter **U.K.****

- (1) This Chapter explains for the purposes of this Act what is meant by—
  - (a) a company's UK property business (see section 205), and
  - (b) a company's overseas property business (see section 206).
- (2) Both those sections need to be read with—
  - (a) section 207 (which explains what is meant by generating income from land), and
  - (b) section 208 (which provides that certain activities do not count as activities for generating income from land).
- (3) In the case of a property business carried on by a company as a member of a firm, the basic rules in sections 205 and 206 are explained in section 1270(2) and (3).
- (4) See also section 432AA of ICTA (which qualifies the basic rules in sections 205 and 206 in the case of an insurance company).

#### **204 Meaning of “property business” **U.K.****

- (1) In this Act “property business” means a UK property business or an overseas property business.
- (2) References in this Act to a property business are to a property business so far as any profits of the business are chargeable to tax under Chapter 3 (as to which see, in particular, the rules about territorial scope in section 5).
- (3) Accordingly, nothing in Chapter 4 or 5 is to be read as treating an amount as a receipt of a property business if the profits concerned would not be chargeable to tax under Chapter 3.

#### *Basic meaning of UK and overseas property business*

#### **205 UK property business **U.K.****

A company's UK property business consists of—

- (a) every business which the company carries on for generating income from land in the United Kingdom, and



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- (b) every transaction which the company enters into for that purpose otherwise than in the course of such a business.

## 206 Overseas property business **U.K.**

A company's overseas property business consists of—

- (a) every business which the company carries on for generating income from land outside the United Kingdom, and
- (b) every transaction which the company enters into for that purpose otherwise than in the course of such a business.

### *Generating income from land*

## 207 Meaning of “generating income from land” **U.K.**

- (1) In this Chapter “generating income from land” means exploiting an estate, interest or right in or over land as a source of rents or other receipts.
- (2) “Rents” includes payments by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out.
- (3) “Other receipts” includes—
  - (a) payments in respect of a licence to occupy or otherwise use land,
  - (b) payments in respect of the exercise of any other right over land, and
  - (c) rentcharges and other annual payments reserved in respect of, or charged on or issuing out of, land.
- (4) For the purposes of this section a right to use a caravan or houseboat at only one location is treated as a right deriving from an estate or interest in land.

## 208 Activities not for generating income from land **U.K.**

For the purposes of this Chapter the following activities are not carried on for generating income from land—

- (a) farming or market gardening in the United Kingdom (but see section 36 (UK farming or market gardening treated as trade)),
- (b) any other occupation of land (but see section 38 (certain commercial occupation of UK land treated as trade)), and
- (c) activities for the purposes of a concern to which section 39 applies (profits of mines, quarries etc).

## CHAPTER 3 **U.K.**

### PROFITS OF PROPERTY BUSINESSES: BASIC RULES

#### *Charge to tax on profits of a property business*

## 209 Charge to tax on profits of a property business **U.K.**

The charge to corporation tax on income applies to the profits of a property business.

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### *Calculation of profits*

## **210 Profits of a property business: application of trading income rules** U.K.

- (1) The profits of a property business are calculated in the same way as the profits of a trade.
- (2) But the provisions of Part 3 (trading income) which apply as a result of subsection (1) are limited to the following—

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*In Chapter 3 (basic rules)—*

section 46	generally accepted accounting practice
section 47	losses calculated on same basis as profits
section 48	receipts and expenses
section 52	apportionment etc of profits and losses to accounting period

*In Chapter 4 (rules restricting deductions)—*

section 53	capital expenditure
section 54	expenses not wholly and exclusively for trade and unconnected losses
section 55	bad debts
sections 56 to 58	car or motor cycle hire
section 59	patent royalties

*In Chapter 5 (rules allowing deductions)—*

section 61	pre-trading expenses
section 68	replacement and alteration of trade tools
section 69	payments for restrictive undertakings
sections 70 and 71	seconded employees
section 72	payroll deduction schemes: contributions to agents' expenses
sections 73 to 75	counselling and retraining expenses
sections 76 to 81	redundancy payments etc
sections 82 to 86	contributions to local enterprise organisations or urban regeneration companies
sections 87 and 88	scientific research
sections 89 and 90	expenses connected with patents, designs and trade marks
section 91	payments to Export Credits Guarantee Department

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section 92	levies under FISMA 2000
<i>In Chapter 6 (receipts)—</i>	
section 93	capital receipts
section 94	debts incurred and later released
section 101	distribution of assets of mutual concerns
section 102	industrial development grants
section 103	sums recovered under insurance policies etc
section 104	repayments under FISMA 2000
<i>In Chapter 7 (gifts to charities etc)—</i>	
section 108	receipt of benefits by donor or connected person
<i>In Chapter 9 (other specific trades)—</i>	
section 131	incidental costs of issuing qualifying shares (building societies)
section 133	annual payments paid by a credit union
<i>In Chapter 12 (deductions from profits)—</i>	
sections 172 to 175	unremittable amounts

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## 211 Loan relationships and derivative contracts **U.K.**

- (1) The profits of a property business are calculated without regard to items giving rise to—
- (a) credits or debits within Part 5 (loan relationships), or
  - (b) credits or debits within Part 7 (derivative contracts).
- (2) This section does not affect the width of the provision made by—
- (a) section 464 (priority of Part 5 for corporation tax purposes), or
  - (b) section 699 (priority of Part 7 for corporation tax purposes).

## 212 Items treated as receipts and expenses **U.K.**

The rules for calculating the profits of a property business need to be read with—

- (a) the provisions of CAA 2001 which treat allowances as expenses of a property business,
- (b) the provisions of CAA 2001 which treat charges as receipts of a property business, and
- (c) section 748 (credits and debits in respect of an intangible fixed asset held by a company for the purposes of a property business carried on by it treated as receipts and expenses of the business).

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### 213 Certain amounts brought into account under Part 3 **U.K.**

- (1) The rules for calculating the profits of a property business need to be read with the following provisions of Part 3 (trading income)—
  - (a) section 42 (tied premises),
  - (b) section 43 (caravan sites where trade carried on),
  - (c) section 44 (surplus business accommodation), and
  - (d) section 45(3) (payments for wayleaves).
- (2) Those provisions secure that amounts which would otherwise be brought into account in calculating the profits of the business are, or may be, brought into account instead in calculating the profits of a trade.

### 214 Relationship between rules prohibiting and allowing deductions **U.K.**

- (1) Any relevant permissive rule in this Part—
  - (a) has priority over any relevant prohibitive rule, but
  - (b) is subject to the following provisions—
    - (i) section 56 (car or motor cycle hire), as applied by section 210,
    - (ii) section 1288 (unpaid remuneration),
    - (iii) section 1290 (employee benefit contributions),
    - (iv) section 1304 (crime-related payments).
- (2) In this section “any relevant permissive rule in this Part” means any provision of this Part (apart from sections 231 to 234) which allows a deduction in calculating the profits of a property business.
- (3) In this section “any relevant prohibitive rule”, in relation to any deduction, means any provision of this Part or Chapter 1 of Part 20 (apart from those mentioned in subsection (1)(b)) which might otherwise be read as—
  - (a) prohibiting or deferring the deduction, or
  - (b) restricting the amount of the deduction.
- (4) In this section any reference to any provision of this Part includes any provision applied by section 210.

## CHAPTER 4 **U.K.**

### PROFITS OF PROPERTY BUSINESSES: LEASE PREMIUMS ETC

#### *Introduction*

### 215 Overview of Chapter **U.K.**

- (1) This Chapter provides for certain amounts (which would otherwise generally be amounts of a capital nature) to be brought into account as receipts in calculating the profits of a property business.
- (2) The amounts relate to short-term leases in the case of—
  - section 217 (lease premiums),
  - section 218 (amount treated as lease premium where work required),

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section 220 (sums payable for surrender of lease), and  
section 222 (assignments for profit of lease granted at undervalue).

- (3) The amounts relate to any lease in the case of—  
section 219 (sums payable instead of rent), and  
section 221 (sums payable for variation or waiver of terms of lease).
- (4) The amounts relate to the sale of any estate or interest in land in the case of—  
section 224 (sales with right to reconveyance), and  
section 225 (sale and leaseback transactions).
- (5) This Chapter also permits certain deductions in calculating the profits of property businesses carried on by tenants under certain leases (see sections 231 and 232).

## 216 Meaning of “short-term lease” **U.K.**

In this Chapter “short-term lease” means a lease whose effective duration is 50 years or less.

*Amounts treated as receipts: leases*

## 217 Lease premiums **U.K.**

- (1) This section applies if a premium is required to be paid—
  - (a) under a short-term lease, or
  - (b) otherwise under the terms subject to which a short-term lease is granted.
- (2) The company to which the premium is due is treated as—
  - (a) entering into a transaction mentioned in section 205 (if the land to which the lease relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the lease is granted.
- (4) The amount of the receipt is given by the formula—

$$P \times 50 - Y50$$

where—

P is the premium, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

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- (5) But, if the rule in section 228 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 228.

**218 Amount treated as lease premium where work required U.K.**

- (1) This section applies if the terms subject to which a lease is granted impose on the tenant an obligation to carry out work on the premises.
- (2) The lease is treated for the purposes of section 217 (lease premiums) as requiring the payment of a premium to the landlord (in addition to any other premium).
- (3) The amount of the premium is the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its value would have been at that time if the terms of the lease did not impose the obligation on the tenant.
- (4) An obligation, or part of an obligation, that requires the carrying out of excepted work is ignored for the purposes of this section.
- (5) Work is “excepted work” if the payment for carrying it out would, if the landlord and not the tenant were obliged to carry it out, be deductible as an expense in calculating the profits of the landlord's property business.

**219 Sums payable instead of rent U.K.**

- (1) This section applies if—
  - (a) under the terms subject to which a lease is granted a sum becomes payable by the tenant instead of the whole or a part of the rent for a period, and
  - (b) the period is 50 years or less.
- (2) The company to which the sum is due is treated as—
  - (a) entering into a transaction mentioned in section 205 (if the land to which the lease relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the sum becomes payable.
- (4) The amount of the receipt is given by the formula—

$$S \times 50 - Y50$$

where—

S is the sum payable instead of rent, and

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Y is the number of complete periods of 12 months (other than the first) comprised in the period in relation to which the sum is payable.

- (5) But, if the rule in section 228 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 228.
- (6) In determining for the purposes of this Chapter the duration of the period in relation to which the sum is payable, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

## 220 Sums payable for surrender of lease **U.K.**

- (1) This section applies if, under the terms subject to which a short-term lease is granted, a sum becomes payable by the tenant as consideration for the surrender of the lease.
- (2) The company to which the sum is due is treated as—
  - (a) entering into a transaction mentioned in section 205 (if the land to which the lease relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the sum becomes payable.
- (4) The amount of the receipt is given by the formula—

$$S \times 50 - Y50$$

where—

S is the sum payable as consideration for the surrender of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 228 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 228.

## 221 Sums payable for variation or waiver of terms of lease **U.K.**

- (1) This section applies if—
  - (a) a sum becomes payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of a lease,
  - (b) the sum is due to the landlord or a company which is connected with the landlord, and
  - (c) the period for which the variation or waiver has effect is 50 years or less.



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- (2) The company to which the sum is due is treated as—
- (a) entering into a transaction mentioned in section 205 (if the land to which the lease relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the contract providing for the variation or waiver is entered into.
- (4) The amount of the receipt is given by the formula—

$$S \times 50 - Y50$$

where—

S is the sum payable as consideration for the variation or waiver, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period for which the variation or waiver has effect.

- (5) But, if the rule in section 228 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 228.
- (6) In determining for the purposes of this Chapter the duration of the period for which the variation or waiver has effect, any part of the period that falls after the expiry of the effective duration of the lease is excluded.

## 222 Assignments for profit of lease granted at undervalue U.K.

- (1) This section applies to an assignment of a short-term lease if—
- (a) the lease was granted at an undervalue, and
  - (b) a profit is made on the assignment.
- (2) The company which assigns the lease is treated as—
- (a) entering into a transaction mentioned in section 205 (if the land to which the lease relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsections (4) and (5) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the consideration for the assignment becomes payable.
- (4) The amount of the receipt is given by the formula—

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$$P \times 50 - Y50$$

where—

P is the lesser of—

- (a) the profit on the assignment, and
- (b) the amount by which the undervalue exceeds the total of the profits (if any) made on previous assignments of the lease, and

Y is the number of complete periods of 12 months (other than the first) comprised in the effective duration of the lease.

- (5) But, if the rule in section 228 (the additional calculation rule) applies, the amount given by the formula in subsection (4) is reduced by the amount calculated in accordance with section 228.
- (6) Section 223 explains references in this section to the grant of a lease at an undervalue and the making of a profit on an assignment of a lease.

## **223 Provisions supplementary to section 222 U.K.**

- (1) This section operates for the purposes of section 222.
- (2) A lease is granted at an undervalue if the terms subject to which it was granted are such that the landlord who granted it could have required the payment of an additional sum by way of premium, or additional premium, for its grant.
- (3) The additional sum is the undervalue.
- (4) The test in subsection (2) must be applied—
  - (a) having regard to values prevailing at the time the lease was granted, and
  - (b) on the assumption that the negotiations for the lease were at arm's length.
- (5) A profit is made on an assignment of a lease if the consideration for the assignment exceeds—
  - (a) if the lease has not previously been assigned, any premium for which it was granted, or
  - (b) in any other case, any consideration for which it was last assigned.
- (6) The amount of the excess is the profit.

*Other amounts treated as receipts*

## **224 Sales with right to reconveyance U.K.**

- (1) This section applies if—
  - (a) an estate or interest in land is sold subject to terms which provide that it is to be, or may be required to be, reconveyed on a future date to the seller or a person connected with the seller,

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- (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed is 50 years or less, and
  - (c) the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed.
- (2) The seller is treated as—
- (a) entering into a transaction mentioned in section 205 (if the land is in the United Kingdom) or section 206 (if the land is outside the United Kingdom), and
  - (b) receiving the amount calculated under subsection (4) as a result of that transaction.
- (3) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the estate or interest is sold.
- (4) The amount of the receipt is given by the formula—

$$E \times 50 - Y50$$

where—

E is the amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the estate or interest would fall to be reconveyed.

- (5) See section 226 for some provisions which are supplementary to this section.

## 225 Sale and leaseback transactions **U.K.**

- (1) This section applies if—
- (a) an estate or interest in land is sold subject to terms which provide for the grant of a lease directly or indirectly out of the estate or interest to the seller or a person connected with the seller,
  - (b) the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted is 50 years or less, and
  - (c) the price at which the estate or interest is sold exceeds the total of—
    - (i) the amount of any premium for the lease, and
    - (ii) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.
- (2) This section does not apply if the lease is granted and begins to run within one month after the sale.
- (3) The seller is treated as—
- (a) entering into a transaction mentioned in section 205 (if the land is in the United Kingdom) or section 206 (if the land is outside the United Kingdom), and

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- (b) receiving the amount calculated under subsection (5) as a result of that transaction.
- (4) That amount is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction for the accounting period in which the estate or interest is sold.
- (5) The amount of the receipt is given by the formula—

$$E \times 50 - Y50$$

where—

E is the amount by which the price at which the estate or interest is sold exceeds the total of—

- (a) the amount of any premium for the lease, and  
(b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run, and

Y is the number of complete periods of 12 months (other than the first) comprised in the period beginning with the sale and ending with the earliest date on which under the terms of the sale the lease would fall to be granted.

- (6) See section 226 for some provisions which are supplementary to this section.

## **226 Provisions supplementary to sections 224 and 225 U.K.**

- (1) This section operates for the purposes of sections 224 (sales with right to reconveyance) and 225 (sale and leaseback transactions).
- (2) Subsection (3) explains how to determine for the purposes of section 224 the price at which an estate or interest is to be reconveyed when—
- (a) the date on which the estate or interest would fall to be reconveyed is not fixed under the terms of the sale, and  
(b) the price at which it is to be reconveyed varies with the date.
- (3) The price is taken to be the lowest possible under the terms of the sale.
- (4) Subsection (5) explains how to determine for the purposes of section 225 the total of—
- (a) the amount of any premium for the lease, and  
(b) the value on the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run,  
when the date for the grant of the lease is not fixed under the terms of the sale and the total varies with the date.
- (5) The total is taken to be the lowest possible under the terms of the sale.
- (6) For the purposes of sections 224(3) and 225(4) (receipts of property business for accounting period in which estate or interest sold) an estate or interest in land is sold when any of the following occurs—
- (a) an unconditional contract for its sale is entered into,

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- (b) a conditional contract for its sale becomes unconditional, or
- (c) an option or right of pre-emption is exercised requiring the seller to enter into an unconditional contract for its sale.

*Additional calculation rule for reducing certain receipts*

**227 Circumstances in which additional calculation rule applies U.K.**

- (1) The rule in section 228 (the additional calculation rule) applies in relation to the calculation of receipts under—
  - section 217 (lease premiums),
  - section 219 (sums payable instead of rent),
  - section 220 (sums payable for surrender of lease),
  - section 221 (sums payable for variation or waiver of terms of lease), or
  - section 222 (assignments for profit of lease granted at undervalue).
- (2) It applies if conditions A and B are met.
- (3) Condition A is that—
  - (a) in the case of a receipt under section 217, 219 or 220, the lease is granted out of a taxed lease,
  - (b) in the case of a receipt under section 221, the lease was granted out of a taxed lease, and
  - (c) in the case of a receipt under section 222, the assignment is of a taxed lease.
- (4) A lease is a “taxed lease” for the purposes of this Chapter if—
  - (a) there is a receipt under any of sections 217 to 222 in respect of the lease,
  - (b) there would be such a receipt, but for the operation of the rule in section 228 (the additional calculation rule) in the calculation of its amount,
  - (c) there is a receipt under any of sections 277 to 282 of ITTOIA 2005 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of terms of lease and assignments) in respect of the lease, or
  - (d) there would be such a receipt, but for the operation of the rule in section 288 of that Act (the additional calculation rule) in the calculation of its amount.

In this Chapter a receipt falling within paragraph (a), (b), (c) or (d) is referred to as a “taxed receipt”.

- (5) Condition B is that the taxed receipt, or if there is more than one, at least one of them, has an unused amount.
- (6) See section 230 for an explanation of when a taxed receipt has an “unused amount”.

**228 The additional calculation rule U.K.**

- (1) The rule in this section applies if the conditions mentioned in section 227(2) are met.
- (2) The additional calculation rule is that the amount given by the formula in section 217, 219, 220, 221 or 222 must be reduced by the amount calculated in accordance with this section in order to give the amount of the receipt under calculation.

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- (3) The amount of the reduction is—
- (a) if there is one taxed receipt which has an unused amount, the basic relieving amount by reference to that receipt, and
  - (b) if there is more than one taxed receipt which has an unused amount, the total of the basic relieving amounts by reference to each receipt,
- adjusted, if necessary, in the light of section 229(5) (reduction not to exceed amount being reduced).
- (4) The basic relieving amount by reference to a taxed receipt is given by the formula—

$$\frac{A \times LRP}{TRP}$$

where—

A is the unreduced amount of the taxed receipt (which is, generally, the amount given by the formula in section 217, 219, 220, 221 or 222, or in section 277, 279, 280, 281 or 282 of ITTOIA 2005, but see section 230(2) to (4) of this Act),

LRP is the receipt period of the receipt under calculation, and

TRP is the receipt period of the taxed receipt.

- (5) But the basic relieving amount is different if section 229(2) or (4) applies (certain special cases).
- (6) For the purposes of this Chapter, the “receipt period” of a receipt is—
- (a) in the case of a receipt under section 217 or 220, the effective duration of the lease,
  - (b) in the case of a receipt under section 219, the period in relation to which the sum payable instead of rent is payable,
  - (c) in the case of a receipt under section 221, the period for which the variation or waiver has effect,
  - (d) in the case of a receipt under section 222, the effective duration of the lease remaining at the date of the assignment, and
  - (e) in the case of a receipt under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc), its receipt period within the meaning of that Chapter (see section 288(6) of that Act).

## 229 The additional calculation rule: special cases **U.K.**

- (1) This section explains how section 228 operates in some special cases.
- (2) If—
- (a) the receipt under calculation is under any of sections 217 to 221, and
  - (b) the lease does not extend to the whole of the premises subject to the taxed lease,

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the basic relieving amount by reference to a taxed receipt is calculated by multiplying the amount given by the formula in subsection (4) of section 228 by the fraction of those premises which is subject to the lease.

- (3) This fraction is calculated on a just and reasonable basis.
- (4) If the basic relieving amount given by section 228(4) or subsection (2) above by reference to a taxed receipt would otherwise exceed the unused amount of the taxed receipt, the basic relieving amount is the unused amount.
- (5) If the amount of the reduction under section 228 would otherwise exceed the amount given, in respect of the receipt under calculation, by the formula in section 217, 219, 220, 221 or 222, the amount of the reduction is equal to the amount given by the formula.

### 230 Meaning of “unused amount” and “unreduced amount” **U.K.**

- (1) For the purposes of this Chapter, a taxed receipt has an “unused amount” if the unreduced amount exceeds the total of the reductions and deductions referred to in subsection (5).
- (2) In this Chapter the “unreduced amount” of a taxed receipt is the amount given, in respect of the taxed receipt, by the formula in—
  - (a) section 217, 219, 220, 221 or 222 above, or
  - (b) section 277, 279, 280, 281 or 282 of ITTOIA 2005 (income tax provisions corresponding to those listed in paragraph (a)).
- (3) Subsection (4) applies—
  - (a) to a taxed receipt under section 217 (lease premiums) as a result of section 218 (amount treated as lease premium where work required), and
  - (b) to a taxed receipt under section 277 of ITTOIA 2005 (lease premiums) as a result of section 278 of that Act (amount treated as lease premium where work required).
- (4) If the obligation to carry out work included the carrying out of work which gives, or will give, rise to qualifying expenditure under CAA 2001, the unreduced amount of the taxed receipt is calculated as if the obligation had not included the carrying out of that work.
- (5) The reductions and deductions mentioned in subsection (1) are—
  - (a) the reductions under section 228 above or section 288 of ITTOIA 2005 (the additional calculation rule) by reference to the taxed receipt,
  - (b) the deductions made in calculating the profits of a trade, profession or vocation for expenses under section 63 above or section 61 of ITTOIA 2005 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt, and
  - (c) the deductions made in calculating the profits of a property business for expenses under section 232 below or section 292 of ITTOIA 2005 (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt.
- (6) For the purposes of this Chapter references to a reduction under section 228 above or section 288 of ITTOIA 2005 by reference to a taxed receipt are to a reduction under the section concerned so far as attributable to the taxed receipt.



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### *Deductions in relation to certain receipts*

#### **231 Deductions for expenses under section 232** **U.K.**

- (1) Section 232 (tenants under taxed leases treated as incurring expenses) applies in calculating the profits of a property business carried on by the tenant under a taxed lease for the purpose of making deductions for the expenses of the property business.
- (2) A deduction is allowed for an expense under section 232 for a qualifying day on which the whole or part of the premises subject to the taxed lease is—
  - (a) occupied by the tenant for the purpose of carrying on the property business, or
  - (b) sublet.
- (3) But any deduction for an expense under section 232 is subject to the application of any provision of Chapter 4 of Part 3 (as applied to property businesses by section 210).
- (4) The amount of the deduction for an expense under section 232 for a qualifying day by reference to a taxed receipt may be reduced in order to comply with section 235 (limit on reductions and deductions).
- (5) For the meaning of expressions used in this section, see in particular—  
section 227(4) (“taxed lease”), and  
Section 227(4) (“taxed receipt”).

#### **232 Tenants under taxed leases treated as incurring expenses** **U.K.**

- (1) The tenant under a taxed lease is treated as incurring an expense of a revenue nature in respect of the premises subject to the taxed lease for each qualifying day.
- (2) If there is more than one taxed receipt, this section applies separately in relation to each of them.
- (3) A day is a “qualifying day”, in relation to a taxed receipt, if it falls within the receipt period of the taxed receipt.
- (4) The amount of the expense for the qualifying day by reference to the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt, and

TRP is the number of days in the receipt period of the taxed receipt.

- (5) This section is subject to sections 233 and 234 (restrictions on expenses where the additional calculation rule is relevant).
- (6) For the meaning of expressions used in this section, see in particular—

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section 228(6) (“receipt period”), and  
 section 230(2) to (4) (“unreduced amount”).

**233 Restrictions on section 232 expenses: the additional calculation rule** U.K.

- (1) This section applies if—
- (a) in calculating the amount of a receipt under this Chapter there is a reduction under section 228 (the additional calculation rule) by reference to a taxed receipt, or
  - (b) in calculating the amount of a receipt under Chapter 4 of Part 3 of ITTOIA 2005 (profits of a property business: lease premiums etc) there is a reduction under section 288 of that Act (the additional calculation rule) by reference to a taxed receipt.

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.

- (2) Subsections (3) to (5) provide for the application of section 232 for a qualifying day that falls within the receipt period of the lease premium receipt.
- (3) The tenant under the taxed lease is treated as incurring an expense under section 232 for the qualifying day by reference to the taxed receipt only if the daily amount of the taxed receipt exceeds the daily reduction of the lease premium receipt.
- (4) If the condition in subsection (3) is met, the amount of the expense under section 232 for the qualifying day by reference to the taxed receipt is equal to that excess.
- (5) If the qualifying day falls within the receipt periods of more than one lease premium receipt, the reference in subsection (3) to the daily reduction of the lease premium receipt is to be read as a reference to the total of the daily reductions of each of the lease premium receipts whose receipt period includes the qualifying day.
- (6) In this section—  
 the “daily amount” of the taxed receipt is given by the formula—

$$\frac{A}{\text{TRP}}$$

where—

A is the unreduced amount of the taxed receipt (see section 230(2) to (4)), and

TRP is the number of days in the receipt period of the taxed receipt, and the “daily reduction” of a lease premium receipt is given by the formula—

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$$\frac{AR}{RRP}$$

where—

AR is the reduction under section 228 above or section 288 of ITTOIA 2005 by reference to the taxed receipt (see section 230(6)), and

RRP is the number of days in the receipt period of the lease premium receipt.

- (7) Section 234 explains how this section operates if the lease premium receipt is in respect of a lease that has been granted out of the taxed lease and does not extend to the whole of the premises subject to the taxed lease.

### **234 Restrictions on section 232 expenses: lease of part of premises** **U.K.**

- (1) This section applies if—
- (a) a lease has been granted out of the taxed lease,
  - (b) the lease does not extend to the whole of the premises subject to the taxed lease, and
  - (c) the condition in subsection (2) is met.
- (2) The condition is that—
- (a) in calculating the amount of a receipt under any of sections 217 to 221 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 228 by reference to a taxed receipt, or
  - (b) in calculating the amount of a receipt under any of sections 277 to 281 of ITTOIA 2005 (receipts in respect of lease premiums or sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of the lease, there is a reduction under section 288 of that Act (the additional calculation rule) by reference to a taxed receipt.

The receipt that is so reduced is referred to in this section as the “lease premium receipt”.

- (3) Subsections (4) to (6) apply for a qualifying day that falls within the receipt period of the lease premium receipt.
- (4) Sections 232 and 233 apply separately in relation to the part of the premises subject to the lease and to the remainder of the premises.
- (5) If—
- (a) more than one lease that does not extend to the whole of the premises subject to the taxed lease has been granted out of the taxed lease, and
  - (b) the qualifying day falls within the receipt period of two or more lease premium receipts that relate to different leases,

sections 232 and 233 apply separately in relation to each part of the premises subject to a lease to which such a receipt relates and to the remainder of the premises.

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- (6) Where sections 232 and 233 apply in relation to a part of the premises, A becomes the amount calculated by multiplying the unreduced amount of the taxed receipt by the fraction of the premises constituted by the part.
- (7) This fraction is calculated on a just and reasonable basis.

*Limit on effect of additional calculation rule and deductions*

**235 Limit on reductions and deductions** **U.K.**

- (1) The total of—
- (a) the reductions under section 228 by reference to a taxed receipt, and
  - (b) the deductions allowed in calculating the profits of a property business for expenses under section 232 (tenant under taxed lease which uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt,
- must not exceed the amount referred to in subsection (2).
- (2) The amount mentioned in subsection (1) is the difference between—
- (a) the unreduced amount of the taxed receipt, and
  - (b) the total of the amounts mentioned in subsection (3).
- (3) Those amounts are—
- (a) the reductions under section 288 of ITTOIA 2005 (the additional calculation rule) by reference to the taxed receipt,
  - (b) the deductions made in calculating the profits of a property business for expenses under section 292 of ITTOIA 2005 (tenant under taxed lease who uses premises for purposes of property business treated as incurring expenses) by reference to the taxed receipt, and
  - (c) the deductions made in calculating the profits of a trade, profession or vocation for expenses under section 63 above or section 61 of ITTOIA 2005 (tenant under taxed lease who uses land in connection with trade treated as incurring expenses) by reference to the taxed receipt.

*Certain administrative provisions*

**236 Payment of tax by instalments** **U.K.**

- (1) This section applies if—
- (a) there is a receipt under section 217 (lease premiums) in respect of a premium which is payable by instalments, or
  - (b) there is a receipt under any of sections 219 to 221 (sums payable instead of rent, for surrender of lease or for variation or waiver of terms of lease) in respect of a sum which is payable by instalments.
- (2) The company which is liable to pay tax by reference to the receipt may choose to pay the tax by such instalments as an officer of Revenue and Customs may allow.
- (3) The period over which the instalments of tax must be paid—
- (a) must be 8 years or less, and

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- (b) must end before, or at the same time as, the time when the last of the instalments mentioned in subsection (1)(a) or (b) is payable.

**237 Statement of accuracy for purposes of section 222 U.K.**

- (1) This section applies if any of the persons mentioned in subsection (3) provides an officer of Revenue and Customs with a statement showing—
  - (a) whether or not there is, or may be, a receipt under section 222 (assignments for profit of lease granted at undervalue), and
  - (b) the amount of any receipt.
- (2) The officer must certify the accuracy of the statement, if satisfied as to its accuracy.
- (3) The persons referred to in subsection (1) are—
  - (a) the landlord who granted the lease,
  - (b) a company which assigned it, or
  - (c) a person to whom it was assigned.

**238 Claim for repayment of tax payable by virtue of section 224 U.K.**

- (1) This section applies if—
  - (a) there is a receipt under section 224 (sales with right to reconveyance), and
  - (b) the date on which the estate or interest would fall to be reconveyed was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
  - A is the amount of tax paid by the seller which was payable by virtue of section 224, and
  - B is the amount of tax that would have been so payable if the date on which the estate or interest was reconveyed had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within 4 years after the day on which the estate or interest was reconveyed.

**239 Claim for repayment of tax payable by virtue of section 225 U.K.**

- (1) This section applies if—
  - (a) there is a receipt under section 225 (sale and leaseback transactions), and
  - (b) the date for the grant of the lease was not fixed under the terms of the sale.
- (2) If the seller makes a claim, the seller must be repaid the amount by which A exceeds B, where—
  - A is the amount of tax paid by the seller which was payable by virtue of section 225, and
  - B is the amount of tax that would have been so payable if the date on which the lease was granted had been taken as the date fixed by the terms of the sale.
- (3) The claim must be made within 4 years after the day on which the lease was granted.

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### *Determinations affecting liability of more than one person*

#### **240 Appeals against proposed determinations** **U.K.**

- (1) Subsection (2) applies if it appears to an officer of Revenue and Customs that—
  - (a) a determination is needed of an amount that is to be brought into account as a receipt under this Chapter in calculating the liability to tax of a person (“the first taxpayer”), and
  - (b) the determination may affect the liability to corporation tax, income tax or capital gains tax of other persons.
- (2) The officer may give notice (a “provisional notice of determination”) to the first taxpayer and the other persons of—
  - (a) the determination the officer proposes to make, and
  - (b) their rights under this section and section 242.
- (3) A person to whom a provisional notice of determination is given may object to the proposed determination by giving notice (“a notice of objection”) to the officer.
- (4) The notice of objection must be given within 30 days of the date on which the provisional notice of determination was given.
- (5) If an officer gives provisional notices of determination and no person gives a notice of objection—
  - (a) a determination must be made by the officer as proposed in the provisional notices, and
  - (b) the determination is not to be called in question in any proceedings.

#### **241 Section 240: supplementary** **U.K.**

- (1) A provisional notice of determination under section 240(2) may include a statement of the grounds on which the officer proposes to make the determination.
- (2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information.
- (3) An officer of Revenue and Customs may by notice (a “preliminary notice”) require any person to give any information that appears to the officer to be needed for deciding whether to give any person a provisional notice of determination under section 240(2).
- (4) The preliminary notice must state the time within which the information is to be given.

#### **242 Determination by tribunal** **U.K.**

- (1) If a notice of objection is given under section 240(3), the amount mentioned in section 240(1) must be determined in the same way as an appeal.
- (2) All persons to whom provisional notices of determination have been given under section 240(2) may take part—
  - (a) in any proceedings under subsection (1), and
  - (b) in any appeal arising out of those proceedings.
- (3) Those persons are bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings.

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- (4) Their successors in title are bound in the same way.

### *Effective duration of lease*

## **243 Rules for determining effective duration of lease** **U.K.**

- (1) The following rules apply for determining the effective duration of a lease for the purposes of this Chapter.

*Rule 1: If—*

- (a) the terms of the lease or any other circumstances make it unlikely that the lease will continue beyond a date before the end of the term for which the lease was granted, and
- (b) the premium was not substantially greater than it would have been had the term been one ending on that date,

the lease is treated as ending on that date (or the earliest such date).

*Rule 2: If the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended.*

*Rule 3: If the tenant or a person connected with the tenant is, or may become, entitled to a further lease or the grant of a further lease (whenever commencing)—*

- (a) of the same premises, or
- (b) of premises including the whole or part of the same premises,

the term of the lease may be treated as continuing until the end of the term of the further lease.

- (2) The rules are to be applied in accordance with section 244.
- (3) In Rule 1, “premium” includes—
- (a) an amount treated as a premium under section 218 (amount treated as lease premium where work required),
  - (b) a sum payable by the tenant under the terms subject to which the lease is granted instead of the whole or a part of the rent for a period,
  - (c) a sum payable by the tenant under the terms subject to which the lease is granted as consideration for the surrender of the lease, and
  - (d) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of the lease.
- (4) In this section and section 244, in relation to Scotland, “term”, where referring to the duration of a lease, means period.

## **244 Applying the rules in section 243** **U.K.**

- (1) The rules in section 243 apply by reference to the facts known or ascertainable—
- (a) at the time of the grant of the lease, or
  - (b) if the determination is for the purposes of section 221 (sums payable for variation or waiver of terms of lease), at the time when the contract for the variation or waiver is entered into.



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- (2) In applying those rules, it is assumed that all parties concerned, whatever their relationship, act as if they were at arm's length.
- (3) Subsection (5) applies if—
  - (a) special benefits were conferred by the lease or in connection with its grant, or
  - (b) payments were made which one would not expect to be made by parties acting at arm's length unless such benefits had been conferred.
- (4) But subsection (5) does not apply if it can be shown that the special benefits were not conferred nor the payments made for the purpose of securing—
  - (a) a corporation tax advantage in the application of this Chapter, or
  - (b) an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA 2005 (profits of property business: lease premiums etc).
- (5) In applying paragraph (b) of Rule 1 in section 243, it is assumed that the special benefits would not have been conferred nor the payments made if the lease had been granted for a term ending on the date mentioned in that rule.
- (6) In this section “special benefits” means benefits other than—
  - (a) vacant possession and beneficial occupation of the premises, or
  - (b) the right to receive rent at a reasonable commercial rate in respect of the premises.

#### **245 Information about effective duration of lease** **U.K.**

- (1) This section applies if an officer of Revenue and Customs has reason to believe that a person has information relevant to the determination of the effective duration of a lease.
- (2) The officer may by notice require the person to provide such information on the matters specified in the notice as is in the person's possession.
- (3) The information must be provided within a time specified in the notice.
- (4) In relation to anything done by a solicitor on behalf of a client, the solicitor is required only to—
  - (a) state that the solicitor was acting on behalf of a client, and
  - (b) provide the name and address of the client.

#### *Other interpretative provisions*

#### **246 Provisions about premiums** **U.K.**

- (1) For the purposes of this Chapter, the presumption is that a sum paid on or in connection with the granting of a tenancy has been paid by way of premium.
- (2) This does not apply if the sum is rent.
- (3) This also does not apply so far as other sufficient consideration for the payment can be shown to have been given.
- (4) In this section “sum” includes the value of any consideration.

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- (5) Where Rule 3 in section 243 (rules for determining effective duration of lease) applies, the premium, or an appropriate part of it, payable for or in connection with either lease mentioned in that rule may be treated for the purposes of this Chapter as having been required under the other.

## 247 Interpretation **U.K.**

- (1) In this Chapter “premium” includes any similar sum payable to the immediate or a superior landlord or to a person connected with such a person.
- (2) In subsection (1) “sum” includes the value of any consideration.
- (3) In the application of this Chapter to Scotland—  
“premium” includes, in particular, a grassum payable to the landlord under the lease in respect of which the grassum is payable or the landlord under any other lease of the property, and  
“reversion” means the interest of the landlord in the property subject to the lease.
- (4) In the application of this Chapter to Scotland—  
(a) references to a lease being granted out of a taxed lease are to the grant of a sublease of land subject to the taxed lease, and  
(b) references to the lease so granted are to be read as references to the sublease.

## CHAPTER 5 **U.K.**

### PROFITS OF PROPERTY BUSINESSES: OTHER RULES ABOUT RECEIPTS AND DEDUCTIONS

#### *Furnished accommodation: receipts and deductions*

## 248 Furnished lettings **U.K.**

- (1) In calculating the profits of a property business which consists of or includes a furnished letting—  
(a) any sum payable for the use of furniture is brought into account as a receipt, and  
(b) a deduction is allowed for expenses incurred in connection with the provision of furniture.
- (2) But subsection (1) does not apply to receipts or expenses brought into account in calculating the profits of a trade which consists of, or involves, making furniture available for use in premises.
- (3) A furnished letting is a lease or other arrangement under which—  
(a) a sum is payable in respect of the use of premises, and  
(b) the person entitled to the use of the premises is also entitled, in connection with that use, to the use of furniture.
- (4) In this section—  
(a) “premises” includes a caravan and a houseboat, and  
(b) “sum” includes the value of any consideration.

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### *Treatment of receipts on acquisition of business*

#### **249 Acquisition of business: receipts from transferor's UK property business** **U.K.**

- (1) This section applies if—
- (a) a person (“the transferor”) permanently ceased to carry on a UK property business (including one within the charge to income tax) at any time,
  - (b) at that time the transferor transferred to another person (“the transferee”) the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
  - (c) the transferee subsequently carries on the transferred business.
- (2) Sums—
- (a) which the transferee receives as a result of the transfer, and
  - (b) which are not brought into account in calculating the profits of the transferor's UK property business for corporation or income tax purposes of any period before the cessation,
- are brought into account in calculating the profits of the transferee's UK property business in the accounting period in which they are received.
- (3) Any sums mentioned in subsection (1)(b) which are received after the cessation of the transferor's property business are not post-cessation receipts (see Chapter 9).

### *Reverse premiums as receipts*

#### **250 Reverse premiums** **U.K.**

- (1) This section applies if—
- (a) a company receives a reverse premium, and
  - (b) the reverse premium is not brought into account under section 98(2) in calculating the profits of any trade carried on by the company.
- (2) The company is treated as—
- (a) entering into a transaction mentioned in section 205 (if the land to which the property transaction relates is in the United Kingdom) or section 206 (if that land is outside the United Kingdom), and
  - (b) receiving the reverse premium as a result of that transaction.
- (3) Accordingly, the reverse premium is brought into account as a receipt in calculating the profits of the property business which consists of or includes that transaction.
- (4) Subsection (5) applies if—
- (a) two or more of the parties to the property arrangements are connected persons, and
  - (b) the terms of those arrangements are not such as would reasonably have been expected if those persons had been dealing at arm's length.
- (5) The whole amount or value of the reverse premium is brought into account in the period of account in which the property transaction is entered into.
- (6) Expressions used in this section and sections 96 to 100 have the same meaning in this section as they do in those sections.

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### *Deductions for expenditure on energy-saving items*

## **251 Deduction for expenditure on energy-saving items U.K.**

- (1) This section applies if—
  - (a) a company carries on a property business in relation to land which consists of or includes a dwelling-house,
  - (b) the company incurs expenditure in acquiring and installing an energy-saving item in the dwelling-house or in a building containing the dwelling-house (see subsections (5) to (7)),
  - (c) the expenditure is incurred before 1 April 2015,
  - (d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and
  - (e) no allowance under CAA 2001 may be claimed in respect of the expenditure.
- (2) In calculating the profits of the business, a deduction for the expenditure is allowed.
- (3) But any deduction is subject to—
  - (a) section 252 (restrictions on relief), and
  - (b) any provision made by regulations under section 253.
- (4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.
- (5) “Energy-saving item” means an item of an energy-saving nature of such description as is for the time being specified in regulations made by the Treasury.
- (6) The Treasury may by regulations provide for an item to be an energy-saving item only if it satisfies such conditions as may be—
  - (a) specified in, or
  - (b) determined in accordance with,the regulations.
- (7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.
- (8) In this section—

“the capital prohibition rule” means the rule in section 53 (capital expenditure), as applied by section 210, and

“the wholly and exclusively rule” means the rule in section 54 (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 210.

## **252 Restrictions on relief U.K.**

- (1) This section restricts deductions that would otherwise be allowable under section 251.
- (2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—
  - (a) is in the course of construction, or

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- (b) is comprised in land in which the company does not have an interest or is in the course of acquiring an interest or further interest.
- (3) No deduction is allowed in respect of expenditure in an accounting period if—
  - (a) the business consists of or includes the commercial letting of furnished holiday accommodation (see Chapter 6), and
  - (b) the dwelling-house constitutes some or all of that accommodation for the accounting period.
- (4) No deduction is allowed in respect of expenditure treated by section 61 (as applied by section 210) as incurred on the date on which the company starts to carry on the business unless the expenditure was incurred not more than 6 months before that date.
- (5) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.

## 253 Regulations **U.K.**

- (1) In relation to any deduction under section 251, the Treasury may make regulations for—
  - (a) restricting or reducing the amount of expenditure for which the deduction is allowable,
  - (b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,
  - (c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,
  - (d) making apportionments if the property business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.
- (2) The apportionments that may be made include apportionments to persons within the charge to income tax.
- (3) Regulations under this section may—
  - (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).

### *Deductions for expenditure on sea walls*

## 254 Deduction for expenditure on sea walls **U.K.**

- (1) This section applies if in a tax year a person —
  - (a) is the owner or tenant of any premises, and
  - (b) incurs expenditure in making a sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river.

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- (2) In calculating the profits of any property business (within the charge to tax under Chapter 3) carried on by the person in relation to the premises, a deduction is allowed for the expenditure in each tax year comprised in the deduction period.
- (3) The deduction period comprises—
  - (a) the tax year in which the expenditure is incurred, and
  - (b) the next 20 tax years.
- (4) The amount of the deduction is 1/21 of the expenditure.
- (5) The deduction is apportioned between the accounting period or periods comprised in the tax year, but—
  - (a) no apportionment is made to an accounting period which ends before the expenditure is incurred, and
  - (b) if the person is entitled to the deduction because of a transfer dealt with by section 255, no apportionment is made to an accounting period which ends before the transfer takes place.
- (6) In the case of the transfer of an interest in the premises dealt with by section 255, this section applies as if the reference to the person in subsection (2) above included the transferor and the transferee.
- (7) No deduction is allowed for any expenditure in respect of which a capital allowance has been made.

## **255 Transfer of interest in premises** **U.K.**

- (1) This section applies if, during the deduction period, the whole of the person's interest in the premises or in any part of them is transferred, whether by operation of law or otherwise.
- (2) For the tax year in which the transfer takes place—
  - (a) the transferor and the transferee are entitled to a part of any deduction under section 254, and
  - (b) the amount of the deduction is determined by what is just and reasonable.
- (3) For subsequent tax years in the deduction period, the entitlement to any deduction under section 254 depends on whether the interest transferred is in the whole of the premises or in part of them.
- (4) If the interest transferred is in the whole of the premises, the transferee (but not the transferor) is entitled to any deduction under section 254.
- (5) If the interest transferred is in part of the premises—
  - (a) the transferor and the transferee are entitled to a part of any deduction under section 254, and
  - (b) the amount of the deduction is determined by reference to what is properly referable to the part of the premises.
- (6) This section is supplemented by sections 256 (ending of lease of premises) and 257 (transfer involving person within the charge to income tax).

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## **256 Ending of lease of premises** **U.K.**

- (1) If a person's interest in the premises is a lease that comes to an end before the end of the deduction period, the interest is treated as if transferred to the following persons.
- (2) If a new lease of the premises is granted and the new tenant makes a payment in respect of the embankment in question to the old tenant, the transferee is the new tenant.
- (3) Otherwise the transferee is the owner of the interest in immediate reversion on the lease (or, in Scotland, the landlord).

## **257 Transfer involving person within the charge to income tax** **U.K.**

- (1) This section explains how section 255 works if—
  - (a) the transferor is a company within the charge to corporation tax and the transferee is a person within the charge to income tax, or
  - (b) the transferor is a person within the charge to income tax and the transferee is a company within the charge to corporation tax.
- (2) Section 255 applies only for the purpose of determining—
  - (a) whether the company within the charge to corporation tax is entitled to a deduction (or part of a deduction) under section 254, and
  - (b) the amount of any such deduction.
- (3) Accordingly, any reference to—
  - (a) whether a person is entitled to a deduction (or part of a deduction) under section 254, or
  - (b) the amount of any such deduction,
 is ignored if the person is within the charge to income tax.
- (4) For any entitlement of a person within the charge to income tax to a deduction for any of the expenditure, see sections 316 to 318 of ITTOIA 2005 (corresponding income tax provisions).

### *Mineral royalties*

## **258 Relief in respect of mineral royalties** **U.K.**

- (1) This section applies if in an accounting period a UK resident company carries on a UK property business the receipts of which consist of or include mineral royalties—
  - (a) which the company is entitled to receive under a mineral lease or agreement, and
  - (b) which are not chargeable to tax under Chapter 7 (rent receivable in connection with a UK section 39(4) concern).
- (2) In calculating the profits of the business, the company is treated as—
  - (a) entitled to receive only half of the total of the mineral royalties arising under the lease or agreement in the accounting period, and
  - (b) making in the accounting period only half of the total of the payments made in respect of the management of the property concerned.
- (3) Sections 274 to 276 (meaning of “mineral lease or agreement” and “mineral royalties”) apply for the purposes of this section as they apply for the purposes of Chapter 7.



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- (4) See also section 201 of TCGA 1992 (gains treated as accruing to a company entitled to receive mineral royalties).

### *Apportionments on sale of land*

## **259 Nature of item apportioned on sale of estate or interest in land** **U.K.**

- (1) This section applies if—
- (a) a company sells an estate or interest in land,
  - (b) on the sale a part of a receipt or outgoing in respect of the estate or interest is apportioned to the seller, and
  - (c) the receipt or outgoing is receivable or to be paid by the buyer after the apportionment is made.
- (2) In calculating the profits of the seller's property business, the part apportioned is treated as being of the same nature as the receipt or outgoing.

### *Mutual business*

## **260 Mutual business** **U.K.**

- (1) Nothing in this Part is to be read as applying the rules relating to mutual business to property businesses.
- (2) Accordingly, receipts and expenses are to be brought into account in calculating the profits of a company's property business even if a relationship of mutuality exists between that company and another person.
- (3) Nothing in this section affects the operation of section 488 of ICTA (co-operative housing associations).

### *Adjustment on change of basis*

## **261 Adjustment on change of basis** **U.K.**

- (1) Section 262 applies if—
- (a) a company carrying on a UK property business changes, from one period of account to the next, the basis on which profits of the business are calculated for corporation tax purposes,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change.
- (2) The practice applicable in any case means the accepted practice in cases of that description as to how profits of a UK property business should be calculated for corporation tax purposes.
- (3) Subsections (3) to (6) of section 180 (what is meant by a company changing the basis on which profits are calculated) apply for the purposes of this section as they apply for

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the purposes of that section (but as if any reference to a trade were to a UK property business).

## 262 Giving effect to positive and negative adjustments **U.K.**

- (1) An amount by way of adjustment must be calculated in accordance with section 182, which applies in relation to a UK property business as it applies in relation to a trade.
- (2) If the amount produced by the calculation is positive—
  - (a) the amount is brought into account as a receipt in calculating the profits of the UK property business, and
  - (b) the receipt is treated as arising on the first day of the first period of account for which the new basis is adopted.
- (3) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, the receipt is treated as arising only when the asset to which it relates is realised or written off.
- (4) If the amount produced by the calculation is negative—
  - (a) a deduction is allowed for the amount as an expense of the UK property business in calculating the profits of that business, and
  - (b) the expense is treated as arising on the first day of the first period of account for which the new basis is adopted.
- (5) But if there is a change of basis resulting from a tax adjustment affecting the calculation of any amount brought into account in respect of depreciation, the expense is treated as arising only when the asset to which it relates is realised or written off.
- (6) This section is subject to section 183 (no adjustment for certain expenses previously brought into account) which applies in relation to a UK property business as it applies in relation to a trade.

### *Integral features*

## 263 Expenditure on integral features **U.K.**

Section 33A(3) of CAA 2001 provides that no deduction is allowed in respect of certain expenditure on an integral feature of a building or structure (within the meaning of that section).

## **CHAPTER 6 U.K.**

### COMMERCIAL LETTING OF FURNISHED HOLIDAY ACCOMMODATION

#### *Introduction*

## 264 Overview of Chapter **U.K.**

- (1) This Chapter explains for the purposes of this Part what is meant by the commercial letting of furnished holiday accommodation (see sections 265 to 268).

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- (2) It matters whether a UK property business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of—
  - (a) Chapter 2 of Part 10 of ICTA (loss relief: see section 503 of that Act),
  - (b) certain provisions of TCGA 1992 (see section 241 of that Act), and
  - (c) CAA 2001 (see, for example, sections 248 and 249 of that Act).
- (3) This Chapter also supplements the above provisions by providing in certain circumstances for the profits of the furnished holiday lettings part of a UK property business to be calculated separately (see section 269).

### Definition

#### 265 Meaning of “commercial letting of furnished holiday accommodation” **U.K.**

- (1) A letting is a lease or other arrangement under which a person is entitled to the use of accommodation.
- (2) A letting of accommodation is commercial if the accommodation is let—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.
- (3) A letting is of furnished holiday accommodation if—
  - (a) the person entitled to the use of the accommodation is also entitled, in connection with that use, to the use of furniture, and
  - (b) the accommodation is qualifying holiday accommodation (see sections 267 and 268).
- (4) This section applies for the purposes of this Chapter.

#### 266 Meaning of “relevant period” in sections 267 and 268 **U.K.**

- (1) For the purposes of sections 267 and 268 “the relevant period” for accommodation let by a company in an accounting period is determined as follows.
- (2) If the accommodation was not let by the company as furnished accommodation in the 12 months immediately before the accounting period, “the relevant period” is 12 months beginning with the first day in the accounting period on which it is let by the company as furnished accommodation.
- (3) If the accommodation—
  - (a) was let by the company as furnished accommodation in the 12 months immediately before the accounting period, but
  - (b) is not let by the company as furnished accommodation in the 12 months immediately after the accounting period,“the relevant period” is 12 months ending with the last day in the accounting period on which it is let by the company as furnished accommodation.
- (4) Otherwise “the relevant period” is the period of 12 months ending with the last day of the accounting period.

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## 267 Meaning of “qualifying holiday accommodation” **U.K.**

- (1) Accommodation which is let by a company during an accounting period is “qualifying holiday accommodation” for the accounting period if the availability, letting and pattern of occupation conditions are met.
- (2) The availability condition is that, during the relevant period, the accommodation is available for commercial letting as holiday accommodation to the public generally for at least 140 days.
- (3) The letting condition is that, during the relevant period, the accommodation is commercially let as holiday accommodation to members of the public for at least 70 days.
- (4) For the purposes of the letting condition, a letting of accommodation for a period of longer-term occupation (see subsection (6)) is not a letting of it as holiday accommodation.
- (5) The pattern of occupation condition is that, during the relevant period, not more than 155 days fall during periods of longer-term occupation.
- (6) For the purposes of this section a “period of longer-term occupation” is a continuous period of more than 31 days during which the accommodation is in the same occupation otherwise than because of circumstances that are not normal.

## 268 Under-used holiday accommodation: averaging elections **U.K.**

- (1) This section applies if during an accounting period a company lets both—
  - (a) qualifying holiday accommodation, and
  - (b) accommodation that would be qualifying holiday accommodation if the letting condition (see section 267(3)) were met in relation to it (“under-used accommodation”).
- (2) The company may make an election for the accounting period specifying—
  - (a) the qualifying holiday accommodation, and
  - (b) any or all of the under-used accommodation.
- (3) The under-used accommodation so specified is treated as qualifying holiday accommodation for the accounting period if the average of the number of let days for the accounting period of all the accommodation specified in the election is at least 70.
- (4) “The number of let days” for an accounting period of any accommodation is the number of days during the relevant period for which it is commercially let by the company as holiday accommodation to members of the public.
- (5) Qualifying holiday accommodation may not be specified in more than one election for an accounting period.
- (6) An election for an accounting period must be made within the period of two years beginning at the end of the accounting period.

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### *Separate profit calculations*

#### **269 Capital allowances and loss relief U.K.**

- (1) If a UK property business consists of both—
  - (a) the commercial letting of furnished holiday accommodation (“the furnished holiday lettings part”), and
  - (b) other businesses or transactions (“the other part”),this section requires separate calculations to be made of the profits of the furnished holiday lettings part and the other part.
- (2) The calculations must be made if—
  - (a) section 248 or 249 of CAA 2001 (giving effect to allowances and charges) applies to the furnished holiday lettings part or the other part, or
  - (b) any provision of Chapter 2 of Part 10 of ICTA (loss relief) applies in relation to a loss made in either of those parts.
- (3) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

### **CHAPTER 7 U.K.**

#### **RENT RECEIVABLE IN CONNECTION WITH A UK SECTION 39(4) CONCERN**

##### *Charge to tax on rent receivable in connection with a UK section 39(4) concern*

#### **270 Charge to tax on rent receivable in connection with a UK section 39(4) concern U.K.**

The charge to corporation tax on income applies to rent receivable in connection with a UK section 39(4) concern.

#### **271 Meaning of “rent receivable in connection with a UK section 39(4) concern” U.K.**

- (1) For the purposes of this Chapter rent is receivable in connection with a UK section 39(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom, and
  - (b) the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 39(4).
- (2) For the purposes of this Chapter rent is also receivable in connection with a UK section 39(4) concern if—
  - (a) it is receivable in respect of an estate, interest or right in or over land in the United Kingdom,
  - (b) the lease or other agreement under which it is receivable provides for its recoupment by reducing royalties or payments of a similar nature, and

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- (c) the reduction applies if the estate, interest or right is used, occupied or enjoyed in connection with a concern listed in section 39(4).
- (3) In this Chapter “rent” includes—
- (a) a receipt mentioned in section 207(3), and
  - (b) any other receipt in the nature of rent.

*Management expenses of owner of mineral rights*

**272 Deduction for management expenses of owner of mineral rights** **U.K.**

- (1) This section applies if in an accounting period—
  - (a) a company lets a right to work minerals in the United Kingdom, and
  - (b) the company pays a sum wholly and exclusively as an expense of management or supervision of the minerals in the accounting period.
- (2) In calculating the amount of rent receivable in connection with a UK section 39(4) concern, a deduction is allowed for the sum for the accounting period.
- (3) This is subject to section 273 (relief in respect of mineral royalties).

*Mineral royalties*

**273 Relief in respect of mineral royalties** **U.K.**

- (1) This section applies if in an accounting period—
  - (a) a UK resident company is entitled to receive mineral royalties under a mineral lease or agreement, and
  - (b) the royalties are chargeable to tax under this Chapter.
- (2) In calculating the amount of the royalties so chargeable, the company is treated as—
  - (a) entitled to receive only half of the total of the royalties arising under the lease or agreement in the accounting period, and
  - (b) paying in the accounting period only half of the total of the expenses mentioned in section 272(1)(b) (deduction for management expenses of owner of mineral rights).
- (3) As to the meaning of “mineral lease or agreement” and “mineral royalties”, see sections 274 to 276.
- (4) See also section 201 of TCGA 1992 (gains treated as accruing to a company entitled to receive mineral royalties).

**274 Meaning of “mineral lease or agreement” and “mineral royalties”** **U.K.**

- (1) In this Chapter “mineral lease or agreement” means—
  - (a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom,
  - (b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom, and

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- (c) a grant of a right under section 1 of the Mines (Working Facilities and Support) Act 1966 (c. 4) other than an ancillary right (within the meaning of that Act).
- (2) In this Chapter “mineral royalties” means so much of any rent receivable under a mineral lease or agreement as relates to the winning and working of minerals.
- (3) For the purposes of this section and section 276 “minerals” means all minerals and substances in or under land which are ordinarily worked for removal—
  - (a) by underground working, or
  - (b) by surface working,but excluding water, peat, top-soil and vegetation.

## **275 Extended meaning of “mineral royalties” etc in Northern Ireland** **U.K.**

- (1) In the application of this Chapter to Northern Ireland references to mineral royalties include the following periodical payments.
- (2) The payments are—
  - (a) payments of compensation under section 29 or 35 of the Mineral Development Act (Northern Ireland) 1969 (c. 35 (N.I.)) (“the 1969 Act”),
  - (b) payments of compensation under section 4 of the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)) (“the 1964 Act”),
  - (c) payments made as mentioned in section 37 of the 1969 Act,
  - (d) payments made under section 55(4)(b) of the 1969 Act, and
  - (e) payments made under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the Irish Land Act 1903 (c. 37)).
- (3) In the application of this Chapter to Northern Ireland references to the mineral lease or agreement under which mineral royalties are receivable include the enactment under which those payments are made.

## **276 Power to determine what counts as “mineral royalties”** **U.K.**

- The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) provide whether, and to what extent, rents receivable under a mineral lease or agreement which relate both to the winning and working of minerals and to other matters are treated as mineral royalties, and
  - (b) provide for treating the whole of such rents as mineral royalties if the extent to which they relate to matters other than the winning and working of minerals is small.



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## CHAPTER 8 **U.K.**

### RENT RECEIVABLE FOR UK ELECTRIC-LINE WAYLEAVES

#### *Charge to tax on rent receivable for UK electric-line wayleaves*

#### **277 Charge to tax on rent receivable for a UK electric-line wayleave **U.K.****

The charge to corporation tax on income applies to rent receivable for a UK electric-line wayleave.

#### **278 Meaning of “rent receivable for a UK electric-line wayleave” **U.K.****

- (1) For the purposes of this Chapter rent is receivable for a UK electric-line wayleave if—
  - (a) it is receivable in respect of an easement, servitude or right in or over land in the United Kingdom, and
  - (b) the easement, servitude or right is enjoyed in connection with an electric, telegraph or telephone wire or cable.
- (2) The reference to the enjoyment of an easement, servitude or right in connection with an electric, telegraph or telephone wire or cable includes (in particular) its enjoyment in connection with—
  - (a) a pole or pylon supporting such a wire or cable, or
  - (b) apparatus used in connection with such a wire or cable.
- (3) In this Chapter “rent” includes—
  - (a) a receipt mentioned in section 207(3), and
  - (b) any other receipt in the nature of rent.

#### **279 Extent of charge to tax **U.K.****

- (1) Rent receivable for a UK electric-line wayleave is not chargeable to tax under this Chapter for an accounting period if—
  - (a) a company carries on a UK property business in relation to some or all of the land to which the wayleave relates, and
  - (b) receipts (other than rents receivable for UK electric-line wayleaves) in respect of some or all of that land are brought into account in calculating the profits of the business of the accounting period.
- (2) In such a case, the rent receivable for the UK electric-line wayleave is brought into account in calculating the profits of the company's UK property business.
- (3) The rules for determining whether an amount is chargeable to tax under this Chapter also need to be read with section 45(2) (payments for wayleaves if company carries on a trade).
- (4) That subsection secures that an amount which would otherwise be chargeable to tax under this Chapter may be brought into account instead in calculating the profits of a trade.

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## CHAPTER 9 U.K.

### POST-CESSATION RECEIPTS

#### *Charge to tax on post-cessation receipts*

#### **280 Charge to tax on post-cessation receipts U.K.**

The charge to corporation tax on income applies to post-cessation receipts arising from a UK property business.

#### **281 Extent of charge to tax U.K.**

- (1) A post-cessation receipt is chargeable to tax under this Chapter only so far as the receipt is not otherwise chargeable to corporation or income tax.
- (2) Accordingly, a post-cessation receipt arising from a UK property business is not chargeable to tax under this Chapter so far as it is brought into account in calculating the profits of the business of any period.

#### *Meaning of “post-cessation receipts”*

#### **282 Basic meaning of “post-cessation receipt” U.K.**

- (1) In this Chapter “post-cessation receipt” means a sum—
  - (a) which is received after a person permanently ceases to carry on a UK property business, and
  - (b) which arises from the carrying on of the business before the cessation.
- (2) In this Chapter, except in section 284, references to a UK property business include one within the charge to income tax and references to a person permanently ceasing to carry on a UK property business include—
  - (a) in the case of a company, the occurrence of an event treated under section 362 of ITTOIA 2005 (company starting or ceasing to be within charge to income tax) as the company permanently ceasing to carry on the business, and
  - (b) in the case of a UK property business carried on by a person in partnership, the occurrence of an event treated under section 353(3) of ITTOIA 2005 (basic meaning of “post-cessation receipt”) as the person permanently ceasing to carry on the business.

#### **283 Other rules about what counts as a “post-cessation receipt” U.K.**

- (1) Section 284 (transfer of rights if transferee does not carry on UK property business) treats certain amounts as being, or not being, post-cessation receipts for the purposes of this Chapter.
- (2) The following provisions (which treat certain amounts as post-cessation receipts) apply for the purposes of this Chapter as they apply for the purposes of Chapter 15 of Part 3 (but as if any reference to a trade were to a UK property business)—
  - section 82(6) (contributions to local enterprise organisations or urban regeneration companies),

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section 101(3) (distribution of assets of mutual concerns),  
section 108(3) (receipt of benefits by donor or connected person),  
section 192 (debts paid after cessation), and  
section 193 (debts released after cessation), as qualified, where appropriate, by  
section 56(4) (car or motor cycle hire).

- (3) This Chapter also needs to be read with—
- (a) section 249(3) (which treats certain amounts as not being post-cessation receipts), and
  - (b) section 1277 (which treats certain income as a post-cessation receipt: unremittable income).

## **284 Transfer of rights if transferee does not carry on UK property business** **U.K.**

- (1) This section applies if—
- (a) a company (“the transferor”) permanently ceases to carry on a UK property business,
  - (b) the transferor transfers to another person (“the transferee”) for value the right to receive sums arising from the carrying on of any business (“the transferred business”) comprised in the transferor's UK property business, and
  - (c) the transferee does not subsequently carry on the transferred business.
- (2) The transferor is treated as receiving a post-cessation receipt.
- (3) The amount of the receipt is—
- (a) the amount or value of the consideration for the transfer, if the transfer is at arm's length, or
  - (b) the value of the rights transferred as between parties at arm's length, if the transfer is not at arm's length.
- (4) Any sums mentioned in subsection (1)(b) which are received after the cessation of the property business are not post-cessation receipts.

### *Deductions*

## **285 Allowable deductions** **U.K.**

Sections 196 and 197 apply for the purposes of this Chapter as they apply for the purposes of Chapter 15 of Part 3 (but as if any reference to a trade were to a UK property business).

### *Election to carry back*

## **286 Election to carry back** **U.K.**

Sections 198 to 200 apply for the purposes of this Chapter as they apply for the purposes of Chapter 15 of Part 3 (but as if any reference to a trade were to a UK property business).

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## CHAPTER 10 **U.K.**

### SUPPLEMENTARY

#### *Priority rules*

#### **287 Provisions which must be given priority over this Part **U.K.****

Any receipt or other credit item, so far as it falls within—

- (a) Chapter 3 of this Part so far as it relates to an overseas property business or Chapter 7 or 8 of this Part (rent receivable in connection with a UK section 39(4) concern or for UK electric-line wayleaves), and
- (b) Chapter 2 of Part 3 (receipts of a trade),

is dealt with under Part 3.

#### **288 Priority between Chapters within this Part **U.K.****

(1) Any receipt, so far as it falls within—

- (a) Chapter 3 so far as it relates to a UK property business, and
- (b) Chapter 7 (rent receivable in connection with a UK section 39(4) concern),

is dealt with under Chapter 7.

(2) Any receipt, so far as it falls within—

- (a) Chapter 3 so far as it relates to a UK property business, and
- (b) Chapter 8 (rent receivable for UK electric-line wayleaves),

is dealt with under Chapter 8.

(3) Any receipt, so far as it falls within Chapter 7 (rent receivable in connection with a UK section 39(4) concern) and Chapter 8 (rent receivable for UK electric-line wayleaves), is dealt with under Chapter 8.

#### *Other supplementary provisions*

#### **289 Effect of company starting or ceasing to be within charge to corporation tax **U.K.****

(1) This section applies if a company starts or ceases to be within the charge to corporation tax in respect of a property business.

(2) The company is treated for the purposes of this Part—

- (a) as starting to carry on the business when it starts to be within the charge, or
- (b) as ceasing to carry on the business when it ceases to be within the charge.

#### **290 Overseas property businesses and overseas land: adaptation of rules **U.K.****

(1) This section applies if a provision of this Part—

- (a) applies to an overseas property business or land outside the United Kingdom, but
- (b) is expressed by reference to a domestic concept of law.

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- (2) In relation to that business or land, the provision is to be read so as to produce the result most closely corresponding with that produced by the provision in relation to a UK property business or land in the United Kingdom.

## **291 Meaning of “lease” and “premises” U.K.**

- (1) In this Part “lease” includes—
- (a) an agreement for a lease (so far as the context permits), and
  - (b) any tenancy,
- but does not include a mortgage.
- (2) In this Part “premises” includes land.

## **PART 5 U.K.**

### LOAN RELATIONSHIPS

## **CHAPTER 1 U.K.**

### INTRODUCTION

#### *Introduction*

## **292 Overview of Part U.K.**

- (1) This Part sets out how profits and deficits arising to a company from its loan relationships are brought into account for corporation tax purposes.
- (2) For the meaning of “loan relationship” see section 302 and Part 6 (relationships treated as loan relationships etc).
- (3) For how such profits and deficits are calculated and brought into account, see—
- (a) section 296 (profits and deficits to be calculated using credits and debits given by this Part),
  - (b) section 297 (trading credits and debits to be brought into account under Part 3),
  - (c) section 299 (charge to tax on non-trading profits),
  - (d) section 300 (method of bringing non-trading deficits into account),
  - (e) section 301 (calculation of non-trading profits and deficits from loan relationships: non-trading credits and debits), and
  - (f) Chapter 16 (non-trading deficits).
- (4) For the priority of this Part for corporation tax purposes, see Chapter 17.
- (5) This Part also contains the following Chapters (which mainly relate to the amounts to be brought into account for the purposes of this Part)—
- (a) Chapter 3 (the credits and debits to be brought into account: general),
  - (b) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations),
  - (c) Chapter 5 (connected companies relationships: introduction and general),

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- (d) Chapter 6 (connected companies relationships: impairment losses and releases of debts),
  - (e) Chapter 7 (group relief claims involving impaired or released consortium debts),
  - (f) Chapter 8 (connected parties relationships: late interest),
  - (g) Chapter 9 (partnerships involving companies),
  - (h) Chapter 10 (insurance companies),
  - (i) Chapter 11 (other special kinds of company),
  - (j) Chapter 12 (special rules for particular kinds of securities),
  - (k) Chapter 13 (European cross-border transfers of business),
  - (l) Chapter 14 (European cross-border mergers),
  - (m) Chapter 15 (tax avoidance),
  - (n) Chapter 18 (general and supplementary provisions).
- (6) This Part needs to be read with Part 19 (general exemptions).

### **293 Construction of references to profits or losses from loan relationships** **U.K.**

- (1) In this Part references to profits or losses from loan relationships include references to profits or losses from related transactions.
- (2) For the meaning of “related transaction” see section 304.
- (3) Except where the context indicates otherwise, in this Part references to profits or losses from loan relationships include references to profits or losses of a capital nature.

### **294 Matters treated as loan relationships** **U.K.**

- (1) Part 6 deals with matters treated for some or all purposes as loan relationships or rights, payments or profits under loan relationships.
- (2) Except where the context indicates otherwise, references to this Part in this Act and elsewhere in the Tax Acts include references to Part 6.

*How profits and deficits from loan relationships are dealt with*

### **295 General rule: profits arising from loan relationships chargeable as income** **U.K.**

- (1) The general rule for corporation tax purposes is that all profits arising to a company from its loan relationships are chargeable to tax as income in accordance with this Part.
- (2) But see section 465 (exclusion of distributions except in tax avoidance cases).

### **296 Profits and deficits to be calculated using credits and debits given by this Part** **U.K.**

Profits and deficits arising to a company from its loan relationships are to be calculated using the credits and debits given by this Part.

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## 297 Trading credits and debits to be brought into account under Part 3 **U.K.**

- (1) This section applies so far as in any accounting period a company is a party to a loan relationship for the purposes of a trade it carries on.
- (2) The credits in respect of the relationship for the period are treated as receipts of the trade which are to be brought into account in calculating its profits for that period.
- (3) The debits in respect of the relationship for the period are treated as expenses of the trade which are deductible in calculating those profits.
- (4) So far as subsection (3) provides for any amount to be deductible, it has effect despite anything in—
  - (a) section 53 (capital expenditure),
  - (b) section 54 (expenses not wholly and exclusively for trade and unconnected losses), or
  - (c) section 59 (patent royalties).
- (5) This section is subject to—
  - (a) section 330 (debts in respect of pre-trading expenditure),
  - (b) section 482(1) (under which credits or debits to be brought into account under Chapter 2 of Part 6 (relevant non-lending relationships) are treated as non-trading credits or debits), and
  - (c) section 494(2A) of ICTA (under which some credits and debits affecting ring-fence profits from petroleum extraction activities are treated as non-trading credits and debits).

## 298 Meaning of trade and purposes of trade **U.K.**

- (1) For the purposes of this Part a company is taken to be a party to a creditor relationship for the purposes of a trade it carries on only if it is a party to the relationship in the course of activities forming an integral part of the trade.
- (2) For the meaning of “creditor relationship”, see section 302(5).
- (3) For the purposes of this Part activities carried on by a company in the course of—
  - (a) any mutual trading,
  - (b) any mutual insurance or other mutual business which is not life assurance business, or
  - (c) any basic life assurance and general annuity business,
 are treated as not constituting the whole or any part of a trade.
- (4) Subsection (3) applies for the purposes of any other relevant enactment as it applies for the purposes of this Part.
- (5) In subsection (4) “relevant enactment” means so much of any enactment as contains provision by reference to which amounts are to be brought into account for the purposes of this Part.

## 299 Charge to tax on non-trading profits **U.K.**

- (1) The charge to corporation tax on income applies to any non-trading profits which a company has in respect of its loan relationships.



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- (2) For the meaning of a company having such profits and how they are calculated, see section 301.

### **300 Method of bringing non-trading deficits into account U.K.**

- (1) Any non-trading deficit which a company has from its loan relationships must be brought into account in accordance with Chapter 16 (non-trading deficits).
- (2) For the meaning of a company having such a deficit and how it is calculated, see section 301.
- (3) This section and Chapter 16 apply even if none of the company's loan relationships is regarded as a source of income as a result of this Part.

### **301 Calculation of non-trading profits and deficits from loan relationships: non-trading credits and debits U.K.**

- (1) Whether a company has non-trading profits or a non-trading deficit from its loan relationships for an accounting period is determined as follows, using the non-trading credits and non-trading debits given by this Part for the accounting period.
- (2) In this Part—
- (a) “non-trading credits” means credits for any accounting period in respect of a company's loan relationships that are not brought into account under section 297(2), and
  - (b) “non-trading debits” means debits for any accounting period in respect of a company's loan relationships that are not brought into account under section 297(3).
- (3) But see also—
- (a) section 330 (debts in respect of pre-trading expenditure), and
  - (b) section 482(1) (under which credits or debits to be brought into account under Chapter 2 of Part 6 (relevant non-lending relationships) are treated as non-trading credits or debits).
- (4) A company has non-trading profits for an accounting period from its loan relationships if the non-trading credits for the period exceed the non-trading debits for the period or there are no such debits.
- (5) The non-trading profits are equal to those credits, less any such debits.
- (6) A company has a non-trading deficit for an accounting period from its loan relationships if the non-trading debits for the period exceed the non-trading credits for the period or there are no such credits.
- (7) The non-trading deficit is equal to those debits, less any such credits.

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## CHAPTER 2 U.K.

### BASIC DEFINITIONS

#### 302 “Loan relationship”, “creditor relationship”, “debtor relationship” U.K.

- (1) For the purposes of the Corporation Tax Acts a company has a loan relationship if—
  - (a) the company stands in the position of a creditor or debtor as respects any money debt (whether by reference to a security or otherwise), and
  - (b) the debt arises from a transaction for the lending of money.
- (2) References to a loan relationship and to a company being a party to a loan relationship are to be read accordingly.
- (3) For cases where this Part applies as if a relationship were a loan relationship despite the money debt not arising from a transaction for the lending of money see Chapter 2 of Part 6 (relevant non-lending relationships).
- (4) See also the following provisions of Part 6 (under which other matters are treated as loan relationships or rights, payments or profits under loan relationships)—
  - (a) Chapter 3 (OEICs, unit trusts and offshore funds),
  - (b) Chapter 4 (building societies),
  - (c) Chapter 5 (industrial and provident societies),
  - (d) Chapter 6 (alternative finance arrangements),
  - (e) Chapter 7 (shares with guaranteed returns etc),
  - (f) Chapter 8 (returns from partnerships),
  - (g) Chapter 9 (manufactured interest etc),
  - (h) Chapter 10 (repos), and
  - (i) Chapter 11 (investment life insurance contracts).
- (5) In this Part “creditor relationship”, in relation to a company, means any loan relationship of the company where it stands in the position of a creditor as respects the debt in question.
- (6) In this Part “debtor relationship”, in relation to a company, means any loan relationship of the company where it stands in the position of a debtor as respects the debt in question.

#### 303 “Money debt” U.K.

- (1) For the purposes of this Part a money debt is a debt which—
  - (a) falls to be settled—
    - (i) by the payment of money,
    - (ii) by the transfer of a right to settlement under a debt which is itself a money debt, or
    - (iii) by the issue or transfer of any share in any company,
  - (b) has at any time fallen to be so settled, or
  - (c) may at the option of the debtor or the creditor fall to be so settled.
- (2) For the purposes of subsection (1) any option exercisable by either party to settle the debt in any other way than is mentioned in subsection (1)(a) is ignored.

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- (3) A money debt is a debt arising from a transaction for the lending of money for the purposes of this Part if an instrument is issued by any person for the purpose of representing—
  - (a) security for the debt, or
  - (b) the rights of a creditor in respect of the debt.
- (4) A debt does not arise from a transaction for the lending of money for the purposes of this Part so far as it arises from rights conferred by shares in a company.
- (5) But see the following provisions (as a result of which some such rights are within this Chapter)—
  - (a) Chapter 3 of Part 6 (OEICs, unit trusts and offshore funds),
  - (b) Chapter 7 of that Part (shares with guaranteed returns etc).
- (6) For the meaning of “share” see section 476(1).

#### **304 “Related transaction” U.K.**

- (1) In this Part “related transaction”, in relation to a loan relationship, means any disposal or acquisition (in whole or in part) of rights or liabilities under the relationship.
- (2) For this purpose the cases where there is taken to be such a disposal and acquisition include those where rights or liabilities under the loan relationship are transferred or extinguished by any sale, gift, exchange, surrender, redemption or release.

#### **305 Payments, interest, rights and liabilities under a loan relationship U.K.**

- (1) For the purposes of this Part references to payments or interest under a loan relationship are references to payments or interest paid or payable in pursuance of any of the rights or liabilities under that relationship.
- (2) For the purposes of this Part references to rights or liabilities under a loan relationship are references to any of the rights or liabilities under the arrangements as a result of which that relationship subsists.
- (3) For the purposes of this Part rights or liabilities under a loan relationship are taken to include the rights or liabilities attached to any security that is issued in relation to the money debt in question (and so is a security representing that relationship).
- (4) But for the treatment of funding bonds see—
  - (a) section 413 (issue of funding bonds), and
  - (b) section 414 (redemption of funding bonds).

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## CHAPTER 3 **U.K.**

### THE CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT: GENERAL

#### *Introduction*

### 306 **Overview of Chapter** **U.K.**

- (1) This Chapter contains rules of general application about the credits and debits to be brought into account for the purposes of this Part.
- (2) In particular, it—
  - (a) provides for the application of generally accepted accounting practice in determining the amounts to be brought into account as credits and debits and makes provision where accounts do not comply with that practice (see sections 307 to 312),
  - (b) makes provision about bases of accounting (see sections 313 and 314),
  - (c) provides for adjustments on changes of accounting policy (see sections 315 to 319),
  - (d) sets out some general rules that differ from generally accepted accounting practice (see sections 320 to 327),
  - (e) provides for exchange gains and losses to be included in the profits and losses of a company from loan relationships (see section 328),
  - (f) makes provision about debits for pre-loan relationship, abortive or pre-trading expenses (see sections 329 and 330),
  - (g) makes provision for companies ceasing to be a party to loan relationships (see sections 331 and 332), and
  - (h) provides for deemed assignments where a company's residence or operations move abroad (see sections 333 and 334).
- (3) For further rules about the credits and debits to be brought into account in particular situations and cases, see—
  - (a) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations),
  - (b) Chapter 5 (connected companies relationships: introduction and general),
  - (c) Chapter 6 (connected companies relationships: impairment losses and releases of debts),
  - (d) Chapter 7 (group relief claims involving impaired or released consortium debts),
  - (e) Chapter 8 (connected parties relationships: late interest),
  - (f) Chapter 9 (partnerships involving companies),
  - (g) Chapter 10 (insurance companies),
  - (h) Chapter 11 (other special kinds of company),
  - (i) Chapter 12 (special rules for particular kinds of securities),
  - (j) Chapter 13 (European cross-border transfers of business),
  - (k) Chapter 14 (European cross-border mergers), and
  - (l) Chapter 15 (tax avoidance).

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*General principles about the bringing into account of credits and debits*

**307 General principles about the bringing into account of credits and debits** **U.K.**

- (1) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes.
- (2) The general rule is that the amounts to be brought into account by a company as credits and debits for any period for the purposes of this Part are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.
- (3) The credits and debits to be brought into account in respect of a company's loan relationships are the amounts that, when taken together, fairly represent for the accounting period in question—
  - (a) all profits and losses of the company that arise to it from its loan relationships and related transactions (excluding interest or expenses),
  - (b) all interest under those relationships, and
  - (c) all expenses incurred by the company under or for the purposes of those relationships and transactions.
- (4) Expenses are only treated as incurred as mentioned in subsection (3)(c) if they are incurred directly—
  - (a) in bringing any of the loan relationships into existence,
  - (b) in entering into or giving effect to any of the related transactions,
  - (c) in making payments under any of those relationships or as a result of any of those transactions, or
  - (d) in taking steps to ensure the receipt of payments under any of those relationships or in accordance with any of those transactions.
- (5) For the treatment of pre-loan relationship and abortive expenses, see section 329.
- (6) Subsection (2) is subject to the provisions of this Part and, in particular, subsection (3).

*Amounts recognised in determining a company's profit or loss*

**308 Amounts recognised in determining a company's profit or loss** **U.K.**

- (1) References in this Part to an amount recognised in determining a company's profit or loss for a period are references to an amount recognised in—
  - (a) the company's profit and loss account, income statement or statement of comprehensive income for that period,
  - (b) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
  - (c) any other statement of items taken into account in calculating the company's profits and losses for that period.
- (2) If, in accordance with generally accepted accounting practice, an amount is shown as a prior period adjustment in any statement within subsection (1), it must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.

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- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.

### 309 Companies without GAAP-compliant accounts **U.K.**

- (1) If a company—
- (a) draws up accounts which are not GAAP-compliant accounts, or
  - (b) does not draw up accounts at all,
- this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) Accordingly, references in this Part to amounts recognised for accounting purposes are references to the amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- (4) In this section “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

### 310 Power to make regulations about recognised amounts **U.K.**

- (1) The Treasury may by regulations—
- (a) make provision excluding from section 308(1) or (2) amounts of a specified description, and
  - (b) make provision for or in connection with bringing into account in specified circumstances amounts in relation to which section 308(1) or (2) does not have effect as a result of regulations under paragraph (a).
- (2) The regulations may provide that section 308(1) or (2) does not apply to specified amounts in a period of account so far as they derive from or otherwise relate to amounts brought into account in a specified way in a previous period of account.
- (3) The regulations may—
- (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other specified conditions.
- (4) The regulations may apply to periods of account beginning before they are made, but not earlier than the beginning of the calendar year in which they are made.
- (5) The power to make regulations under this section does not apply to exchange gains or losses (but see section 328(4) to (7)).

### 311 Amounts not fully recognised for accounting purposes: introduction **U.K.**

- (1) Section 312 applies for the purpose of determining the credits and debits which a company is to bring into account for a period for the purposes of this Part in the following case.
- (2) The case is where—
- (a) the company is, or is treated as, a party to a creditor relationship in the period,

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- (b) an amount is not fully recognised for the period in respect of the relationship as a result of the application of generally accepted accounting practice in relation to the relationship (see subsection (6)), and
  - (c) condition A or B is met.
- (3) Condition A is that—
- (a) the company is or is treated as a party to a debtor relationship in the period, and
  - (b) an amount is not fully recognised for the period in respect of the debtor relationship as a result of the application of generally accepted accounting practice in relation to the relationship.
- (4) Condition B is that—
- (a) an amount (a “relevant capital contribution”) has at any time been contributed to the company which forms part of its capital for the period, and
  - (b) an amount is not fully recognised for the period in respect of the relevant capital contribution as a result of the application of generally accepted accounting practice in relation to the contribution.
- (5) It does not matter for the purposes of subsection (4) whether the contribution forms part of the company's share capital or other capital for the period.
- (6) For the purposes of this section an amount is not fully recognised for a period in respect of a relationship of a company or a relevant capital contribution to it if—
- (a) no amount in respect of the relationship or contribution is recognised in determining its profit or loss for the period, or
  - (b) an amount is so recognised in respect of only part of the relationship or contribution.

### **312 Determination of credits and debits where amounts not fully recognised U.K.**

- (1) In determining the credits and debits which a company is to bring into account for the period referred to in section 311(1) for the purposes of this Part in respect of—
- (a) the creditor relationship mentioned in section 311(2), or
  - (b) in a case where condition A in section 311(3) is met, the debtor relationship by reference to which that condition is met,
- the assumption in subsection (2) is to be made.
- (2) The assumption is that an amount in respect of the whole of the relationship in question is recognised in determining the company's profit or loss for the period.
- (3) But the amount of any debits to be brought into account by the company for a period as a result of this section applying in respect of its debtor relationships must not exceed the amount of any credits to be brought into account by it for the period as a result of this section applying in respect of its creditor relationships.
- (4) Subsection (5) applies in any case where—
- (a) apart from this section any credits or debits are brought into account for a period for the purposes of this Part by the company in respect of a loan relationship, and
  - (b) the relationship is a creditor relationship within subsection (1)(a) or a debtor relationship within subsection (1)(b).



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- (5) The credits and debits which are to be so brought into account as a result of this section are to be determined on the same basis of accounting as that on which the credits or debits mentioned in subsection (4)(a) are determined.
- (6) In any other case, the credits and debits which are to be so brought into account as a result of this section are to be determined on an amortised cost basis of accounting.

#### *Accounting bases*

### **313 Basis of accounting: “amortised cost basis”, “fair value accounting” and “fair value” U.K.**

- (1) The general rule is that the amounts to be brought into account by a company as credits and debits for any period of account for the purposes of this Part may be determined on any basis of accounting that is in accordance with generally accepted accounting practice and, in particular, an amortised cost basis of accounting or fair value accounting.
- (2) But subsection (1) is subject to sections 307(3) and (4) and the following provisions (which require a particular accounting basis to be used)—
  - (a) section 312(5) and (6) (determination of credits and debits where amounts not fully recognised for accounting purposes),
  - (b) section 349(2) (application of amortised cost basis to connected companies relationships),
  - (c) section 382(2) (company partners using fair value accounting),
  - (d) section 399(2) (index-linked gilt-edged securities: application of fair value accounting),
  - (e) section 453(2) (application of fair value accounting where connected parties derive benefit from creditor relationships),
  - (f) section 454(4) (application of fair value accounting: reset bonds etc),
  - (g) section 482(2) (application of amortised cost basis of accounting to discounts arising from a money debt under a relevant non-lending relationship),
  - (h) section 490(3) (holdings in OEICs, unit trusts and offshore funds: application of fair value accounting), and
  - (i) section 534(1) (application of fair value accounting where section 523 applies).
- (3) See also section 314.
- (4) In this Part “amortised cost basis of accounting”, in relation to a company's loan relationship, means a basis of accounting under which an asset or liability representing the loan relationship is shown in the company's accounts at cost adjusted for cumulative amortisation and any impairment, repayment or release.
- (5) In this Part “fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company's balance sheet at their fair value.
- (6) In this Part “fair value”, in relation to a loan relationship of a company, means the amount which, at the time as at which the value is to be determined, is the amount which the company would obtain from or, as the case may be, would have to pay to a knowledgeable and willing person dealing at arm's length for—
  - (a) the transfer of all the company's rights under the relationship, and

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- (b) the release of all the company's liabilities under it.

### **314 Power to make regulations about changes from amortised cost basis U.K.**

- (1) This section applies if the credits or debits to be brought into account for the purposes of this Part in respect of assets or liabilities of a company—
  - (a) are required in accordance with generally accepted accounting practice to be dealt with for accounting purposes using fair value accounting, and
  - (b) were previously dealt with for those purposes on an amortised cost basis.
- (2) The Treasury may by regulations provide that the credits or debits must continue to be determined on an amortised cost basis of accounting.
- (3) The regulations may—
  - (a) make different provision for different cases,
  - (b) make incidental, supplemental, consequential and transitional provision and savings, and
  - (c) make provision subject to an election or to other specified conditions.

#### *Adjustments on change of accounting policy*

### **315 Introduction to sections 316 to 319 U.K.**

- (1) Sections 316 to 319 apply if—
  - (a) there is a change of accounting policy in drawing up a company's accounts from one period of account to the next, and
  - (b) the accounting policy in each of those periods accords with the law and practice applicable in relation to that period.
- (2) In this section and sections 316 to 319—
  - (a) the first of those periods of account is referred to as “the earlier period”, and
  - (b) the next is referred to as “the later period”.
- (3) Sections 316 to 319 apply, in particular, if—
  - (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
  - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.
- (4) For a case where this section and sections 316 to 318 apply as if a change of accounting policy had occurred, see section 416(5) (election for application of sections 415 and 585).

### **316 Change of accounting policy involving change of value U.K.**

- (1) If there is an increase in the carrying value of an asset representing a loan relationship of the company between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,

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a credit equal to the increase must be brought into account for the purposes of this Part for the later period.

- (2) If there is a decrease in the carrying value of such an asset between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,
 a debit equal to the decrease must be brought into account for the purposes of this Part for the later period.
- (3) If there is an increase in the carrying value of a liability representing a loan relationship of the company between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,
 a debit equal to the increase must be brought into account for the purposes of this Part for the later period.
- (4) If there is a decrease in the carrying value of such a liability between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,
 a credit equal to the decrease must be brought into account for the purposes of this Part for the later period.
- (5) This section does not apply so far as such a credit or debit as is mentioned in this section falls to be brought into account apart from this section.

### 317 Carrying value **U.K.**

- (1) In section 316 “carrying value” means the carrying value of the asset or liability recognised for accounting purposes, except as provided in subsection (4).
- (2) For the purposes of this section the “carrying value” of an asset or liability includes amounts recognised for accounting purposes in relation to the loan relationship in respect of—
  - (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses (including provisions for bad or doubtful debts).
- (3) For the meaning of “impairment loss” see section 476(1).
- (4) In determining the profits and losses to be recognised in determining the carrying value of the asset or liability for the purposes of this section, the provisions specified in subsection (5) apply as they apply for the purposes of determining the credits and debits to be brought into account under this Part.
- (5) Those provisions are—
  - (a) sections 340 and 341 (continuity of treatment on group transfers and transfers of insurance business),
  - (b) section 349(2) (application of amortised cost basis of accounting to connected companies relationships),
  - (c) section 354 (exclusion of debits for impaired or released connected companies debts),

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- (d) section 360 (exclusion of credits on reversal of impairments of connected companies debts),
- (e) sections 361 to 363 (deemed debt releases on impaired debts becoming held by connected company),
- (f) Chapter 8 (connected parties relationships: late interest),
- (g) sections 399 and 400 (treatment of index-linked gilt-edged securities),
- (h) section 404 (restriction on deductions etc relating to FOTRA securities),
- (i) sections 409 to 412 (deeply discounted securities of close companies),
- (j) section 415(2) (loan relationships with embedded derivatives),
- (k) sections 422 and 423 (transfer of loan relationships on European cross-border transfers of business),
- (l) sections 433 and 434 (transfer of loan relationships on European cross-border mergers),
- (m) section 454(4) (accounting method where rate of interest is reset),
- (n) section 465 (exclusion of distributions except in tax avoidance cases),
- (o) paragraph 62 of Schedule 2 (disregard of pre-2005 disallowed debits), and
- (p) paragraph 69 of Schedule 2 (5½% Treasury Stock 2008-2012 not redeemed before 6 April 2009).

### **318 Change of accounting policy following cessation of loan relationship** **U.K.**

- (1) This section applies if—
  - (a) the company has ceased to be a party to a loan relationship in an accounting period (“the cessation period”),
  - (b) section 331 (company ceasing to be party to loan relationship) applied to the cessation, and
  - (c) there is a difference between the amount outstanding in respect of the loan relationship (see subsection (5))—
    - (i) at the end of the earlier period, and
    - (ii) at the beginning of the later period.
- (2) In the case of an increase in that amount—
  - (a) if the company was the creditor under the loan relationship, it must bring into account for the later period a credit equal to the increase for the purposes of this Part, and
  - (b) if the company was the debtor under the loan relationship, it must bring into account for the later period a debit equal to the increase for the purposes of this Part.
- (3) In the case of a decrease in that amount—
  - (a) if the company was the creditor under the loan relationship, it must bring into account for the later period a debit equal to the decrease for the purposes of this Part, and
  - (b) if the company was the debtor under the loan relationship, it must bring into account for the later period a credit equal to the decrease for the purposes of this Part.
- (4) Subsections (2) and (3) do not apply so far as the credit or debit falls to be brought into account apart from this section.

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- (5) In this section “the amount outstanding in respect of the loan relationship” means so much of the recognised deferred income or recognised deferred loss from the loan relationship as has not been represented by credits or debits brought into account under this Part in respect of the relationship.
- (6) In subsection (5)—
- “recognised deferred income”, in relation to a loan relationship, means the amount recognised in the company's balance sheet in accordance with generally accepted accounting practice as deferred income in respect of the profits which arose from the relationship or a related transaction in the cessation period, and
- “recognised deferred loss”, in relation to a loan relationship, means the amount so recognised as deferred loss in respect of the losses which so arose.

### 319 General power to make regulations about changes in accounting policy U.K.

- (1) The Treasury may by regulations make provision for cases where there is a change of accounting policy in drawing up a company's accounts from one period of account to the next which affects the amounts to be brought into account for accounting purposes in respect of the company's loan relationships.
- (2) The regulations may provide for any credits or debits which would otherwise be brought into account for the purposes of this Part—
- (a) not to be brought into account,
  - (b) to be brought into account only to a prescribed extent, or
  - (c) to be brought into account over a prescribed period or in prescribed circumstances.
- (3) Regulations under this section may, in particular, modify the operation of sections 315 to 318.
- (4) The regulations may make—
- (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.
- (5) The regulations may apply to periods of account beginning before they are made, but not earlier than the beginning of the calendar year in which they are made.

*Rules differing from generally accepted accounting practice*

### 320 Credits and debits treated as relating to capital expenditure U.K.

- (1) This section applies if generally accepted accounting practice allows a credit or debit for an accounting period in respect of a company's loan relationship to be treated in the company's accounts as an amount brought into account in determining the value of a fixed capital asset or project.
- (2) Despite that treatment, the credit or debit is to be brought into account for the purposes of this Part, for the accounting period in which it is given, in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

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- (3) But subsection (2) does not apply to a debit which is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Part 8 (intangible fixed assets).
- (4) Subsections (5) and (6) apply if a debit is brought into account as mentioned in subsection (2).
- (5) No debit may be brought into account in respect of the writing down of so much of the value of the asset or project as is attributable to that debit.
- (6) No debit may be brought into account in respect of so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.

### **321 Credits and debits recognised in equity U.K.**

- (1) This section applies if in accordance with generally accepted accounting practice a credit or debit for a period in respect of a company's loan relationship—
  - (a) is recognised in equity or shareholders' funds, and
  - (b) is not recognised in any of the statements mentioned in section 308(1).
- (2) The credit or debit is to be brought into account for the period for the purposes of this Part in the same way as a credit or debit which is brought into account in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

### **322 Release of debts: cases where credits not required to be brought into account U.K.**

- (1) This section applies if—
  - (a) a liability to pay an amount under a company's debtor relationship is released, and
  - (b) the release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of that relationship.
- (2) The company is not required to bring into account a credit in respect of the release for the purposes of this Part if condition A, B or C is met.
- (3) Condition A is that the release is part of a statutory insolvency arrangement.
- (4) Condition B is that the release is—
  - (a) in consideration of shares forming part of the ordinary share capital of the debtor company, or
  - (b) in consideration of any entitlement to such shares.
- (5) Condition C is that—
  - (a) the debtor company meets one of the insolvency conditions (see subsection (6)), and
  - (b) the debtor relationship is not a connected companies relationship (see section 348).
- (6) For the purposes of this section a company meets the insolvency conditions if—
  - (a) it is in insolvent liquidation,
  - (b) it is in insolvent administration,

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- (c) it is in insolvent administrative receivership,
  - (d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 (c. 45) or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.
- (7) Section 323 applies for the interpretation of subsection (6).
- (8) For further cases where no credit in respect of the release is to be brought into account, see—
- (a) section 358 (exclusion of credits on release of connected companies debts: general), and
  - (b) section 359 (exclusion of credits on release of connected companies debts during creditor's insolvency).

### 323 Meaning of expressions relating to insolvency etc **U.K.**

- (1) For the purposes of section 322(6) a company is in insolvent liquidation during the period—
- (a) beginning when it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, and
  - (b) ending when the winding up is completed or otherwise brought to an end (whether under paragraph 37 or 38 of Schedule B1 to the Insolvency Act 1986 (c. 45) or otherwise).
- (2) In subsection (1) “liquidation” has the meaning given in—
- (a) section 247(2) of the Insolvency Act 1986, or
  - (b) Article 6(2) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) For the purposes of section 322(6) a company in administration is in insolvent administration if it entered administration under—
- (a) Schedule B1 to the Insolvency Act 1986, or
  - (b) Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
- at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of the administration.
- (4) For the purposes of section 322(6) a company is in insolvent administrative receivership if—
- (a) an appointment of an administrative receiver is in force in relation to the company, and
  - (b) the company was put into administrative receivership at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of administrative receivership.
- (5) In subsection (4) “administrative receiver” has the same meaning as in—
- (a) Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 (c. 45), or



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(b) Part 4 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),  
and “administrative receivership” is to be read accordingly.

### **324 Restriction on debits resulting from revaluation** **U.K.**

- (1) No debit is to be brought into account for the purposes of this Part as a result of the revaluation of an asset representing a creditor relationship of a company except—
  - (a) an impairment loss, or
  - (b) a debit resulting from a release by the company of any liability under the relationship.
- (2) For the meaning of “impairment loss” see section 476(1).
- (3) The reference in subsection (1) to revaluation of an asset includes any case where a provision or allowance is made by the company reducing the carrying value of the asset or of a group of assets including the asset in question.
- (4) This section does not affect the debits to be brought into account in respect of exchange gains or losses.
- (5) This section does not apply if fair value accounting is used.

### **325 Restriction on credits resulting from reversal of disallowed debits** **U.K.**

- (1) No credit is to be brought into account for the purposes of this Part in respect of the reversal of a debit disallowed by section 324(1).
- (2) This section does not apply if fair value accounting is used.
- (3) See also paragraph 61 of Schedule 2 (restriction on bringing into account credits resulting from reversal of debits disallowed in a period of account beginning before 1 January 2005).

### **326 Writing off government investments** **U.K.**

- (1) This section applies if a government investment in a company is written off by the release of a liability to pay any amount under a debtor relationship of the company.
- (2) The company is not required to bring into account a credit for the purposes of this Part in respect of the release.
- (3) Section 400(7) and (8) of ICTA (write-off of government investment) applies for interpreting the reference in subsection (1) to a government investment in a company being written off as it applies for the purposes of section 400(1) of that Act.

### **327 Disallowance of imported losses etc** **U.K.**

- (1) This section applies for an accounting period of a company (“the loss period”) if—
  - (a) apart from this section, a loss arising in connection with a loan relationship of the company would fall to be brought into account for the purposes of this Part, and
  - (b) the loss is wholly or partly referable to a time when the relationship was not subject to United Kingdom taxation.

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- (2) The amounts brought into account for the loss period for the purposes of this Part must be such as to secure that none of the loss referable to a time when the relationship was not so subject is treated for those purposes as arising in the loss period or any other accounting period of the company.
- (3) For the purposes of this section a loss is referable to a time when a relationship is not subject to United Kingdom taxation so far as, at the time to which the loss is referable, the company would not have been chargeable to corporation tax in the United Kingdom on any profits arising from the relationship.
- (4) If the company was not a party to the relationship at the time to which the loss is referable, subsection (3) applies as if the reference to the company were a reference to the person who at that time was in the same position as respects the relationship as is subsequently held by the company.
- (5) An amount which would be brought into account for the purposes of this Part in respect of any matter apart from this section is treated for the purposes of section 464(1) (amounts brought into account under this Part excluded from being otherwise brought into account) as if it were so brought into account.
- (6) Accordingly, that amount must not be brought into account for corporation tax purposes as respects that matter either under this Part or otherwise.
- (7) This section does not apply if fair value accounting is used.

#### *Exchange gains and losses*

### **328 Exchange gains and losses U.K.**

- (1) The reference in section 307(3) to the profits and losses arising to a company from its loan relationships and related transactions includes a reference to exchange gains and losses so arising.
- (2) But subsection (1) is subject to subsections (3) and (4).
- (3) Subsection (1) does not apply to an exchange gain or loss of a company so far as—
  - (a) it arises—
    - (i) in relation to an asset or liability representing a loan relationship of the company, or
    - (ii) as a result of the translation from one currency to another of the profit or loss of part of the company's business, and
  - (b) it is recognised in the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.
- (4) Subsection (1) does not apply to so much of an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company as is within a description specified for the purpose in regulations made by the Treasury.
- (5) The Treasury may by regulations make provision for or in connection with bringing into account in specified circumstances amounts to which subsection (1) does not apply because of subsection (3) or (4).

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- (6) The reference in subsection (5) to bringing amounts into account is a reference to bringing amounts into account for the purposes of this Part as credits or debits arising to a company from its loan relationships.
- (7) The regulations may—
  - (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other specified conditions.
- (8) For the meaning of references to exchange gains or losses from loan relationships, see section 475.

*Pre-loan relationship, abortive and pre-trading expenses*

**329 Pre-loan relationship and abortive expenses U.K.**

- (1) This section applies if—
  - (a) a company may enter into a loan relationship or related transaction but has not yet done so,
  - (b) it incurs any expenses for purposes connected—
    - (i) with entering into it, or
    - (ii) with giving effect to any obligation which might arise under it, and
  - (c) had the company entered into the relationship or transaction, the expenses would be expenses within section 307(3)(c).
- (2) The expenses are treated as expenses in relation to which debits may be brought into account in accordance with section 307(3) to the same extent as if the company had entered into the relationship or transaction.

**330 Debits in respect of pre-trading expenditure U.K.**

- (1) This section applies if—
  - (a) a non-trading debit is given for an accounting period of a company for the purposes of this Part, and
  - (b) within the period of 2 years beginning with the end of the period the company makes an election for the purposes of this section in respect of the debit.
- (2) The debit must not be brought into account for the purposes of this Part as a non-trading debit for that period.
- (3) Instead, if conditions A and B are met in respect of a trade, the debit—
  - (a) is treated for the purposes of this Part as if it were a debit for the accounting period in which the company begins to carry on the trade, and
  - (b) is to be brought into account in accordance with section 297(3) (trading debits).
- (4) Condition A is that the company begins to carry on the trade within the period of 7 years after the end of the accounting period for which a non-trading debit is given for the purposes of this Part.
- (5) Condition B is that that debit is such that, if it were given for the accounting period in which the company begins to carry on the trade, it would be brought into account by reference to that trade in accordance with section 297(3).

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### *Company ceasing to be party to loan relationship*

#### **331 Company ceasing to be party to loan relationship** **U.K.**

- (1) This section applies if—
- (a) a company ceases to be a party to a loan relationship in an accounting period (“the cessation period”),
  - (b) profits or losses arise to the company from the loan relationship in that period, and
  - (c) the credits or debits brought into account for the purposes of this Part for that period do not include credits or debits representing the whole of those profits or losses.
- (2) Credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period must continue to be brought into account under this Part over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a loan relationship to which the company is a party in those periods.
- (3) Subsection (4) applies if any question arises how far in a post-cessation period—
- (a) the company is a party to the loan relationship—
    - (i) for the purposes of a trade it carries on, or
    - (ii) for any other particular purpose or purposes, or
  - (b) the loan relationship is referable to a particular business the company carries on or a particular description of such business.
- (4) The question is to be determined by reference to the circumstances immediately before the company ceased to be a party to the loan relationship, instead of the circumstances in the post-cessation period.
- (5) Subsection (6) applies if any question arises—
- (a) how far the loan relationship has a particular purpose in a post-cessation period, or
  - (b) whether there is a connection between the company and any other person for a post-cessation period for the purposes of this Part.
- (6) The question is to be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.

#### **332 Repo, stock lending and other transactions** **U.K.**

- (1) This section applies if—
- (a) a company ceases to be a party to a loan relationship in any accounting period, for example as a result of the disposal of the rights or liabilities under the relationship under a repo or stock lending arrangement, but
  - (b) nonetheless, in accordance with generally accepted accounting practice, amounts in respect of the relationship are recognised in determining the profit or loss of the company for that or any subsequent accounting period.
- (2) Despite ceasing to be a party to the relationship, the company must bring amounts in respect of the relationship into account for those periods for the purposes of this Part.

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- (3) The amounts that must be so brought into account are those that are so recognised in respect of the relationship (but subject to the provisions of this Part, including, in particular, section 307(3)).
- (4) This section does not apply in relation to any amount in respect of a loan relationship which is brought into account for this Part as a result of—
  - (a) section 331 (company ceasing to be party to a loan relationship), or
  - (b) section 550 (ignoring effect on borrower of sale of securities: debtor repos, debtor quasi-repos and other arrangements).
- (5) Section 331(3) and (4) applies in relation to any time after the company ceases to be a party to a loan relationship in a case where this section applies as it applies where section 331 applies.

#### *Company moving abroad*

### **333 Company ceasing to be UK resident U.K.**

- (1) If a company ceases to be UK resident, this Part applies as if—
  - (a) immediately before so ceasing the company had assigned the assets and liabilities which represent its loan relationships for consideration of an amount equal to their fair value at that time, and
  - (b) it had immediately reacquired them for consideration of the same amount.
- (2) Subsection (1) does not apply in relation to an asset or liability so far as immediately after the company ceases to be UK resident the asset is held or the liability is owed for the purposes of a permanent establishment of the company in the United Kingdom.
- (3) Subsection (1) does not apply if—
  - (a) the conditions in section 344(1)(a) to (c) are met in relation to the company (transferee leaving group after replacing transferor as party to loan relationship), and
  - (b) it ceases to be UK resident at the same time as it ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given in section 344(4).

### **334 Non-UK resident company ceasing to hold loan relationship for UK permanent establishment U.K.**

- (1) This section applies if an asset or liability representing a loan relationship of a company which is not UK resident ceases to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction (but see subsection (3)).
- (2) This Part applies as if—
  - (a) immediately before the asset or liability so ceases the company had assigned it, so far as so ceasing, for consideration of an amount equal to its fair value at that time, and
  - (b) the company had immediately reacquired it for consideration of the same amount.

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- (3) This section does not apply if—
- (a) the conditions in section 344(1)(a) to (c) are met in relation to the company (transferee leaving group after replacing transferor as party to loan relationship), and
  - (b) the asset or liability mentioned in subsection (1) ceases to be held or owed for the purposes of the permanent establishment at the same time as the company ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given in section 344(4).

## CHAPTER 4 **U.K.**

### CONTINUITY OF TREATMENT ON TRANSFERS WITHIN GROUPS OR ON REORGANISATIONS

#### *Application of this Chapter*

### **335 Introduction to Chapter **U.K.****

- (1) This Chapter applies in the cases mentioned in—
- (a) section 336 (transfers of loans on group transactions),
  - (b) section 337 (transfers of loans on insurance business transfers), and
  - (c) section 339 (issues of new securities on certain cross-border reorganisations).
- (2) The following sections make provision about how the credits and debits to be brought into account under this Part in those cases are determined—
- (a) sections 340 and 341 (which apply in the cases mentioned in sections 336 and 337), and
  - (b) sections 342 and 343 (which apply in the case mentioned in section 339).
- (3) Sections 344 to 346 provide for the treatment of a loan relationship in respect of which section 336 has applied where the company replacing another as a party to a loan relationship later leaves the group of companies of which they were members.
- (4) Section 347 (disapplication of Chapter where transferor party to avoidance involving subsequent transfer by transferee) disapplies this Chapter in some circumstances in the cases mentioned in 336 and 337.
- (5) For the meaning of references in this Chapter to a company replacing another as a party to a loan relationship, see section 338.
- (6) In this Chapter references to a company being a member of a group of companies are to be read in accordance with section 170 of TCGA 1992 (interpretation of sections 171 to 181 of that Act: groups).

### **336 Transfers of loans on group transactions **U.K.****

- (1) The case referred to in section 335(1)(a) is where—
- (a) there is a transaction within subsection (2) or a series of transactions within subsection (3), and
  - (b) as a result one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.

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- (2) A transaction is within this subsection if it is a related transaction between two companies which are—
  - (a) members of the same group, and
  - (b) within the charge to corporation tax in respect of that transaction.
- (3) A series of transactions is within this subsection if it is a series having the same effect as a related transaction between two companies each of which—
  - (a) has been a member of the same group at any time in the course of that series, and
  - (b) would be within the charge to corporation tax in respect of such a related transaction.
- (4) This Chapter does not apply as a result of this section in relation to—
  - (a) a transfer of an asset, or
  - (b) a transfer of rights under, or an interest in, an asset,as a result of a transaction within subsection (2) or a series of transactions within subsection (3) if immediately before or after the transfer the asset is within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (assets held for certain categories of long-term business).
- (5) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

### **337 Transfers of loans on insurance business transfers** **U.K.**

- (1) The case referred to in section 335(1)(b) is where—
  - (a) a transfer between two companies occurs to which this section applies, and
  - (b) as a result one of the companies (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.
- (2) This section applies to the transfers specified in subsection (3), so far as they are not excluded by subsection (4).
- (3) They are—
  - (a) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme, and
  - (b) any transfer between two companies which is a qualifying overseas transfer.
- (4) Subsection (3) does not apply to a transfer of an asset, or of rights under or an interest in an asset, if the asset—
  - (a) was within one of the categories set out in section 440(4) of ICTA immediately before the transfer, and
  - (b) is not within that category immediately after it.
- (5) Subsection (6) applies for the purposes of subsection (4) if one of the companies mentioned in subsection (3) is an overseas life insurance company.
- (6) An asset is taken as being in the same category both immediately before and immediately after a transfer if the asset—
  - (a) was in one category immediately before the transfer, and
  - (b) is within the corresponding category immediately after it.



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- (7) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

### 338 Meaning of company replacing another as party to loan relationship **U.K.**

- (1) References in this Chapter to one company (“A”) replacing another company (“B”) as a party to a loan relationship include references to A becoming a party to a loan relationship which—
- (a) confers rights within subsection (2),
  - (b) imposes obligations within subsection (2), or
  - (c) both confers such rights and imposes such obligations.
- (2) Rights or obligations are within this subsection if they are equivalent to those of B under a loan relationship to which B has previously ceased to be a party.
- (3) For the purposes of subsection (2), A's rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question—
- (a) the same rights against the same persons as to capital, interest and dividends, and
  - (b) the same remedies to enforce those rights.
- (4) For the purposes of subsection (3), any difference in—
- (a) the total nominal amounts of the assets representing each relationship,
  - (b) the form in which they are held, or
  - (c) the way in which they can be transferred,
- is ignored.
- (5) For the purposes of subsection (2), A's obligations under a debtor relationship are equivalent to obligations under another debtor relationship if each set of obligations subjects the holder of the liability representing the relationship in question to—
- (a) the same obligations to the same persons as to capital, interest and dividends, and
  - (b) the same remedies to enforce those obligations.
- (6) For the purposes of subsection (5), any difference in—
- (a) the total nominal amounts of the assets representing the creditor relationship corresponding to each relationship,
  - (b) the form in which those assets are held, or
  - (c) the way in which they can be transferred,
- is ignored.

### 339 Issues of new securities on certain cross-border reorganisations **U.K.**

- (1) The case referred to in section 335(1)(c) is where each of conditions A to D is met.
- (2) Condition A is that sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
- (a) apply in relation to an exchange as a result of section 135(3) of that Act (which provides for sections 127 to 130 to apply to an exchange of securities for those in another company as if it were a reorganisation), or

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- (b) would so apply but for section 116(5) of that Act (which disapplies sections 127 to 130 where the original shares or the new holding consist of or include a qualifying corporate bond).
- (3) Condition B is that the original shares consist of or include an asset representing a loan relationship.
- (4) Condition C is that company A is resident in one member State and company B is resident in another member State.
- (5) For the purposes of this section a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (6) Condition D is that neither Chapter 13 (European cross-border transfers of business) nor Chapter 14 (European cross-border mergers) applies in relation to the exchange.
- (7) In this section—
  - (a) “company A” and “company B” have the same meaning as in section 135 of TCGA 1992,
  - (b) “original shares” has the same meaning as it has for the purposes of sections 126 to 131 of that Act, as applied by section 135 of that Act, and
  - (c) “receiving company” means the company to which the issue of shares in or debentures of company B mentioned in section 135(1) of that Act is made.
- (8) If company B is a company to which section 135(5) of TCGA 1992 applies (companies with no share capital), the reference in subsection (7)(c) to the shares in or debentures of company B includes a reference to any interests in the company possessed by its members.

*Continuity of treatment: transfer of loan at notional carrying value*

### **340 Group transfers and transfers of insurance business: transfer at notional carrying value U.K.**

- (1) This section applies in the cases mentioned in—
  - (a) section 336 (transfers of loans on group transactions), and
  - (b) section 337 (transfers of loans on insurance business transfers).
- (2) The credits and debits to be brought into account for the purposes of this Part in respect of the loan relationship referred to in section 336(1)(b) or section 337(1)(b) are determined in accordance with subsections (3) to (5).
- (3) For the accounting period in which the transaction or, as the case may be, the first of the series of transactions takes place, the transferor is treated as having entered into that transaction for consideration of an amount equal to the notional carrying value of the asset or liability representing the relationship (see subsection (6)).
- (4) For any accounting period in which the transferee is a party to the relationship, it is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to its notional carrying value.

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- (5) If a discount arises in respect of the transaction or series of transactions, the consideration is increased for the purposes of subsection (3) (but not subsection (4)) by the amount of the discount.
- (6) For the purposes of this section—
  - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),
  - (b) section 480(5) (when discount arises) applies as it applies for the purposes of section 480, and
  - (c) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (7) Schedule 28AA to ICTA (provision not at arm's length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this section.
- (8) This section is subject to sections 332 and 341.

### **341 Transferor using fair value accounting U.K.**

- (1) This section applies instead of section 340 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (5)).
- (2) The amount which is to be brought into account by the transferor in respect of the transaction or the series of transactions referred to in section 340(3) (“the transferor's amount”) is—
  - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
  - (b) if a liability is to be brought into account, its fair value as at that date.
- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor's amount.
- (4) If a discount arises in respect of the transaction or series of transactions, the transferor's amount is increased for the purposes of subsection (2) (but not subsection (3)) by the amount of the discount.
- (5) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.
- (6) It does not matter for the purposes of subsection (5) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.
- (7) For the purposes of this section, section 480(5) (when discount arises) applies as it applies for the purposes of section 480.

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(8) This section is subject to section 332.

**342 Issues of new securities on reorganisations: disposal at notional carrying value** **U.K.**

- (1) This section applies in the case mentioned in section 339.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the exchange were a disposal of the asset representing the loan relationship referred to in section 339(3) for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount that would have been its carrying value in the accounts of the receiving company if a period of account had ended immediately before the date when the exchange occurred.
- (4) In this section—
  - “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
  - “receiving company” has the meaning given in section 339(7).
- (5) This section is subject to section 343.

**343 Receiving company using fair value accounting** **U.K.**

- (1) This section applies instead of section 342 if, in a case where that section would otherwise apply, the receiving company is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the receiving company in respect of the exchange (“the disposal amount”) is the fair value of the asset representing the loan relationship as at the date when the exchange occurred, or of the rights under or interest in that relationship as at that date.
- (3) For any accounting period in which company B is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, company B is treated as if it had acquired the asset representing the relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (5) and (6) of section 341 apply for the purposes of this section as they apply for the purpose of that section, taking references in that section to the transferor as references to the receiving company.
- (5) In this section “company B”, “original shares” and “receiving company” have the meaning given in section 339(7).

*Transferee leaving group after replacing transferor as party to loan relationship*

**344 Introduction** **U.K.**

- (1) Sections 345 and 346 apply if—

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- (a) this Chapter applies in the case mentioned in section 336 (transfers of loans on group transactions),
  - (b) section 341 (transferor using fair value accounting) does not apply, and
  - (c) before the end of the relevant 6 year period and while still a party to the relevant loan relationship, the transferee ceases to be a member of the relevant group.
- (2) But the transferee is not treated for the purposes of this section and sections 345 and 346 as having left the relevant group if—
- (a) an asset or liability which represents a loan relationship is transferred in the course of a transfer or merger in relation to which Chapter 13 (European cross-border transfers of business) or Chapter 14 (European cross-border mergers) applies, and
  - (b) the transferee ceases to be a member of the relevant group in consequence of the transfer or merger.
- (3) In a case where subsection (2) applies, if the transferee becomes a member of another group in consequence of the transfer or merger, it is treated for the purposes of this section and sections 345 and 346 as if the relevant group and the other group were the same.
- (4) In this section and sections 345 and 346—
- “the relevant 6 year period” means the period of 6 years following—
    - (a) in a case where section 340 applies because of a transaction within section 336(2) (“case A”), that transaction, or
    - (b) in a case where section 340 applies because of a series of transactions within section 336(3) (“case B”), the last transaction of that series,
  - “the relevant group” means—
    - (a) in case A, the group mentioned in section 336(2), and
    - (b) in case B, the group mentioned in section 336(3), and
  - “the relevant loan relationship” means the loan relationship mentioned in section 336(1)(b).

### **345 Transferee leaving group otherwise than because of exempt distribution U.K.**

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group, and
  - (b) it does not so cease just because of a distribution which is exempt as a result of—
    - (i) section 213(2) of ICTA (exempt distributions), or
    - (ii) section 213A of ICTA (exempt distributions: division of business).
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned the asset or liability representing the relevant loan relationship immediately before ceasing to be a member of the relevant group,
  - (b) the assignment had been for consideration of an amount equal to the fair value of the asset or liability at that time, and
  - (c) the transferee had immediately reacquired the asset or liability for consideration of the same amount.

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- (3) Condition A is that if this Part applied as mentioned in subsection (2) because of that subsection applying, a credit would be brought into account for the purposes of this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the relevant loan relationship is a creditor relationship,
  - (b) the transferee has a hedging relationship between a derivative contract and the creditor relationship, and
  - (c) because of section 631(2)(a) and (b) (transferee leaving group otherwise than because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 7 (derivative contracts) in respect of the derivative contract.
- (5) Section 707 (meaning of “hedging relationship”) applies for the purposes of this section.

### **346 Transferee leaving group because of exempt distribution U.K.**

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt as a result of—
    - (i) section 213(2) of ICTA (exempt distributions), or
    - (ii) section 213A of that Act (exempt distributions: division of business),
 and
  - (b) there is a chargeable payment within the meaning of section 214(2) of that Act (chargeable payments connected with exempt distributions) within 5 years after the making of that distribution.
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned the asset or liability representing the relevant loan relationship immediately before the chargeable payment was made,
  - (b) the assignment had been for consideration of an amount equal to the fair value of the asset or liability immediately before the transferee ceased to be a member of the relevant group, and
  - (c) the transferee had immediately reacquired the asset or liability for consideration of the same amount.
- (3) Condition A is that if subsection (2) applied a credit would be brought into account for the purposes of this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the relevant loan relationship is a creditor relationship,
  - (b) the transferee has a hedging relationship between a derivative contract and the creditor relationship, and
  - (c) because of section 632(2)(a) and (b) (transferee leaving group because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 7 (derivative contracts) in respect of the derivative contract.
- (5) Section 707 (meaning of “hedging relationship”) applies for the purposes of this section.



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### *Disapplication of Chapter where transferor party to avoidance*

#### **347 Disapplication of Chapter where transferor party to avoidance U.K.**

- (1) This Chapter does not apply in the cases mentioned in—
  - (a) section 336 (transfers of loans on group transactions), and
  - (b) section 337 (transfers of loans on insurance business transfers),
 if conditions A and B are met.
- (2) Condition A is that the transferor is a party to arrangements in accordance with which there is likely to be a transfer of rights or liabilities under the loan relationship by the transferee to another person in circumstances in which section 336 or 337 would not apply.
- (3) Condition B is that the purpose or one of the main purposes of the arrangements is to secure a tax advantage for the transferor or a person connected with it.
- (4) This Chapter does not apply in relation to a disposal in the cases mentioned in subsection (1) if section 455 (disposals for consideration not fully recognised by accounting practice) applies in relation to the disposal.
- (5) In this section—
 

“arrangements” includes any scheme, agreement, understanding, transaction or series of transactions, and

“transfer” includes any arrangement which equates in substance to a transfer (including any acquisition or disposal of, or increase or decrease in, a share of the profits or assets of a partnership).

## **CHAPTER 5 U.K.**

### CONNECTED COMPANIES RELATIONSHIPS: INTRODUCTION AND GENERAL

#### **348 Introduction: meaning of “connected companies relationship” U.K.**

- (1) This Chapter contains some general rules relating to connected companies relationships.
- (2) For the purposes of this Part a debtor relationship of a company is a connected companies relationship if there is a connection between—
  - (a) the company, and
  - (b) another company standing in the position of a creditor as respects the debt in question.
- (3) For the purposes of subsection (2) a company is treated as standing in the position of a creditor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (4) For the purposes of this Part a creditor relationship of a company is a connected companies relationship if there is a connection between—
  - (a) the company, and
  - (b) another company standing in the position of a debtor as respects the debt in question.



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- (5) For the purposes of subsection (4) a company is treated as standing in the position of a debtor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (6) For the purposes of this Part, if a loan relationship is a connected companies relationship at any time in an accounting period, it is treated as being such a relationship for the period.
- (7) In this section “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

### **349 Application of amortised cost basis to connected companies relationships** **U.K.**

- (1) This section applies if a loan relationship is a connected companies relationship for an accounting period.
- (2) The credits and debits which are to be brought into account for the purposes of this Part in respect of the relationship for the period are determined on an amortised cost basis of accounting.
- (3) Subsection (2) does not apply if section 454(4) (which requires fair value accounting to be applied to reset bonds etc) applies.
- (4) See also section 534(8) (which disapplies this section where the requirement to apply fair value accounting under section 534(1) applies).

### **350 Companies beginning to be connected** **U.K.**

- (1) This section applies if—
  - (a) a company's loan relationship becomes a connected companies relationship, and
  - (b) as a result of the application of section 349 the company—
    - (i) brings into account credits or debits determined in accordance with fair value accounting for one accounting period (“the earlier period”), and
    - (ii) brings into account credits or debits determined in accordance with an amortised cost basis of accounting for the next accounting period (“the later period”).
- (2) If—
  - (a) the fair value of a relevant asset at the end of the earlier period (“FVA”), exceeds
  - (b) the cost of the asset which would be given at that time on an amortised cost basis of accounting (“ACA”),the excess must be brought into account for the later period as a debit for the purposes of this Part.
- (3) If ACA exceeds FVA, the excess must be brought into account for the later period as a credit for the purposes of this Part.
- (4) If—

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- (a) the fair value of a relevant liability at the end of the earlier period (“FVL”), exceeds
  - (b) the cost of the liability which would be given at that time on an amortised cost basis of accounting (“ACL”),
- the excess must to be brought into account for the later period as a credit for the purposes of this Part.
- (5) If ACL exceeds FVL, the excess must to be brought into account for the later period as a debit for the purposes of this Part.

### 351 Companies ceasing to be connected **U.K.**

- (1) This section applies if—
- (a) a company's loan relationship ceases to be a connected companies relationship, and
  - (b) as a result of section 349 ceasing to apply the company—
    - (i) brings into account credits or debits determined in accordance with an amortised cost basis of accounting for one accounting period (“the earlier period”), and
    - (ii) brings into account credits or debits determined in accordance with a fair value basis of accounting for the next accounting period (“the later period”).
- (2) If—
- (a) the fair value of a relevant asset at the end of the earlier period (“FVA”), exceeds
  - (b) the cost of the asset which would be given at that time on an amortised cost basis of accounting (“ACA”),
- the excess must be brought into account for the later period as a credit for the purposes of this Part.
- (3) If ACA exceeds FVA, the excess must be brought into account for the later period as a debit for the purposes of this Part.
- (4) If—
- (a) the fair value of a relevant liability at the end of the earlier period (“FVL”), exceeds
  - (b) the cost of the liability which would be given at that time on an amortised cost basis of accounting (“ACL”),
- the excess must be brought into account for the later period as a debit for the purposes of this Part.
- (5) If ACL exceeds FVL, the excess must be brought into account for the later period as a credit for the purposes of this Part.

### 352 Disregard of related transactions **U.K.**

- (1) This section applies in an accounting period if—
- (a) section 349 applies in respect of a creditor relationship of a company for the period, and
  - (b) a related transaction takes place in relation to the relationship in the period.

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- (2) The credits brought into account in respect of the relationship for the period for the purposes of this Part must not be less than they would have been if—
  - (a) the transaction had not taken place, and
  - (b) no amounts had accrued after the transaction took place.
- (3) The debits brought into account in respect of the loan relationship for the period for the purposes of this Part must not be more than they would have been in that case.
- (4) Nothing in this section affects the credits or debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

## CHAPTER 6 U.K.

### CONNECTED COMPANIES RELATIONSHIPS: IMPAIRMENT LOSSES AND RELEASES OF DEBTS

#### *Introduction*

### 353 Introduction to Chapter U.K.

- (1) This Chapter contains rules about impairment losses and releases of debts in the case of companies connected with other companies.
- (2) In particular, see—
  - (a) sections 354 to 357 (which prevent debits in respect of impairment losses and release debits from being brought into account in the case of connected companies relationships, subject to some exceptions),
  - (b) sections 358 to 360 (which exclude credits in respect of the release of debts or the reversal of impairments from being brought into account in that case, except where the release is a deemed release under section 361 or 362), and
  - (c) sections 361 to 363 (which treat debt releases as occurring when impaired debts become held by companies which might otherwise benefit from the exclusion under section 358).
- <sup>F1</sup>(3) .....
- (4) Section 466 (companies connected for an accounting period) applies for the purposes of sections 354 to 360.
- (5) For the circumstances in which companies are connected for sections 361 and 362, see section 363.
- (6) For the meaning of “impairment loss [<sup>F2</sup>and release debit]” see section 476(1).

#### Textual Amendments

**F1** S. 353(3) omitted (22.4.2009 retrospective) by virtue of [Finance Act 2009 \(c. 10\), s. 42\(2\)\(a\)\(12\)](#)

**F2** Words in s. 353(6) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(2\)\(b\)\(12\)](#)

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*Exclusion of debits for impaired or released connected companies debts*

**354 Exclusion of debits for impaired or released connected companies debts** **U.K.**

- (1) The general rule is that no impairment loss or release debit in respect of a company's creditor relationship is to be brought into account for the purposes of this Part for an accounting period if section 349 (application of amortised cost basis to connected companies relationship) applies to the relationship for the period.
- (2) That rule is subject to—
  - (a) section 356 (swapping debt for equity), and
  - (b) section 357 (insolvent creditors).
- (3) Nothing in this section affects the debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

**355 Cessation of connection** **U.K.**

- (1) This section applies if, in the case of a creditor relationship of a company—
  - (a) an impairment loss or release debit is excluded by section 354 from being brought into account for any accounting period, and
  - (b) there is a later accounting period for which the creditor relationship in respect of the debt is not a connected companies relationship.
- (2) So far as any amount represents the impairment loss or release debit, no debit may be brought into account in respect of it—
  - (a) for the first accounting period within subsection (1)(b), or
  - (b) for any subsequent such accounting period.

**356 Exception to section 354: swapping debt for equity** **U.K.**

- (1) An impairment loss or release debit in relation to a liability to pay any amount to a company (“the creditor company”) under its creditor relationship is not prevented from being brought into account by section 354 if conditions A, B and C are met.
- (2) Condition A is that the creditor company treats the liability as discharged.
- (3) Condition B is that it does so in consideration of—
  - (a) any shares forming part of the ordinary share capital of the company on which the liability would otherwise have fallen, or
  - (b) any entitlement to such shares.
- (4) Condition C is that there would be no connection between the two companies for the accounting period in which the consideration is given if the question whether there is such a connection were determined by reference only to times before the creditor company—
  - (a) acquired possession of the shares, or
  - (b) acquired any entitlement to them.

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### **357 Exception to section 354: insolvent creditors** **U.K.**

- (1) An impairment loss or release debit is not prevented from being brought into account by section 354 in relation to an amount accruing to a company (“the creditor”) if—
  - (a) condition A, B, C, D or E is met in relation to the creditor, and
  - (b) the amount accrues to the creditor at a time which is the relevant time for the condition in question.
- (2) Condition A is that the creditor is in insolvent liquidation, and for this condition the relevant time is any time in the course of the winding up.
- (3) Condition B is that the creditor is in insolvent administration, and for this condition the relevant time is any time in the course of the administration.
- (4) Condition C is that the creditor is in insolvent administrative receivership, and for this condition the relevant time is any time when the appointment of the administrative receiver is in force.
- (5) Condition D is that an appointment of a provisional liquidator is in force in relation to the creditor under section 135 of the Insolvency Act 1986 (c. 45) or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and for this condition the relevant time is any time when the appointment is in force.
- (6) Condition E is that under the law of a country or territory outside the United Kingdom, circumstances exist corresponding to those described in condition A, B, C or D, and for this condition the relevant time is any time corresponding to that described in the case of the condition in question.
- (7) Section 323 applies for interpreting this section as it applies for interpreting section 322(6).

*Exclusion of credits for connected companies debts on release or reversal of impairments*

### **358 Exclusion of credits on release of connected companies debts: general** **U.K.**

- (1) This section applies if—
  - (a) a liability to pay an amount under a company's debtor relationship is released,
  - (b) the release takes place in an accounting period for which—
    - (i) an amortised cost basis of accounting is used in respect of the relationship, and
    - (ii) the relationship is a connected companies relationship.
- (2) The company is only required to bring a credit into account in respect of the release for the purposes of this Part if it is a deemed release.
- (3) In subsection (2) “deemed release” means a release which is deemed to occur because of—
  - (a) section 361 (acquisition of creditor rights by connected company at undervalue), or
  - (b) section 362 (parties becoming connected where creditor's rights subject to impairment adjustment).

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### 359 Exclusion of credits on release of connected companies debts during creditor's insolvency **U.K.**

- (1) This section applies if—
  - (a) a liability to pay an amount under a company's debtor relationship is released,
  - (b) the release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of that relationship,
  - (c) condition A, B, C, D or E in section 357 is met in relation to the company releasing the amount,
  - (d) immediately before the time when the condition in question was first met the relationship was a connected companies relationship, and
  - (e) immediately after that time it was not such a relationship.
- (2) The company is not required to bring into account a credit in respect of the release for the purposes of this Part.

### 360 Exclusion of credits on reversal of impairments of connected companies debts **U.K.**

- (1) If an impairment loss is prevented from being brought into account by section 354, no credit in respect of any reversal of the impairment may be brought into account for the purposes of this Part.
- (2) Nothing in this section affects the credits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

*Deemed debt releases on impaired debts becoming held by connected company*

### 361 Acquisition of creditor rights by connected company at undervalue **U.K.**

- (1) This section applies if—
  - (a) a company (“D”) is a party to a loan relationship as debtor,
  - (b) another company (“C”) becomes a party to it as creditor,
  - (c) immediately after it does so C and D are connected,
  - (d) in a case where the person from whom C acquires its rights under the loan relationship is a company, in the period of account in which C acquires them there is no connection between C and that company,
  - (e) the amount or value of any consideration given by C for the acquisition is less than the pre-acquisition carrying value (see subsection (5)), and
  - (f) at least one of the conditions in subsection (2) is met.
- (2) The conditions are that—
  - (a) the acquisition is not an arm's length transaction, and
  - (b) there was a connection between C and D at any time in the period of 3 years beginning 4 years before the date of the acquisition.
- (3) C is treated as releasing its rights under the loan relationship when it acquires them.
- (4) The amount treated as released is the amount of the difference referred to in subsection (1)(e).

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- (5) In subsection (1)(e) “the pre-acquisition carrying value” means the amount which would be the carrying value of the liability under the loan relationship in D's accounts if a period of account had ended immediately before C became a party to it.
- (6) For the purposes of subsection (5) the carrying value is determined taking no account of—
  - (a) accrued amounts, or
  - (b) amounts paid or received in advance.

### **362 Parties becoming connected where creditor's rights subject to impairment adjustment U.K.**

- (1) This section applies if—
  - (a) a company (“D”) is a party to a loan relationship as debtor,
  - (b) another company (“C”) which—
    - (i) is a party to the loan relationship as creditor, and
    - (ii) is not connected with D,becomes connected with D, and
  - (c) the pre-connection carrying value would have been adjusted for impairment if a period of account had ended immediately before the companies became connected.
- (2) C is treated as releasing its rights under the loan relationship when C and D become connected.
- (3) The amount treated as released is the amount of the impairment adjustment referred to in subsection (1)(c).
- (4) In subsection (1)(c) “the pre-connection carrying value” means the amount that would be the carrying value of the asset representing the loan relationship in C's accounts if a period of account had ended immediately before the companies became connected.
- (5) For the purposes of subsection (4) the carrying value is determined taking no account of—
  - (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses.

### **363 Companies connected for sections 361 and 362 U.K.**

- (1) For the purposes of sections 361 and 362 there is a connection between two companies at any time if condition A or B is met at that time.
- (2) Condition A is that one company has control of the other.
- (3) Condition B is that both companies are under the control of the same person (but see subsection (6)).
- (4) For the purposes of sections 361 and 362 there is a connection between two companies in a period of account if there is a connection between them (within subsection (1)) at any time in the period.
- (5) Section 472 (meaning of “control”) applies for the purposes of this section.



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- (6) Condition B is not taken to be met just because two companies have been under the control of—
- (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department,
  - (e) a foreign sovereign power, or
  - (f) an international organisation.
- (7) Section 468 (connection between companies to be ignored in some circumstances) applies for the purposes of this section as it applies for the purposes of the provisions which apply section 466, taking references in sections 468 and 469 to the accounting period as references to the period of account.
- (8) For the meaning of “international organisation”, see section 476(2) and (3).

## CHAPTER 7 **U.K.**

### GROUP RELIEF CLAIMS INVOLVING IMPAIRED OR RELEASED CONSORTIUM DEBTS

#### 364 Introduction to Chapter **U.K.**

- (1) This Chapter applies if—
- (a) there is (or was) a relevant consortium creditor relationship (see subsection (2)), and
  - (b) either—
    - (i) an impairment loss is or has been brought into account for the purposes of this Part for any group accounting period by the creditor, or
    - (ii) a debit in respect of a release of liability under the relationship is or has been so brought into account.
- (2) For the purposes of this Chapter a relationship is a relevant consortium creditor relationship if—
- (a) it is a creditor relationship of—
    - (i) a company (the “member company”), which is a member of a consortium by which a consortium company is owned, or
    - (ii) a company (a “group member”) which is a member of the same group of companies as the member company but is not itself a member of the consortium, and
  - (b) the consortium company or, if that company is a holding company, a consortium company which is a subsidiary of that company is (or was) the debtor (the “debtor consortium company”).
- (3) The provisions of this Chapter—
- (a) reduce debits for impairment losses and release debits under relevant consortium creditor relationships where an amount surrendered as group relief by the consortium company is claimed by a member company or group member (see section 365),

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- (b) provide for a corresponding reduction in credits in respect of such relationships where a reduction within paragraph (a) has occurred (see section 367),
  - (c) reduce claims for group relief where debits within paragraph (a) for earlier group accounting periods exceed reductions within paragraph (b) (see section 368), and
  - (d) provide for such claims to be carried forward where they exceed such debits (see section 369).
- (4) In this Chapter “release debit” means a debit in respect of a release of liability under a relevant consortium creditor relationship.
- (5) If section 403C of ICTA (amount of relief in consortium cases) applies, effect must be given to that section before effect is given to this Chapter.
- (6) Expressions defined in this section have the same meaning in the other provisions of this Chapter, and sections 370 and 371 also apply for the interpretation of this Chapter.
- (7) For the meaning of “impairment loss” see section 476(1).

### **365 Reduction of impairment loss debits where group relief claimed U.K.**

- (1) This section applies for any group accounting period for which there is a net consortium debit.
- (2) For the purposes of this Chapter there is a net consortium debit for a group accounting period if—
- (a) the total of the impairment losses and release debits brought into account for that period in respect of relevant consortium creditor relationships by—
    - (i) the member company, and
    - (ii) every group member,exceeds
  - (b) the total credits so brought into account by them in connection with debts owed by the companies which are the debtor consortium companies in respect of those relationships.
- (3) The net consortium debit is equal to that excess.
- (4) If there is a claim for that group accounting period by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by the debtor consortium companies, the debits brought into account in respect of the impairment losses and the release debits mentioned in subsection (2)(a) are reduced.
- (5) The amount of reduction in the case of each of the debits referred to in subsection (4) (“the relevant debits”) is calculated as follows.

#### *Step 1*

Find the total amount which—

- (a) may be surrendered as group relief by the debtor consortium companies, and
- (b) is claimed as group relief for the group accounting period by the member company or any group member.

#### *Step 2*

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If the amount found at Step 1 does not exceed the net consortium debit, apportion the amount found at Step 1 between the relevant debits in proportion to their respective amounts.

If the amount found at Step 1 exceeds the net consortium debit, apportion so much of the amount found at Step 1 as does not exceed it between the relevant debits in proportion to their respective amounts.

(6) This section is subject to section 366.

**366 Effect where credit for release brought into account on amortised cost basis** **U.K.**

- (1) This section applies if—
- (a) a company releases liability under a relevant consortium creditor relationship of the company (“the release amount”), and
  - (b) the debtor consortium company brings into account an amount in respect of the release for any accounting period in accordance with an amortised cost basis of accounting.
- (2) An amount equal to the release amount is treated for the purposes of this Chapter as not being a debit brought into account for that period in relation to the relevant consortium creditor relationship.

**367 Reduction of credits exceeding impairment losses** **U.K.**

- (1) This section applies if, apart from this section, for any group accounting period—
- (a) the total of the impairment losses and release debits brought into account for that period in respect of relevant consortium creditor relationships by—
    - (i) the member company, and
    - (ii) every group member,
 is less than
  - (b) the total credits so brought into account by them in connection with debts owed by the companies which are the debtor consortium companies in respect of those relationships.
- (2) Those credits are reduced (but not below nil) in accordance with subsection (3).
- (3) The amount of reduction in the case of each credit is calculated as follows.

*Step 1*

Find the total amount by which the debits in respect of the relationships for previous group accounting periods have been reduced under section 365(4).

*Step 2*

Deduct the total amount by which credits have previously been reduced under this section from the amount found at Step 1.

*Step 3*

Apportion the amount found at Step 2 between the credits in proportion to their respective amounts.

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### **368 Reduction of claims where there are earlier net consortium debts** **U.K.**

- (1) This section applies if—
  - (a) for any group accounting period there is a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by debtor consortium companies, and
  - (b) the total amount of the net consortium debts for earlier group accounting periods in respect of the relevant consortium creditor relationships exceeds any reductions in respect of those debts falling to be made under section 365(4).
- (2) In this section that excess is referred to as “the unreduced debts amount”.
- (3) If—
  - (a) the claim is the only claim for that period, and
  - (b) it exceeds the unreduced debts amount,the claim is reduced by the unreduced debts amount.
- (4) If—
  - (a) the claim is not the only claim for that period, and
  - (b) the total of the claims exceeds the unreduced debts amount,the claim is reduced by the same proportion of the unreduced debts amount as the claim bears to that total.
- (5) In any other case, the claim is reduced to nil.

### **369 Carry forward of claims where there are no net consortium debts** **U.K.**

- (1) This section applies if for any group accounting period there is—
  - (a) a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by debtor consortium companies (as reduced under section 368, if it applies), and
  - (b) no net consortium debit in respect of the relevant consortium creditor relationships.
- (2) The claim (as so reduced) is carried forward and treated for the purposes of section 365—
  - (a) as increasing any such claim for group relief made by the claimant company for its next accounting period, or
  - (b) if apart from this subsection there would be no such claim, as being such a claim.

### **370 Group accounting periods** **U.K.**

- (1) In this Chapter “group accounting period” means—
  - (a) any accounting period of the member company beginning on or after 1 October 2002, or
  - (b) any accounting period of a group member which—
    - (i) begins on or after that date, and
    - (ii) corresponds to such an accounting period of the member company.

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- (2) Any such accounting period of the member company and any such corresponding accounting periods of group members are treated for the purposes of this Chapter as being the same accounting period.
- (3) For the purposes of this Chapter an accounting period of a group member corresponds to an accounting period of the member company if condition A, B or C is met.
- (4) Condition A is that the periods coincide.
- (5) Condition B is that the accounting period of the member company includes more than half of the accounting period of the group member.
- (6) Condition C is that—
  - (a) the accounting period of the member company includes part of the accounting period of the group member, and
  - (b) the remainder of that period is not within any accounting period of the member company.

### 371 Interpretation **U.K.**

- (1) In this Chapter—
  - “consortium company” means a company within section 402(3)(a), (b) or (c) of ICTA (surrender of relief between members of consortia),
  - “debtor consortium company” has the same meaning as in section 364 (see section 364(2)),
  - “group accounting period” is to be read in accordance with section 370,
  - “group member” has the same meaning as in section 364 (see section 364(2)),
  - “group relief” has the meaning given by section 402(1) of ICTA,
  - “holding company” means a company within section 402(3)(c) of ICTA,
  - “member”, in relation to a consortium, has the same meaning as in Chapter 4 of Part 10 of ICTA (group relief),
  - “member company” has the same meaning as in section 364 (see section 364(2)),
  - “net consortium debit” is to be read in accordance with section 365(2) and (3),
  - “relevant consortium creditor relationship” is to be read in accordance with section 364(2), and
  - “subsidiary”, in relation to a company which is a holding company, means a company which is within section 402(3)(b) of ICTA by reference to that holding company.
- (2) Any reference in this Chapter to a company being owned by a consortium is to be read in accordance with section 413(6) of ICTA.
- (3) Any reference in this Chapter to two companies being members of the same group of companies is a reference to those companies being members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3)(a) of that Act).

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## CHAPTER 8 U.K.

### CONNECTED PARTIES RELATIONSHIPS: LATE INTEREST

#### 372 Introduction to Chapter U.K.

- (1) This Chapter makes provision about the debits to be brought into account for the purposes of this Part in cases where certain conditions relating to interest that is not paid or is paid late are met and there is a connection between the parties to the loan relationship.
- (2) For those conditions and the rule that applies in those cases, see section 373 (late interest treated as not accruing until paid in some cases).
- (3) For the kinds of connections where the rule applies, see—
  - (a) section 374 (connection between debtor and person standing in position of creditor),
  - (b) section 375 (loans to close companies by participators etc),
  - (c) section 377 (party to loan relationship having major interest in other party), and
  - (d) section 378 (loans by trustees of occupational pension schemes).
- (4) For the meaning of “standing in the position of a creditor” in this Chapter, see section 379(1) (persons indirectly standing in the position of creditor).

#### 373 Late interest treated as not accruing until paid in some cases U.K.

- (1) Debits relating to interest payable under a company's debtor relationship are to be brought into account for the purposes of this Part on the assumption that the interest does not accrue until it is paid if—
  - (a) conditions A and B are met, and
  - (b) the case is within section 374, 375, 377 or 378.
- (2) Condition A is that the interest is not paid within the period of 12 months following the end of the accounting period in which it would be treated as accruing apart from subsection (1).
- (3) Condition B is that credits representing the full amount of the interest are not brought into account for the purposes of this Part in respect of the corresponding creditor relationship for any accounting period.
- (4) For the meaning of “corresponding creditor relationship” in cases where persons indirectly stand in the position of creditor, see section 379(2).
- (5) References in this Chapter to “the actual accrual period” are references to the accounting period in which the interest would be treated as accruing apart from subsection (1).

#### 374 Connection between debtor and person standing in position of creditor U.K.

- (1) The case to which this section applies is where there is for the actual accrual period a connection between—
  - (a) the company which has the debtor relationship, and

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- (b) a company standing in the position of creditor as respects the loan relationship.
- (2) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

### **375 Loans to close companies by participators etc** U.K.

- (1) The case to which this section applies is where—
  - (a) there is a time in the actual accrual period when the close company conditions are met, and
  - (b) neither the CIS-based close company conditions nor the CIS limited partnership conditions are met.
- (2) The close company conditions are that—
  - (a) the company which has the debtor relationship (“D”) is a close company, and
  - (b) a person (“C”) standing in the position of creditor as respects the loan relationship is—
    - (i) a participator in D,
    - (ii) the associate of a person who is participator in D,
    - (iii) a company of which a participator in D has control,
    - (iv) a company in which a participator in D has a major interest,
    - (v) a person who controls a company which is a participator in D,
    - (vi) the associate of a person within sub-paragraph (v), or
    - (vii) a company controlled by a person within sub-paragraph (v).
- (3) The CIS-based close company conditions are that—
  - (a) D is a CIS-based close company at all times when the close company conditions are met,
  - (b) C is not resident in a non-qualifying territory at any such time, and
  - (c) D is a small or medium-sized enterprise for the actual accrual period.
- (4) The CIS limited partnership conditions are that—
  - (a) the debt is one which is owed to, or to persons acting for, a CIS limited partnership,
  - (b) no member of that partnership is resident in a non-qualifying territory at any time in the actual accrual period,
  - (c) D has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) is met, and
  - (d) D is a small or medium-sized enterprise for the actual accrual period.
- (5) Section 376 applies for the interpretation of this section.

### **376 Interpretation of section 375** U.K.

- (1) For the purposes of section 375 and this section, section 414 of ICTA (meaning of “close company” in the Tax Acts) applies with the omission of section 414(1)(a) (exclusion of non-UK resident companies).
- (2) A person who is a participator in a company which controls another company is treated for the purposes of section 375 and this section as being a participator in that other company also.



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- (3) Subject to that, in section 375 and this section “participator”, in relation to a company, means a person who is a participator in the company for the purposes of Part 11 of ICTA because of section 417 of that Act, but not a person who is a participator for those purposes just because of being a loan creditor of the company.
- (4) Section 472 (meaning of “control”) applies for the purposes of section 375 and this section.
- (5) In section 375—
  - “CIS-based close company” means a company which would not be a close company apart from the rights and powers of one or more partners in a CIS limited partnership being attributed to another of the partners under section 416(6) of ICTA because of section 417(3)(a) of that Act,
  - “CIS limited partnership” means a limited partnership—
    - (a) which is a collective investment scheme, or
    - (b) which would be a collective investment scheme if it were not a body corporate,
  - “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
  - “resident” has the meaning given by paragraph 5B(6) of that Schedule, and
  - “small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.

### **377 Party to loan relationship having major interest in other party** **U.K.**

The case to which this section applies is where—

- (a) a person (“C”) standing in the position of a creditor as respects the loan relationship is a company, and
- (b) there is a time in the actual accrual period when—
  - (i) the company which has the debtor relationship (“D”) has a major interest in C, or
  - (ii) C has a major interest in D.

### **378 Loans by trustees of occupational pension schemes** **U.K.**

- (1) The case to which this section applies is where—
  - (a) the loan is one made by trustees of an occupational pension scheme, and
  - (b) condition A, B or C is met.
- (2) Condition A is that there is a time in the actual accrual period when the company which has the debtor relationship (“D”) is the employer of employees to whom the scheme relates.
- (3) Condition B is that there is a connection between D and such an employer for the actual accrual period.
- (4) Condition C is that a company is such an employer and there is a time in the actual accrual period when—
  - (a) D has a major interest in that company, or
  - (b) that company has a major interest in D.

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- (5) In this section “occupational pension scheme” has the meaning given in section 150(5) of FA 2004.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

### **379 Persons indirectly standing in the position of creditor** **U.K.**

- (1) For the purposes of this Chapter a person is treated as standing in the position of a creditor as respects a loan relationship if the person indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (2) If—
  - (a) a person (“C”) indirectly stands in the position of creditor as respects a loan relationship by reference to such a series of relationships or debts, and
  - (b) section 373 (late interest treated as not accruing until paid in some cases) applies in relation to the debtor relationship because of subsection (1),
 the reference in section 373(3) to the corresponding creditor relationship is a reference to C's creditor relationship.
- (3) In subsection (1) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

## **CHAPTER 9** **U.K.**

### PARTNERSHIPS INVOLVING COMPANIES

### **380 Partnerships involving companies** **U.K.**

- (1) This section applies if—
  - (a) a trade or business is carried on by a firm,
  - (b) any of the partners in the firm is a company (a “company partner”), and
  - (c) a money debt is owed by or to the firm.
- (2) In calculating the profits and losses of the trade or business for corporation tax purposes under section 1259 (calculation of firm's profits or losses), no credits or debits may be brought into account under this Part—
  - (a) in relation to the money debt, or
  - (b) in relation to any loan relationship that would fall to be treated for the purposes of the calculation as arising from the money debt.
- (3) Instead, each company partner must bring credits and debits into account under this Part in relation to the debt or relationship for each of its accounting periods in which the conditions in subsection (1) are met.
- (4) The following provisions of this Chapter contain special rules about the credits and debits to be brought into account under subsection (3)—
  - (a) section 381 (determinations of credits and debits by company partners: general),
  - (b) section 382 (company partners using fair value accounting),
  - (c) section 383 (lending between partners and the partnership),

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- (d) section 384 (treatment of exchange gains and losses), and
- (e) section 385 (company partners' shares where firm owns deeply discounted securities).

(5) In those provisions “company partner” has the same meaning as in this section.

### **381 Determinations of credits and debits by company partners: general U.K.**

- (1) The credits and debits to be brought into account under section 380(3) are to be determined separately for each company partner as follows.
- (2) The money debt owed by or to the firm is treated as if—
  - (a) it were owed by or, as the case may be, to the company partner, and
  - (b) it were so owed for the purposes of the trade or business which the company partner carries on.
- (3) If the money debt arises from a transaction for the lending of money—
  - (a) it continues to be treated as so arising, and
  - (b) accordingly the company partner is treated as having a loan relationship.
- (4) Anything done by or in relation to the firm in connection with the money debt is treated as done by or in relation to the company partner.
- (5) The credits and debits in the case of each company partner are the partner's appropriate share of the total credits and debits determined in accordance with subsections (2) to (4) (without any reduction for the fact that the debt is treated as owed by or to each company partner).
- (6) A company partner's “appropriate share” is the share that would be apportioned to it on the assumption in subsection (7).
- (7) The assumption is that the total credits and debits determined in accordance with subsections (2) to (4) are apportioned between the partners in the shares in which any profit or loss would be apportioned between them in accordance with the firm's profit-sharing arrangements.

### **382 Company partners using fair value accounting U.K.**

- (1) This section applies if a company partner uses fair value accounting in relation to its interest in the firm.
- (2) The credits and debits to be brought into account by the company partner under section 380(3) are to be determined on the basis of fair value accounting.

### **383 Lending between partners and the partnership U.K.**

- (1) This section applies if—
  - (a) the money debt owed by or to the firm arises from a transaction for the lending of money, and
  - (b) there is a time in an accounting period of a company partner (“the relevant accounting period”) when conditions A, B and C are met.
- (2) Condition A is that—

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- (a) if the debt is owed by the firm, the company partner stands in the position of a creditor and accordingly has a creditor relationship, and
  - (b) if the debt is owed to the firm, the company partner stands in the position of a debtor and accordingly has a debtor relationship.
- (3) Condition B is that the company partner controls the firm either alone or taken together with one or more other company partners connected with the company partner (see subsection (7)).
- (4) Condition C is that the company partner or any other company partner is treated under section 381(3) as if—
- (a) it had the debtor relationship which corresponds to the creditor relationship mentioned in subsection (2)(a), or
  - (b) it had the creditor relationship which corresponds to the debtor relationship mentioned in subsection (2)(b).
- (5) If this section applies, for the purposes of this Part for the relevant accounting period there is taken to be a connection between—
- (a) the company partner, and
  - (b) each company partner that is within subsection (4) (including the company partner itself if it is within that subsection),
- as a result of one of them having control of the other at a time in the period for the purposes of section 466(2).
- (6) The provisions of this Part about connected companies relationships apply accordingly.
- (7) For the purposes of subsection (3), one company partner is connected with another at any time in an accounting period if at that or any other time in the accounting period—
- (a) one controls the other, or
  - (b) both are under the control of the same person.
- (8) Section 472 (meaning of “control”) applies for the purposes of [F3 subsection (7) (but see section 840 of ICTA for the meaning of “control” in subsection (3))].

#### Textual Amendments

**F3** Words in s. 383(8) substituted (1.4.2009 retrospective) by [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), **6(2)**

### 384 Treatment of exchange gains and losses **U.K.**

- (1) Whether credits and debits in respect of exchange gains and losses are to be brought into account by a company partner under this Chapter as a result of section 328(1), or that section is disapplied by section 328(3), depends on the firm's accounts.
- (2) Section 328(3) applies only so far as exchange gains and losses are recognised in the firm's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.
- (3) Accordingly, a company partner must bring credits and debits into account under this Chapter in respect of exchange gains and losses which are not so recognised.

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- (4) For the meaning of references in this section to exchange gains and losses, see section 475.

### **385 Company partners' shares where firm owns deeply discounted securities** **U.K.**

- (1) This section applies if the firm holds a deeply discounted security.
- (2) Each partner is treated for the purposes of this Chapter as beneficially entitled to the share of the security specified in subsection (3).
- (3) That share is the share to which the partner would be entitled if—
- (a) all the partners were companies, and
  - (b) the security were apportioned in the shares in which any profit or loss would be apportioned between them in accordance with the firm's profit-sharing arrangements.
- (4) In this section “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 430 of that Act).

## **CHAPTER 10** **U.K.**

### **INSURANCE COMPANIES**

#### *Introduction*

### **386 Overview of Chapter** **U.K.**

- (1) This Chapter contains special rules about the treatment of the loan relationships of insurance companies.
- (2) In particular, it—
- (a) provides for special rules to apply in relation to an insurance company's non-trading deficits referable to BLAGAB instead of those in Chapter 16 (see sections 387 to 391),
  - (b) excludes some loan relationships of corporate members of Lloyd's from this Part (see section 392), and
  - (c) provides for the determination of questions concerning how far certain matters are referable to any particular category of a company's long-term business (see sections 393 and 394).
- (3) For further special rules affecting insurance companies, see—
- (a) section 298(3) (under which activities carried on by a company in the course of mutual insurance business which is not life assurance business or of BLAGAB are treated as not constituting a trade or part of a trade),
  - (b) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations), and, in particular, sections 335(1) and (2), 336(4) and 337,
  - (c) section 405 (certain non-UK residents with interest on 3½% War Loan 1952 Or After),

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- (d) sections 468 and 471 (connection between creditor and debtor companies to be ignored in some cases where creditor is insurance company carrying on BLAGAB),
  - (e) section 483(6) (treatment of deferred acquisition costs and provision for unearned premiums or for unexpired risks as a money debt for the purposes of Chapter 2 of Part 6 in the case of companies carrying on insurance business), and
  - (f) section 486(4) (no exchange gains or losses to arise for the purposes of that Chapter where relevant debts prevented from being deductible as expenses of insurance companies at Step 1 of section 76(7) of ICTA).
- (4) In this Chapter “BLAGAB” means basic life assurance and general annuity business.

*Treatment of deficit on basic life assurance and general annuity business*

**387 Treatment of deficit on basic life assurance and general annuity business: introduction** **U.K.**

- (1) Sections 388 to 391 apply instead of Chapter 16 (non-trading deficits) if a company has a non-trading deficit from its loan relationships for BLAGAB for any accounting period.
- (2) In those sections “the deficit” and “the deficit period” mean that deficit and that period respectively.

**388 Basic rule: deficit set off against income and gains of deficit period** **U.K.**

- (1) The basic rule is that the deficit must be set off against any income and gains of the deficit period which are referable to BLAGAB.
- (2) The income and gains are reduced accordingly.
- (3) Any such reduction is made before any expenses deduction under section 76 of ICTA (expenses of insurance companies).

**389 Claim to carry back deficit** **U.K.**

- (1) If the deficit exceeds the income and gains for the deficit period referred to in section 388(1), the company may make a claim for the whole or part of the excess (“the claim amount”)—
  - (a) to be carried back for up to 3 accounting periods ending within the permitted period, and
  - (b) to be set off against the available profits of the company in those periods in accordance with subsection (2).
- (2) The claim amount reduces the company's available profits in the most recent accounting period of the company, before any remainder reduces those in the next most recent accounting period and then those in the next most recent accounting period.
- (3) For the meaning of “available profits”, see section 390.
- (4) In this section and that section “permitted period” means the period of 12 months immediately before the deficit period.

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- (5) A claim under this section must be made—
- (a) within the period of 2 years after the end of the deficit period, or
  - (b) within such further period as an officer of Revenue and Customs allows.

### 390 Meaning of “available profits” **U.K.**

- (1) For the purposes of section 389 the available profits of the company for an accounting period are its BLAGAB non-trading loan relationships profits for the period (see subsection (4)), less the unused part of the relevant deductions for the period (see subsection (5)).
- (2) If an accounting period ending within the permitted period begins before it, only a part of the amount which would otherwise be the available profit for that accounting period is available profit.
- (3) That part is so much as is proportionate to the part of the accounting period in the permitted period.
- (4) References in this section to a company's BLAGAB non-trading loan relationships profits for an accounting period are references to the amount (if any) which is chargeable to tax for that period under section 299 (charge to tax on non-trading profits) for the company's BLAGAB.
- (5) The unused part of the relevant deductions for an accounting period is found as follows.

#### *Step 1*

Add together—

- (a) so much of the expenses deduction for the period given by Step 8 in section 76(7) of ICTA (expenses of insurance companies) as is referable to BLAGAB, and
- (b) so much of the sum of the deductions made in the case of the company in respect of charges on income for that period as is so referable.

#### *Step 2*

Add together—

- (a) the total amounts so referable which could be applied for the period in making deductions as a result of section 76 of ICTA if the company's BLAGAB non-trading loan relationships profits for the period were disregarded, and
- (b) the total amounts so referable which could be applied for the period in making deductions in respect of charges on income if those profits were disregarded.

#### *Step 3*

Subtract the amount found at Step 2 from the amount found at Step 1.

The result is the unused part of the relevant deductions for the accounting period.

- (6) In the case of any claim under section 389, the reference in Step 1(a) in subsection (5) to the expenses deduction for an accounting period given by Step 8 in section 76(7) of ICTA and the reference in Step 2(a) in subsection (5) to the deduction for expenses as a result of section 76 of ICTA for an accounting period are references to the deduction



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for expenses that would have been made as a result of that section for that period on the assumptions in subsections (7) and (8).

- (7) The first assumption is that no account is taken of—
  - (a) that claim, or
  - (b) any other claim under section 389 relating to a deficit for an accounting period after the deficit period.
- (8) The second assumption is that all such adjustments are made as are required as a result of any sum having been carried back under the Corporation Tax Acts to the accounting period mentioned in subsection (5), otherwise than as a result of—
  - (a) the claim mentioned in subsection (6), or
  - (b) any such other claim as is mentioned in subsection (7)(b).

### **391 Carry forward of surplus deficit to next accounting period** **U.K.**

- (1) This rule applies if any of the deficit is not—
  - (a) set off against the income and gains referred to in section 388(1), or
  - (b) set off against the profits referred to in section 389(1) as the result of a claim under that section.
- (2) That deficit must be carried forward to the accounting period immediately after the deficit period (“the next period”).
- (3) Any deficit so carried forward is treated for the purposes of the Corporation Tax Acts (including sections 388 to 390) as expenses payable which—
  - (a) are referable to the next period, and
  - (b) are to be brought into account at Step 3 in section 76(7) of ICTA (expenses of insurance companies).

*Exclusion of loan relationships of members of Lloyd's*

### **392 Exclusion of loan relationships of members of Lloyd's** **U.K.**

- (1) This section applies to any loan relationship of a corporate member of Lloyd's.
- (2) This Part does not apply as respects the relationship so far as rights or liabilities under it or securities representing it are—
  - (a) assets forming part of the member's premium trust fund, or
  - (b) liabilities attached to that fund.
- (3) In this section “corporate member” and “premium trust fund” have the same meaning as in Chapter 5 of Part 4 of FA 1994 (Lloyd's underwriters: corporations etc) (see section 230(1) of that Act).

*Determination of questions requiring apportionments*

### **393 General rules for some debtor relationships** **U.K.**

- (1) This section applies if a debtor relationship of an insurance company is represented by a liability which is a liability of its long-term insurance fund.

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- (2) Any question arising for the purposes of the Corporation Tax Acts as to how far any credits or debits given for the purposes of this Part in respect of the liability are referable to any particular category of the company's long-term business is determined as follows.
- (3) In the case of credits and debits within the rules in section 394, that section applies.
- (4) In the case of other credits and debits, the relevant fraction of the credits or debits is referable to a category of long-term business.
- (5) That fraction is determined by applying section 432A(6) to (6B) and (8) of ICTA (apportionment of income and gains) as if—
  - (a) the credits or debits were income not directly referable to any category of business, and
  - (b) the references in section 432A(6) to assets directly referable to a category of business were references to assets linked to that category.

### **394 Special rules for some debtor relationships** **U.K.**

- (1) This section sets out the rules referred to in section 393(3) as to how far certain credits or debits given for the purposes of this Part in respect of liabilities representing a debtor relationship of an insurance company which are liabilities of its long-term insurance fund are referable to any particular category of its long-term business.
- (2) If the liabilities are liabilities of an internal linked fund of the company relating to one category of long-term business, the credits or debits are referable to that category.
- (3) If the liabilities are liabilities of an internal linked fund of the company relating to two or more such categories, the credits or debits are referable to those categories in the same proportions as the linked assets in the fund are apportioned to them under section 432ZA(4) of ICTA (linked assets).
- (4) If—
  - (a) the liabilities arise from deposit back arrangements, and
  - (b) the business reinsured by the arrangements under which the deposit back arrangements are made (“the reinsurance arrangements”) is within one category of long term business,the credits or debits are referable to that category.
- (5) If—
  - (a) the liabilities arise from deposit back arrangements, and
  - (b) the business reinsured by the reinsurance arrangements is within two or more such categories,the credits or debits are referable to those categories in the same proportions as the relevant proportions of the liabilities reinsured by the arrangements which are liabilities relating to those categories.
- (6) For the purposes of subsection (5) “relevant proportion”, in relation to reinsured liabilities of any particular category of business, means the average of—
  - (a) the proportion of all the reinsured liabilities that are liabilities relating to that category at the beginning of the period of account, and
  - (b) the proportion of all the reinsured liabilities that are liabilities relating to that category at the end of that period.

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- (7) Debits relating to interest payable in respect of the late payment of any benefits are referable to the category of long-term business that comprises the effecting and carrying out of the policies or contracts under which the benefits are payable.

## CHAPTER 11 **U.K.**

### OTHER SPECIAL KINDS OF COMPANY

#### *Investment trusts' and venture capital trusts' creditor relationships*

#### **395 Investment trusts: profits or losses of a capital nature **U.K.****

- (1) Profits or losses of a capital nature arising to an investment trust from a creditor relationship may not be brought into account as credits or debits for the purposes of this Part.
- (2) For the purposes of this section “profits or losses of a capital nature” means profits or losses that—
  - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
  - (b) would have been so accounted for if that Statement had been applied correctly.
- (3) “The Statement of Recommended Practice”, in relation to an accounting period for which it is required or permitted to be used, means—
  - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to an investment trust that prepares accounts in accordance with international accounting standards.
- (5) An order under subsection (4) may make—
  - (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.

#### **396 Venture capital trusts: profits or losses of a capital nature **U.K.****

- (1) Profits or losses of a capital nature arising to a venture capital trust from a creditor relationship may not be brought into account as credits or debits for the purposes of this Part.
- (2) For the purposes of this section “profits or losses of a capital nature” means profits or losses that—
  - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
  - (b) would have been so accounted for if the venture capital trust had been an investment trust and that Statement had been applied correctly.

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- (3) In this section “the Statement of Recommended Practice” has the meaning given in section 395(3) (investment trusts: profits or losses of a capital nature).
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to a venture capital trust that prepares accounts in accordance with international accounting standards.
- (5) An order under subsection (4) may make—
  - (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.

### *Credit unions*

#### **397 Credit unions** U.K.

- (1) In calculating the income of a credit union for any accounting period, no credit is to be brought into account for the purposes of this Part in respect of a loan relationship of the union if a member of the union stands in the position of debtor in relation to the debt in question.
- (2) But subsection (1) does not apply if the credit union—
  - (a) is obliged to make a return under section 887(2) of ITA 2007 for the accounting period, and
  - (b) has not done so within—
    - (i) 3 months after the end of the period, or
    - (ii) such longer period as an officer of Revenue and Customs allows.
- (3) No debit is to be brought into account for the purposes of this Part in respect of a loan relationship of a credit union if a member of the union stands in the position of creditor in relation to the debt in question.

## **CHAPTER 12** U.K.

### SPECIAL RULES FOR PARTICULAR KINDS OF SECURITIES

#### *Introduction*

#### **398 Overview of Chapter** U.K.

- (1) This Chapter sets out rules relating to the holding of particular kinds of securities.
- (2) In particular, see—
  - (a) sections 399 to 405 (gilt-edged securities),
  - (b) sections 406 to 412 (deeply discounted securities: connected companies and close companies),
  - (c) sections 413 and 414 (funding bonds),
  - (d) sections 415 to 419 (derivatives), and
  - (e) section 420 (assumptions where options etc apply).

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- (3) For other special rules about deeply discounted securities, see section 385 (company partners' shares where firm owns deeply discounted securities).

### *Gilt-edged securities*

#### **399 Index-linked gilt-edged securities: basic rules** U.K.

- (1) This section applies if a loan relationship is represented by an index-linked gilt-edged security.
- (2) The amounts to be brought into account for the purposes of this Part are to be determined using fair value accounting.
- (3) But, in calculating those amounts, the adjustment specified in section 400 (adjustments for changes in index) must be made if that section applies.
- (4) In this section and section 400 “index-linked gilt-edged securities” means any gilt-edged securities under which the amounts of the payments are determined wholly or partly by reference to the retail prices index.
- (5) For the meaning of “gilt-edged securities”, see section 476(1).

#### **400 Index-linked gilt-edged securities: adjustments for changes in index** U.K.

- (1) This section applies if—
  - (a) the amounts to be brought into account for the purposes of this Part in respect of [<sup>F4</sup>an index-linked gilt-edged security] fall to be determined by reference to its value at two different times, and
  - (b) there is a change in the retail prices index between the earlier and the later time.
- (2) If that change is an increase, the carrying value of the security at the earlier time is increased by the same percentage as the percentage increase in the retail prices index between those times.
- (3) If that change is a reduction, the carrying value of the security at the earlier time is reduced by the same percentage as the percentage reduction in the retail prices index between those times.
- (4) The Treasury may, in relation to any description of index-linked gilt-edged securities, by order provide that—
  - (a) there are to be no adjustments under this section, or
  - (b) an adjustment specified in the order is to be made instead.
- (5) An order under subsection (4)—
  - (a) may not apply to a security issued before the making of the order, but
  - (b) may make different provision for different descriptions of securities.
- (6) The general rule is that the percentage increase or reduction in the retail prices index is determined for the purposes of this section by reference to the difference between—
  - (a) the index for the month in which the earlier time falls, and
  - (b) the index for the month in which the later time falls.

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- (7) But if the earlier time falls at the beginning of an accounting period which begins with the first day of a month, the index for the previous month is used for the purposes of subsection (6)(a).

#### Textual Amendments

- F4** Words in s. 400(1)(a) substituted (retrospective and with effect in accordance with art. 1(2) of the commencing S.I.) by [Corporation Tax Act 2009 \(Amendment\) Order 2010 \(S.I. 2010/614\)](#), arts. 1(1), 3(2)

### 401 Gilt strips **U.K.**

- (1) This section applies if a loan relationship is represented by—
- (a) a strip of a gilt-edged security, or
  - (b) any other gilt-edged security.
- (2) Subsections (3) and (4) apply if a person exchanges a gilt-edged security for strips of that security.
- (3) The security is treated as having been redeemed at the time of the exchange by the payment to that person of its market value.
- (4) The person is treated as having acquired each strip for an amount equal to—

$$A \times \frac{B}{C}$$

where—

A is the market value of the security at the time of the exchange,

B is the market value of the strip at that time, and

C is the total of the market values at that time of all the strips received in the exchange.

- (5) Subsections (6) and (7) apply if strips of a gilt-edged security are consolidated into a single gilt-edged security by being exchanged by any person for that security.
- (6) Each strip is treated as having been redeemed at the time of the exchange by the payment to that person of the amount equal to its market value.
- (7) The person is treated as having acquired the security for the amount equal to the total of the market values of all the strips given in the exchange.
- (8) For the meaning of “market value” and “strip” in relation to securities, see section 402 and section 403 respectively.

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#### 402 Market value of securities **U.K.**

- (1) References in section 401 to the market value of a security given or received in exchange for another are references to its market value at the time of the exchange.
- (2) The Treasury may by regulations make provision for the purposes of section 401 and this section as to the way of determining the market value at any time of—
  - (a) any strip, or
  - (b) any other gilt-edged security.
- (3) The regulations may make—
  - (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.

#### 403 Meaning of “strip” **U.K.**

- (1) In sections 401 and 402 “strip”, in relation to a gilt-edged security, means a security issued under the National Loans Act 1968 (c. 13) which meets conditions A, B and C.
- (2) Condition A is that the security is issued for the purpose of representing the right to or of securing—
  - (a) a payment corresponding to a payment of interest or principal remaining to be made under the gilt-edged security, or
  - (b) two or more payments each corresponding to a payment to be so made.
- (3) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
  - (a) represent the right to, or
  - (b) secure,
 payments corresponding to every payment remaining to be made under the gilt-edged security.
- (4) Condition C is that the security is not itself a security that—
  - (a) represents the right to, or
  - (b) secures,
 payments corresponding to a part of every payment remaining to be made under the gilt-edged security.
- (5) After the balance has been struck for a dividend on a gilt-edged security, a payment to be made in respect of that dividend is treated for the purposes of conditions A, B and C as not being a payment remaining to be made under that security.

#### 404 Restriction on deductions etc relating to FOTRA securities **U.K.**

- (1) A company which meets conditions A and B is not to bring into account for the purposes of this Part—
  - (a) any amount relating to changes in the value of a FOTRA security, or
  - (b) any debit in respect of the loan relationship represented by the security, including any expenses related to holding the security or any transaction concerning it.
- (2) Condition A is that the company is the beneficial owner of the security.



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- (3) Condition B is that the company is a company which would be exempt from corporation tax on the security under section 1279 (exemption of profits from FOTRA securities).
- (4) In this section “FOTRA security” has the same meaning as in that section (see section 1280(1)).

#### **405 Certain non-UK residents with interest on 3½% War Loan 1952 Or After** **U.K.**

- (1) This section applies if—
  - (a) in any accounting period a non-UK resident company carries on a business in the United Kingdom—
    - (i) consisting of banking or insurance, or
    - (ii) consisting wholly or partly of dealing in securities, and
  - (b) in calculating the profits of the business for the period any amount is disregarded as a result of section 1279 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.

- (2) Interest on money borrowed for the purposes of the business is to be brought into account as a debit for the purposes of this Part for that period only so far as it exceeds the ineligible amount.

- (3) The ineligible amount is found as follows—

*Step 1*

Add together all sums borrowed for the purposes of the business and still owing in the accounting period.

*Step 2*

Deduct any sums carrying interest that is not brought into account as a debit under this Part (otherwise than because of subsection (2)).

*Step 3*

If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the business in the accounting period, deduct the excess from that amount.

*Step 4*

Calculate the average rate of interest in the accounting period on money borrowed for the purposes of the business.

*Step 5*

Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the accounting period.

The result is the ineligible amount.

- (4) If the company's holding of 3½% War Loan 1952 Or After has fluctuated during the accounting period, the total cost for the purposes of Step 3 is taken to be—

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$$C \times \frac{AH}{TH}$$

where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the accounting period,

AH is the average holding in that period, and

TH is the total of the initial holding (if any) and any holdings acquired during the accounting period.

- (5) In subsection (4) “initial holding” means the holding held by the company at the beginning of the accounting period.

*Deeply discounted securities: connected companies and close companies*

#### 406 Introduction **U.K.**

- (1) The following sections deal with deeply discounted securities—
  - (a) sections 407 and 408 (deeply discounted securities where companies have a connection),
  - (b) sections 409 to 411 (deeply discounted securities of close companies), and
  - (c) section 412 (persons indirectly standing in the position of creditor).
- (2) In this section and sections 407 to 412 “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 430 of that Act).
- (3) In sections 407 to 412 “the discount” means the difference between—
  - (a) the issue price of the security, and
  - (b) the amount payable on redemption.
- (4) The provisions of Chapter 8 of Part 4 of ITTOIA 2005 apply for the purposes of this section and sections 407 to 412 for determining the difference between the issue price of a security and the amount payable on redemption as they apply for the purposes of section 430 of that Act.

#### 407 Postponement until redemption of debits for connected companies' deeply discounted securities **U.K.**

- (1) This section applies as respects any accounting period (“the relevant period”) if—
  - (a) a debtor relationship of a company (“the issuing company”) is represented by a deeply discounted security issued by it,
  - (b) at any time in the relevant period another company stands in the position of a creditor as respects the security,
  - (c) there is a connection between those companies for the relevant period,

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- (d) the period is not the accounting period in which the security is redeemed, and
  - (e) credits representing the full amount of the discount which is referable to the relevant period are not brought into account for the purposes of this Part in respect of the corresponding creditor relationship for any accounting period (see section 412(2)).
- (2) The debits to be brought into account for the purposes of this Part in respect of the loan relationship by the issuing company are to be adjusted so that any debit relating to the amount of the discount which is referable to the relevant period—
- (a) is not brought into account for the relevant period, but
  - (b) is brought into account for the accounting period in which the security is redeemed.
- (3) The amount of the discount which is referable to the relevant period is the amount of it which would be brought into account for that period apart from this section.
- (4) For the meaning of “standing in the position of a creditor” and the meaning of “corresponding creditor relationship” where a company indirectly stands in that position, see section 412.
- (5) Whether there is a connection between companies for the purposes of this section is determined in accordance with section 408.

#### **408 Companies connected for section 407 U.K.**

- (1) For the purposes of section 407 there is a connection between two companies for an accounting period if condition A or B is met.
- (2) Condition A is that there is a time in the period when one of the companies has control of, or a major interest in, the other.
- (3) Condition B is that there is a time in the period when both companies are under the control of the same person.
- (4) Section 472 (meaning of “control”) applies for the purposes of this section.
- (5) For the meaning of “major interest”, see section 473.

#### **409 Postponement until redemption of debits for close companies' deeply discounted securities U.K.**

- (1) This section applies for any accounting period (“the relevant period”) if—
- (a) a debtor relationship of a close company (“the issuing company”) is represented by a deeply discounted security it has issued,
  - (b) at any time in the period there is a person who stands in the position of a creditor as respects the security and is—
    - (i) a participator in the issuing company,
    - (ii) an associate of such a participator,
    - (iii) a company of which such a participator has control,
    - (iv) a person who controls a company which is such a participator,
    - (v) an associate of a person within sub-paragraph (iv), or
    - (vi) a company controlled by a person within sub-paragraph (iv),
  - (c) the period is not the accounting period in which the security is redeemed, and

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- (d) this section is not disapplied by section 410.
- (2) The debits which are to be brought into account for the purposes of this Part by the issuing company in respect of the loan relationship are to be adjusted so that debits relating to the amount of the discount that is referable to the relevant period (“relevant debits”)—
  - (a) are not brought into account for the relevant period, but
  - (b) are brought into account for the accounting period in which the security is redeemed.
- (3) If there is a person within subsection (1)(b) for only part of the relevant period, subsection (2) applies only to the appropriate proportion of the relevant debits.
- (4) In subsection (3) “the appropriate proportion” means the proportion that the part of the relevant period for which there is such a person bears to the whole of that period.
- (5) The amount of the discount that is referable to the relevant period is the amount of it which would be brought into account for the purposes of this Part for the relevant period in the case of the issuing company, apart from subsections (2) and (3).
- (6) For the meaning of other expressions used in this section, see—
  - (a) section 411 (interpretation of this section), and
  - (b) section 412 (persons indirectly standing in the position of creditor).

#### **410 Exceptions to section 409 U.K.**

- (1) Section 409 does not apply for any accounting period (“the relevant period”) if any of the following conditions are met—
  - (a) the corresponding creditor relationship conditions (see subsection (2)),
  - (b) the CIS-based close company conditions (see subsection (3)), or
  - (c) the CIS limited partnership conditions (see subsection (4)).
- (2) The corresponding creditor relationship conditions are that—
  - (a) at all times in the relevant period when there is a person within section 409(1)(b), that person is a company, and
  - (b) credits representing the full amount of the discount that is referable to the period are brought into account for the purposes of this Part for any accounting period in respect of the corresponding creditor relationship (see section 412(3)).
- (3) The CIS-based close company conditions are that—
  - (a) the issuing company is a CIS-based close company,
  - (b) at no time in the relevant period when there is a person within section 409(1)(b) is that person resident in a non-qualifying territory, and
  - (c) the issuing company is a small or medium-sized enterprise for the relevant period.
- (4) The CIS limited partnership conditions are that—
  - (a) the debt is one which is owed to, or to persons acting for, a CIS limited partnership,
  - (b) no member of that partnership is resident in a non-qualifying territory at any time in the relevant period when there is a person within section 409(1)(b),

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- (c) the issuing company has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) is met, and
  - (d) the issuing company is a small or medium-sized enterprise for the relevant period.
- (5) In this section—
- “CIS-based close company” means a company that would not be a close company apart from the rights and powers of one or more partners in a CIS limited partnership being attributed to another of the partners under section 416(6) of ICTA because of section 417(3)(a) of that Act,
  - “CIS limited partnership” means a limited partnership—
    - (a) which is a collective investment scheme, or
    - (b) which would be a collective investment scheme if it were not a body corporate,
  - “issuing company” has the same meaning as in section 409 (see subsection (1)(a) of that section),
  - “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA (provision not at arm's length),
  - “resident” has the meaning given by paragraph 5B(6) of that Schedule, and
  - “small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.
- (6) For the meaning of “corresponding creditor relationship”, see section 412 (persons indirectly standing in the position of creditor).

#### **411 Interpretation of section 409** **U.K.**

- (1) Section 472 (meaning of “control”) applies for the purposes of section 409 and this section.
- (2) A person who is a participator in a company which controls another company is treated for the purposes of section 409 as being a participator in that other company also.
- (3) Subject to that, in section 409 and this section “participator”, in relation to a company, means a person who is a participator in the company for the purposes of Part 11 of ICTA because of section 417 of that Act, but not a person who is a participator for those purposes just because of being a loan creditor of the company.
- (4) In determining whether a person who carries on the trade of banking is a participator in a company for the purposes of section 409 and this section, securities of the company acquired by the person in the ordinary course of the person's business are ignored.

#### **412 Persons indirectly standing in the position of creditor** **U.K.**

- (1) For the purposes of sections 407(1)(b) and 409 a person is treated as standing in the position of a creditor if the person indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (2) If a company (“C”) is so treated for the purposes of section 407(1)(b), the reference in section 407(1)(e) to the corresponding creditor relationship is a reference to C's creditor relationship.

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- (3) If a person (“P”) is so treated for the purposes of section 409, the reference in section 410(2)(b) to the corresponding creditor relationship is a reference to P’s creditor relationship.
- (4) In subsection (1) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

### *Funding bonds*

#### **413 Issue of funding bonds** U.K.

- (1) This section applies to the issue of funding bonds to a creditor in respect of a liability to pay interest on a debt incurred by a body corporate, a government, a public institution or other public authority.
- (2) The issue is treated for the purposes of the Corporation Tax Acts as if it were the payment of so much of that interest as equals the market value of the bonds at their issue.
- (3) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

#### **414 Redemption of funding bonds** U.K.

- (1) The redemption of funding bonds is not treated as the payment of interest on a debt for the purposes of the Corporation Tax Acts if their issue was treated as the payment of interest on the debt under—
  - (a) section 413, or
  - (b) section 380 of ITTOIA 2005 (which makes provision corresponding to section 413 for income tax purposes).
- (2) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

### *Derivatives*

#### **415 Loan relationships with embedded derivatives** U.K.

- (1) This section applies if in accordance with generally accepted accounting practice a company treats the rights and liabilities under a loan relationship to which it is a party as divided between—
  - (a) rights and liabilities under a loan relationship (“the host contract”), and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (2) The company is treated for the purposes of this Part as a party to a loan relationship whose rights and liabilities consist only of those of the host contract.
- (3) For the corresponding treatment of the rights and liabilities within subsection (1)(b), see section 585 (loan relationships with embedded derivatives).

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#### **416 Election for application of sections 415 and 585** **U.K.**

- (1) This section applies if—
  - (a) a company is subject to old UK GAAP for a period of account,
  - (b) at the beginning of its first relevant period of account the company did not hold any assets (“relevant assets”) which it is not permitted under old UK GAAP to treat as mentioned in section 415(1),
  - (c) the company subsequently acquires one or more relevant assets (to which sections 415 and 585 do not apply because of the company being subject to old UK GAAP), and
  - (d) the company would have been permitted to treat the relevant assets as mentioned in section 415(1) if it had been subject to—
    - (i) international accounting standards, or
    - (ii) new UK GAAP.
- (2) The company may elect that this Part and Part 7 (derivative contracts) should apply as if sections 415 and 585 did apply.
- (3) The election has effect in relation to all relevant assets held by the company including those subsequently acquired, except as provided in subsection (4).
- (4) An election made on or after 12 March 2008 does not have effect in relation to any relevant assets in the case of which section 418 (loan relationships treated differently by connected debtor and creditor) applies.
- (5) If an election is made under this section, sections 315 to 318 (adjustments on change of accounting policy) apply as if there were a change of accounting policy consisting of the company treating its relevant assets as mentioned in section 415(1) as from the date the election has effect.
- (6) See also section 613(4) (which makes provision corresponding to subsection (5) for the purposes of Part 7).
- (7) In this section—

“first relevant period of account”, in relation to a company, means the first period of account of the company beginning on or after 1 January 2005 (the first period in relation to which section 94A of FA 1996 (which is rewritten in section 415) had effect),

“old UK GAAP” means UK generally accepted accounting practice as it applied for periods of account beginning before 1 January 2005, and

“new UK GAAP” means UK generally accepted accounting practice as it applies for periods of account beginning on or after that date.
- (8) Section 417 makes further provision about elections under this section.

#### **417 Further provisions about elections under section 416** **U.K.**

- (1) An election under section 416 must be made not later than 90 days after the acquisition of the relevant assets or, if there is more than one acquisition, the first of them.
- (2) The election is irrevocable.
- (3) The election has effect from the beginning of the period of account in which the first relevant asset is acquired.



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(4) In this section “relevant assets” has the same meaning as in section 416.

#### **418 Loan relationships treated differently by connected debtor and creditor** U.K.

- (1) This section applies if—
- (a) two connected companies are party to a loan relationship, one (“the debtor”) as debtor and the other (“the creditor”) as creditor, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that the debtor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as divided between—
- (a) rights and liabilities under a loan relationship (“the host contract”) and,
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (3) Condition B is that the creditor, in accordance with generally accepted accounting practice, does not treat its rights and liabilities under the loan relationship as so divided.
- (4) Condition C is that—
- (a) the debits brought into account by the debtor under this Part in respect of the host contract for any accounting period, exceed
  - (b) the credits brought into account (otherwise than as a result of this section) by the creditor in respect of the loan relationship for the corresponding accounting period or periods of the creditor.
- (5) The creditor is treated for the purposes of this Part as bringing into account for the corresponding accounting period or periods additional credits in respect of the loan relationship of an amount equal to the excess.
- (6) But if the creditor is a party to the loan relationship as creditor during only part of the corresponding accounting period (or any of the corresponding periods), it is treated for the purposes of this Part as bringing into account for the period only such part of the excess as is just and reasonable.
- (7) Section 419 supplements this section.

#### **419 Section 418: supplementary** U.K.

- (1) References in section 418 to a company being a party to a loan relationship as debtor or creditor include a company which indirectly stands in the position of a debtor or creditor as respects the loan relationship by reference to a series of loan relationships or relevant money debts.
- (2) In subsection (1) “relevant money debt” means a money debt that would be a loan relationship if a company directly stood in the position of debtor or creditor.
- (3) For the purposes of section 418 an accounting period of the creditor corresponds with an accounting period of the debtor if—
- (a) it coincides with it, or
  - (b) it is wholly or partly within it.

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- (4) If a corresponding accounting period of the creditor does not coincide with that of the debtor, such apportionments as are just and reasonable are to be made for the purposes of section 418.
- (5) Two companies are connected for the purposes of section 418 if their accounting results are reflected in the consolidated group accounts of a group of companies.
- (6) Subsection (5) does not affect the application of section 839 of ICTA (how to tell whether persons are connected).
- (7) In this section “the debtor” and “the creditor” have the same meaning as in section 418.

### *Options etc*

## **420 Assumptions where options etc apply** U.K.

- (1) This section applies if—
  - (a) the answer to any question specified in subsection (2)—
    - (i) depends on the exercise of an option by a party to a loan relationship (“A”) or A's associate, or
    - (ii) is otherwise under the control of A or A's associate, and
  - (b) an amortised cost basis of accounting applies for an accounting period.
- (2) The questions are—
  - (a) whether any amount will become due under the relationship after the period ends,
  - (b) how much will become due under it after the period ends, and
  - (c) when after the end of the period an amount will become due under the relationship.
- (3) In determining the credits and debits to be brought into account for the accounting period in accordance with an amortised cost basis, the assumption in subsection (4) is to be made.
- (4) The assumption is that A or A's associate will exercise the power to determine whether and on what date any amount will become due in the way which appears to be the most advantageous to A.
- (5) That way is to be determined—
  - (a) as at the end of the accounting period, and
  - (b) ignoring taxation.

## **CHAPTER 13** U.K.

### EUROPEAN CROSS-BORDER TRANSFERS OF BUSINESS

#### *Introduction*

## **421 Introduction to Chapter** U.K.

- (1) This Chapter applies if—

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- (a) condition A or B is met, and
  - (b) each of the companies mentioned in subsection (3)(a) or (4)(a) makes a claim under this section,
- but see section 426 (tax avoidance etc) and section 429 (disapplication of Chapter where transparent entities involved).
- (2) Sections 424 and 425 (reorganisations involving loan relationships) also apply if, in addition to the conditions in section 424(1)(a) and (b), condition C is met in relation to the transfer in the course of which the reorganisation in question occurs.
- (3) Condition A is that—
- (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom,
  - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor, and
  - (c) immediately after the transfer the transferee is within the charge to corporation tax.
- (4) Condition B is that—
- (a) a company transfers part of its business to one or more companies,
  - (b) the transferor is resident in one member State,
  - (c) the part of the transferor's business which is transferred is carried on by the transferor in the United Kingdom,
  - (d) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
  - (e) the transferor continues to carry on a business after the transfer,
  - (f) immediately after the transfer each transferee is within the charge to corporation tax, and
  - (g) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (5) Condition C is that—
- (a) a UK resident company transfers part of its business to one or more companies,
  - (b) the part of the transferor's business which is transferred to the transferees was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment, and
  - (c) the conditions in subsection (4)(d), (e) and (g) are met.
- (6) In this Chapter—
- “the transfer of business” means the transfer of business mentioned in subsection (3)(a), (4)(a) or (5)(a),

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“transferee” has the same meaning as in subsection (3), (4) or (5), and  
“the transferor” has the same meaning as in subsection (3), (4) or (5).

(7) For the meaning of “company” and “resident in a member State”, see section 430.

#### *Transfers of loan relationships at notional carrying value*

### **422 Transfer of loan relationship at notional carrying value** **U.K.**

- (1) This section applies if in the course of the transfer of business the transferor transfers an asset or liability representing a loan relationship to a transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship for the purposes of this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for consideration of an amount equal to the notional carrying value of the asset or liability.
- (3) For the purposes of this section—
  - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
  - (b) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (4) This section is subject to section 423 (transferor using fair value accounting).

### **423 Transferor using fair value accounting** **U.K.**

- (1) This section applies instead of section 422 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)).
- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 422(1) (“the transferor’s amount”) is—
  - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes a party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
  - (b) if a liability is to be brought into account, its fair value as at that date.
- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor’s amount.
- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.
- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

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#### 424 Reorganisations involving loan relationships **U.K.**

- (1) This section applies if—
- (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
    - (i) apply in relation to a reorganisation, or
    - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
  - (b) the original shares consist of or include an asset representing a loan relationship, and
  - (c) either—
    - (i) section 422 or 423 applies as a result of condition B in section 421 being met in relation to the transfer in the course of which the reorganisation occurs, or
    - (ii) condition C in section 421 is met in relation to that transfer.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount which would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the date when the reorganisation occurred.
- (4) In this section—
- “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),
  - “original holder” means a person holding the original shares immediately before the reorganisation,
  - “original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
  - “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.
- (5) This section is subject to—
- (a) section 425 (original holder using fair value accounting), and
  - (b) section 429 (disapplication of Chapter where transparent entities involved).

#### 425 Original holder using fair value accounting **U.K.**

- (1) This section applies instead of section 424 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is the fair value of the asset representing the loan relationship as at the date when the reorganisation occurred, or of the rights under or interest in that relationship as at that date.

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- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (4) and (5) of section 423 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.
- (5) In this section—
  - “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and
  - “original holder” and “original shares” have the same meaning as in section 424.
- (6) This section is subject to section 429 (disapplication of Chapter where transparent entities involved).

*Exception for tax avoidance cases*

**426 Tax avoidance etc U.K.**

- (1) This Chapter does not apply in relation to the transfer of business if—
  - (a) the transfer of business is not effected for genuine commercial reasons, or
  - (b) the transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the transfer of business—
  - (a) the companies mentioned in section 421(3)(a), (4)(a) or (5)(a) have applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified them that they are satisfied that subsection will not have that effect.

**427 Procedure on application for clearance U.K.**

- (1) This section applies in relation to an application under section 426(2).
- (2) The application must be in writing and must contain particulars of the operations which are to be effected.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).

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- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

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

- C4** S. 427 applied (with modifications) by 1988 c. 1, s. 807C(6) (as 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. 258](#) (with [Sch. 2 Pts. 1, 2](#)))
- C5** S. 427 applied (with modifications) by 1988 c. 1, s. 807E(5) (as 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. 260](#) (with [Sch. 2 Pts. 1, 2](#)))

**428 Decision on application for clearance U.K.**

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 426(2) to the applicant—
- (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 427(3), within 30 days of the notice being complied with.
- (2) If the Commissioners for Her Majesty's Revenue and Customs—
- (a) notify the applicant that they are not satisfied as mentioned in section 426(2) (b), or
  - (b) do not notify their decision to the applicant within the time required by subsection (1),
- the applicant may within 30 days of the notification or of that time require them to transmit the application to the tribunal, together with any notice given and further particulars provided under section 427(3).
- (3) In that case any notification by the tribunal has effect for the purposes of section 426(2) (b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.
- (4) If any particulars provided under section 427 do not fully and accurately disclose all facts and considerations material for the decision—
- (a) of the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) of the tribunal,
- any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the tribunal is void.

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

- C6** S. 428 applied (with modifications) by 1988 c. 1, s. 807C(6) (as 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. 258](#) (with [Sch. 2 Pts. 1, 2](#)))
- C7** S. 428 applied (with modifications) by 1988 c. 1, s. 807E(5) (as 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. 260](#) (with [Sch. 2 Pts. 1, 2](#)))



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### *Transparent entities*

#### **429 Disapplication of Chapter where transparent entities involved** U.K.

- (1) This Chapter does not apply in relation to the transfer of business if the transferor is a transparent entity.
- (2) If any transferee is a transparent entity, sections 424 and 425 (reorganisations involving loan relationships) do not apply.
- (3) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.
- (4) For the meaning of “resident in a member State”, see section 430.

### *Interpretation*

#### **430 Interpretation** U.K.

- (1) In this Chapter “company” means any entity listed as a company in the Annex to the Mergers Directive.
- (2) For the purposes of this Chapter, a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

## **CHAPTER 14** U.K.

### EUROPEAN CROSS-BORDER MERGERS

### *Introduction*

#### **431 Introduction to Chapter** U.K.

- (1) This Chapter applies if the following conditions are met—
  - (a) conditions A to D,
  - (b) in the case of a merger within subsection (3)(a), (b) or (c), condition E, and
  - (c) in the case of a merger within subsection (3)(c) or (d), condition F,but see section 437 (tax avoidance etc) and section 438 (disapplication of Chapter where transparent entities involved).
- (2) Sections 435 and 436 (reorganisations involving loan relationships) also apply in cases that would be within subsection (1) apart from condition D not being met if, in addition to the conditions in section 435(1)(a) and (b), condition G is met in relation to a transfer in the course of the merger in which the reorganisation in question occurs.
- (3) Condition A is that—

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- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (4) Condition B is that each merging company is resident in a member State.
- (5) Condition C is that the merging companies are not all resident in the same State.
- (6) Condition D is that immediately after the merger the transferee is within the charge to corporation tax.
- (7) Condition E is that—
- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) that transfer is not so made only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (8) Condition F is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).
- (9) Condition G is that—
- (a) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment, and
  - (b) that transfer includes the transfer of an asset or liability representing a loan relationship.
- (10) In this Chapter, “the merger” and “the merging companies” have the same meaning as in this section.
- (11) See—
- (a) section 432 for the meaning of “the transferee” and “transferor”, and
  - (b) section 439 for the meaning of “company”, “co-operative society” and “resident in a member State”.

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#### **432 Meaning of “the transferee” and “transferor” U.K.**

- (1) In this Chapter, “the transferee” means—
  - (a) in relation to a merger within section 431(3)(a), the SE,
  - (b) in relation to a merger within section 431(3)(b), the SCE, and
  - (c) in relation to a merger within section 431(3)(c) or (d), the company to which assets and liabilities are transferred.
- (2) In this Chapter “transferor” means—
  - (a) in relation to a merger within section 431(3)(a), a company merging to form the SE,
  - (b) in relation to a merger within section 431(3)(b), a co-operative society merging to form the SCE, and
  - (c) in relation to a merger within section 431(3)(c) or (d), a company transferring all its assets and liabilities.

*Transfers of loan relationships at notional carrying value*

#### **433 Transfer of loan relationship at notional carrying value U.K.**

- (1) This section applies if in the course of the merger a transferor transfers an asset or liability representing a loan relationship to the transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for consideration of an amount equal to the notional carrying value of the asset or liability.
- (3) For the purposes of this section—
  - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
  - (b) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (4) This section is subject to section 434.

#### **434 Transferor using fair value accounting U.K.**

- (1) This section applies instead of section 433 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)).
- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 433(1) (“the transferor's amount”) is—
  - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes a party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
  - (b) if a liability is to be brought into account, its fair value as at that date.

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- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor's amount.
- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.
- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

#### 435 Reorganisations involving loan relationships **U.K.**

- (1) This section applies if—
  - (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
    - (i) apply in relation to a reorganisation, or
    - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
  - (b) the original shares consist of or include an asset representing a loan relationship, and
  - (c) section 433 or 434 applies in relation to a transfer in the course of the merger in which the reorganisation occurs or, in a case where those sections would apply apart from condition D in section 431 not being met, condition G in that section is met in relation to such a transfer.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount which would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the date when the reorganisation occurred.
- (4) In this section—
  - “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),
  - “original holder” means a person holding the original shares immediately before the reorganisation,
  - “original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
  - “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.
- (5) This section is subject to—
  - (a) section 436 (original holder using fair value accounting), and

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- (b) section 438 (disapplication of Chapter where transparent entities involved).

**436 Original holder using fair value accounting U.K.**

- (1) This section applies instead of section 435 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is the fair value of the asset representing the loan relationship as at the date when the reorganisation occurred, or of the rights under or interest in that relationship as at that date.
- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (4) and (5) of section 434 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.
- (5) In this section—
  - “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and
  - “original holder” and “original shares” have the same meaning as in section 435.
- (6) This section is subject to section 438 (disapplication of Chapter where transparent entities involved).

*Exception for tax avoidance cases*

**437 Tax avoidance etc U.K.**

- (1) This Chapter does not apply in relation to the merger if—
  - (a) the merger is not effected for genuine commercial reasons, or
  - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the merger—
  - (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the merging companies that they are satisfied that subsection will not have that effect.
- (3) Sections 427 and 428 have effect in relation to subsection (2) as in relation to section 426(2), taking the references in section 428 to section 426(2)(b) as references to subsection (2)(b) of this section.

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### *Transparent entities*

#### **438 Disapplication of Chapter where transparent entities involved** **U.K.**

- (1) This section applies if one or more of the merging companies is a transparent entity.
- (2) If as a result of the merger the assets and liabilities of a transparent entity are transferred to another company, this Chapter does not apply in relation to the transfer.
- (3) If as a result of the merger the assets and liabilities of one or more other companies are transferred to a transparent entity, sections 435 and 436 do not apply to the new holding.
- (4) In this section—
  - “new holding” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
  - “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

### *Interpretation*

#### **439 Interpretation** **U.K.**

- (1) In this Chapter—
  - “company” means any entity listed as a company in the Annex to the Mergers Directive, and
  - “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.
- (2) For the purposes of this Chapter, a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

## **CHAPTER 15** **U.K.**

### TAX AVOIDANCE

#### *Introduction*

#### **440 Overview of Chapter** **U.K.**

- (1) This Chapter contains rules connected with tax avoidance.
- (2) In particular—
  - (a) for rules about unallowable purposes and tax relief schemes and arrangements, see sections 441 to 443,

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- (b) for rules relating to credits and debits where transactions are not at arm's length (other than credits and debits relating to exchange gains and losses), see sections 444 to 446,
- (c) for rules relating to credits and debits relating to exchange gains and losses where transactions are not at arm's length, see sections 447 to 452,
- (d) for rules about connected parties deriving benefit from creditor relationships, see section 453,
- (e) for rules dealing with tax advantages from resetting interest rates, see section 454, and
- (f) for rules dealing with disposals of rights under creditor relationships for consideration not fully recognised for accounting purposes, see section 455.

#### *Unallowable purposes and tax relief schemes*

### **441 Loan relationships for unallowable purposes** **U.K.**

- (1) This section applies if in any accounting period a loan relationship of a company has an unallowable purpose.
- (2) The company may not bring into account for that period for the purposes of this Part so much of any credit in respect of exchange gains from that relationship as on a just and reasonable apportionment is attributable to the unallowable purpose.
- (3) The company may not bring into account for that period for the purposes of this Part so much of any debit in respect of that relationship as on a just and reasonable apportionment is attributable to the unallowable purpose.
- (4) An amount which would be brought into account for the purposes of this Part as respects any matter apart from this section is treated for the purposes of section 464(1) (amounts brought into account under this Part excluded from being otherwise brought into account) as if it were so brought into account.
- (5) Accordingly, that amount is not to be brought into account for corporation tax purposes as respects that matter either under this Part or otherwise.
- (6) For the meaning of “has an unallowable purpose” and “the unallowable purpose” in this section, see section 442.

### **442 Meaning of “unallowable purpose”** **U.K.**

- (1) For the purposes of section 441 a loan relationship of a company has an unallowable purpose in an accounting period if, at times during that period, the purposes for which the company—
  - (a) is a party to the relationship, or
  - (b) enters into transactions which are related transactions by reference to it,include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (2) If a company is not within the charge to corporation tax in respect of a part of its activities, for the purposes of this section the business and other commercial purposes of the company do not include the purposes of that part.



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- (3) Subsection (4) applies if a tax avoidance purpose is one of the purposes for which a company—
  - (a) is a party to a loan relationship at any time, or
  - (b) enters into a transaction which is a related transaction by reference to a loan relationship of the company.
- (4) For the purposes of subsection (1) the tax avoidance purpose is only regarded as a business or other commercial purpose of the company if it is not—
  - (a) the main purpose for which the company is a party to the loan relationship or, as the case may be, enters into the related transaction, or
  - (b) one of the main purposes for which it is or does so.
- (5) The references in subsections (3) and (4) to a tax avoidance purpose are references to any purpose which consists of securing a tax advantage for the company or any other person.

#### **443 Restriction of relief for interest where tax relief schemes involved** U.K.

- (1) A company may not bring a debit into account for the purposes of this Part in respect of interest if a tax relief scheme has been effected or tax relief arrangements have been made in relation to the transaction as a result of which the interest would be taken into account.
- (2) Subsection (1) applies whether the tax relief scheme is effected or the tax relief arrangements are made before or after the transaction.
- (3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the company from the transaction is the obtaining of a reduction in tax liability by bringing the debit into account.
- (4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit which might be expected to accrue to the company from the transaction is the obtaining of a reduction in tax liability by bringing the debit into account.
- (5) Subsection (6) applies if relief is claimed as a result of section 403 of ICTA (amounts which may be surrendered by way of group relief)—
  - (a) in respect of trading losses in a case where, in calculating those losses, debits in respect of loan relationships are treated under section 297(3) as expenses of the trade, or
  - (b) in respect of a deficit to which Chapter 16 (non-trading deficits) applies.
- (6) Any question arising under this section as to what benefit might be expected to accrue from a transaction is to be determined by reference to the claimant company and the surrendering company taken together.
- (7) In this section “the claimant company” and “the surrendering company” have the same meaning as in section 402 of ICTA (see subsection (1) of that section).

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### *Transactions not at arm's length: general*

#### **444 Transactions not at arm's length: general U.K.**

- (1) If—
  - (a) credits or debits in respect of a loan relationship of a company are to be brought into account for the purposes of this Part in respect of a related transaction, and
  - (b) that transaction is not a transaction at arm's length,  
those credits or debits are to be determined for the purposes of this Part in accordance with the independent terms assumption.
- (2) The independent terms assumption is that the transaction was entered into on the terms on which it would have been entered into between knowledgeable and willing parties dealing at arm's length.
- (3) This section is subject to section 445 (disapplication of this section where Schedule 28AA to ICTA applies).
- (4) Subsection (1) does not apply to debits arising from the acquisition of rights under a loan relationship if those rights are acquired for less than market value.
- (5) In a case where the related transaction is a transaction within section 336(2) or part of a series of transactions within 336(3) (group transactions), subsection (1) does not apply if—
  - (a) section 340 (group transfers and transfers of insurance business: transfer at notional carrying value) applies as a result of that transaction or, as the case may be, that series of transactions, or
  - (b) section 340 would so apply apart from section 341 (transferor using fair value accounting).
- (6) Subsection (1) does not apply to exchange gains or losses (but see sections 447 to 452).

#### **445 Disapplication of section 444 where Schedule 28AA to ICTA applies U.K.**

- (1) Section 444 does not apply, and Schedule 28AA to ICTA (provision not at arm's length) applies instead, to credits or debits in respect of amounts which—
  - (a) fall to be adjusted for tax purposes under that Schedule, or
  - (b) are within that Schedule without falling to be so adjusted (see subsection (3)).
- (2) Subsection (1) applies despite section 464 (amounts brought into account under this Part excluded from being otherwise brought into account), but is subject to—
  - (a) section 340(7) (disapplication of Schedule 28AA to ICTA where group member replaces another as party to loan), and
  - (b) section 447(5) (disapplication of that Schedule for exchange gains and losses).
- (3) For the purposes of subsection (1), an amount is within Schedule 28AA to ICTA without falling to be adjusted under it in a case where—
  - (a) the conditions in paragraph 1(1) of that Schedule are met, and
  - (b) the actual provision does not differ from the arm's length provision.
- (4) For the way in which this Part applies where adjustments are made under Schedule 28AA to ICTA, see section 446.

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- (5) In this section “the actual provision” and “the arm's length provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

**446 Bringing into account adjustments made under Schedule 28AA to ICTA U.K.**

- (1) This section deals with the credits and debits which are to be brought into account for the purposes of this Part as a result of Schedule 28AA to ICTA (provision not at arm's length) applying in relation to a company's loan relationships or related transactions.
- (2) Subsection (3) applies if under Schedule 28AA to ICTA an amount (“the imputed amount”) is treated as an amount of profits or losses arising to a company from any of its loan relationships or related transactions.
- (3) Credits or debits relating to the imputed amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such profits or losses.
- (4) Subsection (5) applies if under Schedule 28AA to ICTA an amount is treated as interest payable under any of a company's loan relationships.
- (5) Credits or debits relating to that amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such interest.
- (6) Subsection (7) applies if under Schedule 28AA to ICTA an amount is treated as expenses incurred by a company under or for the purposes of any of its loan relationships or related transactions.
- (7) Debits relating to the amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such expenses.

*Transactions not at arm's length: exchange gains and losses*

**447 Exchange gains and losses on debtor relationships: loans disregarded under Schedule 28AA to ICTA U.K.**

- (1) Subsections (2) and (3) apply if—
  - (a) a company has a debtor relationship in an accounting period,
  - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
  - (c) as a result of paragraph 1 of Schedule 28AA to ICTA (provision not at arm's length) the profits and losses of the company are calculated for tax purposes for the period as if—
    - (i) the loan had not been made, or
    - (ii) part of the loan had not been made.
- (2) In a case where subsection (1)(c)(i) applies, the exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.
- (3) In a case where subsection (1)(c)(ii) applies, a proportion of the exchange gain or loss must be left out of account in determining those credits or debits.

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- (4) That proportion is the proportion that the part of the loan that is treated as if it had not been made bears to the whole of the loan.
- (5) Nothing in Schedule 28AA to ICTA requires the amounts brought into account under this Part in respect of exchange gains or losses from loan relationships to be calculated on the assumption that the arm's length provision had been made instead of the actual provision.
- (6) But subsection (5) does not affect the application of subsections (2) and (3) under subsection (1).
- (7) In this section “the arm's length provision” and “the actual provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

**448 Exchange gains and losses on debtor relationships: equity notes where holder associated with issuer U.K.**

- (1) This section applies if—
  - (a) a company has a debtor relationship in an accounting period,
  - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
  - (c) the whole of any interest or other distribution out of the assets of the company in respect of securities of the company which represent the relationship is regarded as a distribution because of section 209(2)(e)(vii) of ICTA (equity notes held by company associated with issuer or by a funded company).
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.

**449 Exchange gains and losses on creditor relationships: no corresponding debtor relationship U.K.**

- (1) This section applies if—
  - (a) a company has a creditor relationship in an accounting period, and
  - (b) an exchange gain or loss arises in the period in respect of an asset representing the relationship.
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part if conditions A and B are met.
- (3) Condition A is that the transaction giving rise to the loan is such that it would not have been entered into at all if the parties had been dealing at arm's length.
- (4) Condition B is that there is no corresponding debtor relationship.
- (5) For the meaning of “corresponding debtor relationship”, see section 450.
- (6) This section is subject to section 451 (exception to this section where loan exceeds arm's length amount).

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#### **450 Meaning of “corresponding debtor relationship” U.K.**

- (1) In section 449 “corresponding debtor relationship” means a debtor relationship which—
  - (a) corresponds to the creditor relationship mentioned in section 449(1), and
  - (b) is of such a kind that conditions A and B are met.
- (2) Condition A is that such credits as are mentioned in subsection (3) would fall to be brought into account for the purposes of this Part in respect of exchange gains from that debtor relationship.
- (3) Those credits are credits corresponding to, and of the same amount as, the debits that would fall to be so brought into account in respect of exchange losses from the creditor relationship apart from section 449.
- (4) Condition B is that such debits as are mentioned in subsection (5) would fall to be so brought into account in respect of exchange losses from that debtor relationship.
- (5) Those debits are debits corresponding to, and of the same amount as, the credits that would fall to be so brought into account in respect of exchange gains from the creditor relationship apart from section 449.
- (6) In determining for the purposes of this section whether credits or debits would fall to be so brought into account, section 328(2) to (7) (as a result of which some exchange gains and losses are excluded from this Part) is ignored.

#### **451 Exception to section 449 where loan exceeds arm's length amount U.K.**

- (1) Section 449 does not apply if the circumstances are such that, had the parties to the relevant transaction been dealing at arm's length, the amount of the loan would have been an amount (“the arm's length amount”) greater than nil, but less than its actual amount.
- (2) Accordingly, an exchange gain or loss which arises in the accounting period in respect of an asset representing the creditor relationship is not required by that section to be left out of account.
- (3) But if—
  - (a) the circumstances are as mentioned in subsection (1), and
  - (b) there is no corresponding debtor relationship,only a proportion of the exchange gain or loss may be taken into account in determining the credits or debits to be brought into account for the purposes of this Part.
- (4) That proportion is the proportion which the arm's length amount bears to the actual amount of the loan.
- (5) In this section—
  - “corresponding debtor relationship” has the same meaning as in section 449 (see section 450), and
  - “the relevant transaction” means the transaction giving rise to the loan as a result of which the company has the creditor relationship in the accounting period in question.

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## **452 Exchange gains and losses where loan not on arm's length terms** **U.K.**

- (1) This subsection applies if—
  - (a) a company would be treated as having a debtor relationship in an accounting period if a claim were made under paragraph 6D(2) of Schedule 28AA to ICTA in relation to that period, and
  - (b) for that period there is a connection between that company and the company that would have the corresponding creditor relationship.
- (2) If subsection (1) applies, it is assumed that such a claim is made for the purpose of determining the debits or credits to be brought into account for the purposes of this Part in respect of any exchange gains or losses arising in that period in respect of the liability representing that debtor relationship.
- (3) Subsections (4) and (5) apply if—
  - (a) because of a claim made under paragraph 6D(2) of Schedule 28AA to ICTA more than one company is treated for any purpose as having a debtor relationship represented by the same liability, or
  - (b) because of the claim that is assumed to be made under subsection (2) more than one company is so treated.
- (4) The total amount of the credits brought into account for the purposes of this Part in respect of exchange gains from those debtor relationships must not exceed the total amount of the debits brought into account for those purposes in respect of exchange losses from the corresponding creditor relationship.
- (5) The total amount of the debits brought into account for those purposes in respect of exchange losses from those debtor relationships must not exceed the total amount of the credits brought into account for those purposes in respect of exchange gains from the corresponding creditor relationship.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

*Connected parties deriving benefit from creditor relationships*

## **453 Connected parties deriving benefit from creditor relationships** **U.K.**

- (1) This section applies in the case of any loan relationship that is a creditor relationship of a company (“A”) if—
  - (a) the return to A from the relationship is less than a commercial return,
  - (b) another company (“B”) that is connected with A directly or indirectly derives any benefit as a result of any arrangements made—
    - (i) in consequence of the relationship, or
    - (ii) otherwise in connection with the relationship, and
  - (c) that benefit is designed to represent some or all of the amount by which the return to A from the relationship is less than a commercial return.
- (2) The credits to be brought into account by A in respect of the relationship for the purposes of this Part are to be determined on the basis of fair value accounting.
- (3) The fair value of A's rights under the relationship must include the fair value of the benefit which is derived by B as a result of the arrangements.

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- (4) In determining the return to A from the relationship for the purposes of subsection (1) (a), any benefit which A derives directly or indirectly from the benefit derived by B as mentioned in subsection (1)(b) is ignored.
- (5) In this section—
- “arrangements” includes any agreement or understanding, whether or not it is legally enforceable,
  - “benefit” includes value in any form, and
  - “commercial return” means a return on an investment of money at a commercial rate of interest.

*Tax advantages from resetting interest rates (“reset bonds”)*

#### **454 Application of fair value accounting: reset bonds etc** **U.K.**

- (1) This section applies if—
- (a) a company has a creditor relationship,
  - (b) the object, or one of the main objects, of the company entering into or becoming a party to the relationship was the securing of a tax advantage, and
  - (c) conditions A and B are met in relation to an asset representing the relationship.
- (2) Condition A is that there is or has at any time been a change in—
- (a) the rate of interest payable in the case of the asset,
  - (b) the amount payable to discharge the debt,
  - (c) the time at which any payments of interest under the asset fall due, or
  - (d) the time at which any other payments under the asset fall due.
- (3) Condition B is that the difference between—
- (a) the fair value of the asset immediately after the change, and
  - (b) the issue price of the asset,
- is equal to at least 5% of the issue price of the asset.
- (4) On and after the day on which conditions A and B become met in relation to an asset the credits and debits to be brought into account for the purposes of this Part as respects the loan relationship are to be determined using fair value accounting.
- (5) In determining the fair value of an asset for any purpose of this section, it is assumed that all amounts payable by the debtor will be paid in full as they fall due.
- (6) For the purposes of subsection (1)(b), it does not matter for whom the advantage is secured.

*Disposals for consideration not fully recognised by accounting practice*

#### **455 Disposals for consideration not fully recognised by accounting practice** **U.K.**

- (1) This section applies if in any accounting period (“the relevant accounting period”) a company with the relevant avoidance intention disposes of rights under a creditor relationship wholly or partly for consideration which—



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- (a) is not wholly in the form of money or a debt which falls to be settled by the payment of money, and
  - (b) is not fully recognised.
- (2) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account for the purposes of this Part.
- (3) Consideration is not fully recognised if, as a result of the application of generally accepted accounting practice, the full amount or value of the consideration is not recognised in determining the company's profit or loss for the relevant accounting period or any other accounting period.
- (4) In determining the credits which the company must bring into account for the relevant accounting period for the purposes of this Part, it is assumed that the whole of the consideration is recognised in determining the company's profit or loss for that period.
- (5) But this section does not apply if paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) operates in relation to the disposal so as to increase the tax liability of the company.

## CHAPTER 16 **U.K.**

### NON-TRADING DEFICITS

#### **456 Introduction to Chapter **U.K.****

- (1) This Chapter applies if for any accounting period a company has a non-trading deficit from its loan relationships under section 301(6).
- (2) In this Chapter “the deficit” and “the deficit period” mean that deficit and that period respectively (but see section 458(5)).
- (3) Sections 457 and 458 set out the rules about carrying the deficit forward to later accounting periods.
- (4) Sections 459 and 460 deal with claims for the deficit to be dealt with differently.
- (5) Sections 461 to 463 deal with the consequences of such claims.

#### **457 Basic rule for deficits: carry forward to accounting periods after deficit period **U.K.****

- (1) The basic rule is that the deficit must be carried forward and set off against non-trading profits of the company for accounting periods after the deficit period in accordance with subsection (3) and section 458.
- (2) That rule does not apply to so much of the deficit as—
  - (a) is surrendered as group relief under section 403 of ICTA, or
  - (b) is the subject of a claim by the company under section 459 (claim to set off deficit against profits of deficit period or earlier periods).
- (3) So much of the amount carried forward from the deficit period as is not the subject of a claim under section 458(1) must be set off against the non-trading profits of the company for the next accounting period after the deficit period.

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- (4) Those profits are reduced accordingly.
- (5) In this Chapter “non-trading profits”, in relation to a company, means so much of the company's profits as does not consist of trading income for the purposes of section 393A of ICTA (setting-off of trading losses against profits of the same or an earlier period).

#### **458 Claim to carry forward deficit to later accounting periods U.K.**

- (1) The company may make a claim for so much of the amount carried forward from the deficit period as is specified in the claim to be excepted from being set off against non-trading profits of the first accounting period after the deficit period (“the first later period”).
- (2) Any such claim must be made within the period of 2 years after the end of the first later period.
- (3) Subsection (4) applies if any amount is carried forward from the deficit period under section 457(1) which—
  - (a) cannot be set off under section 457(3) against non-trading profits of the first later period, or
  - (b) is the subject of a claim under subsection (1).
- (4) That amount is treated for the purposes of this Part as if it were—
  - (a) an amount of non-trading deficit from the company's loan relationships for the first later period, and
  - (b) an amount which falls to be carried forward and set against non-trading profits of later accounting periods under section 457(1).
- (5) Accordingly, section 457 and this section apply as if the first later period were the deficit period.

#### **459 Claim to set off deficit against profits of deficit period or earlier periods U.K.**

- (1) The company may make a claim for the whole or part of the deficit—
  - (a) to be set off against [<sup>F5</sup>any profits of the company (of whatever description)] for the deficit period, or
  - (b) to be carried back to be set off against profits for earlier accounting periods.
- (2) No claim may be made under subsection (1) in respect of a deficit which is surrendered as group relief under section 403 of ICTA.
- (3) Subsection (1) does not apply if the company is a charity.
- (4) For time limits and other provisions applicable to claims under subsection (1), see section 460.
- (5) For what happens when a claim is made under subsection (1)(a), see section 461.
- (6) For what happens when a claim is made under subsection (1)(b), and for the profits available for relief where such a claim is made, see sections 462 and 463.

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### Textual Amendments

- F5** Words in s. 459(1)(a) substituted (retrospective and with effect in accordance with art. 1(2) of the amending S.I.) by [Corporation Tax Act 2009 \(Amendment\) Order 2010 \(S.I. 2010/614\)](#), arts. 1(1), **3(3)**

## **460 Time limits and procedure for claims under section 459(1) U.K.**

- (1) A claim under section 459(1) must be made within—
  - (a) the period of 2 years after the deficit period ends, or
  - (b) such further period as an officer of Revenue and Customs allows.
- (2) Different claims may be made in respect of different parts of a non-trading deficit for any deficit period.
- (3) But no claim may be made in respect of any part of a deficit to which another such claim relates.

## **461 Claim to set off deficit against other profits for the deficit period U.K.**

- (1) This section applies if a claim is made under section 459(1)(a) for the whole or part of the deficit to be set off against profits for the deficit period.
- (2) The general rule is that the amount to which the claim relates must be set off against the profits of the company for the deficit period which are identified in the claim.
- (3) Those profits are reduced accordingly.
- (4) The general rule is subject to subsections (5) and (7).
- (5) Relief for any deficit incurred in a trade in an earlier accounting period must be given before relief under this section.
- (6) But relief under this section must be given before relief is given against profits for the deficit period—
  - (a) under section 392A(1) or 393A(1) of ICTA (losses set against profits for the same or earlier accounting periods), or
  - (b) as a result of a claim under section 459(1)(b) (carry-back) in respect of a deficit for a later period.
- (7) No relief may be given under this section against ring fence profits of the company within the meaning of Chapter 5 of Part 12 of ICTA (petroleum extraction activities).

## **462 Claim to carry back deficit to earlier accounting periods U.K.**

- (1) This section applies if a claim is made under 459(1)(b) for the whole or part of the deficit to be carried back to be set off against profits for accounting periods before the deficit period.
- (2) The claim has effect only if it relates to an amount equal to the lesser of—
  - (a) so much of the deficit as is not an amount in relation to which a claim is made under section 459(1)(a), and
  - (b) the total amount of the profits available for relief under this section.

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- (3) Section 463 explains which profits are so available.
- (4) The amount to which the claim relates is set off against those profits by treating them as reduced accordingly.
- (5) If those profits are profits for more than one accounting period, the relief is applied by setting off the amount to which the claim relates against profits for a later period before setting off any remainder of that amount against profits for an earlier period.

#### **463 Profits available for relief under section 462 U.K.**

- (1) The profits available for relief under section 462 are the amounts which (apart from the relief) would be charged under this Part as profits for accounting periods ending within the permitted period, after giving every prior relief.
- (2) In this section—
  - “the permitted period” means the period of 12 months immediately before the deficit period, and
  - “prior relief” means a relief which subsection (5) provides must be given before relief under section 462.
- (3) If an accounting period ending within the permitted period begins before it, only a part of the amount which (apart from the relief) would be chargeable under this Part for that period, after giving every prior relief, is available for relief under section 462.
- (4) That part is so much as is proportionate to the part of the accounting period in the permitted period.
- (5) The reliefs which must be given before relief under section 462 are—
  - (a) relief as a result of a claim under section 459(1)(a) (claim for deficit to be set off against total profits for the deficit period),
  - (b) relief in respect of a loss or deficit incurred or treated as incurred in an accounting period before the deficit period,
  - (c) relief under section 338 of ICTA (charges on income deducted from total profits) in respect of payments made wholly and exclusively for the purposes of a trade,
  - (d) relief under section 393A of ICTA (losses set off against profits of the same, or an earlier, accounting period), and
  - (e) if the company is a company with investment business for the purposes of Part 16 (companies with investment business)—
    - (i) any deduction in respect of management expenses under section 1219 (expenses of management of a company's investment business),
    - (ii) relief under section 338 of ICTA in respect of payments made wholly and exclusively for the purposes of its business, and
    - (iii) any allowance under Part 2 of CAA 2001 (plant and machinery allowances).

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## CHAPTER 17 **U.K.**

### PRIORITY RULES

#### **464 Priority of this Part for corporation tax purposes **U.K.****

- (1) The amounts which are brought into account in accordance with this Part in respect of any matter are the only amounts which may be brought into account for corporation tax purposes in respect of it.
- (2) Subsection (1) is subject to any express provision to the contrary.
- (3) For further provisions relating to the rule in this section, see in particular—
  - (a) section 445(2) (disapplication of section 444 where Schedule 28AA to ICTA applies),
  - (b) section 465 (exclusion of distributions except in tax avoidance cases),
  - (c) section 700 (relationship of Part 7 to this Part),
  - (d) section 400(9A) of ICTA (write-off of government investment),
  - (e) section 494 of ICTA (petroleum extraction activities: loan relationships),
  - (f) section 795(4) of ICTA (computation of income subject to foreign tax),
  - (g) section 811(3) of ICTA (deduction for foreign tax where no credit available),
  - (h) section 83(2ZA) of FA 1989 (life assurance: receipts to be taken into account), and
  - (i) paragraph 3(5) of Schedule 12 to F(No.2)A 1992 (banks etc in compulsory liquidation: taxation of certain receipts).
- (4) See also the following sections (under which amounts prevented from being brought into account under this Part are treated as if they were so brought into account for the purposes of this section)—
  - (a) section 327(5) and (6) (disallowance of imported losses etc), and
  - (b) section 441(4) and (5) (loan relationships for unallowable purposes).

#### **465 Exclusion of distributions except in tax avoidance cases **U.K.****

- (1) Credits or debits relating to any amount falling, when paid, to be treated as a distribution must not be brought into account for the purposes of this Part, except, in the case of credits, so far as they are avoidance arrangement amounts (see subsection (4)).
- (2) Nothing in section 464(1) prevents amounts that are not brought into account because of subsection (1) from being brought into account for corporation tax purposes otherwise than under this Part.
- (3) But see the following provisions (under which some amounts are prevented from being distributions for corporation tax purposes and accordingly are within this Part)—
  - (a) section 523(2)(b) (shares subject to outstanding third party obligations and non-qualifying shares),
  - (b) section 209(6A) of ICTA (relevant alternative finance return under alternative finance arrangements),
  - (c) section 477A(3)(b) of ICTA (building society dividends etc), and

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- (d) section 486(1) and (9) of ICTA (dividends, bonuses and other sums payable to shareholders in registered industrial and provident societies and UK agricultural or fishing co-operatives).
- (4) For the purposes of this section an amount is an avoidance arrangement amount if it arises in consequence of, or otherwise in connection with, arrangements of which the purpose, or one of the main purposes, is securing a tax advantage for any person.
- (5) In this section “arrangements” includes any scheme, agreement or understanding, transaction or series of transactions.

## CHAPTER 18 **U.K.**

### GENERAL AND SUPPLEMENTARY PROVISIONS

#### *Connections between persons*

#### **466 Companies connected for an accounting period **U.K.****

- (1) This section and sections 467 to 471 have effect for the purposes of any provisions of this Part which apply this section (but this does not affect the application of section 1316(1) (meaning of “connected” persons) for other purposes of this Part).
- (2) There is a connection between a company (“A”) and another company (“B”) for an accounting period if there is a time in the period when—
  - (a) A controls B,
  - (b) B controls A, or
  - (c) A and B are both controlled by the same person.
- (3) But A and B are not taken to be controlled by the same person just because they have been under the control of—
  - (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department,
  - (e) a foreign sovereign power, or
  - (f) an international organisation.
- (4) Subsection (2) is subject to section 468 (connection between companies to be ignored in some circumstances).
- (5) For a case where companies are treated as if one controlled the other, see section 383(5) (inter-partnership lending between connected company partners etc).
- (6) Section 472 (meaning of “control”) applies for the purposes of this section.

#### **467 Connections where partnerships are involved **U.K.****

- (1) This section applies for the purposes of the provisions which apply section 466 (“the relevant provisions”) if—
  - (a) a trade or business is carried on by a firm, and

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- (b) the firm stands in the position of a creditor or debtor as respects a money debt.
- (2) The questions about connections specified in subsection (3) must be determined as if each of the partners in the firm separately (rather than the firm), stood in that position as respects the debt to the extent of that partner's appropriate share.
- (3) The questions are—
  - (a) whether for the purposes of this Part there is a connection for the purposes of the relevant provisions between any two companies for an accounting period in the case of a loan relationship, and
  - (b) how far any amount is treated under this Part in any particular way as a result of there being, or not being, such a connection.
- (4) For the purposes of subsection (2), a partner's “appropriate share” is the same share as the share in which any profit or loss for the accounting period in question would be apportioned to the partner in accordance with the firm's profit-sharing arrangements.
- (5) The references in subsections (2) to (4) to partners do not include references to the general partner of a limited partnership which is a collective investment scheme.

#### **468 Connection between companies to be ignored in some circumstances** **U.K.**

- (1) In the case of a company (“the creditor”) which has a creditor relationship, any connection for an accounting period between the creditor and another company which stands in the position of a debtor as respects the debt is ignored for the purposes of the relevant provisions if the creditor is a party to the relationship in circumstances where—
  - (a) conditions A to E in section 469 (creditors who are financial traders) are met, or
  - (b) conditions A, B and C in section 471 (creditors who are insurance companies carrying on basic life assurance and general annuity business) are met.
- (2) In subsection (1) “the relevant provisions” means any provisions of this Part which apply section 466.
- (3) Subsection (4) applies if for any accounting period subsection (1) has effect in the case of a creditor relationship of a company.
- (4) Subsection (1) does not apply for determining whether there is a connection between the two companies for the purposes of so much of any of the relevant provisions or of section 467 as relates to the corresponding debtor relationship.
- (5) For the purposes of this section and section 469, a company is treated as standing in the position of a debtor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (6) In subsection (5) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

#### **469 Creditors who are financial traders** **U.K.**

- (1) This section sets out the conditions referred to in section 468(1)(a).



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- (2) Condition A is that the creditor disposes of or acquires assets representing creditor relationships in the course of carrying on any activities forming an integral part of a trade carried on by it in the accounting period.
- (3) Condition B is that the asset representing the creditor relationship was acquired in the course of those activities.
- (4) Condition C is that that asset—
  - (a) is listed on a recognised stock exchange at the end of that period, or
  - (b) is a security the redemption of which must occur within 12 months of its issue.
- (5) Condition D is that there is a time in that period when assets of the same kind as the asset representing the creditor relationship are beneficially owned by persons other than the creditor.
- (6) Condition E is that in that period there is not more than 3 months in total during which the equivalent of at least 30% of the assets of that kind is beneficially owned by connected companies.
- (7) Section 470 supplements this section.

#### **470 Section 469: supplementary provisions U.K.**

- (1) For the purposes of conditions D and E in section 469 assets are taken to be of the same kind if they—
  - (a) are treated as being of the same kind by the practice of any recognised stock exchange, or
  - (b) would be so treated if dealt with on such an exchange.
- (2) For the purposes of condition E in section 469 an asset is beneficially owned by a connected company if there is a connection between—
  - (a) the company which beneficially owns it, and
  - (b) a company which stands in the position of a debtor as respects the money debt by reference to which any loan relationship represented by that asset exists.
- (3) Whether there is a connection for the purposes of subsection (2) at any time in an accounting period (“the relevant time”) is determined in accordance with section 466(2), (3), (5) and (6)—
  - (a) applying the conditions in section 466(2) only at the relevant time, and
  - (b) ignoring section 468.

#### **471 Creditors who are insurance companies carrying on BLAGAB U.K.**

- (1) This section sets out the conditions referred to section 468(1)(b)).
- (2) Condition A is that the creditor is an insurance company carrying on basic life assurance and general annuity business in the accounting period.
- (3) Condition B is that the asset representing the creditor relationship is linked for that period to that business.
- (4) Condition C is that conditions C, D and E in section 469 are met in relation to that asset.

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#### **472 Meaning of “control” U.K.**

- (1) This section has effect for the purposes of any provisions of this Part which apply this section (but this does not affect the application of section 1316(2) (meaning of “control”) for other purposes of this Part).
- (2) For those purposes “control”, in relation to a company, means the power of a person to secure that the affairs of the company are conducted in accordance with the person's wishes—
  - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) as a result of any powers conferred by the articles of association or other document regulating the company or any other company.
- (3) Trading shares held by a company and any voting power or other powers arising from such shares are ignored for the purposes of this section.
- (4) For the purposes of subsection (3) shares held by a company are trading shares if—
  - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
  - (b) the shares are not assets of an insurance company's long-term insurance fund.
- (5) Subsection (6) applies in the case of any firm to which section 1259 (calculation of firm's profits and losses) applies.
- (6) For any accounting period of the firm, property, rights or powers held or exercisable for its purposes are treated for the purposes of this section as if—
  - (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
  - (b) the apportionment had been in the same shares as those in which the profit or loss of the period would be apportioned between the partners in accordance with the firm's profit-sharing arrangements.
- (7) In subsection (6) the references to partners do not include references to the general partner of a limited partnership which is a collective investment scheme.

#### **473 Meaning of “major interest” U.K.**

- (1) In this Part references to a company (“A”) having a major interest in another company (“B”) are to be read as follows.
- (2) A has a major interest in B at any time if at that time—
  - (a) A and one other person (“C”), taken together, have control of B, and
  - (b) A and C each have interests, rights and powers representing at least 40% of the holdings, rights and powers as a result of which A and C are taken to have control of B.
- (3) The reference in subsection (2)(b) to interests, rights and powers does not include interests, rights or powers arising from shares held by a company if—
  - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
  - (b) the shares are not assets of an insurance company's long-term insurance fund.

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- (4) Section 474 makes provision about how this section operates where connected companies or partnerships are involved.
- (5) For the purposes of this section and section 474, a company (“D”) is connected with another company (“E”) if—
  - (a) D controls E,
  - (b) E controls D, or
  - (c) D and E are both controlled by the same company.
- (6) Section 472 (meaning of “control”) applies for the purposes of this section and section 474.
- (7) If two or more persons taken together have the power mentioned in section 472(2) (as read with the other provisions of section 472) as respects the affairs of a company (“B”), they are taken for the purposes of subsection (2)(a) to have control of B.

**474 Treatment of connected companies and partnerships for section 473 U.K.**

- (1) For the purposes of section 473(2), all the interests, rights and powers of any company connected with another company are attributed to the other company before determining any question—
  - (a) whether two persons taken together have control of a company at any time, or
  - (b) whether a person has at any time interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of a company.
- (2) If section 1259 (calculation of firm's profits and losses) applies, any property, rights or powers held or exercisable for the purposes of the firm are treated for the purposes of section 473, as respects any time in an accounting period of the firm, on the basis of the assumptions in subsection (3).
- (3) The assumptions are that—
  - (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners in the firm severally, and
  - (b) the apportionment was in the same shares as those in which the profit or loss of the accounting period would be apportioned between the partners under the firm's profit-sharing arrangements.
- (4) Subsection (5) applies if—
  - (a) a trade or business is carried on by a firm, and
  - (b) the firm stands in the position of a creditor or debtor as respects a money debt.
- (5) The questions in subsection (6) are to be determined as if each of the partners in the firm separately, instead of the firm, stood in the position of a creditor or, as the case may be, a debtor as respects the money debt to the extent of that partner's appropriate share (see subsection (8)).
- (6) The questions are—
  - (a) whether a company has a major interest in another company for an accounting period in the case of a loan relationship, or
  - (b) how far any amount is treated under this Part in any particular way as a result of a company having or, as the case may be, not having such a major interest.

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- (7) The references to partners in subsections (3) and (5) do not include a reference to the general partner of a limited partnership which is a collective investment scheme.
- (8) For the purposes of subsection (5), a partner's “appropriate share” is the same share as the partner's share under the firm's profit-sharing arrangements of any profit or loss calculated in accordance with section 1259 for the accounting period in question.

#### **475 Meaning of expressions relating to exchange gains and losses** **U.K.**

- (1) References in this Part to exchange gains or exchange losses, in relation to a company, are references respectively to—
  - (a) profits or gains which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company, or
  - (b) losses which so arise.
- (2) If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, for the purposes of this Part an exchange gain of nil is taken to arise in the case of that comparison.
- (3) The Treasury may make provision by regulations as to the way in which exchange gains or losses are to be calculated for the purposes of this section in a case where fair value accounting is used by the company.
- (4) The regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.
- (5) Any reference in this Part to an exchange gain or loss from a loan relationship of a company is a reference to an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company.

#### *Other general definitions*

#### **476 Other definitions** **U.K.**

- (1) In this Part—
  - “alternative finance arrangements” has the meaning given in section 501(2),
  - “associate” has the meaning given by section 417(3) of ICTA,
  - “collective investment scheme” has the meaning given by section 235 of FISMA 2000,
  - “debt” includes a debt the amount of which is to be ascertained by reference to matters which vary from time to time,
  - “equity instrument” has the meaning it has for accounting purposes,
  - “gilt-edged securities” means any securities which—
    - (a) are gilt-edged securities for the purposes of TCGA 1992 (see Schedule 9 to that Act), or
    - (b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they are issued,

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“impairment” includes uncollectability,

“impairment loss” means a debit in respect of the impairment of a financial asset,

“income statement” has the meaning it has for accounting purposes,

“international organisation” has the meaning given in subsection (2) (and also see subsection (3)),

“loan” includes any advance of money and related expressions are to be read accordingly,

“non-trading credit” and “non-trading debit” are to be read in accordance with section 301 (but also see sections 330 and 482(1)),

“profit-sharing arrangements”, in relation to a firm, has the meaning given in section 1262(4) (allocation of firm's profits or losses between partners),

[<sup>F6</sup>“release debit”, in relation to a company, means a debit in respect of a release by the company of a liability under a creditor relationship of the company,]

“share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise (except as provided in section 522(6)), but does not include a share in a building society,

“statement of changes in equity” has the meaning it has for accounting purposes,

“statement of comprehensive income” has the meaning it has for accounting purposes,

“statement of income and retained earnings” has the meaning it has for accounting purposes,

“statement of recognised income and expense” has the meaning it has for accounting purposes,

“statement of total recognised gains and losses” has the meaning it has for accounting purposes,

“tax advantage” has the meaning given by section 840ZA of ICTA,

“this Part” is to be read in accordance with section 294(2), and

“trade” and “purposes of trade” are to be read in accordance with section 298.

- (2) In this Part “international organisation” means an organisation of which—
- (a) two or more sovereign powers are members, or
  - (b) the governments of two or more sovereign powers are members.
- (3) If, in any proceedings, any question arises whether a person is an international organisation for the purposes of any provision of this Part, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question is conclusive evidence of that fact.

#### **Textual Amendments**

**F6** Definition in s. 476(1) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(3\)\(12\)](#)

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## PART 6 U.K.

### RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

#### CHAPTER 1 U.K.

##### INTRODUCTION

#### 477 Overview of Part U.K.

- (1) This Part deals with matters treated for some or all purposes as loan relationships or rights, payments or profits under loan relationships.
- (2) See, in particular—
  - (a) Chapter 2 (relevant non-lending relationships),
  - (b) Chapter 3 (OEICs, unit trusts and offshore funds),
  - (c) Chapter 4 (building societies),
  - (d) Chapter 5 (industrial and provident societies),
  - (e) Chapter 6 (alternative finance arrangements),
  - [<sup>F7</sup>(f) Chapter 6A (shares accounted for as liabilities),]
  - (g) Chapter 8 (returns from partnerships),
  - (h) Chapter 9 (manufactured interest etc),
  - (i) Chapter 10 (repos), and
  - (j) Chapter 11 (investment life insurance contracts).
- (3) For the relationship of this Part to other Parts of this Act, see—
  - (a) section 294(2) (which provides for references to Part 5 to be read as including references to this Part), and
  - (b) sections 464 and 465 (relationship of Part 5 and this Part to other provisions).

#### Textual Amendments

- F7** S. 477(2)(f) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 2\(3\), 12](#)

#### CHAPTER 2 U.K.

##### RELEVANT NON-LENDING RELATIONSHIPS

*Introduction: meaning of “relevant non-lending relationship” etc*

#### 478 Relevant non-lending relationships: introduction U.K.

- (1) This Chapter provides for Part 5 to apply to relevant non-lending relationships in relation to some matters as it applies to loan relationships (see section 481).
- (2) For the meaning of “relevant non-lending relationship”, see—
  - (a) section 479 (relevant non-lending relationships not involving discounts), and

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- (b) section 480 (relevant non-lending relationships involving discounts).
- (3) For provisions extending the meaning of “money debt” and “interest” in this Chapter, see—
  - (a) section 483 (exchange gains and losses: amounts treated as money debts), and
  - (b) section 484 (provision not at arm's length: meaning of “interest” and “money debt”).
- (4) For exclusions from this Chapter, see—
  - (a) section 485 (exclusion of debts where profits or losses within Part 7 or 8), and
  - (b) section 486 (exclusion of exchange gains and losses in respect of tax debts etc).

#### 479 Relevant non-lending relationships not involving discounts **U.K.**

- (1) A company has a relevant non-lending relationship if—
  - (a) the company stands, or has stood, in the position of a creditor or debtor in relation to a money debt,
  - (b) the money debt did not arise from a transaction for the lending of money (and so, because of section 302(1)(b), there is no loan relationship), and
  - (c) the money debt is one of the kinds mentioned in subsection (2).
- (2) The kinds of debt are—
  - (a) a debt on which interest is payable to or by the company,
  - (b) a debt in relation to which exchange gains or losses arise to the company, <sup>F8</sup> ...
  - (c) a debt in relation to which an impairment loss (or credit in respect of the reversal of an impairment loss) [<sup>F9</sup>or release debit ] arises to the company in respect of an unpaid (or previously unpaid) business payment<sup>F10</sup>, and
  - (d) a debt in relation to which a relevant deduction has been allowed to the company and which is released.]
- (3) In subsection [<sup>F11</sup>(2)(c)] “business payment” means a payment which, if it were paid, would fall to be brought into account for corporation tax purposes as a receipt of a trade, UK property business or overseas property business carried on by the company.
- [<sup>F12</sup>(3A) In subsection (2)(d) “relevant deduction” means a deduction allowed in calculating the profits of a trade, UK property business or overseas property business. ]
- (4) For the meaning of “money debt” and “interest” in this Chapter, see—
  - (a) section 483 (exchange gains and losses: amounts treated as money debts) and
  - (b) section 484 (provision not at arm's length: meaning of “interest” and “money debt”).
- (5) For the meaning of “exchange gains or losses”, see section 475.
- (6) This section is subject to section 485 (exclusion of debts where profits or losses within Part 7 or 8).

#### Textual Amendments

- F8** Word in s. 479(2)(b) omitted (22.4.2009 retrospective) by virtue of [Finance Act 2009 \(c. 10\), s. 42\(5\)\(a\)\(12\)](#)
- F9** Words in s. 479(2)(c) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(5\)\(b\)\(12\)](#)



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- F10** S. 479(2)(d) and word inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(5\)\(c\)\(12\)](#)  
**F11** Word in s. 479(3) substituted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(6\)\(12\)](#)  
**F12** S. 479(3A) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(7\)\(12\)](#)

#### 480 Relevant non-lending relationships involving discounts **U.K.**

- (1) A company has a relevant non-lending relationship if—
- the company stands in the position of creditor in relation to a money debt,
  - the money debt did not arise from a transaction for the lending of money (and so, because of section 302(1)(b), there is no loan relationship),
  - the money debt is one from which a discount arises to the company,
  - the discount does not fall to be brought into account under section 509 (treatment of alternative finance arrangements as loan relationships etc) as a result of arrangements to which section 503 (purchase and resale arrangements) applies, and
  - in a case where the money debt is some or all of the consideration payable for a disposal of property, conditions A and B are met.
- (2) Condition A is that the property in question is not—
- an asset representing a loan relationship the disposal of which is a disposal to which subsection (3) applies, or
  - an asset representing a derivative contract the disposal of which is such a disposal.
- (3) This subsection applies to a disposal if—
- section 340 (group transfers and transfers of insurance business: transfer at notional carrying value) applies to it or would apply apart from section 341 (transferor using fair value accounting),
  - section 625 (group member replacing another as party to derivative contract) applies to it or would apply apart from section 628 (transferor using fair value accounting), or
  - the whole of the consideration for the disposal is brought into account for the purposes of Part 5 (loan relationships) or Part 7 (derivative contracts).
- (4) Condition B is that, assuming that the money debt will be paid in full, it does not fall to be brought into account for corporation tax purposes as a trading receipt of the company.
- (5) For the purposes of this section, a discount is, in particular, taken to arise from a money debt if—
- there is a sale of property for consideration some or all of which is money which falls to be paid after the sale,
  - the amount or value of the whole consideration exceeds what the purchaser would have paid for the property if payment in full had been required at the time of the sale, and
  - some or all of the excess can reasonably be regarded as representing a return on an investment of money at interest (and so as being a discount arising from the money debt).
- (6) It does not matter for the purposes of subsection (1)(c) whether the discount is of a revenue or capital nature.

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- (7) This section is subject to section 485 (exclusion of debts where profits or losses within Part 7 or 8).

*Application of Part 5 to relevant non-lending relationships*

**481 Application of Part 5 to relevant non-lending relationships** U.K.

- (1) If a company has a relevant non-lending relationship—
- (a) Part 5 (loan relationships) applies in relation to the relevant matters (see subsections (3) and (5)) as it applies in relation to such matters arising under or in relation to a loan relationship, but
  - (b) the only credits or debits to be brought into account for the purposes of that Part in respect of the relationship are those relating to those matters.
- (2) Accordingly, subject to subsection (1)(b), references in the Corporation Tax Acts to a loan relationship include a reference to a relevant non-lending relationship.
- (3) The relevant matters in the case of a relevant non-lending relationship within section 479 are—
- (a) interest payable to or by the company in respect of the relevant non-lending relationship,
  - (b) exchange gains or losses arising to the company as a result of the relationship,
  - (c) in the case of a debt on which interest is payable to the company, profits (but not losses) arising to the company from any related transaction in respect of the right to receive interest,
  - (d) in the case of a debt in relation to which an impairment loss [<sup>F13</sup>or release debit] arises to the company in respect of an unpaid business payment, the [<sup>F14</sup>impairment or release,]
  - (e) in the case of a debt in relation to which a credit in respect of the reversal of an impairment loss arises to the company in respect of a previously unpaid business payment, the reversal [<sup>F15</sup>and
  - (f) in the case of a debt in relation to which a relevant deduction has been allowed to the company and which is released, the release.]

- (4) In subsection [<sup>F16</sup>(3)(d) and (e)] “business payment” has the meaning given in section 479(3).

[<sup>F17</sup>(4A) In subsection (3)(f) “relevant deduction” has the meaning given in section 479(3A). ]

- (5) The relevant matters in the case of a relevant non-lending relationship within section 480 are—
- (a) the matters referred to in subsection (3),
  - (b) the discount arising to the company from the money debt,
  - (c) profits (but not losses) arising to the company from any related transaction,
  - (d) any impairment arising to the company in respect of the discount, and
  - (e) any reversal of any such impairment.
- (6) Subsection (7) applies if a company—
- (a) has a relevant non-lending relationship within section 479 because of a debt on which interest is payable to the company, but

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- (b) enters into a related transaction in respect of the right to receive interest as a result of which interest is not so payable.
- (7) Even though the interest is not payable to the company, for the purpose of bringing credits into account in respect of that or any other related transaction as a result of the application of subsection (3)(c), the company is still treated as having a relevant non-lending relationship within section 479.
- (8) Section 480(5) (when discount arises) applies for the purpose of this section as it applies for the purposes of section 480.

#### Textual Amendments

- F13** Words in s. 481(3)(d) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(9\)\(a\)\(12\)](#)
- F14** Words in s. 481(3)(d) substituted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(9\)\(a\)\(12\)](#)
- F15** S. 481(3)(f) and word inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(9\)\(b\)\(12\)](#)
- F16** Words in s. 481(4) substituted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(10\)\(12\)](#)
- F17** S. 481(4A) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(11\)\(12\)](#)

## 482 Miscellaneous rules about amounts to be brought into account because of this Chapter **U.K.**

- (1) Any credits or debits which—
  - (a) relate to interest payable under the Tax Acts, and
  - (b) fall to be brought into account because of this Chapter,are treated for the purposes of Part 5 as non-trading credits or debits.
- (2) The credits to be brought into account for the purposes of that Part in respect of a discount arising from a money debt under a relevant non-lending relationship are to be determined using an amortised cost basis of accounting.

*Meaning of “money debt” and “interest” in this Chapter*

## 483 Exchange gains and losses: amounts treated as money debts **U.K.**

- (1) This section applies for the purposes of this Chapter so far as relating to exchange gains and losses.
- (2) Any currency held by a company is treated as a money debt owed to the company.
- (3) A provision made by a company for the purposes of its statutory accounts in respect of a liability to which the company may become subject is treated as a money debt owed by the company if it meets conditions A and B.
- (4) Condition A is that if the company became subject to the liability, the duty to settle it would be owed for the purposes of—
  - (a) a trade,
  - (b) a UK property business, or
  - (c) an overseas property business.

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- (5) Condition B is that the provision falls to be taken into account (apart from Part 5) in calculating the profits or losses of the trade, UK property business or overseas property business for corporation tax purposes.
- (6) In the case of a company carrying on insurance business—
- (a) any deferred acquisition costs are treated as a money debt owed to the company, and
  - (b) any provision made by the company for unearned premiums or for unexpired risks is treated as a money debt owed by the company.
- (7) In subsection (6)—
- (a) “deferred acquisition costs” has the meaning given in Assets item G.II in the Balance Sheet Format set out after paragraph 10 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410), as read with note (17) of the Notes on the Balance Sheet Format (which immediately follow that Format),
  - (b) “provision made by the company for unearned premiums” has the meaning given in Liabilities item C.1 in that Balance Sheet Format, as read with notes (12) and (20) of those Notes, and
  - (c) “provision for unexpired risks” has the meaning given in paragraph 91 of that Schedule.
- (8) This section is subject to section 486 (exclusion of exchange gains and losses in respect of tax debts etc).

**484 Provision not at arm's length: meaning of “interest” and “money debt” U.K.**

- (1) References in this Chapter to interest payable on a money debt include a reference to any amount which because of Schedule 28AA to ICTA (provision not at arm's length) falls to be treated as—
- (a) interest on a money debt, or
  - (b) interest on an amount (“the notional debt”) which is treated as a money debt.
- (2) Accordingly, references in this Chapter to a money debt include references to the notional debt.

*Exclusions*

**485 Exclusion of debts where profits or losses within Part 7 or 8 U.K.**

This Chapter does not apply to a debt in respect of which profits or losses (if any) fall to be brought into account under—

- (a) Part 7 (derivative contracts), or
- (b) Part 8 (intangible fixed assets).

**486 Exclusion of exchange gains and losses in respect of tax debts etc U.K.**

- (1) No exchange gains or losses arise for the purposes of this Chapter if the money debt by reference to which the relevant non-lending relationship exists (“the relevant money debt”) is an amount of tax payable under the law of the United Kingdom.

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- (2) If the relevant money debt is an amount of tax payable under the law of a territory outside the United Kingdom, exchange gains or losses arise for the purposes of this Chapter only so far as a deduction in respect of the tax falls to be made under section 811 of ICTA (double taxation relief: deduction for foreign tax where no credit allowable).
- (3) No exchange gains or losses arise for the purposes of this Chapter if the relevant money debt is an amount which would be deductible apart from—
  - (a) a statutory provision other than section 53 (capital expenditure), or
  - (b) a rule of law.
- (4) The reference in subsection (3) to an amount being deductible is a reference to its being deductible—
  - (a) as an expense in calculating trading profits,
  - (b) as expenses of management within section 1219 (expenses of management of a company's investment business), or
  - (c) as expenses falling to be brought into account at Step 1 of section 76(7) of ICTA (expenses of insurance companies).

### CHAPTER 3 U.K.

#### OEICs, UNIT TRUSTS AND OFFSHORE FUNDS

##### *Introduction*

#### **487 Overview of Chapter U.K.**

- (1) This Chapter provides for the Corporation Tax Acts to apply in some circumstances to holdings in open-ended investment companies, unit trust schemes and offshore funds as if they were rights under a creditor relationship (see section 490).
- (2) That treatment depends on the company, scheme or fund failing the qualifying investments test.
- (3) Sections 493 to 496 deal with when that test is met.
- (4) For the meaning of “open-ended investment company” and “offshore fund” in this Chapter, see sections 488 and 489 respectively.

#### **488 Meaning of “open-ended investment company” etc U.K.**

- (1) Section 468A(2) and (3) of ICTA (meaning of “open-ended investment company” and “company” and application to parts of umbrella companies) apply for the purposes of this Chapter as they apply for the purposes of section 468A of that Act.
- (2) In this Chapter “umbrella company” has the meaning given by section 468A(4) of ICTA.

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#### **489 Meaning of “offshore fund” etc U.K.**

- (1) Sections 756A to 756C of ICTA (meaning of “offshore fund” and application to parts of umbrella funds and classes of interests in offshore funds) apply for the purposes of this Chapter as they apply for the purposes of Chapter 5 of Part 17 of that Act, except as provided in subsection (2).
- (2) For the purposes of this Chapter “offshore fund” includes anything which would be an offshore fund for the purposes of Chapter 5 of Part 17 of ICTA if the unit trust schemes and arrangements referred to in section 756A(1)(b) and (c) of that Act were not limited to collective investment schemes (and sections 756B and 756C of that Act apply for the purposes of this Chapter accordingly).
- (3) For the purposes of this Chapter an interest in an offshore fund is a material interest in such a fund if it is such an interest for the purposes of section 759 of ICTA or would be if those schemes and arrangements were not so limited.

*Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights*

#### **490 Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights U.K.**

- (1) This section applies if—
  - (a) at any time in an accounting period of a company it holds—
    - (i) any shares in an open-ended investment company,
    - (ii) any rights under a unit trust scheme, or
    - (iii) a material interest in an offshore fund, and
  - (b) there is a time in the period when that company, scheme or fund fails to meet the qualifying investments test (see section 493).
- (2) The Corporation Tax Acts have effect for the accounting period in accordance with subsections (3) and (4) as if the relevant holding were rights under a creditor relationship of the company.
- (3) The credits and debits to be brought into account for the purposes of Part 5 in respect of the company's relevant holdings are to be determined on the basis of fair value accounting.
- (4) But a credit relating to distributions of an open-ended investment company or authorised unit trust which become due and payable in an accounting period is only to be brought into account for that period if they are interest distributions.
- (5) In subsection (4) “interest distributions” has the meaning given by regulations made under section 17(3) of F(No.2)A 2005.
- (6) In this section and sections 491 and 492 “relevant holding” means a holding within subsection (1)(a).
- (7) But arrangements that are investment bond arrangements for the purposes of Chapter 6 of this Part or are within section 48A of FA 2005 (alternative finance arrangements: alternative finance investment bond: introduction) are not treated as such a holding.
- (8) See section 18(2)(c)(i) of F(No.2)A 2005 (section 17(3): specific powers) for the power to modify “relevant holding” for the purposes of this section and section 492



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by regulations under section 17(3) of that Act (regulations about authorised unit trusts and OEICS).

**491 Holding coming within section 490: opening valuations** **U.K.**

- (1) This section applies if—
  - (a) a relevant holding is held by a company both—
    - (i) at the end of one accounting period (“the first period”), and
    - (ii) at the beginning of the next (“the second period”), and
  - (b) section 490 applies to the holding for the second period but not the first period.
- (2) For the purposes of section 490(3), the opening value of the holding as at the beginning of the second period is taken to be equal to its market value for the purposes of TCGA 1992 immediately before the end of the first period (see section 272 of that Act).

**492 Disregard of investments made and liabilities incurred with avoidance intention etc** **U.K.**

- (1) In determining the credits and debits in respect of a company's relevant holdings under section 490(3), amounts relating to any investment or liability of the open-ended investment company, unit trust scheme or offshore fund must be left out of account if—
  - (a) the investment was made, or the liability was incurred, with the relevant avoidance intention, or
  - (b) any transaction or series of transactions was entered into in relation to the investment or liability with that intention.
- (2) The relevant avoidance intention is the intention of—
  - (a) eliminating or reducing the credits to be brought into account for the purposes of Part 5 or this Part as respects the company's relevant holdings, or
  - (b) creating or increasing the debits to be so brought into account.

*The qualifying investments test*

**493 The qualifying investments test** **U.K.**

- (1) An open-ended investment company, a unit trust scheme or an offshore fund meets the qualifying investments test for the purposes of this Chapter if the market value of the qualifying investments of the company, scheme or fund does not exceed 60% of the market value of all its investments.
- (2) References in this section and sections 494 and 495 to investments of an open-ended investment company are references—
  - (a) except where paragraph (b) applies, to the property subject to the collective investment scheme constituted by the company, and
  - (b) in a case where under section 468A(3) of ICTA part of an umbrella company is regarded as an open-ended investment company, to such of the property subject to the collective investment scheme constituted by the umbrella company as forms part of the separate pool in question,  
other than cash awaiting investment.



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- (3) References in this section and sections 494 and 495 to investments of a unit trust scheme are references to investments subject to the trusts of the scheme, other than cash awaiting investment.
- (4) References in this section and sections 494 and 495 to investments of an offshore fund are references to assets of the fund, other than cash awaiting investment.
- (5) In this section “collective investment scheme” has the meaning given by section 235 of FISMA 2000.
- (6) A person with rights in a part of an umbrella company which is regarded under section 468A(3) of ICTA as an open-ended investment company is treated for the purposes of this section as not owning shares in the umbrella company.
- (7) For the meaning of references to investments subject to the trusts of the scheme in the case of certain authorised unit trusts, see section 468(9) of ICTA (umbrella schemes).

#### 494 Meaning of “qualifying investments” U.K.

- (1) In section 493 “qualifying investments”, in relation to an open-ended investment company, a unit trust scheme or an offshore fund, means investments of the company, scheme or fund of any of the following descriptions—
  - (a) money placed at interest,
  - (b) securities,
  - (c) shares in a building society,
  - (d) qualifying holdings in an open-ended investment company, a unit trust scheme or an offshore fund,
  - (e) alternative finance arrangements,
  - (f) derivative contracts whose underlying subject matter consists wholly of any one or more of—
    - (i) the matters referred to in paragraphs (a) to (e) (other than diminishing shared ownership arrangements), and
    - (ii) currency,
  - (g) contracts for differences whose underlying subject matter consists wholly of any one or more of—
    - (i) interest rates,
    - (ii) creditworthiness, and
    - (iii) currency, and
  - (h) derivative contracts not within paragraph (f) or (g) where there is a hedging relationship between the contract and an asset within paragraphs (a) to (d).
- (2) In this section—
  - “contract for differences” has the same meaning as in Part 7 (derivative contracts) (see section 582),
  - “diminishing shared ownership arrangements” means arrangements to which section 504 applies,
  - “hedging relationship” has the meaning given by section 496,
  - “qualifying holding” has the meaning given by section 495(1),
  - “security” does not include shares in a company, and

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“underlying subject matter” has the same meaning as in Part 7 (derivative contracts) (see section 583).

#### 495 Qualifying holdings **U.K.**

- (1) For the purposes of section 494(1)(d) a holding in an open-ended investment company, a unit trust scheme or an offshore fund is a qualifying holding at any time if—
  - (a) at that time, or
  - (b) at any other time in the relevant accounting period,the company, scheme or fund would itself fail to meet the qualifying investments test, even on the assumption in subsection (2).
- (2) The assumption is that investments of the company, scheme or fund are qualifying investments in relation to the company, scheme or fund only if they are within section 494(1)(a), (b), (c), (e), (f), (g) or (h).
- (3) In this section “holding”—
  - (a) in relation to an open-ended investment company, means—
    - (i) except where sub-paragraph (ii) applies, shares in the company, and
    - (ii) in a case where under section 468A(3) of ICTA part of an umbrella company is regarded as an open-ended investment company, rights in the separate pool in question,
  - (b) in relation to a unit trust scheme, means an entitlement to a share in the investments of the scheme, and
  - (c) in relation to an offshore fund, means—
    - (i) shares in any company by which the fund is constituted, or
    - (ii) an entitlement to a share in the investments of the fund.
- (4) In this section “relevant accounting period” means the accounting period referred to in section 490(1).

#### 496 Meaning of “hedging relationship” **U.K.**

- (1) For the purposes of section 494, in relation to an open-ended investment company, a unit trust scheme or an offshore fund, there is a hedging relationship between a derivative contract (“the hedging instrument”) and an asset (“the hedged item”) so far as condition A or B is met.
- (2) Condition A is that the hedging instrument and the hedged item are designated as a hedge by the company, scheme or fund.
- (3) Condition B is that the hedging instrument is intended to act as a hedge of exposure to changes in fair value of a hedged item which is—
  - (a) a recognised asset which could affect the total net return of the company, scheme or fund, or
  - (b) an identified part of such an asset which is attributable to a particular risk.
- (4) For the purposes of subsection (3) “the total net return” of a company, scheme or fund means its total net return calculated—
  - (a) in accordance with generally accepted accounting practice, or
  - (b) in the case of accounts prepared in a jurisdiction outside the United Kingdom, in accordance with generally accepted accounting practice in that jurisdiction.

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*Power to change investments that are qualifying investments*

**497 Power to change investments that are qualifying investments U.K.**

- (1) The Treasury may by order amend sections 493 to 496 so as to extend or restrict the descriptions of investments of an open-ended investment company, a unit trust scheme or an offshore fund that are qualifying investments for the purposes of those provisions.
- (2) The order may make—
  - (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.
- (3) In particular, the order may make such incidental modifications of section 495(2) as the Treasury consider appropriate.

**CHAPTER 4 U.K.**

BUILDING SOCIETIES

**498 Building society dividends and interest U.K.**

- (1) This section deals with how building society dividends and interest are dealt with for corporation tax purposes.
- (2) Liability to pay building society interest or building society dividends is treated for the purposes of Part 5 as a liability arising under a loan relationship (so far as it would not otherwise be such a liability).
- (3) If building society interest or building society dividends are payable to a company, they are treated as so payable as the result of a right arising under a loan relationship of the company (so far as they would not otherwise be so payable).
- (4) Subsection (3) applies to interest paid under a certified SAYE savings arrangement with a building society as if it were a dividend on a share in the society.
- (5) In this section—
  - “building society dividends” means dividends payable in respect of shares in a building society,
  - “building society interest” means interest payable in respect of shares in, deposits with, or loans to, a building society,
  - “certified SAYE savings arrangement” has the meaning given by section 703 of ITTOIA 2005, and
  - “dividend” includes any distribution, however described.

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## CHAPTER 5 U.K.

### INDUSTRIAL AND PROVIDENT SOCIETIES

#### 499 Industrial and provident society payments treated as interest under loan relationship U.K.

- (1) Any dividend, bonus or other sum payable to a shareholder in—
  - (a) a registered industrial and provident society, or
  - (b) a UK agricultural or fishing co-operative,is treated for corporation tax purposes as interest under a loan relationship of the society or co-operative if it is payable by reference to the amount of the shareholder's holding in its share capital.
- (2) If subsection (1) applies—
  - (a) so far as the shareholder's holding is held for the purposes of a trade, the shareholder is treated for the purposes of section 297 as a party to the loan relationship referred to in subsection (1) for that purpose, and
  - (b) so far as the holding is held for any other purpose, the shareholder is treated for the purposes of that section as a party to that loan relationship for that other purpose.
- (3) In subsection (1) “UK agricultural or fishing co-operative” means a co-operative association—
  - (a) which is established in the United Kingdom and UK resident, and
  - (b) whose primary object is assisting its members in—
    - (i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or
    - (ii) carrying on businesses consisting in the catching or taking of fish or shellfish.
- (4) In subsection (3) “co-operative association” means a body with a written constitution from which the Secretary of State considers that it is in substance a co-operative association.
- (5) For the purposes of subsection (4), the Secretary of State must have regard to the way in which the body's constitution provides for its income to be applied for its members' benefit and all other relevant provisions.
- (6) In the application of subsections (4) and (5) in Northern Ireland for “the Secretary of State” substitute “ the Department of Agriculture and Rural Development ”.

#### 500 Exclusion of interest where failure to make return U.K.

- (1) This section applies if for any accounting period a registered industrial and provident society is obliged to make a return under section 887(2) of ITA 2007.
- (2) If the society has not made the return within 3 months after the end of the period, no interest paid by it in the period is to be brought into account for the period for the purposes of Part 5.
- (3) It does not matter for the purposes of subsection (2) whether the payment would be interest apart from section 499.

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## CHAPTER 6 **U.K.**

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Introduction*

#### **501 Introduction to Chapter **U.K.****

- (1) This Chapter provides for alternative finance arrangements between companies and financial institutions to be treated as loan relationships (see sections 509 and 510).
- (2) In this Part “alternative finance arrangements” means—
  - (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, and
  - (e) investment bond arrangements.
- (3) In this Chapter—
  - (a) “purchase and resale arrangements” means arrangements to which section 503 applies,
  - (b) “diminishing shared ownership arrangements” means arrangements to which section 504 applies,
  - (c) “deposit arrangements” means arrangements to which section 505 applies,
  - (d) “profit share agency arrangements” means arrangements to which section 506 applies, and
  - (e) “investment bond arrangements” means arrangements to which section 507 applies.
- (4) For the meaning of “financial institution”, see section 502.

#### **502 Meaning of “financial institution” **U.K.****

- (1) In this Chapter “financial institution” means—
  - (a) a bank, as defined by section 840A of ICTA,
  - (b) a building society within the meaning of the Building Societies Act 1986 (c. 53),
  - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b),
  - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 (c. 39) to carry on a consumer credit business or consumer hire business within the meaning of that Act,
  - (e) a bond-issuer, within the meaning of section 507, but only in relation to any bond assets which are rights under purchase and resale arrangements or diminishing shared ownership arrangements, or
  - (f) a person authorised in a jurisdiction outside the United Kingdom—
    - (i) to receive deposits or other repayable funds from the public, and
    - (ii) to grant credits for its own account.

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- (2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—
- (a) the parent or persons acting on behalf of the parent, and
  - (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.

*Arrangements that are alternative finance arrangements*

**503 Purchase and resale arrangements** **U.K.**

- (1) This section applies to arrangements if—
- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
  - (b) under the arrangements—
    - (i) the first purchaser purchases an asset and sells it to the second purchaser,
    - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),
    - (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
    - (iv) the second purchase price exceeds the first purchase price, and
    - (v) the excess equates, in substance, to the return on an investment of money at interest.
- (2) The circumstances are that—
- (a) the first purchaser is a financial institution, and
  - (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.
- (3) In this section—
- “the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and
  - “the second purchase price” means the amount payable by the second purchaser in respect of the sale.
- (4) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from this section and sections 504 to 507).

**504 Diminishing shared ownership arrangements** **U.K.**

- (1) This section applies to arrangements if under them—
- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,
  - (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
  - (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),

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- (d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,
  - (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements, or otherwise),
  - (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
  - (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).
- (2) For the purposes of subsection (1)(a) it does not matter if—
- (a) the first owner acquires its beneficial interest from the eventual owner,
  - (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
  - (c) the first owner also has a legal interest in it.
- (3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.
- (4) The conditions are that—
- (a) the grant is not to—
    - (i) the first owner,
    - (ii) a person controlled by the first owner, or
    - (iii) a person controlled by a person who also controls the first owner, and
  - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset's value, or
  - (b) having a share in a loss arising out of any such reduction.
- (6) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from section 503, this section and sections 505 to 507).

## 505 Deposit arrangements **U.K.**

- (1) This section applies to arrangements if under them—
- (a) a person (“the depositor”) deposits money with a financial institution,
  - (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
  - (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
  - (d) the payment is in proportion to the amount deposited by the depositor, and
  - (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from sections 503 and 504, this section, and sections 506 and 507).



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## 506 Profit share agency arrangements **U.K.**

- (1) This section applies to arrangements if under them—
  - (a) a person (“the principal”) appoints a financial institution as 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 its use (and may also be entitled to a fee paid by the principal), and
  - (e) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 508 (provision not at arm's length: exclusion of arrangements from sections 503 to 505, this section and section 507).

## 507 Investment bond arrangements **U.K.**

- (1) This section applies to arrangements if—
  - (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
  - (b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
  - (c) they specify a period at the end of which they cease to have effect (“the bond term”),
  - (d) the bond-issuer undertakes under the arrangements—
    - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,
    - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and
    - (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),
  - (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
  - (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
  - (g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),
  - (h) the arrangements are a listed security on a recognised stock exchange, and
  - (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.
- (2) For the purposes of subsection (1)—
  - (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,

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- (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
  - (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,
  - (d) a reference to the management of assets includes a reference to disposal,
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term,
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
    - (iii) determined in some other way,
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.
- (3) This section is subject to section 508.

**508 Provision not at arm's length: exclusion of arrangements from sections 503 to 507** **U.K.**

- (1) Arrangements to which this section applies are not—
  - (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, or
  - (e) investment bond arrangements.
- (2) This section applies to arrangements if—
  - (a) apart from this section they would be alternative finance arrangements,
  - (b) paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision referred to in paragraph 1(2)(a) of that Schedule had been made or imposed, rather than in accordance with the arrangements,
  - (c) any person who is an affected person for the purposes of that Schedule (“the affected person”) is entitled to—
    - (i) relevant return in relation to the arrangements, or
    - (ii) an amount representing relevant return in relation to them, and
  - (d) the affected person is not subject—

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- (i) to income tax or corporation tax, or
  - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,
- on the relevant return or the amount representing it.
- (3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.
- (4) For the meaning of “alternative finance return”, see sections 511 to 513.

#### *Treatment as loan relationships*

### **509 Application of Part 5: general U.K.**

- (1) Part 5 applies in relation to alternative finance arrangements to which a company (“A”) is a party as if the arrangements were a loan relationship to which A is a party.
- (2) Accordingly, references in the Corporation Tax Acts to a loan relationship include references to such alternative finance arrangements.
- (3) Section 510 makes further provision about the way in which Part 5 applies to particular descriptions of alternative finance arrangements.

### **510 Application of Part 5 to particular alternative finance arrangements U.K.**

- (1) In the case of purchase and resale arrangements, Part 5 applies in relation to A as if—
  - (a) the first purchase price were the amount of a loan made by the first purchaser to the second purchaser, and
  - (b) alternative finance return payable under the arrangements were interest payable on the loan.
- (2) In the case of diminishing shared ownership arrangements, Part 5 applies in relation to A as if—
  - (a) the consideration paid by the first owner for the acquisition of the first owner's beneficial interest (“the acquisition consideration”) were the amount of a loan made by A to the eventual owner, and
  - (b) alternative finance return payable under the arrangements were interest payable on the loan.
- (3) In the case of deposit arrangements, Part 5 applies in relation to A as if—
  - (a) any amount deposited under the arrangements were the amount of a loan made by the depositor to the financial institution, and
  - (b) alternative finance return payable under them were interest on the loan.
- (4) In the case of profit share agency arrangements, Part 5 applies in relation to A as if—
  - (a) any amount provided under the arrangements were the amount of a loan made by the principal to the agent, and
  - (b) alternative finance return payable under them were interest on the loan.
- (5) In the case of investment bond arrangements, Part 5 applies in relation to A as if alternative finance return payable to or by A under them were interest payable under the loan relationship.

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- (6) In this section—
- “the depositor” has the same meaning as in section 505 (see subsection (1) of that section),
  - “the eventual owner” has the same meaning as in section 504 (see subsection (1) of that section),
  - “the first owner” has the same meaning as in section 504 (see subsection (1) of that section),
  - “the first purchaser” has the same meaning as in section 503 (see subsection (1) of that section),
  - “the first purchase price” has the same meaning as in section 503 (see subsection (3) of that section),
  - “the principal” has the same meaning as in section 506 (see subsection (1) of that section), and
  - “the second purchaser” has the same meaning as in section 503 (see subsection (1) of that section).
- (7) For the meaning of “alternative finance return”, see sections 511 to 513.

*Meaning of “alternative finance return”*

**511 Purchase and resale arrangements** U.K.

- (1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Part.
- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.
- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
  - (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
  - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,
  - (c) the instalment is a part repayment of the principal of the loan with interest, and
  - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 503 have the same meaning as in that section.

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## **512 Diminishing shared ownership arrangements** **U.K.**

- (1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Part, except so far as subsection (2) or (3) applies to them.
- (2) This subsection applies to the payments so far as they amount to payments of the kind described in section 504(1)(c) (payments to be made by the eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).
- (3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.
- (4) In this section “the eventual owner” has the same meaning as in section 504.

## **513 Other arrangements** **U.K.**

- (1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 505(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Part.
- (2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 506(1)(c) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Part.
- (3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Part.
- (4) In subsection (3) “additional payments” has the same meaning as in section 507 (see subsection (1)(d)(iii) of that section).

*Treatment for other tax purposes*

## **514 Exclusion of alternative finance return from consideration for sale of assets** **U.K.**

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Corporation Tax Acts (apart from section 503).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Corporation Tax Acts (apart from section 504).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Corporation Tax Acts (apart from section 507).

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- (4) Subsections (1) to (3) do not affect the operation of any provision of the [F18Tax Acts or TCGA 1992] which provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.

#### Textual Amendments

**F18** Words in s. 514(4) substituted (1.4.2009 retrospective) by [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), **6(3)**

#### **515 Diminishing shared ownership arrangements not partnerships** **U.K.**

Diminishing shared ownership arrangements are not treated as a partnership for the purposes of the Corporation Tax Acts.

#### **516 Treatment of principal under profit sharing agency arrangements** **U.K.**

- (1) The principal under profit sharing agency arrangements is not treated for the purposes of the Corporation Tax Acts as entitled to profits to which the agent is entitled in accordance with section 506(1)(d).
- (2) And the agent under such arrangements is treated for those purposes as entitled to those profits and the profits specified in section 506(1)(c).
- (3) In this section “the principal” and “the agent” are to be read in accordance with section 506.

#### **517 Treatment of bond-holder under investment bond arrangements** **U.K.**

- (1) This section applies for the purposes of the Corporation Tax Acts and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Profits accruing to the bond-issuer in connection with the bond assets are profits of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 507.

#### **518 Investment bond arrangements: treatment as securities** **U.K.**

- (1) Investment bond arrangements are securities for the purposes of the Corporation Tax Acts.
- (2) For those purposes—

*Status: Point in time view as at 22/04/2009.*

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- (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment,<sup>F19</sup> ...
  - (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return<sup>F20</sup>, and
  - (c) the bond-issuer is to be treated for the purposes of section 84 of FA 2005 (taxation of securitisation companies) as being party as debtor to a capital market arrangement.]
- (3) In subsection (2) “the redemption payment” has the same meaning as in section 507 (see subsection (1)(d)(ii) of that section).

#### Textual Amendments

- F19** Word in s. 518(2)(a) omitted (1.4.2009 retrospective) by virtue of [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), **6(4)(a)**
- F20** S. 518(2)(c) and word inserted (1.4.2009 retrospective) by [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), **6(4)(b)**

#### 519 Investment bond arrangements: other provisions **U.K.**

- (1) A bond-issuer is not a securitisation company for the purposes of section 83 of FA 2005 (application of accounting standards to securitisation companies) unless it is one as a result of arrangements which are not investment bond arrangements.
- (2) For the purposes of section 417 of ICTA (close companies)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer, and
  - (b) investment bond arrangements must be ignored in the application of section 417(1)(d) of that Act.
- (3) For the purposes of Schedule 18 to ICTA (group relief)—
- (a) a bond-holder is a loan creditor in respect of the bond-issuer, and
  - (b) paragraph 1(5)(b) of that Schedule must be ignored in determining whether a person is an equity holder as a result of investment bond arrangements.

#### 520 Provision not at arm's length: non-deductibility of relevant return **U.K.**

- (1) This section applies if arrangements to which section 508 (provision not at arm's length: exclusion of arrangements from sections 503 to 507) applies would, but for that section, be alternative finance arrangements.
- (2) A company paying relevant return under the arrangements is not entitled to—
- (a) any deduction in calculating profits or gains for corporation tax purposes, or
  - (b) any deduction against total profits,
- in respect of the relevant return.
- (3) In this section “relevant return” has the same meaning as in section 508 (see subsection (3) of that section).



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*Power to extend this Chapter to other arrangements*

**521 Power to extend this Chapter to other arrangements** **U.K.**

- (1) The Treasury may by order amend the alternative finance provisions.
- (2) The amendments which may be made by such an order include—
  - (a) the variation of provision already included in the alternative finance provisions, and
  - (b) the introduction into those provisions of new provision relating to alternative finance arrangements.
- (3) 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, but
  - (b) achieve a similar effect without including provision for the payment of interest.
- (4) An order under subsection (1) may, in particular—
  - (a) make provision of a kind similar to provision already made by the alternative finance provisions,
  - (b) make other provision about the treatment for the purposes of the Corporation 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, and
  - (e) make incidental, supplemental, consequential and transitional provision and savings.
- (5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.
- (6) In this section “the alternative finance provisions” means—
  - (a) this Chapter,
  - (b) section 209(6A) of ICTA (meaning of distribution),
  - (c) section 411ZA of ICTA (no relief where deduction of relevant return under alternative finance arrangements disallowed), and
  - (d) section 151F of TCGA 1992 (treatment of alternative finance arrangements).

[<sup>F21</sup>CHAPTER 6A **U.K.**

SHARES ACCOUNTED FOR AS LIABILITIES

**Textual Amendments**

- F21** Pt. 6 Ch. 6A inserted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 24 para. 412](#)

*Status: Point in time view as at 22/04/2009.*

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## **521A Introduction to Chapter U.K.**

- (1) This Chapter contains rules for Part 5 (and the other provisions of the Corporation Tax Acts) to apply in some cases as if at some times in the accounting period of a company (“A”) which holds shares of a certain kind in another company (“B”) the shares were rights under a creditor relationship of A.
- (2) See, in particular—
  - (a) section 521B (application of Part 5 to some shares as rights under creditor relationship), and
  - (b) section 521C (which describes the shares to which the rules apply).
- (3) In this Chapter references to the investing company are to A and references to the issuing company are to B.
- (4) For the purposes of this Chapter, the definition of “share” in section 476(1) only applies so far as it provides that “share” does not include a share in a building society.
- (5) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this Chapter.
- (6) See section 116B of TCGA 1992 for the effect for chargeable gains purposes of shares beginning or ceasing to be shares to which section 521C applies.

## **521B Application of Part 5 to certain shares as rights under creditor relationship U.K.**

- (1) This section applies in relation to the times in a company's accounting period when—
  - (a) the company holds a share in another company, and
  - (b) section 521C (shares accounted for as liabilities) applies to the share.
- (2) Part 5 (and the other provisions of the Corporation Tax Acts) apply as if at those times—
  - (a) the share were rights under a creditor relationship of the investing company, and
  - (b) any distribution in respect of the share were not a distribution (and accordingly is within Part 5).
- (3) Where Part 5 applies in relation to the investing company in accordance with subsection (2) it so applies as if the issuing company stood in the position of debtor as respects the debt in question.
- (4) No debits are to be brought into account by the investing company as respects the share but this does not affect debits to be brought into account in respect of exchange gains or losses.
- (5) Subsection (2)(b) does not affect the operation of Part 1 of Schedule 25 of ICTA (controlled foreign companies: acceptable distribution policy) (including as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009).
- (6) In this Chapter references to “the share” are to the share mentioned in subsection (1).

## **521C Shares accounted for as liabilities U.K.**

- (1) This section applies to the share if—

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- (a) the share would be accounted for by the issuing company as a liability in accordance with generally accepted accounting practice,
  - (b) the share produces for the investing company a return in relation to any amount which is economically equivalent to interest,
  - (c) the issuing company and the investing company are not connected companies,
  - (d) the condition in subsection (4) is met,
  - (e) the share is not an excepted share (see section 521D), and
  - (f) the investing company holds the share for an unallowable purpose (see section 521E).
- (2) For the purposes of this section a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (3) In subsection (2)(c) “the relevant time” means the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company.
- (4) The condition mentioned in subsection (1)(d) is that the share does not fall to be treated for the accounting period in question as if it were rights under a creditor relationship of the investing company because of section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights).
- (5) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

## 521D Excepted shares U.K.

- (1) A share is an excepted share for the purposes of section 521C if it is—
  - (a) a qualifying publicly-issued share (see subsection (2)), or
  - (b) a share which mirrors a public issue (see subsections (3) and (4)).
- (2) A share is a “qualifying publicly-issued share” if—
  - (a) it was issued by a company as part of an issue of shares to persons not connected with the company, and
  - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.
- (3) The first case where shares (“the mirroring shares”) mirror a public issue is where—
  - (a) a company (“company A”) issues shares (“the public issue”) to persons not connected with the company,
  - (b) within 7 days of that issue, one or more other companies (“companies BB”) issue the mirroring shares to company A on the same terms as the public issue or substantially the same terms,

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- (c) company A and companies BB are associated companies (see subsection (5)), and
  - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue.
- (4) The second case where shares (“the second level mirroring shares”) mirror a public issue is where, in the circumstances of the first case—
- (a) within 7 days of the public issue, one or more other companies (“companies CC”) issue the second level mirroring shares to one or more of companies BB on the same terms as the public issue or substantially the same terms,
  - (b) company A, companies BB and companies CC are associated companies (see subsection (5)), and
  - (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue.
- (5) For the purposes of subsections (3) and (4) companies are associated companies if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3)(a) of that Act).

#### **521E Unallowable purpose U.K.**

- (1) For the purposes of section 521C, the investing company holds the share for an unallowable purpose if the main purpose, or one of the main purposes for which the company holds the share is to obtain a relevant tax advantage.
- (2) But the investing company may elect that this Chapter is to apply in relation to the share even though it would otherwise be prevented from applying by subsection (1) (f) of that section.
- (3) An election under subsection (2)—
  - (a) must be made no later than the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company, and
  - (b) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return produced by the share (or any part of it) is received in a way that means that its treatment for corporation tax purpose is more advantageous to the investing company than it would be if it were—
  - (a) charged to corporation tax as income of the investing company, or
  - (b) brought into account as income of the investing company for corporation tax purposes,at the time when amounts would be brought into account in relation to the return in accordance with section 521B.
- (5) Nothing in this section applies in relation to the investing company for an accounting period if it is an excluded controlled foreign company.
- (6) For this purpose the investing company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
  - (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
  - (b) are not so apportioned because of section 748(1) of that Act.

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**521F Shares becoming or ceasing to be shares to which section 521B applies** U.K.

- (1) This section applies if at any time section 521B begins or ceases to apply in the case of a share held by the investing company.
- (2) The investing company is treated for the purposes of Part 5—
  - (a) as having disposed of the share immediately before that time for consideration of an amount equal to the notional carrying value of the share at that time, and
  - (b) as having immediately reacquired it for consideration of the same amount.
- (3) In subsection (2) “notional carrying value”, in relation to the share, means the amount which would have been its carrying value in the accounts of the investing company if a period of account had ended immediately before section 521B began or ceased to apply in the case of the share and the investing company.
- (4) For the purposes of subsection (3) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317). ]

**CHAPTER 7** U.K.

SHARES WITH GUARANTEED RETURNS ETC

*Application of Part 5 to certain shares as rights under creditor relationship*

**F22 522 Introduction to Chapter** U.K.

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\), 12](#)

**F22 523 Application of Part 5 to certain shares as rights under creditor relationship** U.K.

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\), 12](#)

*Shares subject to outstanding third party obligations*

**F22 524 Shares subject to outstanding third party obligations** U.K.

.....

*Status: Point in time view as at 22/04/2009.*

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**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**<sup>F22</sup>525 Meaning of “interest-like investment” U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

*Non-qualifying shares*

**<sup>F22</sup>526 Non-qualifying shares U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**<sup>F22</sup>527 The increasing value condition U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**<sup>F22</sup>528 Regulations about income-producing assets U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**<sup>F22</sup>529 The redemption return condition U.K.**

.....

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**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**F22 530 The redemption return condition: excepted shares** **U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**F22 531 The redemption return condition: unallowable purposes** **U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**F22 532 The associated transactions condition** **U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**F22 533 Power to change conditions for non-qualifying shares** **U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

*Consequences of section 523 applying or ceasing to apply*

**F22 534 Amounts to be brought into account where section 523 applies** **U.K.**

.....



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**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**F22 535 Shares ceasing to be shares to which section 523 applies** **U.K.**

.....

**Textual Amendments**

**F22** Pt. 6 Ch. 7 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(i\)](#), 12

**CHAPTER 8** **U.K.**

**F23 536 Introduction to Chapter** **U.K.**

.....

**Textual Amendments**

**F23** Pt. 6 Ch. 8 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(ii\)](#), 12

**F23 537 Payments in return for capital contribution to partnership** **U.K.**

.....

**Textual Amendments**

**F23** Pt. 6 Ch. 8 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(ii\)](#), 12

**F23 538 Change of partnership shares** **U.K.**

.....

**Textual Amendments**

**F23** Pt. 6 Ch. 8 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(ii\)](#), 12

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## CHAPTER 9 **U.K.**

### MANUFACTURED INTEREST ETC

#### 539 **Introduction to Chapter** **U.K.**

- (1) This Chapter deals with the application of Part 5 to manufactured interest relationships and payments representative of interest.
- (2) For the purposes of the Corporation Tax Acts a company has a manufactured interest relationship if conditions A and B are met.
- (3) Condition A is that—
  - (a) an amount is payable by or on behalf of the company or to the company under any arrangements, and
  - (b) the arrangements relate to the transfer of an asset representing a loan relationship.
- (4) Condition B is that the amount—
  - (a) is representative of interest under the loan relationship, or
  - (b) will fall to be treated as representative of such interest when it is paid.
- (5) In this Chapter—
 

“manufactured interest”, in relation to a manufactured interest relationship, means an amount within subsection (3)(a), and

“the real interest” means the interest mentioned in subsection (4)(a).
- (6) References in the Corporation Tax Acts to a company being a party to a manufactured interest relationship are to be read in accordance with this section.
- (7) For cases where a payment representative of interest is treated as having been made for the purposes of this Chapter, see section 736B(2) of ICTA (deemed manufactured payments in the case of stock lending arrangements).

#### 540 **Manufactured interest treated as interest under loan relationship** **U.K.**

- (1) If a company has a manufactured interest relationship under which manufactured interest is payable by it, Part 5 applies to the company and the manufactured interest as it would if the manufactured interest were interest payable on a loan to the company (and so were interest under a loan relationship to which the company is a party).
- (2) If a company has a manufactured interest relationship under which manufactured interest is payable to it, Part 5 applies to the company and the manufactured interest as it would if—
  - (a) the manufactured interest were interest payable on a loan by the company (and so were interest under a loan relationship to which the company is a party), and
  - (b) the manufactured interest relationship were the loan relationship under which the real interest is payable.
- (3) Accordingly, subject to subsection (2)(b), references in the Corporation Tax Acts to a loan relationship include a reference to a manufactured interest relationship.
- (4) Subsection (5) applies if a company—
  - (a) has a manufactured interest relationship, but

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- (b) enters into a related transaction in respect of the right to receive manufactured interest as a result of which the manufactured interest is not payable to the company.
- (5) Even though the manufactured interest is not payable to the company, for the purpose of bringing credits into account in respect of that or any other related transaction because of the application of subsection (2), the company is still treated as having a manufactured interest relationship.
- (6) This section is subject to Chapter 10 (repos).

#### **541 Debits for deemed interest under stock lending arrangements disallowed** **U.K.**

- (1) This section applies if a company is the borrower under a stock lending arrangement for the purposes of section 736B(2) of ICTA (which treats such a borrower as having made a payment representative of interest for the purposes of this Chapter).
- (2) In accordance with section 736B(2A) of that Act (which prevents deductions or group relief for the borrower in stock lending cases), the company may not bring debits into account for the purposes of Part 5 in respect of the representative payment which is treated as having been made under section 736B(2) of that Act.

### **CHAPTER 10** **U.K.**

#### REPOS

##### *Introduction*

#### **542 Introduction to Chapter** **U.K.**

- (1) The purpose of this Chapter is to secure that in the case of an arrangement—
  - (a) which involves the sale of securities and the subsequent purchase of those or similar securities, and
  - (b) which equates, in substance, to a transaction for the lending of money at interest from or to a company, with the securities which were sold as collateral for the loan,the charge to corporation tax reflects the fact that the arrangement equates, in substance, to such a transaction.
- (2) Sections 543 to [F24 546] make provision about arrangements which are creditor repos or creditor quasi-repos.
- (3) Sections 548 to 551 make provision about arrangements which are debtor repos or debtor quasi-repos.

#### **Textual Amendments**

**F24** Figure in s. 542(2) substituted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 10, 12](#)

*Status: Point in time view as at 22/04/2009.*

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### *Creditor repos and creditor quasi-repos*

#### **543 Meaning of creditor repo** U.K.

- (1) For the purposes of this Chapter a company (“the lender”) has a creditor repo if each of conditions A to E is met.
- (2) Condition A is that under an arrangement another person (“the borrower”) receives from the lender any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the lender for the period in which the advance is made record a financial asset in respect of the advance.
- (4) Condition C is that under the arrangement the borrower sells any securities at any time to the lender.
- (5) Condition D is that the arrangement makes provision conferring a right or imposing an obligation on the lender to sell those or similar securities at any subsequent time.
- (6) Condition E is that, in accordance with generally accepted accounting practice, the subsequent sale of those or similar securities would extinguish the financial asset in respect of the advance recorded in the accounts of the lender.
- (7) For the purposes of conditions A to E references to the lender include a firm of which the lender is a member.

#### **544 Meaning of creditor quasi-repo** U.K.

- (1) For the purposes of this Chapter a company (“the lender”) has a creditor quasi-repo in any case if—
  - (a) the lender does not have a creditor repo in that case, and
  - (b) each of conditions A to E is met in that case.
- (2) Condition A is that under an arrangement a person receives from the lender any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the lender for the period in which the advance is made record a financial asset in respect of the advance.
- (4) Condition C is that under that or any other arrangement a person sells any securities at any time to the lender or any other person.
- (5) Condition D is that the arrangement or other arrangement—
  - (a) makes provision conferring a right or imposing an obligation on the lender to sell the securities or any other securities at any subsequent time, or
  - (b) makes provision conferring such a right or imposing such an obligation on any other person and makes other relevant provision.
- (6) For this purpose an arrangement makes other relevant provision if it makes provision—
  - (a) for the receipt of any money, securities or other asset from the lender under that arrangement for the purpose of enabling the other person to make that subsequent sale, or

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- (b) for the discharge of any liability to the lender under that arrangement for that purpose (whether by way of set off or otherwise).
- (7) Condition E is that, in accordance with generally accepted accounting practice—
  - (a) the subsequent sale of the securities or the other securities by the lender, or
  - (b) the receipt of the asset from the lender, or the discharge of the liability to the lender, under the arrangement or other arrangement,would extinguish the financial asset in respect of the advance recorded in the accounts of the lender.
- (8) For the purposes of conditions A to E references to the lender include a firm of which the lender is a member.

#### **545 Ignoring effect on lender etc of sale of securities U.K.**

- (1) This section applies if a company (“the lender”) has a creditor repo or a creditor quasi-repo.
- (2) For the purposes of the charge to corporation tax in respect of income of the lender arising while the arrangement is in force, the Corporation Tax Acts have effect as if—
  - (a) the lender did not hold the securities that are initially sold for any period for which the arrangement is in force, and
  - (b) the lender did not make in that period any payment representative of income payable in respect of the securities.
- (3) But subsection (2) is subject to subsections (4) and (5).
- (4) An amount is not to be ignored for the purposes of that charge as a result of subsection (2)(a) if—
  - (a) it is, in accordance with generally accepted accounting practice, recognised in determining the lender’s profit or loss for that or any other period, or
  - (b) it is taken into account in calculating the amounts which are so recognised.
- (5) A payment is not to be ignored for the purposes of that charge as a result of subsection (2)(b) if it is, in accordance with that practice, so recognised.
- (6) Nothing in subsection (5) affects the question whether (apart from that provision) the payment (or any part of it) may be deducted in calculating income for corporation tax purposes or against total profits.

#### **546 Charge on lender for finance return in respect of the advance U.K.**

- (1) This section applies if a company (“the lender”) has a creditor repo or creditor quasi-repo.
- (2) The advance under the creditor repo or creditor quasi-repo is, in the case of the lender, to be treated for the purposes of Part 5 and this Part as a money debt which—
  - (a) is owed to the lender or, if the lender is a member of a firm which makes the advance, to the firm, and
  - (b) is owed by the person who initially sold the securities.
- (3) The arrangement is, in the case of the lender, to be treated for the purposes of those rules as a transaction for the lending of money from which that debt is treated as arising for those purposes.

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- (4) Any amount which, in accordance with generally accepted accounting practice, is recorded in—
- (a) the accounts of the lender, or
  - (b) if the lender is a member of a firm which makes the advance, the accounts of the firm,
- as a finance return in respect of the advance is treated for those purposes as interest receivable under that debt.
- (5) That interest is treated for those purposes as received at the earlier of—
- (a) the time when the relevant repurchase takes place, and
  - (b) the time when it becomes apparent that that repurchase will not take place.
- (6) For this purpose “the relevant repurchase” means—
- (a) if the lender has a creditor repo, the subsequent sale of the securities or similar securities, and
  - (b) if the lender has a creditor quasi repo—
    - (i) the subsequent sale of the securities or other securities by the lender,
    - (ii) the receipt of the asset from the lender, or
    - (iii) the discharge of the liability to the lender,
 as the case may be.

<sup>F25</sup> **547 Repo under arrangement designed to produce quasi-interest: tax avoidance** **U.K.**

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**Textual Amendments**

**F25** S. 547 omitted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 24 paras. 8\(c\)\(iii\)](#), 12

*Debtor repos and debtor quasi-repos*

**548 Meaning of debtor repo** **U.K.**

- (1) For the purposes of this Chapter a company (“the borrower”) has a debtor repo if each of conditions A to E is met.
- (2) Condition A is that under an arrangement the borrower receives from another person (“the lender”) any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the borrower for the period in which the advance is received record a financial liability in respect of the advance.
- (4) Condition C is that under the arrangement the borrower sells any securities at any time to the lender.
- (5) Condition D is that the arrangement makes provision conferring a right or imposing an obligation on the borrower to buy those or similar securities at any subsequent time.

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- (6) Condition E is that, in accordance with generally accepted accounting practice, the subsequent buying of those or similar securities would extinguish the financial liability in respect of the advance recorded in the accounts of the borrower.
- (7) For the purposes of conditions A to E references to the borrower include a firm of which the borrower is a member.

#### 549 Meaning of debtor quasi-repo **U.K.**

- (1) For the purposes of this Chapter a company (“the borrower”) has a debtor quasi-repo in any case if—
  - (a) the borrower does not have a debtor repo, and
  - (b) each of conditions A to E is met.
- (2) Condition A is that under an arrangement the borrower receives any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the borrower for the period in which the advance is received record a financial liability in respect of the advance.
- (4) Condition C is that under that or any other arrangement the borrower [<sup>F26</sup>or any other person] sells any securities at any time.
- (5) Condition D is that the arrangement or other arrangement—
  - (a) makes provision conferring a right or imposing an obligation on the borrower to buy the securities or any other securities at any subsequent time, or
  - (b) makes provision conferring such a right or imposing such an obligation on any other person and makes other relevant provision.
- (6) For this purpose any arrangement makes other relevant provision if it makes provision—
  - (a) for the receipt of any money or other asset from the borrower under that arrangement for the purpose of enabling the other person to make that subsequent purchase, or
  - (b) for the discharge of any liability to the borrower under that arrangement for that purpose (whether by way of set off or otherwise).
- (7) Condition E is that, in accordance with generally accepted accounting practice—
  - (a) the subsequent buying of the securities or the other securities by the borrower, or
  - (b) the receipt of the asset from the borrower, or the discharge of the liability to the borrower, under the arrangement or other arrangement,would extinguish the financial liability in respect of the advance recorded in the accounts of the borrower.
- (8) For the purposes of conditions A to E references to the borrower include a firm of which the borrower is a member.



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### Textual Amendments

**F26** Words in s. 549(4) inserted (1.4.2009 retrospective) by [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), 6(5)

## 550 Ignoring effect on borrower of sale of securities **U.K.**

- (1) This section applies if a company (“the borrower”)—
  - (a) has a debtor repo or a debtor quasi-repo, or
  - (b) has a liability which is discharged under a relevant arrangement.
- (2) A relevant arrangement is one—
  - (a) in relation to which conditions C and D in section 549 are met, and
  - (b) the main purpose or one of the main purposes of which is the obtaining of a tax advantage.
- (3) For the purposes of the charge to corporation tax in respect of income of the borrower arising while the arrangement is in force, the Corporation Tax Acts apply as if—
  - (a) the borrower held the securities which are initially sold for any period for which the arrangement is in force, and
  - (b) the borrower did not receive in that period amounts representative of income payable in respect of the securities.
- (4) Subsection (3) is subject to subsections (5) [<sup>F27</sup>to (6)].
- (5) No amount is to be charged to corporation tax as a result of subsection (3)(a) unless—
  - (a) it is, in accordance with generally accepted accounting practice, recognised in determining the borrower's profit or loss for that or any other period, or
  - (b) it is taken into account in calculating the amounts which are so recognised.
- [<sup>F28</sup>(5A) For the purposes of the charge to corporation tax, an amount representative of income payable in respect of the securities is not to be ignored as a result of subsection (3) (b) if—
  - (a) it is, in accordance with generally accepted accounting practice, recognised in determining the borrower's profit or loss for that or any other period, or
  - (b) it is taken into account in calculating the amounts which are so recognised.]
- (6) If the securities which are initially sold are overseas securities, the entitlement of the borrower to double taxation relief in respect of any overseas dividend payable in respect of those securities is determined as if—
  - (a) subsection (3) were omitted,
  - (b) the borrower received a payment of an amount which is representative of that dividend,
  - (c) the payment were made under a requirement of the arrangement, and
  - (d) the payment were made on the date on which that dividend is payable.
- (7) For the purposes of this section “double taxation relief” means any relief given under or as a result of Part 18 of ICTA.

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### Textual Amendments

- F27** Words in s. 550(4) substituted (1.4.2009 retrospective) by [Finance Act 2010 \(c. 13\), s. 45\(2\)\(a\)\(3\)](#)  
**F28** S. 550(5A) inserted (retrospectively) by [Finance Act 2010 \(c. 13\), s. 45\(2\)\(b\)\(3\)](#)

## 551 Relief for borrower for finance charges in respect of the advance **U.K.**

- (1) This section applies if a company (“the borrower”) has a debtor repo or a debtor quasi-repo.
- (2) The advance under the debtor repo or debtor quasi-repo is, in the case of the borrower, to be treated for the purposes of Part 5 and this Part as a money debt which—
  - (a) is owed by the borrower or, if the borrower is a member of a firm which receives the advance, by the firm, and
  - (b) is owed to the person to whom the securities are initially sold.
- (3) The arrangement is, in the case of the borrower, to be treated for the purposes of Part 5 and this Part as a transaction for the lending of money from which that debt is treated as arising for those purposes.
- (4) Any amount which, in accordance with generally accepted accounting practice, is recorded as a finance charge in respect of the advance in—
  - (a) the accounts of the borrower, or
  - (b) if the borrower is a member of a firm which receives the advance, the accounts of the firm,is treated for the purposes of Part 5, this Part and Part 15 of ITA 2007 (deduction of income tax at source) as interest payable under that debt.
- (5) That interest is treated for those purposes as paid at the earlier of—
  - (a) the time when the relevant repurchase takes place, and
  - (b) the time when it becomes apparent that that repurchase will not take place.
- (6) For this purpose “the relevant repurchase” means—
  - (a) if the borrower has a debtor repo, the subsequent buying of the securities or similar securities, and
  - (b) if the borrower has a debtor quasi-repo—
    - (i) the subsequent buying of the securities or other securities by the borrower,
    - (ii) the receipt of the asset from the borrower, or
    - (iii) the discharge of the liability to the borrower,as the case may be.

### *General provisions*

## 552 General provisions about arrangements **U.K.**

- (1) For the purposes of this Chapter it does not matter whether or not provision of any arrangement conferring a right or imposing an obligation on any person to buy any securities is subject to any conditions.

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- (2) For the purposes of this Chapter an arrangement is in force from the time when the securities are initially sold until the earlier of—
  - (a) the time when the relevant repurchase takes place, and
  - (b) the time when it becomes apparent that that repurchase will not take place.
- (3) In subsection (2) “the relevant repurchase” has the meaning given by subsections (4) to (7).
- (4) In the case of a creditor repo, it means the subsequent sale of the securities or similar securities.
- (5) In the case of a creditor quasi-repo, it means—
  - (a) the subsequent sale of the securities or other securities by the lender,
  - (b) the receipt of the asset from the lender, or
  - (c) the discharge of the liability to the lender,
 as the case may be.
- (6) In the case of a debtor repo, it means the subsequent buying of the securities or similar securities.
- (7) In the case of a debtor quasi-repo, it means—
  - (a) the subsequent buying of the securities or other securities by the borrower,
  - (b) the receipt of the asset from the borrower, or
  - (c) the discharge of the liability to the borrower,
 as the case may be.

### 553 Persons buying or selling for others **U.K.**

- (1) For the purposes of this Chapter, in any case where—
  - (a) a person (“A”) buys securities (or has a right or obligation to buy securities), but
  - (b) the securities are (or are to be) held for the benefit of another person (“B”),
 B (not A) is treated as buying (or having the right or obligation to buy) the securities.
- (2) In any case where—
  - (a) a person (“C”) sells securities, but
  - (b) the proceeds of the sale are held for the benefit of another person (“D”),
 D (not C) is treated as selling the securities.

### 554 Power to modify this Chapter **U.K.**

- (1) The Treasury may by regulations provide for all or any of the provisions of this Chapter to apply with modifications in relation to—
  - (a) cases where section 555 (non-standard repo cases) applies, or
  - (b) cases involving redemption arrangements, or
  - (c) both of those cases.
- (2) A case involves redemption arrangements if—

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- (a) arrangements, corresponding to those made in cases where a company has a repo, are made in relation to securities that are to be redeemed in the period after their sale, and
  - (b) the arrangements are such that a person (instead of having the right or obligation to buy those securities, or similar or other securities, at any subsequent time) has a right or obligation in respect of the benefits which will result from the redemption.
- (3) The regulations may make—
- (a) different provision for different cases, and
  - (b) incidental, supplemental, consequential and transitional provision and savings.
- (4) In this section and section 555—
- “modifications” include exceptions and omissions, and
- “repo” means—
- (a) a debtor repo or debtor quasi-repo, or
  - (b) a creditor repo or creditor quasi-repo (including anything treated, as a result of section 547, as a creditor repo for the purposes of section 546).

#### **555 Cases where section 554 applies: non-standard repos** **U.K.**

- (1) The cases to which this section applies are where—
- (a) a company has a repo,
  - (b) there has been a sale of the securities under the arrangement or arrangements by reference to which the company has the repo, and
  - (c) any of conditions A to C is met in relation to the repo.
- (2) Condition A is that those securities, or similar or other securities, are not subsequently bought under the arrangement or arrangements.
- (3) Condition B is that provision is made by or under an arrangement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the subsequent purchase, are to represent those initially sold.
- (4) Condition C is that provision is made by or under an arrangement for securities to be treated as not so included.

#### *Interpretation*

#### **556 Meaning of securities and similar securities** **U.K.**

- (1) In this Chapter “securities” (except in the definition of “overseas securities” in section 559) means—
- (a) shares, stock or other securities issued by—
    - (i) the government of the United Kingdom,
    - (ii) any public or local authority in the United Kingdom, or
    - (iii) any UK resident company or other UK resident body, or
  - (b) overseas securities.
- (2) For the purposes of this Chapter securities are similar if they entitle their holders to—

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- (a) the same rights against the same persons as to capital, interest and dividends, and
  - (b) the same remedies for the enforcement of those rights.
- (3) For the purposes of subsection (2) any difference in—
- (a) the total nominal amounts of the respective securities,
  - (b) the form in which they are held, or
  - (c) the way in which they can be transferred,
- is ignored.

**557 Meaning of person receiving an asset** **U.K.**

For the purposes of this Chapter references to a person receiving any asset include the person—

- (a) obtaining the value of any asset directly or indirectly, or
- (b) otherwise deriving any benefit from it directly or indirectly.

**558 Interpretation of accounting expressions** **U.K.**

- (1) In determining for the purposes of this Chapter whether an amount is recorded as a financial asset or liability in respect of the advance, it is assumed that the period of account in which the advance is received or made ended immediately after the receipt or making of the advance.
- (2) In its application for the purposes of this Chapter, section 309(1) applies as if the reference to a company were a reference to a person.

**559 Minor definitions** **U.K.**

In this Chapter—

“advance”—

- (a) in the case of a creditor repo, has the same meaning as in section 543,
- (b) in the case of a creditor quasi-repo, has the same meaning as in section 544,
- (c) in the case of a debtor repo, has the same meaning as in section 548, and
- (d) in the case of a debtor quasi-repo, has the same meaning as in section 549,

“arrangement” includes any agreement or understanding (whether or not it is legally enforceable),

“creditor quasi-repo” has the meaning given by section 544,

“creditor repo” has the meaning given by section 543,

“debtor quasi-repo” has the meaning given by section 549,

“debtor repo” has the meaning given by section 548,

“discharge”, in relation to a liability, means the discharge of the liability in whole or in part (and “discharged” is to be read accordingly),

“overseas dividend”, in relation to overseas securities, means any interest, dividend or other annual payment payable in respect of the securities, and

“overseas securities” means shares, stock or other securities issued by—

- (a) a government or public or local authority of a territory outside the United Kingdom, or

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- (b) any other body of persons not resident in the United Kingdom.

## CHAPTER 11 **U.K.**

### INVESTMENT LIFE INSURANCE CONTRACTS

#### *Introduction*

#### **560 Introduction to Chapter **U.K.****

- (1) This Chapter makes provision about investment life insurance contracts to which relevant companies are party.
- (2) See, in particular—
  - (a) sections 562 to 565 (which make provision about treating the contracts as creditor relationships in relation to those companies for the purposes of Part 5), and
  - (b) sections 566 to 569 (which make provision for cases where the relevant company was a party to the contract before the beginning of the company's first accounting period beginning on or after 1 April 2008).
- (3) In this Chapter “relevant company” means a company which is not a life insurance company.
- (4) In subsection (3) “life insurance company” means—
  - (a) an insurance company (as defined in section 431(2) of ICTA) which carries on long-term business (as defined in that section), or
  - (b) a friendly society which would be such an insurance company but for the words “(other than a friendly society)” in the definition of “insurance company” in that section.
- (5) For the meaning of “investment life insurance contract”, see section 561.

#### **561 Meaning of “investment life insurance contract” **U.K.****

- (1) In this Chapter “investment life insurance contract” means—
  - (a) a policy of life insurance which has, or is capable of acquiring, a surrender value,
  - (b) a contract for a purchased life annuity, or
  - (c) a capital redemption policy,other than a relevant excluded contract.
- (2) In subsection (1)—

“capital redemption policy” means a contract made in the course of capital redemption business (as defined in section 431(2ZF) of ICTA),

“purchased life annuity” means an annuity—

  - (a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and

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- (b) payable for a term ending at a time ascertainable only by reference to the end of a human life (whether or not the annuity may in some circumstances end before or after the life), and  
 “relevant excluded contract” means—
  - (a) an investment life insurance contract under a registered pension scheme,
  - (b) an investment life insurance contract purchased with sums or assets held for the purposes of a registered pension scheme, or
  - (c) a policy of life insurance issued in respect of an insurance made before 14 March 1989.
- (3) A policy of life insurance issued in respect of an insurance made before 14 March 1989 is treated for the purposes of this Chapter as issued in respect of one made on or after that date if it is varied on or after that date so as—
  - (a) to increase the benefits secured, or
  - (b) to extend the term of the insurance.
- (4) For the purposes of subsection (3) any exercise of rights conferred by a policy is to be regarded as a variation of it.

*Investment life assurance contracts treated as creditor relationships*

**562 Contract to be loan relationship U.K.**

- (1) If a relevant company is a party to an investment life insurance contract, for the purposes of Part 5 (loan relationships) the contract is, in relation to the company, a creditor relationship of the company.
- (2) Subsection (1) is subject to subsection (4).
- (3) Subsection (4) applies if—
  - (a) the amount or value of a lump sum payable under an investment life contract by reason of death or the onset of critical illness, exceeds
  - (b) the surrender value of the contract immediately before the time when the lump sum becomes payable.
- (4) If this subsection applies, that excess is not to be brought into account as a credit under Part 5 representing a profit from a related transaction arising as a result of the lump sum becoming payable.

**563 Increased non-trading credits for BLAGAB and EEA taxed contracts U.K.**

- (1) This section applies if—
  - (a) as a result of section 562 the relevant company is required to bring into account for an accounting period a non-trading credit representing a profit from a related transaction, and
  - (b) the investment life insurance contract is—
    - (i) a BLAGAB contract, or
    - (ii) a contract which is subject to a relevant comparable EEA tax charge.
- (2) For the meaning of “BLAGAB contract” and of a contract being subject to a relevant comparable EEA tax charge, see section 564.



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- (3) The non-trading credit is treated as increased by the relevant amount.
- (4) The relevant amount is set off against corporation tax assessable on the company for the accounting period.
- (5) Except where section 565 (relevant amount where the relevant company uses fair value accounting) applies, the relevant amount is—

$$\text{NTC} \times \frac{\text{AR}}{100 - \text{AR}}$$

where—

NTC is the non-trading credit, and

AR is the appropriate rate for the accounting period.

- (6) The appropriate rate for an accounting period is—
  - (a) if a single rate of tax under section 88(1) of FA 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the accounting period, that rate, and
  - (b) if more than one such rate of tax is applicable in relation to the accounting period, the average of those rates over the accounting period.

#### 564 Section 563: interpretation **U.K.**

- (1) In section 563 “BLAGAB contract” means a contract forming part of basic life assurance and general annuity business of an insurance company but not part of business which is exempt from corporation tax under section 460 of ICTA (friendly society business and former friendly society business).
- (2) For the purposes of section 563 a contract is subject to a relevant comparable EEA tax charge if the contract forms part of the business of a company (other than the relevant company) to which a relevant comparable EEA tax charge has applied.
- (3) For the purposes of subsection (2) a relevant comparable EEA tax charge has applied to a company if each of conditions A to D is met.
- (4) Condition A is that a charge to tax has applied to the company under the laws of a territory outside the United Kingdom that is within the European Economic Area.
- (5) Condition B is that the charge has applied to the company—
  - (a) as a body deriving its status as a company from those laws,
  - (b) as a company with its place of management there, or
  - (c) as a company falling under those laws to be regarded for any other reason as resident or domiciled there.
- (6) Condition C is that the charge applies at a rate of at least 20% in relation to the amounts subject to tax in the company's hands, other than amounts arising or accruing in respect

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of investments of a description for which a special relief or exemption is generally available.

- (7) Condition D is that the charge is made otherwise than by reference to the company's profits.

**565 Relevant amount where the relevant company uses fair value accounting U.K.**

- (1) This section applies if the relevant company brings credits and debits in respect of the investment life insurance contract into account on the basis of fair value accounting.
- (2) If this section applies, the relevant amount for section 563 is—

$$PC \times \frac{AR}{100 - AR}$$

where—

PC is the profit from the contract (see subsections (3) and (4)), and

AR is the appropriate rate for the accounting period (as defined in section 563(6)).

- (3) For the purposes of this section, except where subsection (4) applies, the profit from the contract is any amount by which—
- (a) the amount payable as a result of the related transaction, exceeds
  - (b) the fair value of the contract at the beginning time (see subsection (6)).
- (4) If the related transaction is an assignment or surrender of only part of the rights conferred by the contract, the profit from the contract is any amount by which—
- (a) the amount payable as a result of the related transaction, exceeds
  - (b) the relevant fraction of the fair value of the contract at the beginning time.
- (5) In subsection (4) “the relevant fraction” means—

$$\frac{C}{FVC}$$

where—

C is the amount payable as a result of the related transaction, and

FVC is the fair value of the contract immediately before the related transaction.

- (6) In this section “the beginning time” means—

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- (a) if the contract was made before the beginning of the first accounting period of the company beginning on or after 1st April 2008, at the beginning of that period, and
- (b) otherwise when the contract was made.

### *Old accounting period contracts*

## **566 Introduction** **U.K.**

(1) This section and sections 567 to 569 apply if the relevant company was a party to an investment life insurance contract immediately before the beginning of the first accounting period of the company beginning on or after 1 April 2008.

(2) In those sections—

“the deemed surrender” means the surrender of all the rights under that contract that the relevant company was deemed for the purposes of Chapter 2 of Part 13 of ICTA (life policies etc) to have made <sup>F29</sup> ... under paragraph 6(1) of Schedule 13 to FA 2008 <sup>F30</sup> ...,

“the first accounting period” means the first accounting period of the company beginning on or after [<sup>F31</sup>1 April 2008], and

“the old contract” means the contract mentioned in subsection (1).

### **Textual Amendments**

- F29** Words in s. 566(2) omitted (retrospective and with effect in accordance with art. 1(2) of the commencing S.I.) by virtue of [Corporation Tax Act 2009 \(Amendment\) Order 2010 \(S.I. 2010/614\)](#), arts. 1(1), **3(4)(a)(i)**
- F30** Words in s. 566(2) omitted (retrospective and with effect in accordance with art. 1(2) of the commencing S.I.) by virtue of [Corporation Tax Act 2009 \(Amendment\) Order 2010 \(S.I. 2010/614\)](#), arts. 1(1), **3(4)(a)(ii)**
- F31** Words in s. 566(2) substituted (retrospective and with effect in accordance with art. 1(2) of the commencing S.I.) by [Corporation Tax Act 2009 \(Amendment\) Order 2010 \(S.I. 2010/614\)](#), arts. 1(1), **3(4)(b)**

## **567 Gains on deemed surrenders to be brought into account on related transactions** **U.K.**

(1) Any gain which arose under Chapter 2 of Part 13 of ICTA (life policies etc) as a result of the deemed surrender (“the deemed gain”) is to be brought into account by the relevant company as a non-trading credit for the accounting period in which there is a related transaction (so far as not previously brought into account under this section).

(2) But if the relevant company is still a party to the old contract immediately after the related transaction, only the relevant fraction of the deemed gain which would otherwise be brought into account under subsection (1) is to be so brought into account.

(3) “The relevant fraction” is—

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# $\frac{P}{SAR}$

where—

P is the amount payable as a result of the related transaction, and

SAR is the amount which would have been payable on a surrender of all the rights under the old contract immediately before the related transaction.

## 568 Restriction on credits on old contracts: fair value accounting cases **U.K.**

- (1) This section applies if—
- (a) at all times since the old contract was made the rights conferred by it have been in the beneficial ownership of the relevant company,
  - (b) the company brings into account credits and debits in respect of the old contract on the basis of fair value accounting, and
  - (c) the old contract cost exceeds the fair value of the contract immediately before the beginning of the first accounting period.
- (2) In subsection (1)(c) “the old contract cost” means—
- (a) if section 541 of ICTA applied on the deemed surrender, the amount specified in section 541(1)(b)(i) of that Act, less the amount or value of any relevant capital payments (as defined in section 541(5)(a) of that Act), and
  - (b) if section 543 of that Act applied on the deemed surrender, the amount specified in section 543(1)(a)(i) of that Act, less the amount or value of any relevant capital payments (as defined in section 543(3) of that Act).
- (3) No amount is to be brought into account as a credit in relation to the old contract by the relevant company as a result of section 562 except so far as the total of—
- (a) the amount of the credit, and
  - (b) the amount of any other credits which have previously arisen in relation to the old contract as a result of that section,
- is greater than the excess mentioned in subsection (1)(c).

## 569 Restriction on debits on old contracts: non-fair value accounting cases **U.K.**

- (1) This section applies where—
- (a) the relevant company brings into account credits and debits in respect of the old contract otherwise than on the basis of fair value accounting, and
  - (b) the carrying value of the old contract, as recognised for accounting purposes immediately before the beginning of the first accounting period, exceeds its fair value at that time.
- (2) No amount is to be brought into account as a debit in relation to the old contract by the relevant company as a result of section 562 except so far as the total of—
- (a) the amount of the debit, and

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- (b) the amount of any other debits which have previously arisen in relation to the contract as a result of that section,  
is greater than the excess mentioned in subsection (1)(b).

## PART 7 U.K.

### DERIVATIVE CONTRACTS

## CHAPTER 1 U.K.

### INTRODUCTION

#### *Introduction*

## 570 Overview of Part U.K.

- (1) This Part is about how profits and losses arising to a company from its derivative contracts are brought into account for corporation tax purposes.
- (2) For the meaning of “derivative contract”, see section 576 and the remainder of Chapter 2.
- (3) For how such profits and losses are calculated and brought into account, see—
  - (a) section 572 (profits and losses to be calculated using credits and debits given by this Part),
  - (b) section 573 (trading credits and debits to be brought into account under Part 3),
  - (c) section 574 (non-trading credits and debits to be brought into account under Part 5), and
  - (d) Chapter 7 (chargeable gains arising in relation to derivative contracts).
- (4) For the priority of this Part for corporation tax purposes, see Chapter 12.
- (5) This Part also contains the following Chapters (which mainly relate to the amounts to be brought into account in respect of derivative contracts)—
  - (a) Chapter 3 (credits and debits to be brought into account: general),
  - (b) Chapter 4 (further provision about credits and debits to be brought into account),
  - (c) Chapter 5 (continuity of treatment on transfers within groups),
  - (d) Chapter 6 (special kinds of company),
  - (e) Chapter 8 (further provision about chargeable gains and derivative contracts),
  - (f) Chapter 9 (European cross-border transfers of business),
  - (g) Chapter 10 (European cross-border mergers),
  - (h) Chapter 11 (tax avoidance), and
  - (i) Chapter 13 (general and supplementary provisions).
- (6) See also section 980 of ITA 2007 (payments under derivative contracts excepted from duty to deduct income tax).

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### *How profits and losses from derivative contracts are dealt with*

#### **571 General rule: profits chargeable as income U.K.**

- (1) The general rule for corporation tax purposes is that all profits arising to a company from its derivative contracts are chargeable to corporation tax as income in accordance with this Part.
- (2) But see Chapter 7, which makes provision for cases in which profits arising to a company from its derivative contracts are chargeable to corporation tax as chargeable gains.

#### **572 Profits and losses to be calculated using credits and debits given by this Part U.K.**

- (1) Profits and losses arising to a company from its derivative contracts are to be calculated using the credits and debits given by this Part.
- (2) For exceptions to this section, see sections 652 to 658 (issuers of securities with embedded derivatives: deemed options and contracts for differences).

#### **573 Trading credits and debits to be brought into account under Part 3 U.K.**

- (1) This section applies so far as in an accounting period a company is a party to a derivative contract for the purposes of a trade it carries on.
- (2) The credits in respect of the contract for the period are treated as receipts of the trade which are to be brought into account in calculating the profits of the trade for that period.
- (3) The debits in respect of the contract for the period are treated as expenses of the trade which are deductible in calculating those profits.
- (4) So far as subsection (3) provides for any amount to be deductible, it applies despite anything in—
  - (a) section 53 (capital expenditure),
  - (b) section 54 (expenses not wholly and exclusively for trade and unconnected losses), or
  - (c) section 59 (patent royalties).
- (5) For cases in which this section does not apply, see—
  - (a) section 616 (disapplication of fair value accounting for certain embedded derivatives), and
  - (b) Chapter 7 (chargeable gains arising in relation to derivative contracts).

#### **574 Non-trading credits and debits to be brought into account under Part 5 U.K.**

- (1) This section applies if, for an accounting period, there are credits or debits in respect of the derivative contracts of a company which are not brought into account in accordance with section 573.
- (2) Those credits or debits—

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- (a) are to be treated as non-trading credits or non-trading debits (within the meaning of Part 5 (loan relationships)) for the period, and
  - (b) are accordingly to be brought into account in determining whether the company has non-trading profits or a non-trading deficit from its loan relationships for the period.
- (3) For cases in which this section does not apply, see—
- (a) section 616 (disapplication of fair value accounting for certain embedded derivatives), and
  - (b) Chapter 7 (chargeable gains arising in relation to derivative contracts).

## CHAPTER 2 U.K.

### CONTRACTS TO WHICH THIS PART APPLIES

#### *Introduction*

#### 575 Overview of Chapter U.K.

- (1) This Chapter makes provision about the contracts to which this Part applies.
- (2) In particular, it—
  - (a) contains a definition of “derivative contract” (see section 576),
  - (b) contains other definitions (such as “relevant contract”, “option”, “future” and “contract for differences”) which are used in determining whether a contract is a derivative contract (see sections 577 to 583),
  - (c) makes provision about cases in which companies are treated as parties to relevant contracts (see sections 584 to 586),
  - (d) provides for certain contracts and transactions to be treated as derivative contracts (see sections 587 and 588), and
  - (e) provides for certain contracts to be treated as not being derivative contracts because of their underlying subject matter (see sections 589 to 593).

#### *Meaning of “derivative contract” and other basic definitions*

#### 576 “Derivative contract” U.K.

- (1) For the purposes of this Part, a contract of a company is a derivative contract of the company for an accounting period if it—
  - (a) is a relevant contract (see sections 577 and 578),
  - (b) meets any of the accounting conditions for the accounting period (see section 579), and
  - (c) is not prevented from being a derivative contract by section 589 (contracts excluded because of underlying subject matter: general) or any other provision of the Corporation Tax Acts.
- (2) See also sections 587 and 588 (other contracts etc treated as derivative contracts).
- (3) But note section 701 which includes power to amend the provisions of this Chapter relating to the meaning of “derivative contract”.



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### 577 “Relevant contract” **U.K.**

- (1) In this Part “relevant contract” means—
  - (a) an option,
  - (b) a future, or
  - (c) a contract for differences.
- (2) For the meaning of “option”, “future” and “contract for differences”, see sections 580, 581 and 582 respectively.

### 578 Relevant contracts of a company and being party to such contracts **U.K.**

- (1) For the purposes of this Part, references to a relevant contract of a company are references to a relevant contract entered into or acquired by the company (but see subsection (3)).
- (2) For the purposes of this Part, a relevant contract is acquired by a company if the company becomes—
  - (a) entitled to the rights under the relevant contract, and
  - (b) subject to the liabilities under it.
- (3) For particular cases where companies are treated as parties to relevant contracts, see—
  - (a) section 584 (hybrid derivatives with embedded derivatives),
  - (b) section 585 (loan relationships with embedded derivatives), and
  - (c) section 586 (other contracts with embedded derivatives).
- (4) References in this Part to a company being a party to a relevant contract are to be read in accordance with this section.

### 579 The accounting conditions **U.K.**

- (1) The accounting conditions for any accounting period are that—
  - (a) the relevant contract is treated for accounting purposes as a derivative,
  - (b) the relevant contract—
    - (i) is not so treated just because of not meeting the requirement in paragraph 9(b) of Financial Reporting Standard 26 issued in December 2004 by the Accounting Standards Board (requirement for no initial net investment or smaller initial net investment than comparable types of contract), but
    - (ii) is or forms part of a financial asset or liability for accounting purposes, or
  - (c) the relevant contract is not within paragraph (a) or (b), but is within subsection (2).
- (2) A relevant contract is within this subsection if—
  - (a) its underlying subject matter is commodities, or
  - (b) it is a contract for differences whose underlying subject matter is—
    - (i) land,
    - (ii) tangible movable property, other than commodities which are tangible assets,
    - (iii) intangible fixed assets,

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- (iv) weather conditions, or
  - (v) creditworthiness.
- (3) For the purposes of subsection (1)(a), a relevant contract of a company is treated for accounting purposes as a derivative for an accounting period if for that period—
- (a) it is so treated for the purposes of the relevant accounting standard used by the company for that period, or
  - (b) it would be so treated if the company used the relevant accounting standard for that period in respect of the contract.
- (4) For the purposes of subsection (1)(b), a relevant contract of a company is or forms part of a financial asset or liability for accounting purposes for an accounting period if for that period—
- (a) it is or does so for the purposes of the relevant accounting standard used by the company for that period, or
  - (b) it would be or would do so if the company used the relevant accounting standard for that period in respect of the contract.
- (5) In this section “relevant accounting standard” means—
- (a) for any accounting period in relation to which it is required or permitted to be used, Financial Reporting Standard 25 issued in December 2004 by the Accounting Standards Board, as from time to time modified, amended or revised, or
  - (b) for any accounting period in relation to which it is required or permitted to be used, any subsequent accounting standard dealing with transactions which are derivatives, as from time to time modified, amended or revised.
- (6) For the meaning of “underlying subject matter”, see section 583.

## 580 “Option” **U.K.**

- (1) In this Part “option” includes a warrant.
- (2) References in this Part to an option do not include a contract whose terms—
- (a) provide—
    - (i) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or
    - (ii) that each party is liable to make to the other party a cash payment in respect of all that party's obligations to the other under the contract, and
  - (b) do not provide for the delivery of any property.
- (3) Subsection (2) does not prevent an option whose underlying subject matter is currency from being an option.
- (4) But see—
- (a) section 652 (introduction to sections 653 to 655),
  - (b) section 665 (issuers of securities with embedded derivatives: equity instruments), and
  - (c) section 695 (transfers of value to connected companies),
- in which “option” is to be construed as if subsections (2) and (3) were omitted.

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## 581 “Future” **U.K.**

- (1) In this Part “future” means a contract for the sale of property under which delivery is to be made—
  - (a) at a future date agreed when the contract is made, and
  - (b) at a price so agreed,but this is subject to subsection (3).
- (2) For the purposes of subsection (1)(b), a price is agreed when the contract is made even if—
  - (a) the price is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (3) References in this Part to a future do not include a contract whose terms—
  - (a) provide—
    - (i) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or
    - (ii) that each party is liable to make to the other party a cash payment in respect of all that party's obligations to the other under the contract, and
  - (b) do not provide for the delivery of any property.
- (4) Subsection (3) does not prevent a future whose underlying subject matter is currency from being a future.

## 582 “Contract for differences” **U.K.**

- (1) In this Part “contract for differences” means a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—
  - (a) the value or price of property described in the contract, or
  - (b) an index or other factor designated in the contract.
- (2) But none of the following is a contract for differences—
  - (a) an option,
  - (b) a future,
  - (c) a contract of insurance,
  - (d) a capital redemption policy,
  - (e) a contract of indemnity,
  - (f) a guarantee,
  - (g) a warranty, or
  - (h) a loan relationship.
- (3) For the purposes of subsection (1)(b), an index or factor may be determined by reference to any matter.

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### 583 “Underlying subject matter” **U.K.**

- (1) In this Part references to the underlying subject matter of a relevant contract are to be read as follows.
- (2) The underlying subject matter of an option is—
  - (a) the property which would fall to be delivered if the option were exercised, or
  - (b) if the property which would so fall is a derivative contract, the underlying subject matter of that contract.
- (3) The underlying subject matter of a future is—
  - (a) the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, or
  - (b) if the property which would so fall is a derivative contract, the underlying subject matter of that contract.
- (4) The underlying subject matter of a contract for differences is—
  - (a) if the contract for differences relates to fluctuations in the value or price of property described in the contract, the property so described, or
  - (b) if an index or factor is designated in the contract for differences, the matter by reference to which the index or factor is determined.
- (5) The things which may be the subject matter of a contract for differences include—
  - (a) interest rates,
  - (b) weather conditions, and
  - (c) creditworthiness.
- (6) Interest rates are not the underlying subject matter of a relevant contract if—
  - (a) under the terms of that contract—
    - (i) the date on which a party to that contract becomes subject to a duty to make a payment is a variable date, and
    - (ii) the amount of that payment varies according to the date of payment, and
  - (b) those terms refer to an interest rate only for the purpose of establishing that amount.
- (7) The underlying subject matter of a relevant contract is not treated as being—
  - (a) land,
  - (b) shares in a company, or
  - (c) rights of a unit holder under a unit trust scheme,just because its underlying subject matter includes income from that kind of property.

*Cases where companies treated as parties to relevant contracts*

### 584 Hybrid derivatives with embedded derivatives **U.K.**

- (1) This section applies if—
  - (a) a company is a party to a relevant contract which meets the condition in section 579(1)(b) or (c) (contracts not treated for accounting purposes as derivatives),

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- (b) in accordance with generally accepted accounting practice, the company treats the rights and liabilities under the contract as divided between—
    - (i) rights and liabilities under one or more derivatives (“embedded derivatives”), and
    - (ii) the remaining rights and liabilities, and
  - (c) a contract consisting of only those remaining rights and liabilities would be a relevant contract.
- (2) The company is treated for the purposes of this Part—
- (a) as a party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or (if there is more than one embedded derivative) as a party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives, and
  - (b) as a party to a relevant contract whose rights and liabilities are those within subsection (1)(b)(ii).
- (3) Each relevant contract to which a company is treated as a party under subsection (2) is treated for the purposes of this Part as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the deemed relevant contract would be.
- (4) In this Part “hybrid derivative” means a relevant contract within subsection (1)(a).
- (5) See also—
- (a) section 592 (embedded derivatives treated as meeting condition in section 591 etc), and
  - (b) section 616 (disapplication of fair value accounting for certain embedded derivatives).

## 585 **Loan relationships with embedded derivatives** U.K.

- (1) This section applies if in accordance with generally accepted accounting practice a company treats the rights and liabilities under a loan relationship to which it is a party as divided between—
- (a) rights and liabilities under a loan relationship, and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments (“embedded derivatives”).
- (2) The company is treated for the purposes of this Part—
- (a) as a party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, as a party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives.
- (3) Each relevant contract to which a company is treated as a party under subsection (2) is treated for the purposes of this Part as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the embedded derivative would be.
- (4) For the corresponding treatment of the rights and liabilities within subsection (1)(a), see section 415 (loan relationships with embedded derivatives).

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- (5) See also—
- (a) section 416 (election for section 415 and this section to apply), and
  - (b) section 635 (some creditor relationships treated as ones in relation to which section 415 and this section have effect).

## **586 Other contracts with embedded derivatives** **U.K.**

- (1) This section applies if a company—
- (a) is a party to a contract which is neither a hybrid derivative nor a loan relationship, and
  - (b) in accordance with generally accepted accounting practice, treats the rights and liabilities under the contract as divided between—
    - (i) rights and liabilities under one or more derivatives (“embedded derivatives”), and
    - (ii) the remaining rights and liabilities.
- (2) The company is treated for the purposes of this Part—
- (a) as a party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, as a party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives.
- (3) Each relevant contract to which a company is treated as a party under subsection (2) is treated for the purposes of this Part as an option, a future or a contract for differences depending on what the character of a separate contract containing the rights and liabilities of the embedded derivative would be.
- (4) See also section 616 (disapplication of fair value accounting for certain embedded derivatives).

*Other contracts etc treated as derivative contracts*

## **587 Contract relating to holding in OEIC, unit trust or offshore fund** **U.K.**

- (1) This section applies in relation to a relevant contract to which a company is a party in an accounting period if—
- (a) it is not a derivative contract for the purposes of this Part but for this section, and
  - (b) its underlying subject matter consists wholly or partly of a relevant holding in that period.
- (2) This Part has effect—
- (a) for that accounting period, and
  - (b) for any succeeding accounting period in which the relevant contract is a relevant contract of the company,
- as if the relevant contract were a derivative contract.
- (3) For the purposes of this section, the underlying subject matter of a contract consists wholly or partly of a relevant holding in an accounting period if—
- (a) at any time in that period it consists wholly or partly of—

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- (i) any shares in an open-ended investment company,
  - (ii) any rights under a unit trust scheme, or
  - (iii) a material interest in an offshore fund within the meaning of Chapter 3 of Part 6 (see section 489), and
  - (b) there is a time in the period when that company, scheme or fund fails to meet the qualifying investments test.
- (4) In subsection (3) “meeting the qualifying investments test” has the same meaning as in section 493 (the qualifying investments test).
- (5) See section 18(2)(c)(ii) of F(No.2)A 2005 (section 17(3): specific powers) for the power to modify the meaning of “relevant holding” for the purposes of this section by regulations under section 17(3) of that Act (regulations about authorised unit trusts and OEICs).
- (6) For the way in which credits and debits are to be brought into account where this section applies, see section 601 (application of fair value accounting).
- (7) See also—
- (a) section 602 (contract becoming one relating to holding in OEIC, unit trust or offshore fund), and
  - (b) section 660 (company ceasing to be party to contract relating to holding in OEIC, unit trust or offshore fund).

**588 Associated transaction treated as derivative contract U.K.**

- (1) This section is to be read as if it were in Chapter 7 (shares with guaranteed returns etc) of Part 6 (relationships treated as loan relationships etc).
- (2) See, in particular—
- section 526(2) (meaning of “non-qualifying share”), and
  - section 532 (meaning of “associated transaction” and “the associated transactions condition”).
- (3) Subsection (4) applies in a case which falls within section 523(1)(b)(ii) (loan relationships: non-qualifying shares) because the share mentioned in section 523(1)(a) is a non-qualifying share as a result of the associated transactions condition being met.
- (4) An associated transaction is treated for the purposes of this Part as a derivative contract or a transaction in respect of a derivative contract if it is not in fact such a contract or transaction.
- (5) For the way in which credits and debits are to be brought into account where subsection (4) applies, see section 603 (application of fair value accounting).

*Exclusions from derivative contracts*

**589 Contracts excluded because of underlying subject matter: general U.K.**

- (1) A relevant contract is not a derivative contract for the purposes of this Part if its underlying subject matter—
- (a) consists wholly of excluded property (see subsections (2) to (5)), or
  - (b) is treated as consisting wholly of such property.



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- (2) “Excluded property” means—
  - (a) intangible fixed assets,
  - (b) shares in a company other than shares within subsection (3), or
  - (c) rights of a unit holder under a unit trust scheme other than a scheme in relation to which section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) has effect.
- (3) The shares within this subsection are—
  - (a) shares to which section 524 or 526 (shares subject to outstanding third party obligations and shares which are non-qualifying shares) applies, and
  - (b) shares in an open-ended investment company in relation to which section 490 has effect.
- (4) Subsection (2)(a) applies only in relation to a relevant contract which is an option or future.
- (5) Subsection (2)(b) and (c) apply only in relation to a relevant contract which—
  - (a) meets any of conditions A to E in section 591, and
  - (b) is not designed to produce a return which equates in substance to the return on an investment of money at a commercial rate of interest.
- (6) Section 590 applies for determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of excluded property.

#### **590 Disregard of subordinate or small value underlying subject matter U.K.**

- (1) This section applies in relation to a relevant contract if its underlying subject matter consists only of—
  - (a) excluded property, and
  - (b) other underlying subject matter which is—
    - (i) subordinate in relation to any of the excluded property, or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (2) The underlying subject matter of the contract is treated for the purposes of this Part as if it consisted wholly of excluded property.
- (3) For the purposes of this section, whether part of the underlying subject matter of a relevant contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.
- (4) In this section “excluded property” has the same meaning as in section 589.

#### **591 Conditions A to E mentioned in section 589(5) U.K.**

- (1) The following are the conditions mentioned in section 589(5).
- (2) Condition A is that the relevant contract—
  - (a) is a plain vanilla contract entered into or acquired by a company carrying on life assurance business,
  - (b) is an approved derivative for the purposes of Rule 3.2.5 of the Insurance Prudential Sourcebook, and

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- (c) does not meet the condition in section 579(1)(b) (contract which is or forms part of a financial asset or liability for accounting purposes).
- (3) Condition B is that—
- (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it,
  - (b) there is a hedging relationship between the contract and—
    - (i) an asset of the company which consists of shares or rights of a unit holder under a unit trust scheme, or
    - (ii) any share capital of the company or any liability related to share capital of the company, and
  - (c) the relevant contract is not one to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives).
- (4) Condition C is that—
- (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it, and
  - (b) the relevant contract is an option which is listed on a recognised stock exchange to subscribe for shares in a company.
- (5) Condition D is that—
- (a) the relevant contract is entered into or acquired by a company otherwise than in the course of activities forming an integral part of a trade carried on by it,
  - (b) the relevant contract is—
    - (i) an option to acquire shares in a company, or
    - (ii) a future requiring delivery of shares in a company,
  - (c) the relevant contract is not one to which the company is treated as a party under section 585(2), and
  - (d) the shares to be acquired or delivered—
    - (i) constitute a substantial shareholding within the meaning of paragraph 8 of Schedule 7AC to TCGA 1992 (meaning of “substantial shareholding”), or
    - (ii) would do so if acquired or delivered.
- (6) Condition E is that—
- (a) the company which is a party to the relevant contract has a hedging relationship between—
    - (i) the relevant contract, and
    - (ii) an asset or liability representing a loan relationship which is treated as mentioned in section 585(1) (loan relationships with embedded derivatives), and
  - (b) each relevant contract to which the company is treated as a party under section 585(2) in the case of that loan relationship is a derivative contract to which any of the provisions in subsection (7) applies.
- (7) The provisions mentioned in subsection (6)(b) are—
- (a) section 645 (creditor relationships: embedded derivatives which are options),
  - (b) section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences),
  - (c) sections 653 to 655 (issuers of securities with embedded derivatives: deemed options), and

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- (d) section 658 (issuers of securities with embedded derivatives: deemed contracts for differences).
- (8) For the cases in which sections 653 to 655 and section 658 apply, see sections 652 and 656 respectively.

## **592 Embedded derivatives treated as meeting condition in section 591 etc** **U.K.**

- (1) This section applies if for an accounting period—
  - (a) a company is a party to a hybrid derivative which meets the condition in section 579(1)(b) (contract which is or forms part of a financial asset or liability for accounting purposes),
  - (b) the embedded derivative is a relevant contract which meets the condition in section 579(1)(a) (contract treated for accounting purposes as derivative),
  - (c) the underlying subject matter of that contract consists, or is treated as consisting, wholly of—
    - (i) shares in a company, or
    - (ii) rights of a unit holder under a unit trust scheme, and
  - (d) the host contract is or forms part of a financial asset or liability for accounting purposes.
- (2) The embedded derivative is treated—
  - (a) for the purposes of section 589 (contracts excluded because of underlying subject matter: general) as meeting one of the conditions in section 591, and
  - (b) as a chargeable asset.
- (3) The host contract is treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company (see Part 5 (loan relationships)).
- (4) Section 590 (disregard of subordinate or small value underlying subject matter) applies for the purpose of determining whether the underlying subject matter is to be treated as consisting wholly of property mentioned in subsection (1)(c) as that section so applies in relation to excluded property.
- (5) In this section—
  - “the embedded derivative” means the relevant contract to which the company is treated as a party under section 584(2)(a) because of the hybrid derivative mentioned in subsection (1)(a), and
  - “the host contract” means the relevant contract to which the company is treated as a party under section 584(2)(b) because of that hybrid derivative.

## **593 Contracts where part of underlying subject matter is excluded property** **U.K.**

- (1) This section applies to a relevant contract of a company—
  - (a) which is an option or future,
  - (b) which meets any of the accounting conditions in section 579(1), and
  - (c) whose underlying subject matter consists of—
    - (i) excluded property, and
    - (ii) other underlying subject matter.
- (2) A relevant contract to which this section applies is treated for the purposes of the Corporation Tax Acts as if it were the following two contracts—

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- (a) a relevant contract whose underlying subject matter consists of the excluded property, and
  - (b) a relevant contract whose underlying subject matter consists of the other underlying subject matter.
- (3) For the purposes of giving effect to subsection (2), all such apportionments as are just and reasonable are to be made.
- (4) This section does not apply to a relevant contract if it is determined in accordance with section 590 (disregard of subordinate or small value underlying subject matter) that the underlying subject matter of the relevant contract is to be treated as consisting wholly of excluded property.
- (5) In this section “excluded property” has the same meaning as in section 589 (contracts excluded because of underlying subject matter: general).

### CHAPTER 3 **U.K.**

#### CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT: GENERAL

##### *Introduction*

#### 594 **Overview of Chapter** **U.K.**

- (1) This Chapter contains rules of general application about the credits and debits to be brought into account for the purposes of this Part.
- (2) In particular, it—
- (a) sets out the general principles which are to apply in relation to the bringing into account of credits and debits, including the use of generally accepted accounting practice and the taking into account of related transactions (see sections 595 and 596),
  - (b) makes provision about the interpretation of the expression “amounts recognised in determining a company's profit or loss” (see sections 597 to 599),
  - (c) makes provision in relation to the application of fair value accounting (see sections 600 to 603),
  - (d) sets out some general rules which differ from generally accepted accounting practice (see sections 604 and 605),
  - (e) makes provision about exchange gains and losses (see section 606),
  - (f) makes provision about pre-contract or abortive expenses (see section 607),
  - (g) makes provision about companies ceasing to be parties to derivative contracts and companies moving abroad (see sections 608 to 610), and
  - (h) makes provision in relation to statutory insolvency arrangements (see section 611).

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### General principles

#### 595 General principles about the bringing into account of credits and debits **U.K.**

- (1) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes in those accounts.
- (2) The general rule is that the amounts to be brought into account by a company as credits or debits for any period for the purposes of this Part are those which are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice (but this is subject to subsections (3) and (4)).
- (3) The credits and debits to be brought into account in respect of a company's derivative contracts are the amounts which, when taken together, fairly represent for the accounting period in question—
  - (a) all profits and losses of the company which arise to it from its derivative contracts and related transactions (excluding expenses), and
  - (b) all expenses incurred by the company under or for the purposes of those contracts and transactions.
- (4) Expenses are only treated as incurred as mentioned in subsection (3)(b) if they are incurred directly—
  - (a) in bringing any of the derivative contracts into existence,
  - (b) in entering into or giving effect to any of the related transactions,
  - (c) in making payments under any of those contracts or as a result of any of those transactions, or
  - (d) in taking steps to ensure the receipt of payments under any of those contracts or in accordance with any of those transactions.
- (5) For the treatment of pre-contract or abortive expenses, see section 607.
- (6) In subsection (3) “profits and losses” includes profits and losses of a capital nature.
- (7) This section is subject to the following provisions of this Part.
- (8) For the meaning of “related transaction” see section 596.

#### 596 Meaning of “related transaction” **U.K.**

- (1) In this Part “related transaction”, in relation to a derivative contract, means any disposal or acquisition (in whole or in part) of rights or liabilities under the contract.
- (2) For this purpose the cases where there is taken to be such a disposal or acquisition include—
  - (a) those where rights or liabilities under the derivative contract are transferred or extinguished by any sale, gift, surrender or release, and
  - (b) those where the contract is discharged by performance in accordance with its terms.

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*Amounts recognised in determining a company's profit or loss*

**597 Amounts recognised in determining a company's profit or loss** **U.K.**

- (1) References in this Part to an amount recognised in determining a company's profit or loss for a period are to an amount recognised in—
  - (a) the company's profit and loss account, income statement or statement of comprehensive income for that period,
  - (b) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
  - (c) any other statement of items recognised in calculating the company's profits and losses for that period.
- (2) If, in accordance with generally accepted accounting practice, an amount is shown as a prior period adjustment in any statement within subsection (1), it must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.
- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.

**598 Regulations about recognised amounts** **U.K.**

- (1) The Treasury may by regulations make provision—
  - (a) excluding amounts of a specified description from section 597(1) (amounts recognised in determining a company's profit or loss),
  - (b) requiring amounts of a specified description which are not within section 597(1) to be brought into account in determining a company's profit or loss for a period in specified circumstances, and
  - (c) as to the way in which any such amounts are to be brought into account.
- (2) For the purposes of subsection (1)(b), it does not matter whether the amounts are not within section 597(1) because of regulations under subsection (1)(a) or otherwise.
- (3) The regulations may (in particular) make provision by reference to the fact that amounts derive from or otherwise relate to amounts brought into account in a specified way in a previous period of account.
- (4) The regulations may—
  - (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other specified conditions.
- (5) The regulations may apply, exclude or modify any of the provisions of this Part in relation to cases for which provision is made by the regulations.
- (6) The regulations may apply to periods of account beginning before they are made, but not earlier than the beginning of the calendar year in which they are made.

**599 Meaning of “amounts recognised for accounting purposes”** **U.K.**

- (1) If a company—
  - (a) draws up accounts which are not GAAP-compliant accounts, or

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- (b) does not draw up accounts at all,  
this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) Accordingly, references in this Part to amounts recognised for accounting purposes include references to the amounts which would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- (4) In this section “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

*Application of fair value accounting*

**600 Contract which is or forms part of financial asset or liability U.K.**

- (1) This section applies to a derivative contract which meets the condition in section 579(1)(b) (contract which is or forms part of a financial asset or liability for accounting purposes).
- (2) The amounts to be brought into account in accordance with this Part in respect of the contract are to be determined on the basis of fair value accounting.

**601 Contract relating to holding in OEIC, unit trust or offshore fund U.K.**

- (1) This section applies if a company is a party in an accounting period to a relevant contract which is treated as a derivative contract under section 587 (contract relating to holding in OEIC, unit trust or offshore fund).
- (2) The credits and debits which are to be brought into account in accordance with this Part in respect of the relevant contract are to be determined on the basis of fair value accounting.

**602 Contract becoming one relating to holding in OEIC, unit trust or offshore fund U.K.**

- (1) This section applies if—
- (a) a company is a party to a relevant contract in two successive accounting periods,
  - (b) section 587 (contract relating to holding in OEIC, unit trust or offshore fund) applies in relation to the relevant contract for the second accounting period but not the first accounting period, and
  - (c) immediately before the beginning of the second accounting period the relevant contract was a chargeable asset.
- (2) For the purposes of section 601(2), the opening valuation of the contract as at the beginning of the second accounting period is taken to be equal to the market value of the contract.
- (3) In subsection (2) “the market value of the contract” means the amount which would have been the market value of the contract for the purposes of corporation tax on



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chargeable gains if it had been disposed of immediately before the end of the first accounting period.

- (4) For the rules which apply where the company ceases to be a party to the contract, see section 660 (company ceasing to be party to contract relating to holding in OEIC, unit trust or offshore fund).

### 603 Associated transaction treated as derivative contract **U.K.**

- (1) This section is to be read as if it were in Chapter 7 (shares with guaranteed returns etc) of Part 6 (relationships treated as loan relationships etc).
- (2) See, in particular, section 532(3) (meaning of “associated transaction”).
- (3) Subsection (4) applies if credits and debits are required to be brought into account in accordance with this Part in respect of any associated transaction because of section 588 (which treats such a transaction which is not a derivative contract as if it were).
- (4) Those credits and debits are to be determined on the basis of fair value accounting.

*Rules differing from generally accepted accounting practice*

### 604 Credits and debits treated as relating to capital expenditure **U.K.**

- (1) This section applies if generally accepted accounting practice allows a credit or debit for an accounting period in respect of a company's derivative contract to be treated in the company's accounts as an amount recognised in determining the value of a fixed capital asset or project.
- (2) Despite that treatment, the credit or debit must be brought into account in accordance with this Part, in the accounting period for which it is given, in the same way as a credit or debit which is recognised in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.
- (3) But subsection (2) does not apply to a debit which is recognised in arriving at the amount of expenditure in relation to which a debit may be given by Part 8 (intangible fixed assets).
- (4) Subsection (5) applies if a debit is recognised as mentioned in subsection (1).
- (5) No debit may be brought into account in accordance with this Part in respect of—
- (a) the writing down of so much of the value of the asset or project, or
  - (b) so much of any amortisation or depreciation as represents a writing off of that value,
- as is attributable to that debit.

### 605 Credits and debits recognised in equity **U.K.**

- (1) This section applies if in accordance with generally accepted accounting practice a credit or debit for a period in respect of a company's derivative contract—
- (a) is recognised in equity or shareholders' funds, and
  - (b) is not recognised in any of the statements mentioned in section 597(1) (amounts recognised in determining a company's profit or loss).

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- (2) The credit or debit must be brought into account for the period in accordance with this Part in the same way as a credit or debit which is recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

### Miscellaneous

#### 606 Exchange gains and losses **U.K.**

- (1) The reference in section 595(3) to the profits and losses arising to a company from its derivative contracts includes a reference to exchange gains and losses so arising.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) Subsection (1) does not apply to an exchange gain or loss of a company so far as—
  - (a) it arises—
    - (i) in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, or
    - (ii) as a result of the translation from one currency to another of the profit or loss of part of the company's business, and
  - (b) it is recognised in the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.
- (4) Subsection (1) does not apply to so much of an exchange gain or loss arising to a company in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency as is within a description specified for the purpose in regulations made by the Treasury.
- (5) The Treasury may by regulations make provision for or in connection with bringing into account in specified circumstances amounts to which subsection (1) does not apply because of subsection (3) or (4).
- (6) The reference in subsection (5) to bringing amounts into account is a reference to bringing amounts into account—
  - (a) for the purposes of this Part as credits or debits arising to a company from its derivative contracts, or
  - (b) for the purposes of corporation tax on chargeable gains.
- (7) The regulations may—
  - (a) make different provision for different cases, and
  - (b) make provision subject to an election or to other specified conditions.
- (8) For the meaning of references to exchange gains or losses from derivative contracts, see section 705.

#### 607 Pre-contract or abortive expenses **U.K.**

- (1) This section applies if—
  - (a) a company may enter into a derivative contract or related transaction but has not yet done so,
  - (b) it incurs any expenses for purposes connected—

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- (i) with entering into it, or
  - (ii) with giving effect to any obligation which might arise under it, and
  - (c) had the company entered into the contract or transaction, the expenses would be expenses within section 595(3)(b).
- (2) The expenses are treated as expenses in relation to which debits may be brought into account in accordance with section 595(3) to the same extent as if the company had entered into the contract or transaction.

**608 Company ceasing to be party to derivative contract U.K.**

- (1) This section applies if—
- (a) a company ceases to be a party to a derivative contract in an accounting period (the “cessation period”),
  - (b) profits or losses arise to the company from the derivative contract or a related transaction in that period, and
  - (c) the credits or debits brought into account in accordance with this Part for that period do not include credits or debits representing the whole of those profits or losses.
- (2) Credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period must continue to be brought into account in accordance with this Part over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a derivative contract to which the company is a party in those periods.
- (3) Subsection (4) applies if any question arises how far in a post-cessation period—
- (a) the company is a party to the derivative contract for the purposes of a trade it carries on, or
  - (b) the derivative contract is referable to a particular business the company carries on or a particular description of such business.
- (4) The question is to be determined by reference to the circumstances immediately before the company ceased to be a party to the derivative contract, instead of the circumstances in the post-cessation period.
- (5) Subsection (6) applies if any question arises—
- (a) how far the derivative contract has a particular purpose in a post-cessation period, or
  - (b) whether there is a connection between the company and any other person for a post-cessation period.
- (6) The question is to be determined by reference to the circumstances in the cessation period, instead of the circumstances in the post-cessation period.
- (7) For the purposes of the Corporation Tax Acts, references to a person's derivative contracts and to a person being a party to a derivative contract are to be read in accordance with this section.

**609 Company ceasing to be UK resident U.K.**

- (1) If a company ceases to be UK resident, this Part applies as if—

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- (a) immediately before so ceasing the company had assigned the rights and liabilities under its derivative contracts for consideration of an amount equal to their fair value at that time, and
  - (b) it had immediately reacquired them for consideration of the same amount.
- (2) Subsection (1) does not apply in relation to a derivative contract so far as immediately after the company ceases to be UK resident its rights and liabilities under the contract are held or owed for the purposes of a permanent establishment of the company in the United Kingdom.
- (3) Subsection (1) does not apply if—
- (a) the conditions in section 630(1)(a) and (b) are met in relation to the company (transferee leaving group after replacing transferor as party to derivative contract), and
  - (b) it ceases to be UK resident at the same time as it ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given by section 630(4).

**610 Non-UK resident company ceasing to hold derivative contract for UK permanent establishment U.K.**

- (1) This section applies if the rights and liabilities under a derivative contract of a company which is not UK resident cease to any extent to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction.
- (2) This Part applies as if—
- (a) immediately before the rights and liabilities so cease the company had assigned them, so far as so ceasing, for consideration of an amount equal to their fair value at that time, and
  - (b) the company had immediately reacquired them for consideration of the same amount.
- (3) This section does not apply if—
- (a) the conditions in section 630(1)(a) and (b) are met in relation to the company (transferee leaving group after replacing transferor as party to derivative contract), and
  - (b) the rights and liabilities mentioned in subsection (1) cease to be held or owed for the purposes of the permanent establishment at the same time as the company ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given by section 630(4).

**611 Release under statutory insolvency arrangement of liability under derivative contract U.K.**

No credit is required to be brought into account by a company in respect of the release of the company's liability to pay an amount under a derivative contract of the company if the release is part of a statutory insolvency arrangement.

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## CHAPTER 4 U.K.

### FURTHER PROVISION ABOUT CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT

#### *Introduction*

#### 612 Overview of Chapter U.K.

- (1) This Chapter makes further provision about the credits and debits to be brought into account for the purposes of this Part.
- (2) In particular, it—
  - (a) provides for adjustments on a change of accounting policy (see sections 613 to 615),
  - (b) makes provision in relation to certain embedded derivatives (see sections 616 to 618),
  - (c) makes provision about partnerships involving companies (see sections 619 to 621),
  - (d) makes provision about contracts ceasing to be derivative contracts (see section 622), and
  - (e) makes provision in relation to some gilt-edged securities (see section 623).

#### *Adjustments on change of accounting policy*

#### 613 Introduction to sections 614 and 615 U.K.

- (1) Sections 614 and 615 (adjustments on change of accounting policy) apply if—
  - (a) there is a change of accounting policy in drawing up a company's accounts from one period of account to the next, and
  - (b) the accounting policy in each of those periods accords with the law and practice applicable in relation to that period.
- (2) In this section and those sections—
  - (a) the first of those periods of account is referred to as “the earlier period”, and
  - (b) the next is referred to as “the later period”.
- (3) Sections 614 and 615 apply, in particular, if—
  - (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
  - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.
- (4) If an election is made under section 416, this section and sections 614 and 615 apply as if there were a change of accounting policy consisting of the company treating the assets referred to in section 416(1)(c) as mentioned in section 585(1) as from the date the election has effect.

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#### **614 Change of accounting policy involving change of value** **U.K.**

- (1) If there is an increase in the carrying value of a derivative contract of the company between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,a credit of an amount equal to the increase must be brought into account in accordance with this Part for the later period.
- (2) If there is a decrease in the carrying value of such a derivative contract between—
  - (a) the end of the earlier period, and
  - (b) the beginning of the later period,a debit of an amount equal to the decrease must be brought into account in accordance with this Part for the later period.
- (3) This section does not apply so far as such a credit or debit as is mentioned in this section falls to be brought into account apart from this section.

#### **615 Change of accounting policy after ceasing to be party to derivative contract** **U.K.**

- (1) This section applies if—
  - (a) the company has ceased to be a party to a derivative contract in an accounting period (“the cessation period”),
  - (b) section 608 (credits and debits to be brought into account in respect of profits and losses arising in the cessation period) applied to the cessation, and
  - (c) there is a difference between the amount outstanding in respect of the derivative contract (see subsection (5))—
    - (i) at the end of the earlier period, and
    - (ii) at the beginning of the later period.
- (2) If that amount has increased, a credit of an amount equal to the increase must be brought into account in accordance with this Part for the later period.
- (3) If that amount has decreased, a debit of an amount equal to the decrease must be brought into account in accordance with this Part for the later period.
- (4) Subsections (2) and (3) do not apply so far as the credit or debit falls to be brought into account apart from this section.
- (5) In subsection (1) “the amount outstanding in respect of the derivative contract” means so much of the recognised deferred income or recognised deferred loss from the derivative contract as has not been represented by credits or debits brought into account in accordance with this Part in respect of the contract.
- (6) In subsection (5)—

“recognised deferred income”, in relation to a derivative contract, means the amount recognised in the company’s balance sheet in accordance with generally accepted accounting practice as deferred income in respect of the profits which arose from the contract or a related transaction in the cessation period, and

“recognised deferred loss”, in relation to a derivative contract, means the amount so recognised as deferred loss in respect of the losses which so arose.

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### *Certain embedded derivatives*

## **616 Disapplication of fair value accounting U.K.**

- (1) This section applies if—
  - (a) a company is treated as a party to a relevant contract under section 584(2)(a) or 586(2) (“the embedded derivative”),
  - (b) the embedded derivative is a derivative contract which meets the condition in section 579(1)(a) (contract treated for accounting purposes as derivative),
  - (c) section 592 (embedded derivatives treated as meeting condition in section 591 etc) does not apply in relation to the embedded derivative, and
  - (d) regulation 9 of the Disregard Regulations (interest rate contracts) does not apply to the embedded derivative.
- (2) If this section applies—
  - (a) sections 573 and 574 (trading credits and debits to be brought into account under Part 3 and non-trading credits and debits to be brought into account under Part 5) do not apply in relation to the embedded derivative, and
  - (b) subsection (3) or subsections (4) to (6) apply in relation to the original contract, depending on whether that contract is a hybrid derivative or a contract within section 586(1).
- (3) If the original contract is a hybrid derivative, profits and losses are to be calculated for the purposes of this Part as if that contract—
  - (a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in section 584(1) (hybrid derivatives with embedded derivatives), and
  - (b) were not one in relation to which a fair value basis of accounting is used.
- (4) If the original contract is a contract within section 586(1), profits and losses are to be brought into account for the purposes of the Corporation Tax Acts in relation to that contract as if that contract—
  - (a) were not one where the rights and liabilities are treated for accounting purposes as divided as mentioned in section 586(1) (other contracts with embedded derivatives), and
  - (b) were not one in relation to which a fair value basis of accounting is used.
- (5) Accordingly, this Part does not apply to the original contract (except for the purposes of this section), but section 46 applies to that contract as if fair value accounting were not generally accepted accounting practice in relation to the company.
- (6) Subsections (4) and (5) apply despite section 699(1) (priority of this Part for corporation tax purposes).
- (7) In this section—
 

“the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256), and

“the original contract” means—

  - (a) the hybrid derivative as a result of which the company falls to be treated under section 584(2) (hybrid derivatives with embedded derivatives) as a party to the embedded derivative, or



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- (b) the contract within section 586(1) (other contracts with embedded derivatives) as a result of which the company falls to be treated under section 586(2) as a party to the embedded derivative.

#### **617 Election for section 616 not to apply U.K.**

- (1) A company may elect that section 616 is not to apply in relation to its contracts.
- (2) But such an election does not apply to a contract if—
  - (a) the contract is a contract of long-term insurance, or
  - (b) the underlying subject matter of the embedded derivative is, or includes, commodities.
- (3) An election under this section—
  - (a) must be made before the end of the first applicable accounting period of the company, and
  - (b) is irrevocable.
- (4) In subsection (3) “the first applicable accounting period” means the first accounting period in which the conditions in section 616(1) are met.
- (5) Section 618 makes further provision about elections under this section.

#### **618 Elections under section 617: groups of companies U.K.**

- (1) If—
  - (a) a company makes an election under section 617 in relation to its contracts, and
  - (b) another company, which is a member of the same group as the company making the election, is a party to a contract to which the election applies,the other company is treated, in relation to that contract, as if it had also made such an election.
- (2) If—
  - (a) a company (“the electing company”) makes an election under section 617 in relation to its contracts,
  - (b) another company (“the transferee”) becomes a party to a contract to which section 584 (hybrid derivatives with embedded derivatives) or section 586 (other contracts with embedded derivatives) applies, in place of the electing company (whether before or after the election is made), and
  - (c) the transferee is a member of the same group of companies as the electing company at the time of the transfer,the transferee is treated, in relation to the contract mentioned in paragraph (b), as if it had also made such an election.
- (3) If—
  - (a) a company (“A”) is treated under section 584 or 586 as a party to a relevant contract in relation to which section 616(1) applies,
  - (b) another company (“B”) becomes a party to that contract in place of A,
  - (c) A and B are members of the same group of companies when B becomes a party to the contract, and
  - (d) section 616(1) does not apply in relation to B's other relevant contracts because of an election under section 617 (whenever made),

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subsection (4) applies, unless A, subsequent to B's becoming a party to the contract, makes such an election.

- (4) B is treated, in relation to the contract mentioned in subsection (3)(b), as if section 616(1) applied in relation to it.
- (5) In this section, references to a company being a member of the same group of companies are to be read in accordance with section 170 of TCGA 1992 (interpretation of sections 171 to 181 of that Act: groups).

### *Partnerships involving companies*

#### **619 Partnerships involving companies** **U.K.**

- (1) This section applies if—
  - (a) a trade or business is carried on by a firm,
  - (b) any of the partners in the firm is a company (a “company partner”), and
  - (c) the firm is a party to a contract which is a derivative contract or would be a derivative contract if the firm were a company.
- (2) No credits or debits may be brought into account in accordance with this Part in respect of the contract in calculating the profits and losses of the trade or business for corporation tax purposes under section 1259 (calculation of firm's profits and losses).
- (3) Instead, each company partner must bring into account in accordance with this Part credits and debits in respect of the contract for each of its accounting periods in which the conditions in subsection (1) are met.
- (4) Sections 620 (determination of credits and debits by company partners) and 621 (company partners using fair value accounting) contain special rules about the credits and debits to be brought into account under subsection (3).
- (5) In sections 620 and 621 “company partner” has the same meaning as in this section.

#### **620 Determination of credits and debits by company partners** **U.K.**

- (1) The credits and debits to be brought into account under section 619(3) are to be determined separately for each company partner as follows.
- (2) The contract entered into or acquired by the firm is treated as if it were instead entered into or acquired by the company partner for the purposes of the trade or business which the company partner carries on.
- (3) Anything done by or in relation to the firm in connection with the contract is treated as done by or in relation to the company partner.
- (4) So far as exchange gains or losses arising from the contract are recognised in the firm's—
  - (a) statement of total recognised gains and losses,
  - (b) statement of recognised income and expense,
  - (c) statement of changes in equity, or
  - (d) statement of income and retained earnings,

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they are treated as if they had been recognised in the corresponding statement of the company partner.

- (5) The credits and debits in the case of each company partner are the partner's appropriate share of the total credits and debits determined in accordance with subsections (2) to (4).
- (6) A company partner's "appropriate share" is the share which would be apportioned to it on the assumption in subsection (7).
- (7) The assumption is that the total credits and debits determined in accordance with subsections (2) to (4) are apportioned between the partners in the shares in which any profit or loss would be apportioned between them in accordance with the firm's profit-sharing arrangements.

#### **621 Company partners using fair value accounting U.K.**

- (1) This section applies if a company partner uses fair value accounting in relation to its interest in the firm.
- (2) The credits and debits to be brought into account by the company partner under section 619(3) are to be determined on the basis of fair value accounting.

#### *Miscellaneous*

#### **622 Contracts ceasing to be derivative contracts U.K.**

- (1) This section applies if a company is a party to a relevant contract which ceases to be a derivative contract.
- (2) The company is treated for the purposes of this Part as if it had disposed of the contract in a related transaction at the relevant time for consideration of an amount equal to the notional carrying value of the contract at that time.
- (3) In this section "the relevant time" means the time when the contract ceases to be a derivative contract.
- (4) For the purposes of this section, the "notional carrying value" of the contract at the relevant time is the amount which would have been the carrying value of the contract in the accounts of the company if a period of account had ended immediately before that time.
- (5) See also section 662 (chargeable gains provision for contracts ceasing to be derivative contracts).

#### **623 Index-linked gilt-edged securities with embedded contracts for differences U.K.**

- (1) This section applies to a derivative contract of a company for an accounting period if each of conditions A to D is met.
- (2) Condition A is that the derivative contract is a relevant contract to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives) because of a creditor relationship of the company.

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- (3) Condition B is that the derivative contract is treated as a contract for differences by section 585(3) (contract treated as option, future or contract for differences).
- (4) Condition C is that the creditor relationship is an index-linked gilt-edged security.
- (5) Condition D is that the credits and debits which fall to be brought into account for the accounting period for the purposes of Part 5 (loan relationships) in respect of the host contract are non-trading credits and non-trading debits.
- (6) The credits and debits which would fall to be brought into account in accordance with this Part in respect of the derivative contract for the accounting period apart from this section may not be so brought into account.
- (7) In this section—
  - “the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the creditor relationship mentioned in subsection (2), and
  - “index-linked gilt-edged security” has the same meaning as in Part 5 (see section 399(4)).

## CHAPTER 5 **U.K.**

### CONTINUITY OF TREATMENT ON TRANSFERS WITHIN GROUPS

#### *Introductory*

#### **624 Introduction to Chapter **U.K.****

- (1) This Chapter makes provision—
  - (a) about continuity of treatment in some cases in which a company replaces a member of the same group of companies as a party to a derivative contract, and
  - (b) about cases in which the company ceases to be a member of the group.
- (2) For the meaning of references in this Chapter to a company replacing another as a party to a derivative contract, see section 627.
- (3) In this Chapter, references to a company being a member of a group of companies are to be read in accordance with section 170 of TCGA 1992 (interpretation of sections 171 to 181 of that Act: groups).
- (4) For modifications of this Chapter for insurance companies, see section 636.

#### *Group member replacing another as party to derivative contract*

#### **625 Group member replacing another as party to derivative contract **U.K.****

- (1) This section applies if—
  - (a) there is a transaction within section 626(2) or a series of transactions within section 626(3),

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- (b) as a result one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a derivative contract.
- (2) The credits and debits to be brought into account in accordance with this Part in respect of the derivative contract are determined in accordance with subsections (3) to (5).
- (3) For the accounting period in which the transaction or, as the case may be, the first of the transactions takes place, the transferor is treated as having entered into that transaction for consideration of an amount equal to the notional carrying value of the contract (see subsection (6)).
- (4) For any accounting period in which the transferee is a party to the contract, it is treated as if it had acquired the contract for consideration of an amount equal to its notional carrying value.
- (5) If a discount arises in respect of the transaction or series of transactions, the consideration is increased for the purposes of subsection (3) (but not subsection (4)) by the amount of the discount.
- (6) For the purposes of this section—
  - (a) “discount” has same meaning as in section 480 (relevant non-lending relationships involving discounts), and
  - (b) the notional carrying value of a contract is the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the contract.
- (7) Schedule 28AA to ICTA (provision not at arm's length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this section.
- (8) This section is subject to sections 628 (transferor using fair value accounting) and 629 (tax avoidance).

## **626 Transactions to which section 625 applies** **U.K.**

- (1) This section applies for the purposes of section 625(1)(a).
- (2) A transaction is within this subsection if it is a related transaction between two companies which are—
  - (a) members of the same group, and
  - (b) within the charge to corporation tax in respect of that transaction.
- (3) A series of transactions is within this subsection if it is a series of transactions having the same effect as a related transaction between two companies each of which—
  - (a) has been a member of the same group at any time in the course of that series of transactions, and
  - (b) would be within the charge to corporation tax in respect of such a related transaction.

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## 627 Meaning of company replacing another as party to derivative contract **U.K.**

- (1) References in this Chapter to one company (“A”) replacing another company (“B”) as a party to a derivative contract include references to A becoming a party to a derivative contract which—
  - (a) confers rights within subsection (2),
  - (b) imposes liabilities within subsection (2), or
  - (c) both confers such rights and imposes such liabilities.
- (2) Rights or liabilities are within this subsection if they are equivalent to those of B under a derivative contract to which B has previously ceased to be a party.

### *Exceptions to section 625*

## 628 Transferor using fair value accounting **U.K.**

- (1) This section applies instead of section 625 if, in a case where that section would otherwise apply, the transferor uses fair value accounting as respects the derivative contract.
- (2) The amount which is to be brought into account by the transferor in respect of—
  - (a) the transaction mentioned in that section, or
  - (b) the series of transactions mentioned in that section taken together,
 is the fair value of the derivative contract as at the date of transfer to the transferee.
- (3) For any accounting period in which the transferee is a party to the contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for consideration of an amount equal to the fair value of the contract as at the date of transfer to it.
- (4) If a discount arises in respect of the transaction or series of transactions, the amount to be brought into account under subsection (2) is increased by the amount of the discount.
- (5) In this section—
 

“discount” has the same meaning as in section 480 (relevant non-lending relationships involving discounts), and

“the transferor” and “the transferee” have the same meaning as in section 625.

## 629 Tax avoidance **U.K.**

- (1) Section 625 does not apply if conditions A and B are met.
- (2) Condition A is that the transferor is a party to arrangements in accordance with which there is likely to be a transfer of rights or liabilities under the derivative contract by the transferee to another person in circumstances in which section 625 would not apply.
- (3) Condition B is that the purpose or one of the main purposes of the arrangements is to secure a tax advantage for the transferor or a person connected with it.

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- (4) Section 625 does not apply in relation to a disposal if section 698 (disposals for consideration not fully recognised by accounting practice) applies in relation to the disposal.
- (5) In this section—
- “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions,
  - “tax advantage” has the meaning given by section 840ZA of ICTA,
  - “transfer” includes any arrangement which equates in substance to a transfer (including any acquisition or disposal of, or increase or decrease in, a share of the profits or assets of a firm), and
  - “the transferor” and “the transferee” have the same meaning as in section 625.

*Transferee leaving group after replacing transferor as party to derivative contract*

### **630 Introduction to sections 631 and 632** **U.K.**

- (1) Sections 631 and 632 apply if—
- (a) section 625 (group member replacing another as party to derivative contract) applies because of a transaction or series of transactions within section 626(2) or (3), and
  - (b) before the end of the relevant 6 year period and while still a party to the relevant derivative contract, the transferee ceases to be a member of the relevant group.
- (2) But the transferee is not to be treated for the purposes of this section and sections 631 and 632 as having left the relevant group if—
- (a) rights and liabilities under a derivative contract are transferred in the course of a transfer or merger in relation to which Chapter 9 (European cross-border transfers of business) or Chapter 10 (European cross-border mergers) applies, and
  - (b) the transferee ceases to be a member of the relevant group in consequence of the transfer or merger.
- (3) In a case where subsection (2) applies, if the transferee becomes a member of another group in consequence of the transfer or merger, it is to be treated for the purposes of this section and sections 631 and 632 as if the relevant group and the other group were the same.
- (4) In this section and sections 631 and 632—
- “the relevant 6 year period” means the period of 6 years following—
    - (a) in a case where section 625 applies because of a transaction within section 626(2) (“case A”), that transaction, or
    - (b) in a case where section 625 applies because of a series of transactions within section 626(3) (“case B”), the last transaction of that series,
  - “the relevant derivative contract” means the derivative contract mentioned in section 625(1),
  - “the relevant group” means—
    - (a) in case A, the group mentioned in section 626(2),



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- (b) in case B, the group mentioned in section 626(3), and  
 “the transferee” has the same meaning as in section 625.

**631 Transferee leaving group otherwise than because of exempt distribution U.K.**

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group, and
  - (b) it does not so cease just because of a distribution which is exempt as a result of—
    - (i) section 213(2) of ICTA (exempt distributions), or
    - (ii) section 213A of ICTA (exempt distributions: division of business).
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before so ceasing,
  - (b) the assignment had been for consideration of an amount equal to their fair value at that time, and
  - (c) the transferee had immediately reacquired them for consideration of the same amount.
- (3) Condition A is that if subsection (2) applied a credit would be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and
  - (b) because of section 345(2)(a) and (b) (transferee leaving group otherwise than because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 5 (loan relationships) in respect of the creditor relationship.

**632 Transferee leaving group because of exempt distribution U.K.**

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt as a result of—
    - (i) section 213(2) of ICTA (exempt distributions), or
    - (ii) section 213A of ICTA (exempt distributions: division of business),
 and
  - (b) there is a chargeable payment within the meaning of section 214(2) of that Act (chargeable payments connected with exempt distributions) within 5 years after the making of the distribution.
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before that chargeable payment was made,
  - (b) the assignment had been for consideration of an amount equal to their fair value immediately before the transferee ceased to be a member of the relevant group, and
  - (c) the transferee had immediately reacquired them for consideration of the same amount.

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- (3) Condition A is that if subsection (2) applied a credit would be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and
  - (b) because of section 346(2)(a) and (b) (transferee leaving group because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 5 (loan relationships) in respect of the creditor relationship.

## CHAPTER 6 U.K.

### SPECIAL KINDS OF COMPANY

#### *Mutual trading companies*

#### 633 Mutual trading companies U.K.

For the purposes of this Part, activities carried on by a company in the course of any mutual trading are treated as not constituting the whole or any part of a trade.

#### *Insurance companies*

#### 634 Insurance companies U.K.

For the purposes of this Part, activities carried on by a company in the course of—

- (a) any mutual insurance or other mutual business which is not life assurance business, or
  - (b) any basic life assurance and general annuity business,
- are treated as not constituting the whole or any part of a trade.

#### 635 Creditor relationships: embedded derivatives which are options U.K.

- (1) This section applies if in any accounting period—
- (a) a company is a party to a creditor relationship for the purposes of its life assurance business, and
  - (b) that creditor relationship is one in relation to which sections 415 and 585 (which both apply to loan relationships with embedded derivatives) would have effect but for the fact that the company accounts for the creditor relationship at fair value through profit and loss.
- (2) This Part and Part 5 (loan relationships) have effect for that accounting period as they would if the creditor relationship were one in relation to which those sections have effect.

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### 636 **Modifications of Chapter 5** **U.K.**

- (1) Chapter 5 (continuity of treatment on transfers within groups) has effect in relation to insurance companies with the following modifications.
- (2) Section 625(1)(a) (which sets out one of the conditions for that section to apply) has effect as if for “section 626(2)” there were substituted “section 626(2), (2A) or (2B)”.
- (3) Section 626 (transactions to which section 625 applies) has effect as if after subsection (2) there were inserted—
  - “(2A) A transaction is within this subsection if it is a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme.
  - (2B) A transaction is within this subsection if it is a transfer between two companies which is a qualifying overseas transfer.”
- (4) Section 625 (group member replacing another as party to derivative contract) does not apply as a result of a transaction or series of transactions within section 626(2) or (3) in relation to a transfer of an asset, or of rights or duties under or an interest in an asset, if the asset was within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (assets held for certain categories of long-term business)—
  - (a) immediately before the transfer, or
  - (b) immediately after it.
- (5) Section 625 does not apply as a result of a transaction within section 626(2A) or (2B) in relation to a transfer of an asset, or of rights or duties under or an interest in an asset, if the asset—
  - (a) was within one of the categories set out in section 440(4) of ICTA (transfer of assets etc) immediately before the transfer, and
  - (b) is not within that category immediately after it.
- (6) Subsection (7) applies for the purposes of subsection (5) if one of the companies is an overseas life insurance company.
- (7) An asset is taken to be within the same category both immediately before the transfer and immediately after it if the asset—
  - (a) was within one category immediately before the transfer, and
  - (b) is within the corresponding category immediately after it.

#### *Investment and venture capital trusts*

### 637 **Investment trusts: profits or losses of a capital nature** **U.K.**

- (1) Profits or losses of a capital nature arising to an investment trust from a derivative contract may not be brought into account as credits or debits in accordance with this Part.
- (2) For the purposes of this section, “profits or losses of a capital nature” means profits or losses which—
  - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
  - (b) would have been so accounted for if that Statement had been applied correctly.

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- (3) “The Statement of Recommended Practice”, in relation to an accounting period for which it is required or permitted to be used, means—
  - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to an investment trust which prepares accounts in accordance with international accounting standards.

### 638 Venture capital trusts: profits or losses of a capital nature **U.K.**

- (1) Profits or losses of a capital nature arising to a venture capital trust from a derivative contract may not be brought into account as credits or debits in accordance with this Part.
- (2) For the purposes of this section, “profits or losses of a capital nature” means profits or losses which—
  - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
  - (b) would have been so accounted for if the venture capital trust had been an investment trust and that Statement had been applied correctly.
- (3) In this section “the Statement of Recommended Practice” has the meaning given by section 637(3) (investment trusts: profits or losses of a capital nature).
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to a venture capital trust which prepares accounts in accordance with international accounting standards.

## CHAPTER 7 **U.K.**

### CHARGEABLE GAINS ARISING IN RELATION TO DERIVATIVE CONTRACTS

#### *Introduction*

### 639 Overview of Chapter **U.K.**

- (1) This Chapter makes provision about cases in which—
  - (a) credits and debits are not to be brought into account in accordance with section 574 (non-trading credits and debits to be brought into account under Part 5: loan relationships) (see sections 640 and 643 to 650), but
  - (b) instead profits arising to a company from its derivative contracts are chargeable to corporation tax as chargeable gains (see sections 641 to 650).
- (2) This Chapter also makes provision about cases in which—
  - (a) credits and debits are not to be brought into account in accordance with section 573 (trading credits and debits to be brought into account under Part 3:

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- trading income) or section 574 (non-trading credits and debits to be brought into account under Part 5: loan relationships) (see section 651), but
- (b) instead provisions relating to corporation tax on chargeable gains apply in relation to derivative contracts (see sections 652 to 658).

*Some credits and debits not to be brought into account under Part 5*

#### **640 Credits and debits not to be brought into account under Part 5** **U.K.**

- (1) If any of the provisions in subsection (2) applies to a derivative contract of a company for an accounting period, section 574 (non-trading credits and debits to be brought into account under Part 5: loan relationships) does not apply to the relevant credits and debits.
- (2) The provisions are—
- (a) section 643 (contracts relating to land or certain tangible movable property),
  - (b) section 645 (creditor relationships: embedded derivatives which are options),
  - (c) section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences), and
  - (d) section 650 (property based total return swaps).
- (3) For the meaning of “relevant credits” and “relevant debits”, see section 659.
- (4) For the treatment of the relevant credits and debits in the case of a derivative contract to which section 643, 645, 648 or 650 applies, see section 641 (derivative contracts to be taxed on a chargeable gains basis).

*Some derivative contracts to be taxed on a chargeable gains basis*

#### **641 Derivative contracts to be taxed on a chargeable gains basis** **U.K.**

- (1) This section applies to a derivative contract of a company for an accounting period if any of the provisions in subsection (2) applies to the derivative contract for the period.
- (2) The provisions are—
- (a) section 643 (contracts relating to land or certain tangible movable property),
  - (b) section 645 (creditor relationships: embedded derivatives which are options),
  - (c) section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences), and
  - (d) section 650 (property based total return swaps).
- (3) For the purposes of corporation tax on chargeable gains—
- (a) if C exceeds D, a chargeable gain equal to the amount of the excess is treated as accruing to the company in the accounting period,
  - (b) if D exceeds C, an allowable loss equal to the amount of the excess is treated as accruing to the company in the accounting period.
- (4) “C” means the sum of the relevant credits for the accounting period in respect of the derivative contract.
- (5) “D” means the sum of the relevant debits for the accounting period in respect of the derivative contract.

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- (6) For a case in which this section does not apply, see section 642.
- (7) See also section 663 (carry back of net losses on derivative contracts to which this section applies).

#### **642 Exception from section 641 U.K.**

- (1) Section 641 does not apply to a derivative contract to which section 645 applies if, on the assumptions in subsection (2), paragraph 2 of Schedule 7AC to TCGA 1992 (substantial shareholding exemptions: gain on disposal of asset related to shares not a chargeable gain) would apply to the gain mentioned in subsection (2)(d).
- (2) Those assumptions are that—
  - (a) the rights and liabilities treated as comprised in the derivative contract were contained in a separate contract,
  - (b) that separate contract was an option,
  - (c) that option was disposed of at the end of the accounting period, and
  - (d) a gain accrued to the company on the disposal for the purposes of corporation tax on chargeable gains.

*Derivative contracts to which sections 640 and 641 apply*

#### **643 Contracts relating to land or certain tangible movable property U.K.**

- (1) This section applies to a derivative contract of a company for an accounting period if conditions A, B and C are met.
- (2) Condition A is that the underlying subject matter of the derivative contract consists of either or both of the following—
  - (a) land,
  - (b) tangible movable property, other than commodities which are tangible assets.
- (3) Condition B is that the company is not a party to the derivative contract at any time in the accounting period for the purposes of a trade carried on by it.
- (4) Condition C is that the company is not an excluded body.
- (5) For the case where the underlying subject matter of a derivative contract also includes income from property within subsection (2)(a) or (b), see section 644.

#### **644 Income to be left out of account in determining whether section 643 applies U.K.**

- (1) This section applies if the underlying subject matter of a derivative contract includes income from property within section 643(2)(a) or (b).
- (2) If that income is subordinate income, it is left out of account in determining for the purposes of section 643 whether condition A is met.
- (3) Income is “subordinate income” if it is—
  - (a) subordinate in relation to so much of the underlying subject matter of the derivative contract as consists of property within section 643(2)(a) or (b), or

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- (b) of small value in comparison with the value of the underlying subject matter as a whole.
- (4) For the purposes of this section, whether part of the underlying subject matter of a derivative contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.

#### **645 Creditor relationships: embedded derivatives which are options** U.K.

- (1) This section applies to a derivative contract of a company for an accounting period if each of conditions A to E is met.
- (2) Condition A is that the derivative contract is a relevant contract to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives) because of a creditor relationship of the company.
- (3) Condition B is that the derivative contract is treated as an option by section 585(3) (contract treated as option, future or contract for differences).
- (4) Condition C is that the underlying subject matter of the derivative contract—
  - (a) is qualifying ordinary shares, or
  - (b) is mandatorily convertible preference shares.
- (5) Condition D is that the company is not a party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it.
- (6) Condition E is that the company is not an excluded body.
- (7) Where this section applies to a derivative contract, the asset representing the creditor relationship is treated for corporation tax purposes as not being a qualifying corporate bond.
- (8) See also—
  - (a) section 647 (meaning of certain expressions in this section), and
  - (b) section 670 (treatment of net gains and losses on exercise of option).

#### **646 Exclusions from section 645** U.K.

- (1) Section 645 does not apply to a derivative contract of a company for an accounting period if condition A or B is met in the period.
- (2) Condition A is that the rights and liabilities which fall to be treated as comprised in the derivative contract are such that the extent to which shares may be acquired in accordance with them is to be determined using a cash value—
  - (a) which is specified in the contract for the asset representing the creditor relationship mentioned in section 645(2), or
  - (b) which is or will be ascertainable by reference to that contract.
- (3) Condition B is that the rights and liabilities which fall to be treated as comprised in the derivative contract are such that—
  - (a) the company is entitled or obliged to receive a payment instead of the shares which are the underlying subject matter of the derivative contract, and
  - (b) the amount of that payment differs by more than an insignificant amount from the value of the shares which the company would be entitled to acquire in



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accordance with those rights and liabilities at the time it became entitled or obliged to receive the payment.

#### **647 Meaning of certain expressions in section 645 U.K.**

- (1) This section applies for the purposes of section 645.
- (2) “Mandatorily convertible preference shares” means shares which—
  - (a) represent the creditor relationship mentioned in section 645(2),
  - (b) are not qualifying ordinary shares, and
  - (c) are issued upon terms which stipulate that they must be converted into, or exchanged for, qualifying ordinary shares by a relevant time.
- (3) In subsection (2) “relevant time” means a time no more than 24 hours after the acquisition of the shares by a person who, immediately before that acquisition, had the creditor relationship.
- (4) “Qualifying ordinary shares” means shares in a company which satisfy conditions A and B.
- (5) Condition A is that the shares are all or part of the issued share capital (however described) of the company, other than—
  - (a) capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
  - (b) capital the holders of which have no right to a dividend of any description nor any other right to share in the profits of the company.
- (6) Condition B is that the shares—
  - (a) are listed on a recognised stock exchange, or
  - (b) are shares in a holding company or a trading company.
- (7) In subsection (6) “holding company” and “trading company” have the same meaning as in section 165 of TCGA 1992 (see section 165A of that Act).

#### **648 Creditor relationships: embedded derivatives which are exactly tracking contracts for differences U.K.**

- (1) This section applies to a derivative contract of a company for an accounting period if each of conditions A to F is met.
- (2) Condition A is that the derivative contract is a relevant contract to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives) because of a creditor relationship of the company.
- (3) Condition B is that the derivative contract is treated as a contract for differences by section 585(3) (contract treated as option, future or contract for differences).
- (4) Condition C is that the derivative contract is an exactly tracking contract.
- (5) Condition D is that the underlying subject matter of the derivative contract is qualifying ordinary shares listed on a recognised stock exchange.
- (6) Condition E is that the company is not a party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it.

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- (7) Condition F is that the company is not an excluded body.
- (8) Where this section applies to a derivative contract, the asset representing the creditor relationship is treated for corporation tax purposes as not being a qualifying corporate bond.
- (9) See also section 672 (treatment of net gains and losses on disposal of certain embedded derivatives).

#### 649 Meaning of certain expressions in section 648 **U.K.**

- (1) This section applies for the purposes of section 648.
- (2) “Exactly tracking contract” means a contract where the amount which is to be paid to discharge the rights and liabilities which fall to be treated as comprised in the contract is equal to the amount found by applying R% to C, where—
  - R% is the percentage change (if any) over the relevant period in—
    - (a) the value of the assets which are the underlying subject matter of the contract, or
    - (b) any index of the value of those assets, and
  - C is the amount falling to be regarded in accordance with generally accepted accounting practice as the cost of the asset representing the creditor relationship mentioned in section 648(2) on the date when that asset came into existence.
- (3) In subsection (2) “the relevant period” means—
  - (a) the period between—
    - (i) the date when the asset representing that creditor relationship came into existence, and
    - (ii) the date when the debtor relationship corresponding to that creditor relationship comes to an end, or
  - (b) any other period in which almost all of that period falls, and which differs from that period only for purposes connected with giving effect to a valuation in relation to rights or liabilities under that asset.
- (4) “Qualifying ordinary shares” means shares in a company which are all or part of the issued share capital (however described) of the company, other than—
  - (a) capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
  - (b) capital the holders of which have no right to a dividend of any description nor any other right to share in the profits of the company.

#### 650 Property based total return swaps **U.K.**

- (1) This section applies to a derivative contract of a company for an accounting period if each of conditions A to F is met.
- (2) Condition A is that the derivative contract is a contract for differences.
- (3) Condition B is that one or more indices are specified in the contract.
- (4) Condition C is that at least one index so specified (“the capital value index”) is an index of changes in the value of land.

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- (5) Condition D is that the underlying subject matter of the derivative contract also includes interest rates.
- (6) Condition E is that the company is not a party to the derivative contract at any time in the accounting period for the purposes of a trade carried on by it.
- (7) Condition F is that the company is not an excluded body.

*Some credits and debits not to be brought into account under Part 3 or 5*

#### **651 Credits and debits not to be brought into account under Part 3 or Part 5 U.K.**

- (1) If the provisions in subsection (2)(a) or (b) apply to a derivative contract for an accounting period, sections 573 (trading credits and debits to be brought into account under Part 3: trading income) and 574 (non-trading credits and debits to be brought into account under Part 5: loan relationships) do not apply to the relevant credits and debits.
- (2) The provisions are—
  - (a) sections 653 to 655 (issuers of securities with embedded derivatives: deemed options), and
  - (b) section 658 (issuers of securities with embedded derivatives: deemed contracts for differences).
- (3) For the cases in which sections 653 to 655 and section 658 apply, see sections 652 and 656 respectively.
- (4) For the provision which applies where sections 653 to 655 or 658 apply, see those sections.

*Issuers of securities with embedded derivatives: deemed options*

#### **652 Introduction to sections 653 to 655 U.K.**

- (1) Sections 653 to 655 apply to a derivative contract of a company for an accounting period if each of conditions A to E is met.
- (2) Condition A is that the derivative contract is a relevant contract to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives) because of a debtor relationship of the company.
- (3) Condition B is that the derivative contract is treated as an option by section 585(3) (contract treated as option, future or contract for differences).
- (4) Condition C is that the underlying subject matter of the derivative contract is shares.
- (5) Condition D is that at the time when the company became a party to the debtor relationship—
  - (a) it was not carrying on a banking business or a business as a securities house, or
  - (b) if it was carrying on such a business, it did not become a party to the debtor relationship in the ordinary course of that business.
- (6) Condition E is that the company is not an excluded body.

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- (7) In this section “option” is to be construed as if section 580(2) and (3) (meaning of “option”) were omitted.

### 653 Shares issued or transferred as a result of exercise of deemed option **U.K.**

- (1) Subsections (2) and (3) apply if—
- (a) the option mentioned in section 652(3) is exercised at any time in the accounting period, and
  - (b) shares are issued or transferred in fulfilment of the obligations under the option (“the relevant disposal”).
- (2) Section 144(2) of TCGA 1992 (exercise of options) applies to the relevant disposal as if the carrying value of the option at the time the company became a party to the debtor relationship mentioned in section 652(2) were the consideration for the grant of the option.
- (3) So far as it would otherwise apply, section 17(1) of TCGA 1992 (deemed market value consideration) does not apply to the relevant disposal.

### 654 Payment instead of disposal on exercise of deemed option **U.K.**

- (1) Subsection (2) applies if—
- (a) the option mentioned in section 652(3) is exercised at any time in the accounting period,
  - (b) no shares are issued or transferred in fulfilment of the obligations under the option, and
  - (c) an amount is paid in fulfilment of those obligations.
- (2) If —
- (a) CV exceeds X, a chargeable gain equal to the amount of the excess is treated as accruing to the company in the accounting period,
  - (b) X exceeds CV, an allowable loss equal to the amount of the excess is treated as accruing to the company in the accounting period.
- (3) In this section—
- “CV” means—
- (a) if the company was a party to the debtor relationship mentioned in section 652(2) at the time it was created, the carrying value of the option at that time, or
  - (b) if the company became a party to that relationship at a later time, the carrying value of the option at that time,
- “X” means the amount paid by the debtor in fulfilment of the obligations under the debtor relationship reduced (but not below nil) by the fair value of the host contract at the date on which the option is exercised, and
- “the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the debtor relationship.

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**655 Ceasing to be party to debtor relationship when deemed option not exercised U.K.**

- (1) Subsection (2) applies if the company ceases to be a party to the debtor relationship mentioned in section 652(2) at a time when the option mentioned in section 652(3) has not been exercised.
- (2) The company is treated for the purposes of corporation tax on chargeable gains—
  - (a) as having acquired an asset for consideration of an amount equal to Y, and
  - (b) as having disposed of that asset for consideration of an amount equal to CV.
- (3) In this section—

“CV” has the same meaning as in section 654,  
“Y” means—

  - (a) if the company ceases to be a party to the debtor relationship as a result of the redemption or repayment of the liability representing that relationship, the amount paid by the company, or
  - (b) otherwise, the consideration given by the company on its ceasing to be a party to that relationship,

in either case reduced (but not below nil) by the fair value of the host contract at the date on which it so ceases, and  
“the host contract” has the same meaning as in section 654.

*Issuers of securities with embedded derivatives: deemed contracts for differences*

**656 Introduction to section 658 U.K.**

- (1) Section 658 (chargeable gain or allowable loss treated as accruing) applies to a derivative contract of a company for an accounting period if each of conditions A to F is met.
- (2) Condition A is that the derivative contract is a relevant contract to which the company is treated as a party under section 585(2) (loan relationships with embedded derivatives) because of a debtor relationship of the company.
- (3) Condition B is that the derivative contract—
  - (a) is treated as a contract for differences by section 585(3) (contract treated as option, future or contract for differences), and
  - (b) is not within section 652.
- (4) Condition C is that the derivative contract is an exactly tracking contract.
- (5) Condition D is that the underlying subject matter of the derivative contract is shares.
- (6) Condition E is that at the time when the company became a party to the debtor relationship—
  - (a) it was not carrying on a banking business or a business as a securities house, or
  - (b) if it was carrying on such a business, it did not become a party to the debtor relationship in the ordinary course of that business.
- (7) Condition F is that the company is not an excluded body.
- (8) For the meaning of “exactly tracking contract”, see section 657.

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## 657 Meaning of “exactly tracking contract” in section 656 **U.K.**

- (1) This section applies for the purposes of section 656.
- (2) “Exactly tracking contract” means a contract where the amount which is to be paid to discharge the rights and liabilities which fall to be treated as comprised in the contract is equal to the amount found by applying R% to C, where—
  - R% is the percentage change (if any) over the relevant period in—
    - (a) the value of the assets which are the underlying subject matter of the contract, or
    - (b) any index of the value of those assets, and
  - C is the amount falling to be regarded in accordance with generally accepted accounting practice as the proceeds of issue of the liability which represents the debtor relationship mentioned in section 656(2).
- (3) In subsection (2) “the relevant period” means—
  - (a) the period between—
    - (i) the date when the liability representing that debtor relationship came into existence, and
    - (ii) the date when the creditor relationship corresponding to that debtor relationship comes to an end, or
  - (b) any other period in which almost all of that period falls, and which differs from that period only for purposes connected with giving effect to a valuation in relation to rights or liabilities under the liability representing that debtor relationship.

## 658 Chargeable gain or allowable loss treated as accruing **U.K.**

- (1) Subsection (2) applies if—
  - (a) the debtor relationship mentioned in section 656(2) comes to an end, and
  - (b) an amount (“the discharge amount”) is paid to discharge all the company’s obligations under that relationship.
- (2) For the purposes of corporation tax on chargeable gains, a chargeable gain or allowable loss equal to the amount mentioned in subsection (3) is treated as accruing to the company.
- (3) That amount is the amount of the gain or loss (as the case may be) which would accrue on the assumptions in subsection (4).
- (4) Those assumptions are that—
  - (a) the derivative contract is an asset of the company,
  - (b) there is a disposal of that asset at the time when the debtor relationship comes to an end,
  - (c) the consideration for the disposal of that asset is equal to the relevant amount, and
  - (d) the cost of the asset is equal to the discharge amount.
- (5) In subsection (4) “the relevant amount” means—
  - (a) if the company was a party to the debtor relationship at the time it was created, the amount of the proceeds of issue of the security representing that relationship, or

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- (b) if the company became a party to the debtor relationship after that time, the amount of the carrying value of the host contract at that time.
- (6) In this section “the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the debtor relationship.

### *Interpretation*

## **659 Meaning of “relevant credits” and “relevant debits” U.K.**

- (1) This section applies for the purposes of this Chapter.
- (2) In the case of a derivative contract which is not one to which section 650 (property based total return swaps) applies for an accounting period, the relevant credits and debits are the credits and debits which are given in relation to the derivative contract for the accounting period by section 595.
- (3) In the case of a derivative contract to which section 650 applies for an accounting period, the relevant credits and debits are the credits and debits which—
  - (a) are given in relation to the derivative contract for the accounting period by section 595, and
  - (b) are within subsection (4).
- (4) The credits and debits are those found for the period by applying R% to N, where—
  - N is the amount which is the notional principal amount in the case of the derivative contract, and
  - R% is the percentage change (if any) in the capital value index over the relevant period.
- (5) In subsection (4) “the relevant period” means—
  - (a) the accounting period, if the company is a party to the derivative contract throughout that period,
  - (b) in any other case, any part of the accounting period throughout which the company is a party to the derivative contract.
- (6) For the meaning of “the capital value index”, see section 650(4).

## **CHAPTER 8 U.K.**

### **FURTHER PROVISION ABOUT CHARGEABLE GAINS AND DERIVATIVE CONTRACTS**

#### *Company ceasing to be party to certain contracts*

## **660 Contract relating to holding in OEIC, unit trust or offshore fund U.K.**

- (1) This section applies if—
  - (a) a company is a party to a relevant contract in two successive accounting periods,



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- (b) section 587 (contract relating to holding in OEIC, unit trust or offshore fund) applies in relation to the relevant contract for the second of those periods but not the first, and
  - (c) immediately before the beginning of the second period the relevant contract was a chargeable asset.
- (2) The company must bring into account for the accounting period in which it ceases to be a party to the contract the amount of any chargeable gain or allowable loss which would have been treated as accruing to it on the assumptions in subsection (3).
- (3) Those assumptions are that—
- (a) the company disposed of the relevant contract immediately before the beginning of the second period mentioned in subsection (1), and
  - (b) the disposal was for consideration of an amount equal to the value (if any) given to the relevant contract in the accounts of the company at the end of the first such period.

#### **661 Contract which becomes derivative contract U.K.**

- (1) This section applies if—
- (a) a company is a party to a relevant contract which (not having been a derivative contract) becomes a derivative contract, and
  - (b) immediately before the relevant contract becomes a derivative contract it is a chargeable asset.
- (2) The company must bring into account for the accounting period in which it ceases to be a party to the relevant contract the amount of any chargeable gain or allowable loss which would have been treated as accruing to it on the assumptions in subsection (3).
- (3) Those assumptions are that—
- (a) the company disposed of the relevant contract immediately before the relevant time, and
  - (b) the disposal was for consideration of an amount equal to the notional carrying value of the relevant contract at that time.
- (4) In this section “the relevant time” means the time when the relevant contract becomes a derivative contract.
- (5) Section 622(4) (meaning of “notional carrying value”) applies for the purposes of this section.

#### *Contracts ceasing to be derivative contracts*

#### **662 Contracts ceasing to be derivative contracts U.K.**

- (1) This section applies if a company is a party to a relevant contract which ceases to be a derivative contract.
- (2) The company is treated for the purposes of corporation tax on chargeable gains as if it had acquired the contract immediately after the relevant time for consideration of an amount equal to the notional carrying value of the contract at that time.

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- (3) In this section “the relevant time” means the time when the contract ceases to be a derivative contract.
- (4) Section 622(4) (meaning of “notional carrying value”) applies for the purposes of this section.

#### *Carry back of net losses on certain derivative contracts*

### **663 Contracts to which section 641 applies** **U.K.**

- (1) This section applies in the case of a company if—
  - (a) there are net section 641 losses for an accounting period (“the loss period”),
  - (b) there are net section 641 gains for a previous accounting period (“the gains period”),
  - (c) the gains period falls wholly or partly within the period of 24 months immediately preceding the start of the loss period, and
  - (d) within two years after the end of the loss period the company makes a claim in respect of the whole or a part of the net section 641 losses for the loss period.
- (2) The net section 641 gains for the gains period are reduced (but not below nil) by the amount in respect of which the claim is made.
- (3) And the net section 641 losses for the loss period are reduced by the amount in respect of which the claim is made.
- (4) For the purposes of this section—
  - (a) the net section 641 gains for a later period are reduced so far as possible before the net section 641 gains for an earlier period, and
  - (b) where a gains period falls partly before the start of the 24 month period mentioned in subsection (1), only the appropriate fraction of the net section 641 gains for that period may be reduced.
- (5) For the meaning of “net section 641 gains”, “net section 641 losses” and “the appropriate fraction”, see section 664.

### **664 Meaning of certain expressions in section 663** **U.K.**

- (1) This section applies for the purposes of section 663.
- (2) If for an accounting period L exceeds G, there are net section 641 losses for the period of an amount equal to the excess.
- (3) If for an accounting period G exceeds the sum of L and N, there are net section 641 gains for the period of an amount equal to the excess.
- (4) In this section—

G is the sum of the amounts of any chargeable gains treated as accruing to the company in the period under section 641(3)(a) in respect of derivative contracts of the company (“section 641 gains”),

L is the sum of the amounts of any allowable losses treated as accruing to the company in the period under section 641(3)(b) in respect of derivative contracts of the company (“section 641 losses”), and

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N is the sum of the amounts of any non-section 641 losses which would fall to be deducted in the period from section 641 gains, on the assumption in subsection (5).

- (5) That assumption is that, as respects the accounting period, non-section 641 losses are treated as being deducted from non-section 641 gains, so far as possible, before any remainder is deducted from section 641 gains.
- (6) The “appropriate fraction” is—

$$\frac{A}{B}$$

where—

A is the number of days in the gains period which fall within the 24 month period mentioned in section 663(1)(c), and

B is the number of days in the gains period.

- (7) In this section—
- “deducted” means deducted in accordance with section 8(1) of TCGA 1992 (company's total profits to include chargeable gains),
  - “the gains period” has the same meaning as in section 663,
  - “non-section 641 gains” means any chargeable gains accruing to the company in the accounting period, other than section 641 gains, and
  - “non-section 641 losses” means any allowable losses of the company which may be deducted in the accounting period, other than section 641 losses.

*Issuers of securities with embedded derivatives: equity instruments*

## 665 Introduction to section 666 **U.K.**

- (1) Section 666 (allowable loss treated as accruing) applies to a company for an accounting period if each of conditions A to F is met.
- (2) Condition A is that the company is treated as a party to a relevant contract under section 585(2) (loan relationships with embedded derivatives) because of a debtor relationship of the company.
- (3) Condition B is that the division mentioned in section 585(1) (loan relationships with embedded derivatives) in the case of the debtor relationship is between—
- (a) rights and liabilities under a loan relationship, and
  - (b) rights and liabilities under an equity instrument of the company.
- (4) Condition C is that the relevant contract is treated as an option by section 585(3) (contract treated as option, future or contract for differences).

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- (5) Condition D is that the company pays an amount in the accounting period to the person who is a party to the debtor relationship as creditor in discharge of any obligations under that relationship.
- (6) Condition E is that at the time when the company became a party to the debtor relationship—
  - (a) it was not carrying on a banking business or a business as a securities house, or
  - (b) if it was carrying on such a business, it did not become a party to that relationship in the ordinary course of that business.
- (7) Condition F is that the company is not an excluded body.
- (8) In this section “option” is to be construed as if section 580(2) and (3) (meaning of “option”) were omitted.

#### **666 Allowable loss treated as accruing U.K.**

- (1) If A exceeds B, an allowable loss equal to the amount of the excess is treated as accruing to the company in the accounting period for the purposes of corporation tax on chargeable gains.
- (2) In this section—

A is the amount paid as mentioned in section 665(5) reduced (but not below nil) by an amount equal to the fair value of the host contract at the time that amount is paid,

B is the amount treated as the carrying value of the relevant contract mentioned in section 665(4) at the time the company became a party to the debtor relationship mentioned in section 665(2), and

“the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the debtor relationship.

*Treatment of shares acquired in certain circumstances*

#### **667 Shares acquired on exercise of non-embedded option U.K.**

- (1) This section applies if—
  - (a) a company is a party to a derivative contract in an accounting period,
  - (b) the derivative contract is a plain vanilla contract,
  - (c) the contract is an option,
  - (d) rights to acquire shares are comprised in the contract, and
  - (e) shares are acquired as a result of the exercise of any of those rights in the accounting period.
- (2) For the purpose of calculating any chargeable gain accruing to the company on a disposal by it of all the shares so acquired, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) are—
  - (a) if G exceeds L, increased by the amount of that excess,
  - (b) if L exceeds G, reduced by the amount of that excess,and, in the case of a part disposal of those shares, section 42(2) of that Act (part disposals) has effect accordingly.

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(3) If the amount of the excess in subsection (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess which cannot be deducted from the expenditure so allowable is, for the purpose mentioned in subsection (2), added to the amount of the consideration for the disposal of the shares.

(4) For the meaning of G and L, see section 669.

### **668 Shares acquired on running of future to delivery U.K.**

(1) This section applies if—

- (a) a company is a party to a derivative contract in an accounting period,
- (b) the derivative contract is a plain vanilla contract,
- (c) the contract is a future, and
- (d) delivery is taken of shares in accordance with the terms of the future.

(2) For the purpose of calculating any chargeable gain accruing to the company on a disposal by it of all the shares so delivered, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) are—

- (a) if G exceeds L, increased by the amount of that excess,
- (b) if L exceeds G, reduced by the amount of that excess,

and, in the case of a part disposal of those shares, section 42(2) of that Act (part disposals) has effect accordingly.

(3) If the amount of the excess in subsection (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess which cannot be deducted from the expenditure so allowable is, for the purpose mentioned in subsection (2), added to the amount of the consideration for the disposal of the shares.

(4) For the meaning of G and L, see section 669.

### **669 Meaning of G and L in sections 667 and 668 U.K.**

(1) This section applies for the purposes of sections 667 and 668.

(2) G is the sum of the credits brought into account under section 574 (non-trading credits and debits to be brought into account under Part 5) in respect of the derivative contract in each relevant accounting period so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of rights mentioned in section 667(1)(e) or the delivery mentioned in section 668(1)(d).

(3) L is the sum of the debits brought into account under section 574 in respect of the derivative contract in each relevant accounting period, so far as so referable.

(4) In this section “relevant accounting period” means—

- (a) the accounting period in which the disposal in question is made, or
- (b) any previous accounting period.

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### *Treatment of net gains and losses on exercise of option*

#### **670 Treatment of net gains and losses on exercise of option** **U.K.**

- (1) This section applies if—
  - (a) a derivative contract is one to which section 645 (creditor relationships: embedded derivatives which are options) applies for an accounting period,
  - (b) rights to acquire shares fall to be treated as comprised in the derivative contract because of section 585(2), and
  - (c) any of those rights are exercised or otherwise disposed of in the accounting period.
- (2) Subsection (3) applies if there is a disposal of the asset representing the creditor relationship mentioned in section 645(2).
- (3) For the purpose of calculating any chargeable gain accruing to the company on the disposal, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) are—
  - (a) if the sum of G and CV exceeds L, increased by the amount of that excess,
  - (b) if L exceeds the sum of G and CV, reduced by the amount of that excess.
- (4) Subsection (5) applies if there is a disposal of all or any of the shares (“the relevant shares”) acquired—
  - (a) as a result of the exercise of rights mentioned in subsection (1)(c), and
  - (b) in circumstances where a disposal is deemed not to occur because of section 127 of TCGA 1992 (equation of original shares and new holding).
- (5) For the purpose of calculating any chargeable gain accruing to the company on a disposal of all the relevant shares, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) are—
  - (a) if the sum of G and CV exceeds L, increased by the amount of that excess,
  - (b) if L exceeds the sum of G and CV, reduced by the amount of that excess,and, in the case of a part disposal of those shares, section 42(2) of that Act (part disposals) has effect accordingly.
- (6) If the amount of the excess in subsection (3)(b) or (5)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess which cannot be deducted from the expenditure so allowable is, for the purpose mentioned in subsection (3) or (5) (as the case may be), added to the amount of the consideration for the disposal so mentioned.
- (7) Sections 37 and 39 of TCGA 1992 (consideration chargeable to tax on income and exclusion of expenditure by reference to tax on income) do not apply in relation to a disposal mentioned in subsection (2) or (4) above.
- (8) For the meaning of G, L and CV, see section 671.

#### **671 Meaning of G, L and CV in section 670** **U.K.**

- (1) This section applies for the purposes of section 670.
- (2) G is the sum of the amounts of any chargeable gains treated as accruing to the company under section 641(3)(a) (derivative contracts to be taxed on a chargeable gains basis) in

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respect of the derivative contract in each relevant accounting period, so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of rights mentioned in section 670(1)(c).

- (3) L is the sum of the amounts of any allowable losses treated as accruing to the company under section 641(3)(b) in respect of the derivative contract in each relevant accounting period, so far as so referable.
- (4) CV is the amount by which the carrying value of the host contract at the date on which the option is exercised exceeds the carrying value of that contract at—
  - (a) the date on which the company became a party to the creditor relationship mentioned in section 645(2), or
  - (b) (if later) the date on which the derivative contract became one to which section 645 applies.
- (5) In this section—
 

“the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the creditor relationship mentioned in section 645(2), and

“relevant accounting period” means—

  - (a) the accounting period in which the disposal in question is made, or
  - (b) any previous accounting period.

*Treatment of net gains and losses on disposal of certain embedded derivatives*

## 672 Treatment of net gains and losses on disposal of certain embedded derivatives **U.K.**

- (1) This section applies if—
  - (a) a derivative contract is one to which section 648 (creditor relationships: embedded derivatives which are exactly tracking contracts for differences) applies for an accounting period, and
  - (b) the asset representing the creditor relationship mentioned in section 648(2) is disposed of in the accounting period.
- (2) For the purpose of calculating any chargeable gain accruing to the company on the disposal, the sums allowable as a deduction under section 38(1)(a) of TCGA 1992 (acquisition costs) are—
  - (a) if the sum of G and CV exceeds L, increased by the amount of that excess,
  - (b) if L exceeds the sum of G and CV, reduced by the amount of that excess.
- (3) If the amount of the excess in subsection (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of TCGA 1992, the amount of the excess which cannot be deducted from the expenditure so allowable is, for the purpose mentioned in subsection (2), added to the amount of the consideration for the disposal.
- (4) Sections 37 and 39 of TCGA 1992 (consideration chargeable to tax on income and exclusion of expenditure by reference to tax on income) do not apply in relation to the disposal.
- (5) For the meaning of G, L and CV, see section 673.



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### 673 Meaning of G, L and CV in section 672 **U.K.**

- (1) This section applies for the purposes of section 672.
- (2) G is the sum of the amounts of any chargeable gains treated as accruing to the company under section 641(3)(a) (derivative contracts to be taxed on a chargeable gains basis) in respect of the derivative contract in each relevant accounting period.
- (3) L is the sum of the amounts of any allowable losses treated as accruing to the company under section 641(3)(b) in respect of the derivative contract in each relevant accounting period.
- (4) CV is the amount by which the carrying value of the host contract at the date of the disposal exceeds the carrying value of that contract at the date on which the company became a party to the creditor relationship mentioned in section 648(2).
- (5) In this section—
  - “the host contract” means the loan relationship to which the company is treated as a party under section 415(2) (loan relationships with embedded derivatives) because of the creditor relationship mentioned in section 648(2), and
  - “relevant accounting period” means—
    - (a) the accounting period in which the disposal is made, or
    - (b) any previous accounting period.

## CHAPTER 9 **U.K.**

### EUROPEAN CROSS-BORDER TRANSFERS OF BUSINESS

#### *Introduction*

### 674 Introduction to Chapter **U.K.**

- (1) This Chapter applies if—
  - (a) condition A or B is met, and
  - (b) each of the companies mentioned in subsection (2)(a) or (3)(a) makes a claim under this section,but see section 677 (tax avoidance etc) and section 680 (disapplication of Chapter where transparent entities involved).
- (2) Condition A is that—
  - (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom,
  - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor, and
  - (c) immediately after the transfer the transferee is within the charge to corporation tax.
- (3) Condition B is that—
  - (a) a company transfers part of its business to one or more companies,

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- (b) the transferor is resident in one member State,
  - (c) the part of the transferor's business which is transferred is carried on by the transferor in the United Kingdom,
  - (d) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
  - (e) the transferor continues to carry on a business after the transfer,
  - (f) immediately after the transfer each transferee is within the charge to corporation tax, and
  - (g) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (4) In this Chapter—
- “the transfer of business” means the transfer of business mentioned in subsection (2)(a) or (3)(a),
  - “transferee” has the same meaning as in subsection (2) or (3), and
  - “the transferor” has the same meaning as in subsection (2) or (3).
- (5) For the meaning of “company” and “resident in a member State”, see section 681.

*Transfers of derivative contracts at notional carrying value*

**675 Transfer of derivative contract at notional carrying value U.K.**

- (1) This section applies if in the course of the transfer of business the transferor transfers the rights and liabilities under a derivative contract to a transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the derivative contract in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of those rights and liabilities for consideration of an amount equal to the notional carrying value of the contract.
- (3) For the purposes of this section, the notional carrying value of a contract is the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the contract.
- (4) This section is subject to section 676 (transferor using fair value accounting).

**676 Transferor using fair value accounting U.K.**

- (1) This section applies instead of section 675 if, in a case where that section would otherwise apply, the transferor uses fair value accounting as respects the derivative contract.

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- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the rights and liabilities mentioned in section 675(1) is the fair value of the derivative contract as at the date of transfer to the transferee.
- (3) For any accounting period in which the transferee is a party to the derivative contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for consideration of an amount equal to the fair value of the contract as at the date of transfer to it.

#### *Exception for tax avoidance cases and clearances*

### **677 Tax avoidance etc U.K.**

- (1) This Chapter does not apply in relation to the transfer of business if—
  - (a) the transfer of business is not effected for genuine commercial reasons, or
  - (b) the transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the transfer of business—
  - (a) the companies mentioned in section 674(2)(a) or (3)(a) have applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified them that they are satisfied that subsection will not have that effect.

### **678 Procedure on application for clearance U.K.**

- (1) This section applies in relation to an application under section 677(2).
- (2) The application must be in writing and must contain particulars of the operations which are to be effected.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).
- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

### **679 Decision on application for clearance U.K.**

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 677(2) to the applicant—
  - (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 678(3), within 30 days of the notice being complied with.

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- (2) If the Commissioners for Her Majesty's Revenue and Customs—
- (a) notify the applicant that they are not satisfied as mentioned in section 677(2)(b), or
  - (b) do not notify their decision to the applicant within the time required by subsection (1),
- the applicant may within 30 days of the notification or of that time require them to transmit the application to the tribunal, together with any notice given and further particulars provided under section 678(3).
- (3) In that case any notification by the tribunal has effect for the purposes of section 677(2)(b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.
- (4) If any particulars provided under section 678 do not fully and accurately disclose all facts and considerations material for the decision—
- (a) of the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) of the tribunal,
- any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the tribunal is void.

#### *Transparent entities*

### **680 Disapplication of Chapter where transparent entities involved U.K.**

- (1) This Chapter does not apply in relation to the transfer of business if the transferor is a transparent entity.
- (2) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and which does not have an ordinary share capital.

#### *Interpretation*

### **681 Interpretation U.K.**

- (1) In this Chapter “company” means any entity listed as a company in the Annex to the Mergers Directive.
- (2) For the purposes of this Chapter, a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

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## CHAPTER 10 U.K.

### EUROPEAN CROSS-BORDER MERGERS

#### Introduction

#### 682 Introduction to Chapter U.K.

- (1) This Chapter applies if the following conditions are met—
  - (a) conditions A to D,
  - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition E, and
  - (c) in the case of a merger within subsection (2)(c) or (d), condition F,but see section 686 (tax avoidance etc) and section 687 (disapplication of Chapter where transparent entities involved).
- (2) Condition A is that—
  - (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that immediately after the merger the transferee is within the charge to corporation tax.
- (6) Condition E is that—
  - (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) that transfer is not so made only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (7) Condition F is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).

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- (8) In this Chapter, “the merger” and “the merging companies” have the same meaning as in this section.
- (9) See—
- (a) section 683 for the meaning of “the transferee” and “transferor”, and
  - (b) section 688 for the meaning of “company”, “co-operative society” and “resident in a member State”.

### **683 Meaning of “the transferee” and “transferor” U.K.**

- (1) In this Chapter, “the transferee” means—
- (a) in relation to a merger within section 682(2)(a), the SE,
  - (b) in relation to a merger within section 682(2)(b), the SCE, and
  - (c) in relation to a merger within section 682(2)(c) or (d), the company to which assets and liabilities are transferred.
- (2) In this Chapter “transferor” means—
- (a) in relation to a merger within section 682(2)(a), a company merging to form the SE,
  - (b) in relation to a merger within section 682(2)(b), a co-operative society merging to form the SCE, and
  - (c) in relation to a merger within section 682(2)(c) or (d), a company transferring all of its assets and liabilities.

*Transfers of derivative contracts at notional carrying value*

### **684 Transfer of derivative contract at notional carrying value U.K.**

- (1) This section applies if in the course of the merger a transferor transfers the rights and liabilities under a derivative contract to the transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the derivative contract in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of those rights and liabilities for consideration of an amount equal to the notional carrying value of the contract.
- (3) For the purposes of this section, the notional carrying value of a contract is the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the contract.
- (4) This section is subject to section 685 (transferor using fair value accounting).

### **685 Transferor using fair value accounting U.K.**

- (1) This section applies instead of section 684 if, in a case where that section would otherwise apply, the transferor uses fair value accounting as respects the derivative contract.
- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the rights and liabilities mentioned in section 684(1) is the fair value of the derivative contract as at the date of transfer to the transferee.

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- (3) For any accounting period in which the transferee is a party to the derivative contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for consideration of an amount equal to the fair value of the contract as at the date of transfer to it.

*Exception for tax avoidance cases and clearances*

**686 Tax avoidance etc U.K.**

- (1) This Chapter does not apply in relation to the merger if—
- (a) the merger is not effected for genuine commercial reasons, or
  - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the merger—
- (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the merging companies that they are satisfied that subsection will not have that effect.
- (3) Sections 678 and 679 have effect in relation to subsection (2) as in relation to section 677(2), taking the references in section 679 to section 677(2)(b) as references to subsection (2)(b) of this section.

*Transparent entities*

**687 Disapplication of Chapter where transparent entities involved U.K.**

- (1) This section applies if one or more of the merging companies is a transparent entity.
- (2) If as a result of the merger the assets and liabilities of a transparent entity are transferred to another company, this Chapter does not apply in relation to the transfer.
- (3) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and which does not have an ordinary share capital.

*Interpretation*

**688 Interpretation U.K.**

- (1) In this Chapter—
- “company” means any entity listed as a company in the Annex to the Mergers Directive, and
  - “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.
- (2) For the purposes of this Chapter, a company is resident in a member State if—



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- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
- (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

## CHAPTER 11 U.K.

### TAX AVOIDANCE

#### *Introduction*

#### 689 **Overview of Chapter** U.K.

- (1) This Chapter contains rules connected with tax avoidance.
- (2) In particular—
  - (a) for rules about unallowable purposes, see sections 690 to 692,
  - (b) for rules relating to credits and debits where transactions are not at arm's length, see sections 693 to 695,
  - (c) for rules relating to credits and debits in the case of transactions with non-UK residents, see sections 696 and 697, and
  - (d) for rules relating to disposals for consideration not fully recognised by accounting practice, see section 698.

#### *Unallowable purposes*

#### 690 **Derivative contracts for unallowable purposes** U.K.

- (1) This section applies if in any accounting period a derivative contract of a company has an unallowable purpose.
- (2) The company may not bring into account for that period for the purposes of this Part so much of any exchange credit in respect of that contract as is referable to the unallowable purpose on a just and reasonable apportionment.
- (3) The company may not bring into account for that period for the purposes of this Part so much of any debit in respect of that contract as is referable to the unallowable purpose on a just and reasonable apportionment.
- (4) Subsections (2) and (3) are subject to section 692 (allowance of accumulated net losses).
- (5) An amount which would be brought into account in accordance with this Part as respects any matter apart from this section and section 692—
  - (a) is treated for the purposes of section 699(1) (priority of this Part for corporation tax purposes) as if it were so brought into account, and
  - (b) accordingly may not be brought into account for any other corporation tax purposes as respects that matter.
- (6) For the purposes of this section and section 692, a credit is an exchange credit, in the case of any company, so far as it is attributable to any exchange gains arising

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to the company which are included in the reference to profits of the company in section 595(3) (see section 606 (exchange gains and losses from derivative contracts)).

- (7) For the meaning of “has an unallowable purpose” and “the unallowable purpose” in this section and section 692, see section 691.

## **691 Meaning of “unallowable purpose” U.K.**

- (1) For the purposes of sections 690 and 692, a derivative contract of a company has an unallowable purpose in an accounting period if the purposes for which, at times during that period, the company—
- (a) is a party to the contract, or
  - (b) enters into transactions which are related transactions by reference to it,
- include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (2) If a company is not within the charge to corporation tax in respect of a part of its activities, for the purposes of this section the business and other commercial purposes of the company do not include the purposes of that part.
- (3) Subsection (4) applies if a tax avoidance purpose is one of the purposes for which a company—
- (a) is a party to a derivative contract at any time, or
  - (b) enters into a transaction which is a related transaction by reference to a derivative contract of the company.
- (4) For the purpose of subsection (1), the tax avoidance purpose is only regarded as a business or other commercial purpose of the company if it is not—
- (a) the main purpose for which the company is a party to the derivative contract or, as the case may be, enters into the related transaction, or
  - (b) one of the main purposes for which it is or does so.
- (5) The references in subsections (3) and (4) to a tax avoidance purpose are references to any purpose which consists of securing a tax advantage for the company or any other person.
- (6) In this section “tax advantage” has the meaning given by section 840ZA of ICTA (meaning of “tax advantage”).

## **692 Allowance of accumulated net losses U.K.**

- (1) This section applies if—
- (a) in any accounting period a derivative contract of a company has an unallowable purpose, and
  - (b) there is a net loss in respect of that contract for that period.
- (2) For the purposes of this section, there is such a net loss if—
- (a) the sum of the debits in respect of that contract which are excluded from being brought into account for that period by section 690(3), exceeds
  - (b) the sum of the exchange credits in respect of that contract which are so excluded by section 690(2).

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- (3) The amount of that excess is the amount of the net loss in respect of the contract for the period.
- (4) The amount of the excess accumulated net losses in respect of the contract for an accounting period is to be brought into account as a debit for that period.
- (5) The amount of the excess accumulated net losses in respect of a contract for an accounting period is found as follows.

*Step 1*

Add together the amount of any net loss arising in respect of the contract for that accounting period and earlier accounting periods.

*Step 2*

Deduct from the result of Step 1 any amount which was brought into account in accordance with this section in any earlier accounting period.

*Step 3*

Add together the amount of any credits (other than exchange credits) arising in respect of the contract for that accounting period or any earlier accounting period.

*Step 4*

Deduct from the result of Step 3 (but not so as to reduce it below nil)—

- (a) so much of any debits arising in respect of the contract for that accounting period or any earlier accounting period as is not excluded from being brought into account by section 690(3), and
- (b) any amount which was brought into account in accordance with this section in any earlier accounting period.

*Step 5*

Compare the result of Step 2 and the result of Step 4.

The amount of the excess accumulated net losses for the period is the lower of those results.

*Transactions not at arm's length*

**693 Bringing into account adjustments under Schedule 28AA to ICTA U.K.**

- (1) This section deals with the credits and debits which are to be brought into account in accordance with this Part as a result of Schedule 28AA to ICTA (provision not at arm's length) applying in relation to a company's derivative contracts or related transactions.
- (2) Subsection (3) applies if under Schedule 28AA to ICTA an amount (“the imputed amount”) is treated as an amount of profits or losses arising to a company from any of its derivative contracts or related transactions.
- (3) Credits or debits relating to the imputed amount are to be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such profits or losses.

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- (4) Subsection (5) applies if under Schedule 28AA to ICTA an amount is treated as expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.
- (5) Debits relating to the amount are to be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such expenses.

#### **694 Exchange gains and losses** **U.K.**

- (1) Subsections (2) to (7) apply if—
  - (a) a company is a party to a derivative contract in an accounting period, and
  - (b) an exchange gain or exchange loss arises to the company for the accounting period from the contract.
- (2) Subsection (3) applies if as a result of Schedule 28AA to ICTA (provision not at arm's length) the company's profits and losses are calculated for tax purposes as if it were not a party to the contract.
- (3) Any exchange gains or losses which arise to the company from the contract for the accounting period are left out of account in determining the credits and debits to be brought into account in accordance with this Part.
- (4) Subsection (5) applies if as a result of Schedule 28AA to ICTA the company's profits and losses are calculated for tax purposes as if the terms of the contract were those which would have been agreed by the company and the other party to the contract had they been dealing at arm's length (“the arm's length terms”).
- (5) The credits and debits which are to be brought into account in accordance with this Part in the case of the company are to be determined on the assumption that the amount of any exchange gain or loss arising to the company from the contract in the accounting period is the adjusted amount.
- (6) In subsection (5), the “adjusted amount” means the amount of an exchange gain or loss which would have arisen from the contract if its terms were the arm's length terms.
- (7) That amount may be nil.
- (8) Nothing in Schedule 28AA to ICTA requires the amounts brought into account in accordance with this Part in respect of exchange gains and losses from derivative contracts to be calculated on the assumption that the arm's length provision had been made instead of the actual provision.
- (9) But subsection (8) does not affect the application of—
  - (a) subsection (3) under subsection (2), or
  - (b) subsection (5) under subsection (4).
- (10) In subsection (8) “the actual provision” and “the arm's length provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

#### **695 Transfers of value to connected companies** **U.K.**

- (1) This section applies if—

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- (a) a company (“A”) paid an amount (“amount X”) to a company (“B”) for the grant of an option,
  - (b) there is a failure to exercise in full all the rights under the option,
  - (c) until the failure the option was a derivative contract of A,
  - (d) as a result of the failure there is a transfer of value by A to B,
  - (e) B is a connected company in relation to A, and
  - (f) B is not chargeable to corporation tax in accordance with this Part in respect of the derivative contract.
- (2) A must bring into account a credit of the appropriate amount in respect of the derivative contract for the accounting period in which the option expired or would have expired if none of the rights under it had been exercised.
- (3) If the option expired, “the appropriate amount” means amount X.
- (4) If any rights under the option were exercised (in whole or in part), “the appropriate amount” means amount X less so much of it as is referable, on a just and reasonable basis, to the rights which have been so exercised.
- (5) In determining for the purposes of subsection (1)(d) whether there is a transfer of value, the assumption in subsection (6) is made.
- (6) That assumption is that if there had not been a connection between A and B—
- (a) all the rights under the option would have been exercised in full, and
  - (b) all of those rights would have been exercised on the latest date on which they were exercisable.
- (7) In this section “option” is to be construed as if section 580(2) and (3) (meaning of “option”) were omitted.
- (8) For the purposes of this section, B is a connected company in relation to A in an accounting period if there is a time in the period when—
- (a) A controls B,
  - (b) B controls A, or
  - (c) A and B are both controlled by the same person.
- (9) But A and B are not taken to be controlled by the same person just because they have been under the control of—
- [<sup>F32</sup>(za) the Crown,]
  - (a) a Minister of the Crown,
  - (b) a government department,
  - (c) a Northern Ireland department,
  - (d) a foreign sovereign power, or
  - (e) an international organisation.
- (10) Section 472 (meaning of “control”) applies for the purposes of this section.

#### Textual Amendments

**F32** S. 695(9)(za) inserted (1.4.2009 retrospective) by Corporation Tax Act 2009 (Amendment) Order 2009 (S.I. 2009/2860), arts. 1(2), 6(6)

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### *Transactions with non-UK residents*

#### **696 Derivative contracts with non-UK residents** U.K.

- (1) This section applies in relation to a company (“A”) if, as a result of any transaction—
  - (a) A becomes a party to a derivative contract to which a non-UK resident (“NR”) is a party,
  - (b) NR becomes a party to a derivative contract to which A is a party, or
  - (c) A and NR both become a party to a derivative contract.
- (2) For each accounting period for any part of which A and NR are both a party to a derivative contract which makes provision for notional interest payments, the credits and debits which fall to be brought into account in accordance with this Part in respect of the contract in the case of A do not include the amount of any excluded debit in relation to that contract.
- (3) The amount of an excluded debit is calculated by determining for the accounting period the amount (if any) by which—
  - (a) the sum of any notional interest payments made by A to NR while A and NR are both a party to the contract, exceeds
  - (b) the sum of any notional interest payments made by NR to A during that time.
- (4) For the purposes of this section, a payment is a notional interest payment if—
  - (a) a derivative contract specifies—
    - (i) a notional principal amount,
    - (ii) a period, and
    - (iii) a rate of interest,
  - (b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and
  - (c) the value of the rate is the same at all times as that of the specified rate of interest.
- (5) This section is subject to section 697.

#### **697 Exceptions to section 696** U.K.

- (1) Section 696 does not apply if A—
  - (a) is a bank, building society, financial trader or recognised clearing house,
  - (b) is a party to the derivative contract solely for the purposes of a trade or part of a trade it carries on in the United Kingdom, and
  - (c) is a party to it otherwise than as agent or nominee of another person.
- (2) Section 696 does not apply if NR—
  - (a) is a party to the derivative contract solely for the purposes of a trade or part of a trade which NR carries on in the United Kingdom through a relevant entity, and
  - (b) is a party to it otherwise than as agent or nominee of another person.
- (3) Section 696 does not apply if arrangements made in relation to the territory in which NR is resident—

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- (a) have effect because of section 788 of ICTA (double taxation relief), and
  - (b) make provision in relation to interest (as defined in the arrangements).
- (4) It does not matter whether the provision mentioned in subsection (3)(b) is for relief or otherwise.
- (5) If NR is a party to the contract as agent or nominee of another person, subsection (3) applies as if the reference to the territory in which NR is resident were a reference to the territory in which that other person is resident.
- (6) In this section—
- “recognised clearing house” has the meaning given by section 285 of FISMA 2000 (exemption for recognised investment exchanges and clearing houses), and
  - “relevant entity” means—
    - (a) if NR is a company, a permanent establishment, and
    - (b) if that is not the case, a branch or agency.

*Disposals for consideration not fully recognised by accounting practice*

**698 Disposals for consideration not fully recognised by accounting practice** U.K.

- (1) This section applies if in any accounting period (“the relevant accounting period”) a company with the relevant avoidance intention disposes of rights or liabilities under a derivative contract wholly or partly for consideration which—
- (a) is not wholly in the form of money or a debt which falls to be settled by the payment of money, and
  - (b) is not fully recognised.
- (2) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account in accordance with this Part.
- (3) Consideration is not fully recognised if, as a result of the application of generally accepted accounting practice, the full amount or value of the consideration is not recognised in determining the company's profit or loss for the relevant accounting period or any other accounting period.
- (4) In determining the credits which the company is to bring into account for the relevant accounting period in accordance with this Part, it is to be assumed that the whole of the consideration is recognised in determining the company's profit or loss for that period.
- (5) But this section does not apply if paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) operates in relation to the disposal so as to increase the tax liability of the company.



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## CHAPTER 12 **U.K.**

### PRIORITY RULES

#### **699 Priority of this Part for corporation tax purposes **U.K.****

- (1) The amounts which are brought into account in accordance with this Part in respect of any matter are the only amounts which may be brought into account for corporation tax purposes in respect of it.
- (2) Subsection (1) is subject to any provision to the contrary.
- (3) For such provisions, see in particular—
  - (a) section 616 (disapplication of fair value accounting for certain derivative contracts),
  - (b) paragraph 93 of Schedule 2 (plain vanilla contracts which became derivative contracts before 30 December 2006), and
  - (c) section 83(2ZA) of FA 1989 (life assurance: receipts to be taken into account).

#### **700 Relationship of this Part to Part 5: loan relationships **U.K.****

- (1) This section applies if—
  - (a) a company is a party to a loan relationship because of a derivative contract, and
  - (b) in accordance with this Part, a profit or loss accrues to the company on the contract for an accounting period (“the derivative profit or loss”).
- (2) The general rule is that this Part does not apply to the derivative profit or loss if—
  - (a) an amount representing the derivative profit or loss, or
  - (b) an amount representing the profit or loss accruing to that company on the contract,is brought into account for that period for the purposes of Part 5 otherwise than because of section 574.
- (3) But in a case where section 585 (loan relationships with embedded derivatives) applies, the general rule does not apply so far as—
  - (a) the derivative profit or loss accrues from the rights and liabilities mentioned in section 585(1)(b) (rights and liabilities under derivative financial instruments or equity instruments), and
  - (b) that profit or loss is dealt with in accordance with that section and this Part.

## CHAPTER 13 **U.K.**

### GENERAL AND SUPPLEMENTARY PROVISIONS

#### *Power to amend certain provisions*

#### **701 Power to amend some provisions **U.K.****

- (1) The Treasury may by order amend—
  - (a) Chapter 2 (except sections 578(1), (2) and (4), 585, 587 and 588),

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- (b) Chapter 4 (except section 613(4)),
  - (c) section 635,
  - (d) Chapter 7,
  - (e) Chapter 8 (except section 660),
  - (f) section 702,
  - (g) section 706,
  - (h) section 707,
  - (i) section 708,
  - (j) section 709,
  - (k) the definitions in section 710 specified in subsection (2), and
  - (l) paragraphs 80 to 94 of Schedule 2.
- (2) The definitions mentioned in subsection (1)(k) are—
- capital redemption policy,
  - depository receipt (in relation to shares),
  - designated,
  - intangible fixed asset,
  - shares, and
  - warrant.
- (3) The provision that may be made by an order under this section includes provision—
- (a) adding to or varying the descriptions of contract which are derivative contracts within section 576 (meaning of “derivative contract”) or removing any such description of contract, or
  - (b) adding to or varying the descriptions of contract which are excluded under section 589 (contracts excluded because of underlying subject matter: general) or removing any such description of contract.
- (4) The provision that may be made under subsection (3)(b), in relation to contracts which are excluded under section 589, includes provision—
- (a) adding to the provisions which qualify the exclusion of contracts under that section,
  - (b) varying any such provision, or
  - (c) removing any such provision.
- (5) An order under this section may provide for any of its provisions to have effect in relation to—
- (a) accounting periods ending on or after the day on which the order comes into force (whenever they begin),
  - (b) periods of account beginning before the order is made, but not earlier than the beginning of the calendar year in which it is made.
- (6) An order under this section may—
- (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings (including provision amending any enactment or any instrument made under an enactment).

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### Other general definitions

#### 702 “Carrying value” U.K.

- (1) For the purposes of this Part, the “carrying value” of a contract includes amounts recognised for accounting purposes in relation to the contract in respect of—
  - (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses (including provisions for bad or doubtful debts).
- (2) In determining the profits and losses to be recognised in determining the carrying value of the contract for the purposes of this Part, the provisions in subsection (3) apply as they apply for the purposes of determining the credits and debits to be brought into account in accordance with this Part.
- (3) Those provisions are—
  - (a) section 584 (hybrid derivatives with embedded derivatives),
  - (b) section 585 (loan relationships with embedded derivatives),
  - (c) section 586 (other contracts with embedded derivatives),
  - (d) section 625(3) to (5) (transactions within groups),
  - (e) sections 675 and 676 (European cross-border transfers of business), and
  - (f) sections 684 and 685 (European cross-border mergers).
- (4) In this section “impairment loss” means a debit in respect of the impairment of a financial asset, and “impairment” includes uncollectability.

#### 703 “Chargeable asset” U.K.

- (1) For the purposes of this Part, an asset is a chargeable asset if any gain accruing on its disposal would be a chargeable gain for corporation tax purposes.
- (2) For the purposes of this section, “asset” includes any obligations under futures contracts which are regarded because of section 143 of TCGA 1992 as assets to the disposal of which that Act applies.

#### 704 “Creditor relationship” and “debtor relationship” U.K.

- (1) In this Part “creditor relationship” has the same meaning as in Part 5 (loan relationships) (see section 302(5) (meaning of “creditor relationship”)).
- (2) In this Part “debtor relationship” has the same meaning as in Part 5 (see section 302(6) (meaning of “debtor relationship”)).

#### 705 Expressions relating to exchange gains and losses U.K.

- (1) References in this Part to exchange gains or exchange losses, in relation to a company, are references respectively to—
  - (a) profits or gains which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company, or
  - (b) losses which so arise.

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- (2) If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, for the purposes of this Part an exchange gain of nil is taken to arise in the case of that comparison.
- (3) The Treasury may make provision by regulations as to the way in which exchange gains or losses are to be calculated for the purposes of this section in a case where fair value accounting is used by the company.
- (4) The regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.
- (5) Any reference in this Part to an exchange gain or loss from a derivative contract of a company is a reference to an exchange gain or loss arising to a company in relation to a derivative contract of the company.

**706 “Excluded body” U.K.**

In this Part “excluded body” means—  
 an authorised unit trust,  
 an investment trust,  
 an open-ended investment company, or  
 a venture capital trust.

**707 “Hedging relationship” U.K.**

- (1) This section applies for the purposes of this Part.
- (2) A company has a “hedging relationship” between a relevant contract (“the hedging instrument”) and an asset or liability (“the hedged item”) so far as condition A or B is met.
- (3) Condition A is that the hedging instrument and the hedged item are designated as a hedge by the company.
- (4) Condition B is that—
  - (a) the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of the hedged item which is attributable to a particular risk and could affect the profit or loss of the company, and
  - (b) the hedged item is an asset or liability recognised for accountancy purposes or is an identified portion of such an asset or liability.
- (5) For the purposes of subsections (2) and (4), the liabilities of a company include its own share capital.

**708 “Plain vanilla contract” U.K.**

In this Part “plain vanilla contract” means a relevant contract other than one to which a company is treated as being a party under—  
 (a) section 584 (hybrid derivatives with embedded derivatives),  
 (b) section 585 (loan relationships with embedded derivatives), or  
 (c) section 586 (other contracts with embedded derivatives).

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## 709 “Securities house” **U.K.**

In this Part “securities house” means a person—

- (a) who is authorised for the purposes of FISMA 2000, and
- (b) whose business consists wholly or mainly of dealing as a principal in financial instruments within the meaning of section 984 of ITA 2007.

## 710 Other definitions **U.K.**

In this Part—

“bank” means—

- (a) the Bank of England,
- (b) a person within section 840A(1)(b) of ICTA, or
- (c) a firm within section 840A(1)(c) of that Act,

“capital redemption policy” means a contract made in the course of capital redemption business (as defined in section 431(2ZF) of ICTA),

“contract of insurance” has the meaning given by section 431(2) of ICTA,

“contract of long-term insurance” has the meaning given by section 431(2) of ICTA,

“depository receipt”, in relation to shares (as defined in this section), has the same meaning as it has in Part 4 of FA 1986 in relation to shares (within the meaning of that Part),

“designated” has the meaning it has for accounting purposes,

“equity instrument” has the meaning it has for accounting purposes,

“fair value”, in relation to a derivative contract of a company, means the amount which, at the time as at which the value is to be determined, is the amount which the company would obtain from or, as the case may be, would have to pay to an independent person dealing at arm's length for—

- (a) the transfer of the company's rights under the contract, and
- (b) the release of all the company's liabilities under it,

“fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company's balance sheet at their fair value,

“financial trader” means—

- (a) a person who—
  - (i) is within section 31(1)(a), (b) or (c) of FISMA 2000, and
  - (ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act (Regulated Activities) Order 2001 (S.I. 2001/544), or
- (b) a person not within paragraph (a) who is approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of this section,

“income statement” has the meaning it has for accounting purposes,

“intangible fixed asset” has the same meaning as in Part 8 (intangible fixed assets), and sections 804 to 807 and 809 (assets wholly excluded from that Part) (and sections 800 to 802 so far as they relate to those sections) apply for the purposes of this Part as they apply for the purposes of that Part,

“open-ended investment company” has the meaning given by section 468A(2) of ICTA,

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“profit-sharing arrangements”, in relation to a firm, has the meaning given by section 1262(4) (allocation of firm's profits or losses between partners),

“shares”, in relation to a company, means any shares in the company under which an entitlement to receive distributions may arise, including—

(a) a depositary receipt for shares under which such an entitlement may arise, and

(b) in the case of a company which has no share capital, any interests in the company possessed by members of the company,

“statement of changes in equity” has the meaning it has for accounting purposes,

“statement of comprehensive income” has the meaning it has for accounting purposes,

“statement of income and retained earnings” has the meaning it has for accounting purposes,

“statement of recognised income and expense” has the meaning it has for accounting purposes,

“statement of total recognised gains and losses” has the meaning it has for accounting purposes, and

“warrant” means an instrument which entitles the holder to subscribe for—

(a) shares in a company, or

(b) assets representing a loan relationship of a company,

whether or not the shares or assets exist or are identifiable.

## PART 8 **U.K.**

### INTANGIBLE FIXED ASSETS

#### CHAPTER 1 **U.K.**

##### INTRODUCTION

###### *Introductory*

## 711 Overview of Part **U.K.**

- (1) This Part sets out how a company's gains and losses in respect of intangible fixed assets are calculated and brought into account for corporation tax purposes.
- (2) For the meaning of “intangible fixed assets” and rules about the assets to which this Part applies, see—
  - (a) sections 712 to 715,
  - (b) Chapter 10 (excluded assets), and
  - (c) Chapter 16 (pre-FA 2002 assets etc).
- (3) For how such gains and losses are calculated and brought into account, see, in particular, Chapter 6 which—

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- (a) deals with the use of credits and debits in respect of some intangible fixed assets in calculating the profits and losses of trades, businesses and other concerns (see sections 747 to 750),
  - (b) provides for the calculation of gains and losses where there are credits or debits in respect of other intangible fixed assets (see section 751),
  - (c) makes gains so calculated subject to the charge to corporation tax on income (see section 752), and
  - (d) gives an allowance for losses so calculated (see section 753).
- (4) For the priority of this Part for corporation tax purposes, see Chapter 18 (under which the general rule is that the amounts brought into account in accordance with this Part in respect of any matter are the only amounts that may be brought into account for corporation tax purposes in respect of it).
- (5) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes.
- (6) For the meaning of “amounts recognised for accounting purposes” and other expressions related to accounting and for rules about “GAAP-compliant accounts”, see sections 716 to 719.
- (7) Chapters 2 to 6 contain basic rules about the credits and debits to be brought into account for corporation tax purposes in respect of intangible fixed assets.
- (8) For rules about particular situations and cases, see—
- (a) Chapter 7 (roll-over relief in case of realisation and reinvestment),
  - (b) Chapters 8 and 9 (groups of companies),
  - (c) Chapter 11 (transfer of business or trade),
  - (d) Chapter 12 and 13 (related parties),
  - (e) Chapter 14 (further provisions relating to miscellaneous cases),
  - (f) Chapter 15 (adjustments on change of accounting policies), and
  - (g) Chapter 17 (insurance companies).

### *Basic definitions*

## **712 “Intangible asset” U.K.**

- (1) In this Part “intangible asset” has the meaning it has for accounting purposes.
- (2) In particular, “intangible asset” includes intellectual property.
- (3) For this purpose “intellectual property” means—
  - (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997 (c. 66),
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding or similar to a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value, or
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c).
- (4) This section is subject to Chapter 10 (excluded assets).



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### 713 “Intangible fixed asset” **U.K.**

- (1) In this Part an “intangible fixed asset”, in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company's activities.
- (2) In this Part “intangible fixed asset” includes an option or other right—
  - (a) to acquire an intangible asset that would be a fixed asset if it were acquired, or
  - (b) to dispose of an intangible fixed asset.
- (3) This Part applies to an intangible fixed asset whether or not it is capitalised in the company's accounts.
- (4) Subsection (3) is subject to any indication to the contrary.
- (5) This section is subject to any such provision of regulations under section 854 (finance leasing etc) as is mentioned in section 855(1) (assets to be treated as intangible fixed assets of finance lessor).

### 714 “Royalty” **U.K.**

In this Part “royalty” means a royalty in respect of the enjoyment or exercise of rights that constitute an intangible fixed asset.

#### *Goodwill*

### 715 Application of this Part to goodwill **U.K.**

- (1) This Part applies to goodwill as it applies to an intangible fixed asset.
- (2) Subsection (1) is subject to any indication to the contrary.
- (3) In this Part “goodwill” has the meaning it has for accounting purposes.

#### *Accounting rules and definitions*

### 716 “Recognised” amounts and “GAAP-compliant accounts” **U.K.**

- (1) References in this Part to an amount “recognised” in determining a company's profit or loss for a period are to—
  - (a) an amount recognised in—
    - (i) the company's profit and loss account, income statement or statement of comprehensive income for that period,
    - (ii) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
    - (iii) any other statement of items brought into account in calculating the company's profits and losses for that period, and
  - (b) an amount that would have been so recognised if such an account or statement had been drawn up for that period in accordance with generally accepted accounting practice.

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- (2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subsection (1) must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.
- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.
- (4) In this Part “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.
- (5) In the case of a company that is a member of a group, see also section 718.

#### **717 Companies without GAAP-compliant accounts** U.K.

- (1) If a company—
  - (a) draws up accounts that are not GAAP-compliant accounts, or
  - (b) does not draw up accounts at all,this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) References in this Part to amounts recognised for accounting purposes are references to the amounts which would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.

#### **718 GAAP-compliant accounts: reference to consolidated group accounts** U.K.

- (1) In determining whether a company's accounts are GAAP-compliant, reference may be made to any view about—
  - (a) the useful life of an asset, or
  - (b) the economic value of an asset,taken for the purposes of consolidated group accounts prepared for any group of companies of which the company is a member.
- (2) This section does not apply if the consolidated group accounts—
  - (a) are drawn up using a different accounting framework from that used for the company's individual accounts, and
  - (b) as a result are prepared on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from the basis used in the company's individual accounts.
- (3) This section does not apply so far as the consolidated group accounts are prepared—
  - (a) in accordance with the requirements of the law of a country outside the United Kingdom, and
  - (b) on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from generally accepted accounting practice.

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## 719 Accounting value **U.K.**

In this Part “accounting value”, in relation to an asset, means the net book value (or carrying amount) of the asset recognised for accounting purposes.

## CHAPTER 2 **U.K.**

### CREDITS IN RESPECT OF INTANGIBLE FIXED ASSETS

## 720 Introduction **U.K.**

- (1) This Chapter provides for credits to be brought into account by a company for tax purposes in respect of—
  - (a) receipts in respect of intangible fixed assets that are recognised in determining the company's profit or loss as they accrue (see section 721),
  - (b) receipts in respect of royalties, so far as the receipts do not give rise to a credit under section 721 (see section 722),
  - (c) revaluation of an intangible fixed asset (see section 723),
  - (d) credits recognised for accounting purposes in respect of negative goodwill (see section 724), and
  - (e) the reversal of previous accounting debits in respect of an intangible fixed asset (see section 725).
- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 734).
- (3) For the rules about those amounts, see that Chapter.

## 721 Receipts recognised as they accrue **U.K.**

- (1) If in a period of account a gain representing a receipt in respect of an intangible fixed asset is recognised in determining the company's profit or loss, a corresponding credit must be brought into account for tax purposes.
- (2) The amount of the credit is the same as the amount of the gain recognised by the company for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

## 722 Receipts in respect of royalties so far as not dealt with under section 721 **U.K.**

- (1) So far as a receipt in respect of any royalty does not give rise to a credit under section 721 in the period of account in which it is received or in a subsequent period of account, a credit must be brought into account for tax purposes.
- (2) The credit must be brought into account in the accounting period in which the receipt is recognised for accounting purposes.
- (3) The amount of the credit is equal to so much of the amount of the receipt as does not give rise to a credit under section 721.

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## 723 Revaluation **U.K.**

- (1) If in a period of account there is an increase in the accounting value of an intangible fixed asset on a revaluation, a credit must be brought into account for tax purposes.
- (2) The amount of the credit is the lesser of—
  - (a) the amount corresponding for tax purposes to the increase (see subsection (3)), and
  - (b) the net total of relevant previous tax debits (see subsection (4)).
- (3) The amount corresponding for tax purposes to the increase is—

$$I \times \frac{\text{WDV}}{\text{AV}}$$

where—

I is the increase,

WDV is the tax written-down value of the asset immediately before the revaluation, and

AV is the accounting value of the asset by reference to which the revaluation is carried out.

- (4) The net total of relevant previous tax debits is—

$$D - C$$

where—

D is the total debits previously brought into account for tax purposes in respect of the asset, and

C is the total credits so brought into account.

- (5) For the purposes of this section “revaluation” includes—
  - (a) the valuation of an asset for which a value is shown in the company's balance sheet, but which has not previously been the subject of a valuation, and
  - (b) the restoration of past losses.
- (6) This section does not apply to an asset in respect of which an election has been made under section 730 (writing down at fixed rate: election for fixed-rate basis).

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#### 724 Negative goodwill **U.K.**

- (1) If in a period of account a gain is recognised in determining the company's profit or loss in respect of negative goodwill arising on an acquisition of a business, a corresponding credit must be brought into account for tax purposes.
- (2) The amount of the credit is so much of the gain recognised for accounting purposes as, on a just and reasonable apportionment, is attributable to intangible fixed assets.

#### 725 Reversal of previous accounting loss **U.K.**

- (1) This section applies if—
  - (a) in a period of account a gain is recognised in determining the company's profit or loss (“the recognised gain”),
  - (b) the gain wholly or partly reverses a loss recognised in a previous period of account (“the reversed loss”), and
  - (c) a debit was brought into account for tax purposes under Chapter 3 (debits in respect of intangible fixed assets) in respect of that loss (“the tax debit”).
- (2) A corresponding credit must be brought into account for tax purposes.
- (3) The amount of the credit is—

$$RG \times \frac{D}{RL}$$

where—

RG is the recognised gain,

D is the tax debit, and

RL is the reversed loss.

- (4) This section does not apply to a gain on a revaluation within the meaning of section 723 (see subsection (5) of that section).

### CHAPTER 3 **U.K.**

#### DEBITS IN RESPECT OF INTANGIBLE FIXED ASSETS

#### 726 Introduction **U.K.**

- (1) This Chapter provides for debits to be brought into account by a company for tax purposes in respect of—
  - (a) expenditure on an intangible fixed asset that is written off for accounting purposes as it is incurred (see section 728),
  - (b) writing down the capitalised cost of an intangible fixed asset—

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- (i) on an accounting basis (see section 729), or
  - (ii) on a fixed-rate basis (see sections 730 and 731), and
  - (c) the reversal of a previous accounting gain in respect of an intangible fixed asset (see section 732).
- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 734).
- (3) For the rules about those amounts, see that Chapter.

#### **727 References to expenditure on an asset** U.K.

- (1) References in this Part to expenditure on an asset are to any expenditure (including abortive expenditure)—
- (a) for the purpose of acquiring or creating, or establishing title to, the asset,
  - (b) by way of royalty in respect of the use of the asset, or
  - (c) for the purpose of maintaining, preserving or enhancing, or defending title to, the asset.
- (2) No account may be taken of capital expenditure on tangible assets in determining for the purposes of this Part the amount of expenditure on an intangible asset.
- (3) In subsection (2) “capital expenditure” has the same meaning as in CAA 2001.
- (4) If expenditure is incurred partly as mentioned in subsection (1) or (2) and partly otherwise, any necessary apportionment must be made on a just and reasonable basis.

#### **728 Expenditure written off as it is incurred** U.K.

- (1) If in a period of account expenditure on an intangible fixed asset is recognised in determining a company's profit or loss, a corresponding debit must be brought into account for tax purposes.
- (2) The amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).
- (4) This section does not apply if the loss represents previously capitalised expenditure.
- (5) Nothing in section 59 (patent royalties) prevents a debit from being brought into account in accordance with this section, and so given effect under Chapter 6 of this Part.

#### **729 Writing down on accounting basis** U.K.

- (1) If in a period of account a loss is recognised in determining a company's profit or loss in respect of capitalised expenditure on an intangible fixed asset—
- (a) by way of amortisation, or
  - (b) as a result of an impairment review,
- a corresponding debit must be brought into account for tax purposes.

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- (2) The reference in subsection (1) to an “impairment review” does not include the valuation of an asset for the purpose of determining the amount of expenditure to be capitalised in the first place.
- (3) In the period of account in which expenditure on an asset is capitalised the amount of the debit for tax purposes in respect of the expenditure is—

$$L \times \frac{E}{CE}$$

where—

L is the amount of the loss recognised for accounting purposes,

E is the amount of expenditure on the asset that is recognised for tax purposes, and

CE is the amount capitalised in respect of expenditure on the asset.

- (4) For the purposes of subsection (3), subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length), the amount of expenditure on the asset that is recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company.
- (5) In a subsequent period of account the amount of the debit for tax purposes in respect of the expenditure on an asset is—

$$L \times \frac{WDV}{AV}$$

where—

L is the amount of the loss recognised for accounting purposes,

WDV is the tax written-down value of the asset (see section 742) immediately before the amortisation charge is made or, as the case may be, the impairment loss is recognised for accounting purposes, and

AV is the value of the asset recognised for accounting purposes immediately before the amortisation charge or, as the case may be, the impairment review.

- (6) In this section “capitalised” means capitalised for accounting purposes.
- (7) This section does not apply to an asset in respect of which an election is made under section 730.



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### **730 Writing down at fixed rate: election for fixed-rate basis** U.K.

- (1) A company may elect to write down the cost of an intangible fixed asset for tax purposes at a fixed rate.
- (2) The election may be made whether or not the asset is written down for accounting purposes.
- (3) The election may only be made—
  - (a) in writing,
  - (b) to an officer of Revenue and Customs, and
  - (c) not later than 2 years after the end of the accounting period in which the asset is created or acquired by the company.
- (4) The election applies to all expenditure on the asset that is capitalised for accounting purposes.
- (5) The election is irrevocable.

### **731 Writing down at fixed rate: calculation** U.K.

- (1) If an election is made under section 730 for writing down at a fixed rate, a debit equal to the lesser of—
  - (a) 4% of the cost of the asset, and
  - (b) the balance of the tax written-down value,must be brought into account for tax purposes in each accounting period beginning with that in which the relevant expenditure is incurred.
- (2) If the accounting period is less than 12 months, the amount mentioned in subsection (1) (a) must be proportionately reduced.
- (3) In this section “the cost of the asset” means the cost recognised for tax purposes.
- (4) The cost of the asset recognised for tax purposes is the same as the amount capitalised for accounting purposes in respect of expenditure on the asset.
- (5) Subsection (4) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).
- (6) If there is a part realisation of the asset (see section 734(4)), the reference in subsection (1)(a) to the cost of the asset must be read as a reference to the sum of—
  - (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (7) If there is a further part realisation, subsection (6) applies again.

### **732 Reversal of previous accounting gain** U.K.

- (1) This section applies if—
  - (a) in a period of account a loss is recognised in determining a company's profit or loss (“the recognised loss”),

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- (b) the loss wholly or partly reverses a gain recognised in a previous period of account (“the reversed gain”), and
  - (c) a credit was brought into account for tax purposes under Chapter 2 (credits in respect of intangible fixed assets) in respect of that gain (“the previous credit”).
- (2) A corresponding debit must be brought into account for tax purposes.
- (3) The amount of that debit is—

$$RL \times \frac{PC}{RG}$$

where—

RL is the recognised loss,

PC is the previous credit, and

RG is the reversed gain.

- (4) References in this section to the recognition of a loss that reverses a gain recognised in a previous period of account do not include a loss recognised—
- (a) by way of amortisation of an asset that has previously been the subject of a revaluation, or
  - (b) as a result of an impairment review of such an asset.
- (5) In subsection (4) “revaluation” has the same meaning as in section 723 (see subsection (5) of that section).

## CHAPTER 4 **U.K.**

### REALISATION OF INTANGIBLE FIXED ASSETS

#### 733 **Overview of Chapter U.K.**

- (1) This Chapter provides for credits or debits to be brought into account for tax purposes on the realisation by a company of an intangible fixed asset.
- (2) For the meaning of “realisation”, see section 734.
- (3) Sections 735 to 738 are subject to Chapter 7 (roll-over relief in case of realisation and reinvestment).
- (4) This Chapter is also relevant for determining—
  - (a) whether an asset is a chargeable intangible asset for the purposes of this Part, and
  - (b) whether a gain is a chargeable realisation gain for the purposes of this Part.

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- (5) For the meaning of “chargeable intangible asset” and “chargeable realisation gain”, see section 741.

### **734 Meaning of “realisation” U.K.**

- (1) References in this Part to the realisation of an intangible fixed asset are to a transaction resulting, in accordance with generally accepted accounting practice—
- in the asset ceasing to be recognised in the company's balance sheet, or
  - in a reduction in the accounting value of the asset.
- (2) In subsection (1) “transaction” includes any event giving rise to a gain recognised for accounting purposes.
- (3) In relation to an intangible fixed asset that has no balance sheet value (or no longer has a balance sheet value), subsections (1) and (2) apply as if it did have a balance sheet value.
- (4) References in this Part to a “part realisation” are to a realisation falling within subsection (1)(b).

### **735 Asset written down for tax purposes U.K.**

- (1) This section applies if there is a realisation of an intangible fixed asset in respect of which debits have been brought into account for tax purposes.
- (2) If the proceeds of realisation exceed the tax written-down value of the asset, a credit equal to the excess must be brought into account for tax purposes.
- (3) If the proceeds of realisation are less than the tax written-down value of the asset, a debit equal to the shortfall must be brought into account for tax purposes.
- (4) If there are no proceeds of realisation, a debit equal to the tax written-down value must be brought into account for tax purposes.
- (5) References in this section to the tax written-down value of an asset are to its tax written-down value immediately before the realisation.

### **736 Asset shown in balance sheet and not written down for tax purposes U.K.**

- (1) This section applies if—
- there is a realisation of an intangible fixed asset to which section 735 does not apply, and
  - a value is shown for the asset in the company's balance sheet.
- (2) If the proceeds of realisation exceed the cost of the asset, a credit equal to the excess must be brought into account for tax purposes.
- (3) If the proceeds of realisation are less than the cost of the asset, a debit equal to the shortfall must be brought into account for tax purposes.
- (4) If there are no proceeds of realisation, a debit equal to the cost of the asset must be brought into account for tax purposes.
- (5) In this section “the cost of the asset” means the cost recognised for tax purposes.

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- (6) The cost of the asset recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company for accounting purposes.
- (7) Subsection (6) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length)).
- (8) If this section has applied on a part realisation of an asset and applies again (on the realisation of the unrealised asset) the references in subsections (2) to (4) to the cost of the asset must be read as references to the sum of—
  - (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (9) If there is a further part realisation, subsection (8) applies again.

**737 Apportionment in case of part realisation** U.K.

- (1) In the case of a part realisation—
  - (a) the references in section 735 to the tax written-down value of the asset, and
  - (b) the references in section 736 to the cost of the asset,
 must be read as references to the appropriate proportion of that amount.
- (2) That proportion is—

$$\frac{AVB - AVA}{AVB}$$

where—

AVB is the accounting value immediately before the realisation, and

AVA is the accounting value immediately after the realisation.

**738 Asset not shown in balance sheet** U.K.

- (1) This section applies if—
  - (a) there is a realisation of an intangible fixed asset, and
  - (b) neither section 735 (asset written down for tax purposes) nor section 736 (asset shown in balance sheet and not written down for tax purposes) applies.
- (2) A credit equal to any proceeds of realisation must be brought into account for tax purposes.

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### **739 Meaning of “proceeds of realisation” U.K.**

- (1) In this Part “proceeds of realisation” of an asset means the amount recognised for accounting purposes as the proceeds of realisation, less the amount so recognised as incidental costs of realisation.
- (2) The amounts referred to in subsection (1) are subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

### **740 Abortive expenditure on realisation U.K.**

- (1) This section applies if—
  - (a) in a period of account a loss is recognised in determining the company's profit or loss in respect of expenditure by the company for the purposes of a transaction,
  - (b) the transaction does not proceed to completion, but
  - (c) were it completed, it would constitute a realisation of an intangible fixed asset.
- (2) A corresponding debit must be brought into account for tax purposes.
- (3) The amount of the debit is the same as the amount of the loss recognised by the company for accounting purposes.
- (4) Subsection (3) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

### **741 Meaning of “chargeable intangible asset” and “chargeable realisation gain” U.K.**

- (1) For the purposes of this Part, an asset is a “chargeable intangible asset” in relation to a company at any time if any gain on its realisation by the company at that time would be a chargeable realisation gain.
- (2) For the purposes of this Part, “chargeable realisation gain”, in relation to an asset, means a gain on the realisation of the asset that gives rise to a credit required to be brought into account under this Chapter.
- (3) For the purposes of subsections (1) and (2), there is a gain on the realisation of an asset in any case if section 735(2), 736(2) or 738(2) applies.
- (4) For the purpose of subsections (1) and (2), ignore any question whether—
  - (a) relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) is available, or
  - (b) a transfer of an asset is tax-neutral for the purposes of this Part (see section 776).

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## CHAPTER 5 U.K.

### CALCULATION OF TAX WRITTEN-DOWN VALUE

#### 742 Asset written down on accounting basis U.K.

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset to which section 729 (writing down on accounting basis) applies is the cost of the asset recognised for tax purposes, less the total net debits brought into account for tax purposes previously in respect of the asset.
- (2) For the purposes of subsection (1) the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).
- (4) For the purposes of subsection (1) “the total net debits brought into account for tax purposes previously in respect of the asset”, means the total debits so brought into account, less the total credits so brought into account (if any).
- (5) In the case of an asset that has been the subject of a part realisation, this section is subject to section 744.
- (6) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15 (adjustments on a change of accounting policy).

#### 743 Asset written down at fixed rate U.K.

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset in respect of which an election has been made under section 730 (writing down at fixed rate: election for fixed-rate basis) is the cost of the asset recognised for tax purposes, less any debits brought into account for tax purposes previously in respect of the asset under section 731 (writing down at fixed rate: calculation).
- (2) For the purposes of subsection (1), the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.
- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).
- (4) In the case of an asset that has been the subject of a part realisation, this section is subject to section 744.
- (5) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15 (adjustments on change of accounting policy).

#### 744 Effect of part realisation of asset U.K.

- (1) The tax written-down value of an intangible asset that has been the subject of a part realisation is determined as follows.

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(2) Immediately after the part realisation the tax written-down value of the asset is—

$$\text{WDVB} \times \frac{\text{AVA}}{\text{AVB}}$$

where—

WDVB is the tax written-down value of the asset immediately before the part realisation,

AVA is the accounting value of the asset immediately after the part realisation, and

AVB is the accounting value immediately before the part realisation.

- (3) Subsequently, the tax written-down value of the asset is determined in accordance with section 742 or 743, but subject to subsections (4) and (5).
- (4) The cost of the asset recognised for tax purposes is the sum of—
- the tax written-down value in accordance with subsection (2), and
  - the cost recognised for tax purposes of subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) Only credits and debits brought into account for tax purposes after the part realisation are taken account of.
- (6) If there is a further part realisation, subsections (1) to (5) apply again.
- (7) If there is a subsequent change of accounting policy affecting the asset, Chapter 15 (adjustments on change of accounting policy) applies.

## CHAPTER 6 U.K.

### HOW CREDITS AND DEBITS ARE GIVEN EFFECT

#### *Introductory*

#### 745 Introduction U.K.

- (1) Credits and debits to be brought into account for tax purposes under this Part are given effect in accordance with this Chapter.
- (2) Credits and debits in respect of assets held for the purposes mentioned in any of the following sections are given effect in accordance with that section—
- section 747 (assets held for purposes of trade),
  - section 748 (assets held for purposes of property business),
  - section 749 (assets held for purposes of mines, transport undertakings, etc).



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- (3) Credits and debits in respect of intangible fixed assets that are not within sections 747 to 749 are dealt with in accordance with sections 751 to 753.
- (4) This section is subject to section 901 (effect of application of the I minus E basis: non-trading amounts).

**746 “Non-trading credits” and “non-trading debits” U.K.**

- (1) In this Part credits and debits in respect of intangible fixed assets that are not within sections 747 to 749 are referred to respectively as “non-trading credits” and “non-trading debits”.
- (2) See also—
  - (a) section 781(5) (character of credits and debits brought into account as a result of section 780),
  - (b) section 792(5) (reallocation of charge within group), and
  - (c) section 901(3) (insurance companies: effect of application of the I minus E basis: non-trading amounts).

*Trading etc credits and debits*

**747 Assets held for purposes of trade U.K.**

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a trade carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the trade in calculating the profits of the trade for tax purposes.
- (3) The debits are given effect by treating them as expenses of the trade in calculating the profits of the trade for tax purposes.

**748 Assets held for purposes of property business U.K.**

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a property business carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the business in calculating the profits of the business for tax purposes.
- (3) The debits are given effect by treating them as expenses of the business in calculating the profits of the business for tax purposes.
- (4) In subsection (1) “property business” means—
  - (a) an ordinary property business,
  - (b) a furnished holiday lettings business, or
  - (c) an overseas property business.
- (5) In this section—
 

“commercial letting of furnished holiday accommodation” has the meaning given by section 265,

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“ordinary property business” means a UK property business except so far as it is a furnished holiday lettings business, and

“furnished holiday lettings business” means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation in the United Kingdom.

#### **749 Assets held for purposes of mines, transport undertakings, etc** U.K.

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a concern listed in section 39(4) (mines, quarries and other concerns) that is carried on by it in that period.
- (2) The credits are given effect by treating them as receipts of the concern in calculating the profits of the concern under Part 3 (trading income).
- (3) The debits are given effect by treating them as expenses of the concern in calculating the profits of the concern under that Part.

#### **750 Assets held for purposes falling within more than one section** U.K.

If an asset is held—

- (a) for purposes falling within more than one of sections 747 to 749, or
- (b) for purposes falling within one or more of those sections and for purposes not so falling,

any necessary apportionment must be made on a just and reasonable basis.

#### *Non-trading credits and debits*

#### **751 Non-trading gains and losses** U.K.

- (1) If there are non-trading credits or debits in an accounting period in respect of intangible fixed assets, the company's non-trading gain or loss on such assets in the period must be calculated.
- (2) There is a non-trading gain on intangible fixed assets in an accounting period if subsection (3) or (4) applies.
- (3) If in the accounting period—
  - (a) there are non-trading credits, but
  - (b) there are no non-trading debits,there is a non-trading gain on intangible fixed assets equal to the sum of the credits.
- (4) If in the accounting period—
  - (a) there are both non-trading credits and non-trading debits, and
  - (b) the total non-trading credits exceed the total non-trading debits,there is a non-trading gain on intangible fixed assets equal to the excess.
- (5) There is a non-trading loss on intangible fixed assets in an accounting period if subsection (6) or (7) applies.
- (6) If in the accounting period—
  - (a) there are non-trading debits, but

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- (b) there are no non-trading credits,  
there is a non-trading loss on intangible fixed assets equal to the sum of the debits.
- (7) If in the accounting period—
  - (a) there are both non-trading credits and non-trading debits, and
  - (b) the total non-trading debits exceed the total non-trading credits,  
there is a non-trading loss on intangible fixed assets equal to the excess.
- (8) For the treatment of non-trading gains and losses see—
  - (a) section 752 (charge to tax on non-trading gains on intangible fixed assets), and
  - (b) section 753 (treatment of non-trading losses).

## **752 Charge to tax on non-trading gains on intangible fixed assets** **U.K.**

The charge to corporation tax on income applies to non-trading gains arising to a company on intangible fixed assets.

## **753 Treatment of non-trading losses** **U.K.**

- (1) A company that has a non-trading loss on intangible fixed assets for an accounting period may claim to have the whole or part of the loss set off against the company's total profits for that period.
- (2) Such a claim must be made—
  - (a) not later than the end of the period of 2 years immediately following the end of the accounting period to which it relates, or
  - (b) within such further period as an officer of Revenue and Customs may allow.
- (3) To the extent that the loss is not—
  - (a) set off against total profits on a claim under subsection (1), or
  - (b) surrendered by way of group relief (see section 403 of ICTA),  
it is carried forward to the next accounting period of the company and treated as if it were a non-trading debit of that period.

## **CHAPTER 7** **U.K.**

### ROLL-OVER RELIEF IN CASE OF REALISATION AND REINVESTMENT

#### *When the relief is given*

## **754 The relief: the “old asset” and “other assets”** **U.K.**

- (1) This Chapter provides for relief if a company realises an intangible fixed asset and incurs expenditure on other intangible fixed assets.
- (2) In this Chapter references to the “old asset” are references to the asset that is realised and references to “other assets” are references to the other assets on which expenditure is incurred.
- (3) A company is entitled to relief under this Chapter only if—

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- (a) the conditions in section 755 are met in relation to the old asset and its realisation,
  - (b) the conditions in section 756 are met in relation to the expenditure on other assets, and
  - (c) the company claims the relief in accordance with section 757.
- (4) See also the following provisions (which extend or restrict the circumstances in which relief is available)—
- (a) sections 777 to 779 (application of roll-over relief where there is reinvestment by group members),
  - (b) section 791 (application of roll-over relief in relation to degrouping charge),
  - (c) section 794 (application of roll-over relief in relation to reallocated charge),
  - (d) section 850 (part realisation involving related party acquisition: exclusion of roll-over relief), and
  - (e) sections 898 and 899 (roll-over relief for disposals of pre-FA 2002 assets).

#### **755 Conditions relating to the old asset and its realisation** **U.K.**

- (1) The old asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company (but see subsection (5)).
- (2) The proceeds of realisation of the old asset must exceed—
  - (a) the cost of the asset,
  - (b) in the case of a part realisation, the appropriate proportion of the cost of the asset (see section 759(1) and (2)), or
  - (c) in the case of the realisation of an asset that has previously been the subject of a part realisation, the adjusted cost of the asset (see section 759(3)).
- (3) In subsection (2) “the cost of the asset” means the total capitalised expenditure on the asset recognised for tax purposes.
- (4) The condition in subsection (2) is met if the old asset has no cost as defined in subsection (3).
- (5) Subsection (6) applies if the old asset was a chargeable intangible asset of the company—
  - (a) at the time of its realisation, and
  - (b) for a substantial proportion of the period during which it was held by the company, but not for the whole of that period.
- (6) The same proportion of the asset is treated for the purposes of this Chapter as if it were a separate asset in relation to which the condition in subsection (1) was wholly met.
- (7) Any apportionment necessary for the purposes of subsections (5) and (6) must be made on a just and reasonable basis.

#### **756 Conditions relating to expenditure on other assets** **U.K.**

- (1) The expenditure on other assets must be incurred in the period—
  - (a) beginning 12 months before the date of realisation of the old asset or at such earlier time as an officer of Revenue and Customs may by notice allow, and

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- (b) ending 3 years after the date of realisation of the old asset or at such later time as an officer of Revenue and Customs may by notice allow.
- (2) The expenditure on other assets must be capitalised by the company for accounting purposes.
- (3) Immediately after the expenditure is incurred the other assets must be chargeable intangible assets in relation to the company.
- (4) For the purposes of this section expenditure is treated as incurred when it is recognised for accounting purposes.

### 757 Claim for relief **U.K.**

A claim by a company for relief under this Chapter must specify—

- (a) the old assets to which the claim relates,
- (b) the amount of the relief claimed in relation to each old asset, and
- (c) in relation to each old asset, the expenditure on other assets by reference to which relief is claimed.

*How the relief is given*

### 758 How the relief is given: general **U.K.**

- (1) A company that is entitled to relief under this Chapter is treated for the purposes of this Part as if—
  - (a) the proceeds of realisation of the old asset, and
  - (b) the cost recognised for tax purposes of acquiring the other assets, were each reduced by the amount available for relief.
- (2) If the qualifying expenditure on other assets equals or exceeds the proceeds of realisation of the old asset, the amount available for relief is the amount by which the proceeds of realisation exceed the cost of the old asset.
- (3) If the qualifying expenditure on other assets is less than the proceeds of realisation of the old asset, the amount available for relief is the amount by which the qualifying expenditure on other assets exceeds the cost of the old asset.
- (4) In this section “qualifying expenditure” means expenditure in relation to which the conditions in section 756 are met.
- (5) In this section “the cost of the old asset” means the total capitalised expenditure on the asset recognised for tax purposes, but—
  - (a) in the case of a part realisation, references to the cost of the old asset are references to the appropriate proportion of the cost (see section 759(1) and (2)), and
  - (b) in the case of the realisation of an asset that has previously been the subject of a part realisation, references to the cost of the old asset are references to the adjusted cost (see section 759(3)).
- (6) The relief does not affect the treatment of any other party to—
  - (a) any transaction involved in the realisation of the old asset, or
  - (b) the expenditure on the other assets,

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for any purpose of the enactments relating to income tax, corporation tax or chargeable gains.

**759 Determination of appropriate proportion of cost and adjusted cost** **U.K.**

- (1) In the case of a part realisation, any reference in section 755 or 758 to the appropriate proportion of the cost of the old asset is to the following proportion of it—

$$\frac{AVB - AVA}{AVB}$$

where—

AVB is the accounting value immediately before the part realisation, and

AVA is the accounting value immediately after the part realisation.

- (2) If the old asset has previously been the subject of a part realisation, the reference in subsection (1) to the cost of the old asset is a reference to the adjusted cost.
- (3) References in sections 755 and 758 and subsection (2) to the adjusted cost are references to the cost of the old asset, less the sum of the amounts given by subsections (1) and (2) in relation to earlier part realisations.

**760 References to cost of asset where asset affected by change of accounting policy** **U.K.**

- (1) In the case of an asset to which Chapter 15 has applied (adjustments on change of accounting policy) the references in this Chapter to the cost of the asset must be read as follows.
- (2) If section 872 (adjustments in respect of change) applied, the references are unaffected.
- (3) If section 874 or 876 (change of accounting policy involving disaggregation) applied, the references to the cost of the asset must be read as references to the appropriate proportion of that cost.
- (4) For the purposes of subsection (3) the appropriate proportion is determined by applying to the cost of the asset the same fraction as is applied by section 875(2) or (3) or 876(3), as the case may be, to determine the tax written-down value of the asset after the change.
- (5) References in this section to sections 872, 874, 875 and 876 include references to those provisions as applied by section 877 (election for fixed-rate writing down in relation to resulting asset).

**761 Declaration of provisional entitlement to relief** **U.K.**

- (1) A company realising an intangible fixed asset may make a declaration of provisional entitlement to relief under this Chapter.

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- (2) While the declaration continues in force, this Chapter applies as if the conditions for relief under this Chapter were met.
- (3) A declaration of provisional entitlement is a declaration by the company, in its company tax return for the accounting period in which the realisation takes place, that the company—
  - (a) has realised an intangible fixed asset,
  - (b) proposes to meet the conditions for relief under this Chapter, and
  - (c) accordingly is provisionally entitled to relief of a specified amount.
- (4) A declaration of provisional entitlement ceases to have effect if or to the extent that—
  - (a) it is withdrawn, or
  - (b) it is superseded by a claim for relief under this Chapter.
- (5) So far as not previously withdrawn or superseded, a declaration of provisional entitlement ceases to have effect 4 years after the end of the accounting period in which the realisation took place.
- (6) If a declaration of provisional entitlement ceases to have effect, in whole or in part, all necessary adjustments must be made, by assessment or otherwise.
- (7) Subsection (6) applies despite any limitation on the time within which assessments or amendments may be made.

## 762 Realisation and reacquisition **U.K.**

If a company realises an asset and subsequently reacquires it, this Chapter applies as if what is reacquired were a different asset from that previously realised.

## 763 Disregard of deemed realisations and reacquisitions **U.K.**

- (1) This Chapter does not apply in relation to a realisation of an asset that does not actually occur but is treated as occurring, except as provided by—
  - (a) section 791 (application of roll-over relief in relation to degrouping charge), or
  - (b) section 794 (application of roll-over relief in relation to reallocated charge).
- (2) Reacquisitions that do not actually occur but are treated as occurring are ignored for the purposes of this Chapter.

## CHAPTER 8 **U.K.**

### GROUPS OF COMPANIES: INTRODUCTION

#### *Introductory*

## 764 Meaning of “company”, “group” and “subsidiary” **U.K.**

- (1) This Chapter applies for the purposes of this Part to determine whether companies form a group and, where they do, which is the principal company of the group.
- (2) In this Chapter, references to a company apply only to—



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- (a) a company within the meaning of the Companies Act 2006 (c. 46),
  - (b) a company (other than a limited liability partnership) constituted under any other Act or by a Royal Charter or letters patent,
  - (c) a company formed under the law of a country or territory outside the United Kingdom,
  - (d) a registered industrial and provident society,
  - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
  - (f) a building society.
- (3) In this Part “group” and “subsidiary” must be read with any necessary modifications if applied to a company formed under the law of a country or territory outside the United Kingdom.

### Rules

#### **765 General rule: a company and its 75% subsidiaries form a group U.K.**

- (1) The general rule is that—
  - (a) a company (“A”) and all its 75% subsidiaries form a group, and
  - (b) if any of those subsidiaries have 75% subsidiaries, the group includes them and their 75% subsidiaries, and so on.
- (2) A is referred to in this Chapter and in Chapter 9 as the principal company of the group.
- (3) Subsections (1) and (2) are subject to the following provisions of this Chapter.

#### **766 Only effective 51% subsidiaries of principal company to be members of group U.K.**

- (1) A group of companies does not include any company (other than the principal company of the group) that is not an effective 51% subsidiary of the principal company of the group.
- (2) For the meaning of “effective 51% subsidiary”, see section 771.

#### **767 Principal company cannot be 75% subsidiary of another company U.K.**

- (1) The general rule is that a company (“A”) is not the principal company of a group if it is itself a 75% subsidiary of another company (“B”).
- (2) That rule is subject to subsection (3).
- (3) A is the principal company of a group (“group C”) if—
  - (a) A and B are prevented from being members of another group by section 766,
  - (b) the requirements of sections 765 and 766 are met in relation to group C, and
  - (c) A being the principal company of group C does not enable a further company to be the principal company of a group of which A would be a member.

#### **768 Company cannot be member of more than one group U.K.**

- (1) A company cannot be a member of more than one group.

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- (2) If, apart from subsection (1), a company (“A”) would be a member of 2 or more groups, the group of which it is a member is determined by applying the rules in subsections (4), (6), (7) and (8) successively in that order until an answer is obtained.
- (3) In those subsections the principal company of each group is referred to as its head.
- (4) A is a member of the group of which it would be a member if in applying section 766 (only effective 51% subsidiaries of principal company to be members of group) the amounts specified in subsection (5) were ignored.
- (5) Those amounts are—
  - (a) any amount to which a head of a group is beneficially entitled of any profits available for distribution to equity holders of a head of another group (see section 772), and
  - (b) any amount to which a head of a group would be beneficially entitled of any assets of a head of another group available for distribution to its equity holders on a winding up (see that section).
- (6) A is a member of the group the head of which is beneficially entitled to a percentage of the profits available for distribution to A's equity holders that is greater than the percentage of those profits to which any other head of a group is so entitled.
- (7) A is a member of the group the head of which would be beneficially entitled to a percentage of any of A's assets available for distribution to its equity holders on a winding up that is greater than the percentage of those assets to which any other head of a group would be so entitled.
- (8) A is a member of the group the head of which owns directly or indirectly a percentage of A's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group.
- (9) Section 838(2) to (10) of ICTA applies for the interpretation of subsection (8) as it applies for the interpretation of section 838(1)(a) of that Act (definition of “51% subsidiary”).

#### **769 Continuity of identity of group U.K.**

- (1) A group of companies remains the same group of companies for the purposes of this Part so long as the same company is the principal company of the group.
- (2) If the principal company of a group becomes a member of another group—
  - (a) the groups are treated as the same group for the purposes of this Part, and
  - (b) the question whether a company has ceased to be a member of a group must be determined accordingly.
- (3) The passing of a resolution or the making of an order, or any other act, for the winding up of a company is not treated for the purposes of this Part as causing any company to cease to be a member of any group of which it is a member.

#### **770 Continuity where group includes an SE U.K.**

- (1) This section applies if the principal company of a group (“Group 1”)—
  - (a) becomes an SE as a result of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)

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- (a) and 29(1) of Council Regulation (EC) No 2157/2001 on the Statute for a European company),
  - (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
  - (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation).
- (2) For the purposes of this Part—
- (a) Group 1 and any group of which the SE is a member on formation is treated as the same, and
  - (b) the question whether a company has ceased to be a member of a group must be determined accordingly.

#### **771 Meaning of “effective 51% subsidiary” U.K.**

- (1) For the purposes of this Part a company (“the subsidiary”) is an effective 51% subsidiary of another company (“the parent”) if (and only if) conditions A and B are met.
- (2) Condition A is that the parent is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary (see section 772).
- (3) Condition B is that the parent would be beneficially entitled to more than 50% of any assets of the subsidiary available for distribution to its equity holders on a winding up (see section 772).

#### **772 Equity holders and profits or assets available for distribution U.K.**

- (1) Schedule 18 to ICTA (group relief: equity holders and profits or assets available for distribution) applies for the purposes of sections 768 and 771.
- (2) In that Schedule as it applies for those purposes—
  - (a) for any reference to sections 403C and 413(7) of ICTA, or either of those provisions, substitute a reference to sections 768 and 771,
  - (b) omit the words in paragraph 1(4) from “but” to the end, and
  - (c) omit paragraphs 5(3), 5B to 5F and 7(1)(b).

#### **773 Supplementary provisions U.K.**

- (1) In applying the definition of “75% subsidiary” in section 838 of ICTA for the purposes of this Chapter, any share capital of a registered industrial and provident society is treated as ordinary share capital.
- (2) Section 170(12) to (14) of TCGA 1992 (application to certain statutory bodies of provisions relating to groups of companies) applies for the purposes of this Chapter as it applies for the purposes of sections 171 to 181 of TCGA 1992.

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## CHAPTER 9 **U.K.**

### APPLICATION OF THIS PART TO GROUPS OF COMPANIES

#### *Introductory*

#### 774 **Overview of Chapter** **U.K.**

- (1) This Chapter makes provision about how this Part applies in the case of certain transactions involving groups.
- (2) In particular—
  - (a) for the treatment of transfers within groups as “tax-neutral transfers” and the meaning of that expression, see sections 775 and 776,
  - (b) for the application of Chapter 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group, see sections 777 to 779,
  - (c) for the rules that apply where a company ceases to be a member of a group, see—
    - (i) sections 780 to 791 (which provide for the deemed realisation of chargeable intangible fixed assets and their deemed reacquisition at market value), and
    - (ii) sections 792 to 798 (which provide for elections for a different member of the group to be treated as the company to which any gain on the deemed transfer accrues, how roll-over relief applies in such a case and for the recovery of the charge on any such gain), and
  - (d) for the disregard of some payments made in connection with claims for relief under Chapter 7 where this Chapter applies and payments made in connection with such elections as are mentioned in paragraph (c)(ii), see section 799.
- (3) Section 788 contains provisions that supplement sections 780 to 787.

#### *Transfers within a group treated as tax-neutral*

#### 775 **Transfers within a group** **U.K.**

- (1) A transfer of an intangible fixed asset from one company (“the transferor”) to another company (“the transferee”) is tax-neutral for the purposes of this Part if—
  - (a) at the time of the transfer both companies are members of the same group,
  - (b) immediately before the transfer the asset is a chargeable intangible asset in relation to the transferor, and
  - (c) immediately after the transfer the asset is a chargeable intangible asset in relation to the transferee.
- (2) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 776.
- (3) Schedule 28AA to ICTA (provision not at arm's length) does not apply in relation to a transfer to which subsection (1) applies.
- (4) Subsection (1) does not apply if—

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- (a) the transferor or transferee is a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
- (b) the transferee is a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

## 776 Meaning of “tax-neutral” transfer **U.K.**

- (1) This section sets out the consequences of a transfer of an asset being “tax-neutral” for the purposes of this Part.
- (2) The transfer is treated for those purposes as not involving—
  - (a) any realisation of the asset by the transferor, or
  - (b) any acquisition of the asset by the transferee.
- (3) The transferee is treated for those purposes—
  - (a) as having held the asset at all times when it was held by the transferor, and
  - (b) as having done all such things in relation to the asset as were done by the transferor.
- (4) In particular—
  - (a) the original cost of the asset in the hands of the transferor is treated as the original cost in the hands of the transferee, and
  - (b) all such credits and debits in relation to the asset as have been brought into account for tax purposes by the transferor under this Part are treated as if they had been brought into account by the transferee.
- (5) The references in subsection (4)(a) to the cost of the asset are to the cost recognised for tax purposes.

*Roll-over relief under Chapter 7 (realisation and reinvestment)*

## 777 Relief on realisation and reinvestment: application to group member **U.K.**

- (1) This section deals with the application of Chapter 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group.
- (2) Chapter 7 does not apply if the expenditure on other assets is expenditure on the acquisition of assets from another member of the same group by a tax-neutral transfer.
- (3) Chapter 7 applies as if two companies (“A” and “B”) are the same person if—
  - (a) the realisation of the old asset is by A,
  - (b) at the time of the realisation A is a member of a group,
  - (c) the expenditure on other assets is by B,
  - (d) B is a member of the same group as A at the time the expenditure is incurred (“the expenditure time”),
  - (e) B is not a dual resident investing company within the meaning of section 404 of ICTA (limitation of group relief) at the expenditure time,
  - (f) immediately after the expenditure time the other assets are chargeable intangible assets in relation to B, and
  - (g) both A and B make a claim for relief under Chapter 7.

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- (4) Expressions used in this section that are defined for the purposes of Chapter 7 have the same meaning in this section.
- (5) In particular, see section 754 for the meaning of “the old asset” and “the other assets”.

### **778 Relief on reinvestment: acquisition of group company: introduction** U.K.

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies in accordance with section 779 if—
  - (a) a company (“A”) acquires a controlling interest in another company (“B”), and
  - (b) intangible fixed assets (“underlying assets”) are held by B or one or more other companies within subsection (2).
- (2) A company is within this subsection if—
  - (a) it was not in the same group as A before the acquisition, and
  - (b) as a result of the acquisition it is in the same group as A immediately after it.
- (3) For this purpose A acquires a controlling interest in B if—
  - (a) A and B are not in the same group,
  - (b) A acquires shares in B, and
  - (c) as a result of the acquisition A and B are in the same group immediately after the acquisition.
- (4) A claim for relief under Chapter 7 made because of section 779 must be made jointly by A and the company or companies holding the underlying assets concerned.
- (5) In this section and section 779 expressions that are defined for the purposes of Chapter 7 have the same meaning as in that Chapter.

### **779 Rules that apply to cases within section 778(1)** U.K.

- (1) The expenditure by A on the acquisition is treated as expenditure on acquiring the underlying assets.
- (2) The amount of the expenditure so treated is taken to be the lower of—
  - (a) the tax written-down value of the underlying assets immediately before the acquisition, and
  - (b) the amount or value of the consideration for the acquisition.
- (3) The requirement in section 756(3) (that immediately after the expenditure on acquiring the assets is incurred the assets must be chargeable intangible assets in relation to A) is treated as met in relation to the underlying assets if the condition in subsection (4) is met.
- (4) That condition is that the underlying assets are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by A.
- (5) The tax written-down value of the underlying assets in the hands of the company by which they are held is reduced by the amount available for relief (but see subsections (6) and (7)).
- (6) If—

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- (a) there is more than one underlying asset, and
  - (b) the amount of expenditure on other assets that is treated as incurred exceeds the amount available for relief,
- the company which holds the underlying assets may decide how the amount available for relief is to be allocated in reducing the tax written-down values of the assets.
- (7) If there are two or more such companies, they may agree between them how that amount is to be allocated.
  - (8) In this section references to “A” and “B” and “underlying assets” must be read in accordance with section 778(1).

### *Company ceasing to be member of group*

## **780 Deemed realisation and reacquisition at market value** **U.K.**

- (1) This section applies if—
  - (a) a company (“the transferor”) that is a member of a group (“the group”) transfers an intangible fixed asset (“the relevant asset”) to another company (“the transferee”),
  - (b) immediately before the transfer the relevant asset is a chargeable intangible asset in relation to the transferor,
  - (c) immediately after the transfer the relevant asset is a chargeable intangible asset in relation to the transferee,
  - (d) the transferee—
    - (i) is a member of the group at the time of the transfer, or
    - (ii) subsequently becomes a member of the group,
  - (e) the transferee ceases to be a member of the group during the period of 6 years after the date of the transfer, and
  - (f) when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company (see section 788(3)) also leaving the group.
- (2) This Part applies as if the transferee—
  - (a) had realised the relevant asset immediately after its transfer to the transferee for its market value at that time, and
  - (b) had immediately reacquired the asset at that value.
- (3) The adjustments to be made as a result of subsection (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the relevant period must be made by bringing the total net credit or debit into account as if it had arisen immediately before the transferee ceased to be a member of the group.
- (4) In subsection (3) “the relevant period” means the period between—
  - (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to be a member of the group.
- (5) This section is subject to—
  - (a) section 782 (certain transferees of businesses etc not treated as leaving group),
  - (b) section 783 (associated companies leaving group at the same time),
  - (c) section 785 (principal company becoming member of another group),



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- (d) section 787 (company ceasing to be member of group because of exempt distribution), and
  - (e) section 789 (merger carried out for genuine commercial reasons).
- (6) See section 788 (provisions supplementing this section and sections 781 to 787) for the interpretation of certain expressions used in this section or those sections.
- (7) For the way in which Chapter 7 applies if a company is treated as having realised an asset as a result of this section, see section 791 (application of roll-over relief in relation to degrouping charge).

**781 Character of credits and debits brought into account as a result of section 780 U.K.**

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account as a result of section 780 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.
- (2) But subsection (1) does not apply if conditions A and B are met.
- (3) Condition A is that immediately after the transfer the relevant asset was held by the transferee for the purposes of a trade, business or concern within section 747, 748 or 749.
- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group.
- (5) If conditions A and B are met, a credit or debit brought into account because of section 780 is treated for the purposes of Chapter 6 as a non-trading credit or debit.
- (6) References in this section to “the transferee” and the relevant asset” must be read in accordance with section 780.

**782 Certain transferees of businesses etc not treated as leaving group U.K.**

- (1) This section applies if—
  - (a) the relevant asset is transferred in the course of a transfer of business to which section 820 applies or which includes such a transfer as is mentioned in section 807B(2)(b)(iii) of ICTA and in respect of which section 807C of that Act applies (European cross-border transfers of business), and
  - (b) in consequence of the transfer the transferee ceases to be a member of a group (“Group 1”).
- (2) For the purposes of section 780, the transferee is not treated as having left Group 1.
- (3) If as a result of the transfer the transferee becomes a member of another group (“Group 2”), it is treated for the purposes of section 780 as if Group 1 and Group 2 were the same.
- (4) References in this section to “the transferee” and “the relevant asset” must be read in accordance with section 780.

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### **783 Associated companies leaving group at the same time** U.K.

- (1) If two or more companies that are associated (see section 788(3)) cease to be members of a group at the same time, section 780 does not apply in relation to a transfer between them.
- (2) This subsection applies if—
  - (a) a company (“the transferee”) that is a member of a group of companies (“the first group”) acquires an asset from another company (“the transferor”) which is a member of that group at the time of the transfer,
  - (b) the transferee ceases to be a member of the first group,
  - (c) subsection (1) applies in relation to the transferee ceasing to be a member of the first group (so that section 780 does not apply),
  - (d) the transferee subsequently ceases to be a member of another group of companies (“the second group”), and
  - (e) there is a relevant connection between the two groups (see section 784).
- (3) If subsection (2) applies, section 780 applies in relation to the transferee ceasing to be a member of the second group as if both companies had been members of the second group at the time of the transfer.
- (4) This section is subject to section 789 (merger carried out for genuine commercial reasons).

### **784 Groups with a relevant connection** U.K.

- (1) For the purposes of section 783(2) there is a relevant connection between the first group and the second group if, at the time when the transferee ceases to be a member of the second group, the company which is the principal company of that group is under the control of—
  - (a) a person within subsection (2),
  - (b) a person or persons within subsection (3), or
  - (c) a person or persons within subsection (4).
- (2) A person is within this subsection if it is the company—
  - (a) that is the principal company of the first group, or
  - (b) if that group no longer exists, that was its principal company when the transferee ceased to be a member of it.
- (3) A person or persons are within this subsection if they—
  - (a) control the company within subsection (2), or
  - (b) have had it under their control at any time in the period since the transferee ceased to be a member of the first group.
- (4) A person or persons are within this subsection if they have, at any time in that period, had under their control either—
  - (a) a company that would have fallen within subsection (3) if it had continued to exist, or
  - (b) a company to which subsection (5) applies.
- (5) This subsection applies to a company if, had the company continued to exist—

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- (a) it would have fallen within subsection (4) because of its control of another company that would have fallen within subsection (3) if that other company had continued to exist, or
  - (b) it would have fallen within subsection (4) because of its control of a company to which paragraph (a) or this paragraph would have applied.
- (6) Section 416(2) to (6) of ICTA (meaning of control) applies for the purposes of this section as it applies for the purposes of Part 11 of that Act.
- (7) But a person carrying on a business of banking is not treated for those purposes as having control of a company just because of—
- (a) having any rights in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business, or
  - (b) the consequences of having exercised such rights.
- (8) References in this section to “the first group”, “the second group” and “the transferee” must be read in accordance with section 783.

## 785 Principal company becoming member of another group **U.K.**

- (1) Section 780 does not apply if a company ceases to be a member of a group just because the principal company of the group becomes a member of another group (“the second group”).
- (2) This subsection applies if—
- (a) section 780 would have applied but for subsection (1),
  - (b) after the transfer and before the end of the period of 6 years after the date of the transfer, the transferee ceases to meet the condition that it is both a 75% subsidiary and an effective 51% subsidiary of one or more members of the second group (“the qualifying condition”), and
  - (c) at the time at which the transferee ceases to do so, the relevant asset is held by the transferee or another company in the same group.
- (3) If subsection (2) applies, this Part applies as if immediately after the transfer to the transferee of the relevant asset the transferee had—
- (a) realised the asset for its market value at that time, and
  - (b) immediately reacquired the asset at that value.
- (4) The adjustments to be made as a result of subsection (3), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the relevant period must be made by bringing the total net credit or debit into account as if it had arisen immediately before the transferee ceased to meet the qualifying condition.
- (5) In subsection (4) “the relevant period” means the period between—
- (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to meet the qualifying condition.
- (6) This section is subject to section 789 (merger carried out for genuine commercial reasons).
- (7) References in this section to “the transferee” and “the relevant asset” must be read in accordance with section 780.

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- (8) For the way in which Chapter 7 applies if a company is treated as having realised an asset as a result of this section, see section 791 (application of roll-over relief in relation to degrouching charge).

#### **786 Character of credits and debits brought into account as a result of section 785 U.K.**

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account because of section 785 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.
- (2) But subsection (1) does not apply if conditions A and B are met.
- (3) Condition A is that immediately after the transfer the asset was held by the transferee for the purposes of a trade, business or concern within section 747, 748 or 749.
- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to meet the qualifying condition.
- (5) If conditions A and B are met, a credit or debit brought into account because of section 785 is treated for the purposes of Chapter 6 as a non-trading credit or debit.
- (6) References in this section to “the transferee” and the relevant asset” must be read in accordance with section 780.

#### **787 Company ceasing to be member of group because of exempt distribution U.K.**

- (1) Sections 780 and 785 do not apply if a company ceases to be a member of a group just because of an exempt distribution, unless subsection (2) applies.
- (2) This subsection applies if there is a chargeable payment within 5 years after the making of the exempt distribution.
- (3) If subsection (2) applies, all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made within the period of 3 years after the making of the chargeable payment.
- (4) Those adjustments may be made despite any time limit on the making of an assessment or the amendment of a return.
- (5) In this section—  
“exempt distribution” means a distribution that is exempt because of section 213(2) of ICTA (distributions involving shares in 75% subsidiaries),  
and  
“chargeable payment” has the meaning given in section 214(2) of that Act.
- (6) Subsections (7) and (8) apply for determining for the purposes of this section whether one company is a 75% subsidiary of another company.
- (7) The other company is treated as not being the owner of any share capital that it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade.
- (8) The other company is treated as not being the owner of any share capital that—  
(a) it owns indirectly, and

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- (b) is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

**788 Provisions supplementing sections 780 to 787 U.K.**

- (1) References in sections 780 to 787 (degrouching) to a company ceasing to be a member of a group do not include cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.
- (2) For the purposes of those sections an asset acquired by a company is treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset.
- (3) For the purposes of those sections and this section two or more companies are associated if, by themselves, they would form a group of companies.

**789 Merger carried out for genuine commercial reasons U.K.**

- (1) Sections 780 to 787 do not apply if—
  - (a) the transferee ceases to be a member of a group of companies (“the group”) as part of a merger,
  - (b) the merger is carried out for genuine commercial reasons, and
  - (c) the avoidance of liability to tax is not the main purpose of the merger or one of its main purposes.
- (2) For this purpose “merger” means an arrangement in respect of which each of conditions A to D is met.
- (3) Condition A is that—
  - (a) as a result of the arrangement one or more companies (“the acquiring company” or “the acquiring companies”) acquire one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee,
  - (b) the acquiring company is not a member of the group or, as the case may be, none of the acquiring companies is such a member,
  - (c) at least 25% by value of each of the interests acquired consists of a holding of ordinary share capital, and
  - (d) the acquisition is not with a view to the disposal of the interests.
- (4) Condition B is that—
  - (a) as a result of the arrangement one or more members of the group acquire one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on—
    - (i) by the acquiring company or acquiring companies, or
    - (ii) by a company at least 90% of whose ordinary share capital was then beneficially owned by two or more of the acquiring companies,
  - (b) at least 25% by value of each of the interests acquired consists of a holding of ordinary share capital,
  - (c) the remainder of the interest, or as the case may be of each of the interests, acquired consists of a holding of share capital (of any description) or debentures or both, and
  - (d) the acquisition is not with a view to the disposal of the interests.

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- (5) Condition C is that the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (3) is substantially the same as the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (4).
- (6) Condition D is that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (3)—
  - (a) consists of, or is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in subsection (4), or
  - (b) consists partly of, and as to the balance is applied in the acquisition of, that interest or those interests.
- (7) Section 790 supplements this section.

#### **790 Provisions supplementing section 789 U.K.**

- (1) In section 789 “arrangement” includes a series of arrangements.
- (2) For the purposes of section 789(3) and (4) a member of a group of companies is treated as carrying on as one business the activities of that group.
- (3) For the purposes of section 789(3)(c), (4)(b) and (5) the value of an interest is determined as at the date of its acquisition.
- (4) For the purposes of section 789(6), any part of the consideration for the acquisition which is small by comparison with the total is ignored.

#### **791 Application of roll-over relief in relation to degrouping charge U.K.**

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies with the modifications specified in subsections (2) to (4) if a company is treated as having realised an asset as a result of section 780 or 785 (degrouping).
- (2) In section 755 (conditions relating to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute references to its being a chargeable intangible asset in relation to the transferor.
- (3) In section 756(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute—
  - (a) in a case within section 780, references to the date on which the transferee ceased to be a member of the group, and
  - (b) in a case within section 785, references to the date on which the transferee ceased to meet the qualifying condition.
- (4) For references in Chapter 7 to the proceeds of realisation substitute references to the amount for which the transferee is treated as having realised the asset.
- (5) A reduction of that amount as a result of a claim for relief under Chapter 7 does not affect the value at which the company is treated as having reacquired the asset.
- (6) In this section “the transferee” and “the transferor” have the same meaning as in section 780.



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### *Reallocation of degrouping charge within group and recovery*

#### **792 Reallocation of charge within group U.K.**

- (1) This section applies if a chargeable realisation gain (see section 741) accrues to a company (“A”) under section 780 or 785 in respect of an asset.
- (2) A and a company (“B”) that was a member of the relevant group at the relevant time may jointly elect that the gain, or such part of it as may be specified in the election, must be treated as accruing to B, and not A.
- (3) In a case within section 780—
  - (a) “the relevant group” is the group of which A was a member at the relevant time, and
  - (b) “the relevant time” is immediately before A ceases to be a member of the group.
- (4) In a case within section 785—
  - (a) “the relevant group” is the second group (within the meaning of that section), and
  - (b) “the relevant time” is immediately before A ceases to meet the qualifying condition (within the meaning of that section).
- (5) The effect of the election is that the gain, or the part specified in the election, is treated—
  - (a) as if it had accrued to B at the relevant time as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect), and
  - (b) if B is not UK resident at the relevant time, as if it had accrued in respect of an asset held for the purposes of a permanent establishment of B in the United Kingdom.
- (6) Section 793 makes further provision about elections under this section.
- (7) Section 794 makes provision for enabling claims under Chapter 7 to be made by B.
- (8) In sections 793 and 794 references to “A” and “B” and “the relevant time” must be read in accordance with this section.

#### **793 Further requirements about elections under section 792 U.K.**

- (1) An election under section 792 may be made only if subsection (2) or (3) applies to B.
- (2) This subsection applies if at the relevant time B was UK resident.
- (3) This subsection applies if at the relevant time—
  - (a) B carried on a trade in the United Kingdom through a permanent establishment, and
  - (b) B was not exempt from corporation tax in respect of the income or chargeable gains of that permanent establishment because of arrangements under Part 18 of ICTA (double taxation relief).
- (4) An election under section 792 may not be made if at the relevant time B was—
  - (a) a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or



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- (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).
- (5) An election under section 792 may only be made—
- (a) by notice in writing to an officer of Revenue and Customs, and
  - (b) not later than 2 years after the end of the accounting period of A in which the relevant time falls.

#### **794 Application of roll-over relief in relation to reallocated charge U.K.**

- (1) This section applies where an election has been made under section 792 for the purpose of enabling B to make a claim under Chapter 7 (roll-over relief on realisation and reinvestment).
- (2) Chapter 7 applies as if the realisation of the asset treated as occurring under section 780 or 785 had been by B, and not A.
- (3) The conditions in section 755 (conditions relating to the old asset) are treated as met in relation to the asset if they would have been met if there had been no election and A had made the claim.
- (4) The proceeds of realisation and the cost of the old asset recognised for tax purposes are what they would have been if there had been no election and A had made the claim.
- (5) If the election relates to only part of the gain on the realisation of an asset treated as occurring under section 780 or 785, Chapter 7 and this section apply as if the realisation treated as occurring had been of a separate asset representing a corresponding part of the asset.
- (6) If subsection (5) applies, any necessary apportionments must be made accordingly.

#### **795 Recovery of charge from another group company or controlling director U.K.**

- (1) This section applies if—
  - (a) a company (“A”) is liable to a degrouping charge,
  - (b) an amount of corporation tax has been assessed on A for the relevant accounting period, and
  - (c) the whole or part of that amount is unpaid at the end of the period of 6 months after the time when it became payable.
- (2) An officer of Revenue and Customs may serve a notice on the persons to whom this subsection applies (see subsections (3) and (4)) requiring them to pay the lesser of—
  - (a) the amount of corporation tax referable to the degrouping charge (see section 796(2)), or
  - (b) the amount that remains unpaid of the corporation tax payable for the relevant accounting period by A.
- (3) If A was a member of a group at the relevant time, subsection (2) applies to—
  - (a) a company that was at that time the principal company of the group, and
  - (b) any other company that at any time in the period of 12 months ending with the relevant time—
    - (i) was a member of that group, and
    - (ii) owned the relevant asset or any part of it.

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- (4) If at the relevant time A is not UK resident but carries on a trade in the United Kingdom through a permanent establishment, subsection (2) applies to any person who is a controlling director—
- (a) of A,
  - (b) of a company that has control of A,
  - (c) of a company that had control of A within the period of 12 months ending with the relevant time,
- or was such a controlling director during that period.
- (5) Section 796 applies for the interpretation of this section and in that section references to “A” must be read in accordance with this section.

## 796 Interpretation of section 795 **U.K.**

- (1) For the purposes of section 795 and this section—
- “the relevant accounting period” is the accounting period in which the degrouping charge falls to be brought into account by A,
- “the relevant time” is—
- (a) in a case within section 780, when A ceased to be a member of the group,
  - (b) in a case within section 785, when A ceased to meet the qualifying condition (within the meaning of that section), and
  - (c) if there has been an election under section 792, the time that would have been the relevant time under paragraph (a) or (b) had there been no such election, and
- “the relevant asset” is the asset in respect of which the degrouping charge arises.
- (2) For the purposes of section 795 the amount of corporation tax referable to a degrouping charge is the difference between—
- (a) the tax in fact payable for the relevant accounting period, and
  - (b) the tax that would have been payable for that period in the absence of the degrouping charge.
- (3) References in section 795 and this section to a degrouping charge are to—
- (a) a credit required to be brought into account under section 780(3) or 785(4), or
  - (b) if there has been an election under section 792, a credit required to be brought into account as a result of the election.
- (4) In section 795 and this section—
- “director”, in relation to a company—
- (a) has the meaning given by section 67(1) of ITEPA 2003 (read with section 67(2) of that Act) and
  - (b) includes any person falling within section 417(5) of ICTA (read with section 417(6) of that Act),
- “controlling director”, in relation to a company, means a director of the company who has control of it, and
- “group” and “principal company” have the meaning that would be given by Chapter 8 if in that Chapter for references to 75% subsidiaries there were substituted references to 51% subsidiaries.
- (5) In subsection (4) “control” has the meaning given by section 416(2) to (6) of ICTA.

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## **797 Recovery under section 795: procedure etc** **U.K.**

- (1) A notice served under section 795(2) may require the payment of the amount required to be paid by the notice within 30 days of the service of the notice.
- (2) The notice must state—
  - (a) the amount of the tax referable to the degrouping charge (within the meaning given in section 796(2)),
  - (b) the amount of corporation tax assessed on A for the relevant accounting period that remains unpaid,
  - (c) the date when it first became payable, and
  - (d) the amount required to be paid by the person on whom the notice is served.
- (3) The notice has effect—
  - (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (4) A person who has paid an amount required to be paid by a notice under section 795(2) may recover the amount paid from A.
- (5) A payment required to be made by such a notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.
- (6) In this section “A” and “the relevant accounting period” have the same meaning as in section 795 (see section 795(1) and section 796(1) respectively).

## **798 Recovery under section 795: time limit** **U.K.**

- (1) A notice under section 795(2) must be served before the end of the period of 3 years beginning with the date on which A's liability to corporation tax for the relevant accounting period is finally determined.
- (2) In subsection (1) “A” and “the relevant accounting period” have the same meaning as in section 795 (see section 795(1) and section 796(1) respectively).
- (3) If the unpaid tax is charged because of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (1) is the date on which the determination was made.
- (4) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is the latest of—
  - (a) the last date on which notice of enquiry may be given into the return containing the self-assessment,
  - (b) if notice of enquiry is given, 30 days after the enquiry is completed,
  - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion,
  - (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
  - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

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- (5) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is—
- (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, and
  - (b) if there is such an appeal, the date on which the appeal is finally determined.
- (6) In this section—
- “self-assessment” includes a self-assessment that supersedes a determination as a result of paragraph 40 of Schedule 18 to FA 1998, and
- “discovery assessment” means an assessment under paragraph 41(1) of that Schedule.

*Disregard of payments between group members for reliefs*

**799 Disregard of payments between group members for reliefs U.K.**

- (1) If a payment for group roll-over relief or for the reallocation of a degrouping charge does not exceed the amount of the relevant relief—
- (a) it is not taken into account in calculating profits or losses of either of the companies involved for corporation tax purposes, and
  - (b) it is not a distribution for any of the purposes of the Corporation Tax Acts.
- (2) A payment for group roll-over relief is a payment made—
- (a) in connection with a claim for relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) made because of—
    - (i) section 777 (relief on realisation and reinvestment: application to group member), or
    - (ii) section 779 (rules that apply to cases within section 778(1)),
  - (b) by the company whose proceeds of realisation are reduced as a result of the claim,
  - (c) to a company whose acquisition costs are reduced (in a case within section 777) or the tax written-down value of whose assets is reduced (in a case within section 779) as a result of the claim, and
  - (d) in accordance with an agreement between those companies in connection with the claim.
- (3) A payment for the reallocation of a degrouping charge is a payment made—
- (a) in connection with an election under section 792 (reallocation of charge within group),
  - (b) by the company to which the chargeable realisation gain accrues,
  - (c) to the company to which as a result of the election the whole or part of that gain is treated as accruing, and
  - (d) in accordance with an agreement between those companies in connection with the election.
- (4) In the case of a payment in connection with such a claim for relief as is mentioned in section 777(3), the amount of the relevant relief is the amount of the reduction, as a result of the claim, in the acquisition costs of the company to which the payment is made.

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- (5) In the case of a payment in connection with such a claim for relief as is mentioned in section 778(4), the amount of the relevant relief is the amount of the reduction, as a result of the claim, in the tax written-down value of the assets of the company to which the payment is made.
- (6) In the case of a payment in connection with an election under section 792, the amount of the relevant relief is the amount treated as a result of the election as accruing to the company to which the payment is made.

## CHAPTER 10 **U.K.**

### EXCLUDED ASSETS

#### *Introductory*

#### **800 Introduction **U.K.****

- (1) This Chapter provides for the exclusion from this Part of certain assets.
- (2) This Chapter provides for 3 kinds of exclusion—
  - (a) assets within sections 803 to 809 are wholly excluded from this Part,
  - (b) assets within sections 810 to 813 are excluded from this Part except as respects royalties, and
  - (c) assets within section 814 or 815 are excluded from this Part to the extent specified in that section.
- (3) For further rules about the exclusion of assets from this Part, see—
  - (a) Chapter 16 (pre-FA 2002 assets etc), and
  - (b) section 902 (assets held by a life insurance company for the purposes of its life assurance business).

#### **801 Right to dispose of or acquire excluded asset also excluded **U.K.****

So far as an asset of any description is excluded from this Part by this Chapter, an option or other right to acquire or dispose of an asset of that description is similarly excluded.

#### **802 Effect of partial exclusion **U.K.****

- (1) If because of any of sections 803 to 815 an asset is excluded to the extent that—
  - (a) it represents particular rights,
  - (b) it is an asset of a particular description,
  - (c) it is held for particular purposes, or
  - (d) it represents expenditure of a particular kind,this Part applies as if there were a separate asset representing so much of the asset as is not so excluded.
- (2) The other provisions of the Corporation Tax Acts apply as if there were a separate asset representing so much of the asset as is excluded.

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- (3) Any apportionment necessary for the purposes of this section must be made on a just and reasonable basis.

*Assets wholly excluded from this Part*

**803 Non-commercial purposes etc U.K.**

This Part does not apply to an intangible fixed asset so far as it is held—

- (a) for a purpose that is not a business or other commercial purpose of the company, or
- (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

**804 Assets for which capital allowances previously made U.K.**

- (1) This Part does not apply to an intangible asset of a company if conditions A, B and C are met.
- (2) Condition A is that the asset falls to be treated as an intangible asset in accounts of the company.
- (3) Condition B is that in a previous period of account the asset fell to be treated as a tangible asset in accounts of the company.
- (4) Condition C is that an allowance under Part 2 of CAA 2001 (plant and machinery allowances) was made to the company in respect of the asset on the basis that it was a tangible asset.

**805 Rights over tangible assets U.K.**

This Part does not apply to an intangible fixed asset so far as it represents—

- (a) rights enjoyed by virtue of an estate, interest or right in or over land, or
- (b) rights in relation to tangible movable property.

**806 Financial assets U.K.**

- (1) This Part does not apply to financial assets.
- (2) In this Part “financial asset” has the same meaning as it has for accounting purposes.
- (3) “Financial asset” includes—
  - (a) loan relationships (see Parts 5 and 6),
  - (b) derivative contracts (see Part 7),
  - (c) contracts or policies of insurance or capital redemption policies, and
  - (d) rights under a collective investment scheme within the meaning of FISMA 2000 (see section 235 of that Act).

**807 Rights in companies, trusts etc U.K.**

- (1) This Part does not apply to an asset so far as it represents—

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- (a) shares or other rights in relation to the profits, governance or winding up of a company,
  - (b) rights under a trust, or
  - (c) the interest of a partner in a firm.
- (2) Subsection (1)(b) does not apply to rights that for accounting purposes fall to be treated as representing an interest in trust property that is an intangible fixed asset to which this Part applies.
- (3) Subsection (1)(c) does not apply to an interest that for accounting purposes falls to be treated as representing an interest in partnership property that is an intangible fixed asset to which this Part applies.

#### **808 Assets representing production expenditure on films** **U.K.**

- (1) This Part does not apply to an intangible fixed asset held by a film production company so far as it represents production expenditure on a film to which Chapter 2 of Part 15 (taxation of activities of film production company) applies.
- (2) In this section—
- (a) “film” has the same meaning as in Part 15 (see section 1181),
  - (b) “film production company” has the same meaning as in that Part (see section 1182), and
  - (c) “production expenditure” has the same meaning as in that Part (see section 1184(1)).

#### **809 Oil licences** **U.K.**

- (1) This Part does not apply to an oil licence or an interest in an oil licence.
- (2) In subsection (1) “oil licence” means a UK oil licence or a foreign oil concession.
- (3) In this section—
- “UK oil licence” means a licence under—
- (a) Part 1 of the Petroleum Act 1998 (c. 17) (“the 1998 Act”), or
  - (b) the Petroleum Production (Northern Ireland) Act 1964 (c. 28 (N.I.)) (“the 1964 Act”),
- authorising the winning of oil, and
- “foreign oil concession” means any right that—
- (a) is a right to search for or win oil that exists in its natural condition in a place to which neither the 1998 Act nor the 1964 Act applies, and
  - (b) is conferred or exercisable (whether or not under a licence) in relation to a particular area.
- (4) In subsection (1) “interest in an oil licence” includes any entitlement under an agreement to, or to a share of, oil or the proceeds of its sale if the agreement—
- (a) relates to oil from the whole or a part of the licensed area, and
  - (b) was made before the extraction of the oil to which it relates.
- (5) In subsection (4)(a) “licensed area” means—
- (a) in relation to a UK oil licence, the area to which the licence applies, and



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- (b) in relation to a foreign oil concession, the area in relation to which the right to search for or win oil is conferred or exercisable under the concession.
- (6) In this section “oil”—
- (a) in relation to a UK oil licence, means any substance won or capable of being won under the authority of a licence granted under Part 1 of the 1998 Act or the 1964 Act, other than methane gas won in the course of making and keeping mines safe, and
  - (b) in relation to a foreign oil concession, means any petroleum (as defined in section 1 of the 1998 Act).

*Assets excluded from this Part except as respects royalties*

### **810 Mutual trade or business** U.K.

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset so far as it is held for the purposes of any mutual trade or business.
- (2) But see section 902(1) and (2) (which disapplies subsection (1) in relation to assets held for the purposes of life assurance business).

### **811 Sound recordings** U.K.

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company on the production or acquisition of the master version of a sound recording.
- (2) For this purpose—
  - (a) “sound recording” does not include a film soundtrack,
  - (b) “master version” means master tape or master audio disc of the recording, and
  - (c) references to the master version include any rights in the master version that are held or acquired with it.

### **812 Master versions of films** U.K.

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company—
  - (a) on the production of the original master version of a film that began principal photography before 1 January 2007, or
  - (b) on the acquisition before 1 October 2007 of such an original master version.
- (2) In this section—
  - (a) “film” has the same meaning as in Part 15 (see section 1181),
  - (b) “original master version” means the original negative, tape or disc, and
  - (c) references to the original master version of a film include—
    - (i) the original master version of the film soundtrack, if any, and
    - (ii) any rights in the original master version that are held or acquired with it.

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

- C8** S. 812 applied (with modifications) by S.I. 2007/1050, regs. 3-12 (as amended (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. 131](#) (with [Sch. 2 Pts. 1, 2](#)))

**813 Computer software treated as part of cost of related hardware** **U.K.**

Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company on computer software that falls to be treated for accounting purposes as part of the costs of the related hardware.

*Assets excluded from this Part to the extent specified*

**814 Research and development** **U.K.**

- (1) This section applies to an intangible fixed asset held by a company so far as it represents expenditure by the company on research and development.
- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for—
  - (a) section 721 (receipts recognised as they accrue), and
  - (b) section 722 (receipts in respect of royalties so far as not dealt with under section 721).
- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 732 (debit on reversal of previous accounting gain) so far as that section relates to credits previously brought into account under section 721 or 722.
- (4) Chapter 4 (realisation of intangible fixed assets) applies to the asset as if its cost did not include any expenditure on research and development.
- (5) In this section “research and development” has the meaning given by section 837A of ICTA and includes oil and gas exploration and appraisal.

**815 Election to exclude capital expenditure on software** **U.K.**

- (1) If a company so elects in respect of capital expenditure by the company on computer software, this section applies to an intangible fixed asset held by the company so far as it represents the expenditure.
- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for—
  - (a) section 721 (receipts recognised as they accrue), and
  - (b) section 722 (receipts in respect of royalties so far as not dealt with under section 721).
- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 732 (debit on reversal of previous accounting gain) so far as that section relates to credits previously brought into account under section 721 or 722.

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- (4) Chapter 4 (realisation of intangible fixed assets) applies as if the cost of the asset did not include any expenditure in respect of which an election under this section has been made.
- (5) A credit is required to be brought into account under this Part in respect of the asset only so far as the receipts to which the credit relates are not taken into account in calculating disposal values under section 72 of CAA 2001.
- (6) The references in this section and section 816—
  - (a) to capital expenditure, and
  - (b) to the time when such expenditure is incurred,
 have the same meaning as if this section were in CAA 2001.
- (7) Section 816 makes further provision about elections under this section.
- (8) See also section 903(1) (which extends elections under this section to capital expenditure on some computer software by insurance companies).

## **816 Further provision about elections under section 815 U.K.**

- (1) An election under section 815 must specify the expenditure to which it relates.
- (2) The election must be made not more than 2 years after the end of the accounting period in which the expenditure was incurred.
- (3) The election must be made in writing to an officer of Revenue and Customs.
- (4) The election is irrevocable.

## **CHAPTER 11 U.K.**

### TRANSFER OF BUSINESS OR TRADE

#### *Introduction*

## **817 Overview of Chapter U.K.**

- (1) This Chapter contains provisions—
  - (a) treating some transfers of assets as tax-neutral transfers for the purposes of this Part (see sections 818, 820, 822, 824 and 826), and
  - (b) giving relief in respect of the transfer of assets to a non-UK resident company (see sections 827 to 830).
- (2) Sections 831 to 833 deal with the genuine commercial transaction requirement (which applies in some cases for the treatment mentioned in subsection (1)(a)).
- (3) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 776.

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### *Tax-neutral transfers*

#### **818 Company reconstruction involving transfer of business** **U.K.**

- (1) This section applies if—
  - (a) a scheme of reconstruction involves the transfer of the whole or part of the business of one company (“the transferor”) to another company (“the transferee”), and
  - (b) the transferor receives no part of the consideration for the transfer (otherwise than by the transferee taking over the whole or part of the liabilities of the business),but see subsections (3) to (5).
- (2) If the transfer includes intangible fixed assets that—
  - (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,the transfer of those assets is tax-neutral for the purposes of this Part.
- (3) This section does not apply if the transfer is one to which section 775 (transfers within a group) applies.
- (4) This section does not apply if the transferor or the transferee is—
  - (a) a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
  - (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).
- (5) This section applies only if the reconstruction meets the genuine commercial transaction requirement (see section 831).
- (6) In this section “scheme of reconstruction” has the same meaning as it has in section 136 of TCGA.

#### **819 European cross-border transfers of business: introduction** **U.K.**

- (1) Section 820 applies if—
  - (a) condition A or B is met, and
  - (b) each of the companies mentioned in subsection (2)(a) or (3)(a) makes a claim under this section,but see section 820(2) and (3).
- (2) Condition A is that—
  - (a) an EU company resident in one member State transfers the whole or part of the business carried on by it in the United Kingdom to an EU company resident in another member State, and
  - (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor.
- (3) Condition B is that—
  - (a) an EU company transfers part of its business to one or more EU companies,

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- (b) the transferor is resident in one member State,
  - (c) the part of the transferor's business which is transferred is carried on by the transferor in the United Kingdom,
  - (d) at least one transferee is resident in a member State other than that in which the transferor is resident,
  - (e) the transferor continues to carry on a business after the transfer, and
  - (f) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to the persons holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (4) For the purposes of this Chapter, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (5) In this section and section 820—
- (a) “company” means any entity listed as a company in the Annex to the Mergers Directive,
  - (b) “EU company” means a body incorporated under the law of a member State,
  - (c) “securities” includes shares,
  - (d) “transferee” has the same meaning as in subsection (2) or (3), and
  - (e) “the transferor” has the same meaning as in subsection (2) or (3).

## **820 Transfer of assets on European cross-border transfer of business** **U.K.**

- (1) If the transfer of business includes intangible fixed assets that—
- (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,
- the transfer of those assets is tax-neutral for the purposes of this Part.
- (2) This section applies only if the transfer of the business or part meets the genuine commercial transaction requirement (see section 831).
- (3) This section does not apply if the transferor is a transparent entity.
- (4) In this section—
- “the transfer of business” means the transfer of business mentioned in section 819(2)(a) or (3)(a), and
  - “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.
- (5) For the purposes of subsection (4) an entity is resident in a member State if—

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- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
- (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

## 821 European cross-border mergers: introduction **U.K.**

- (1) Section 822 applies if the following conditions are met in the case of any merger—
  - (a) conditions A, B and C,
  - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition D, and
  - (c) in the case of a merger within subsection (2)(c) or (d), condition E,but see section 822(3) to (5)).
- (2) Condition A is that—
  - (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that—
  - (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) that transfer of those assets and liabilities is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (6) Condition E is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).
- (7) For the meaning of expressions used in this section, see section 823.

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## **822 Transfer of assets on European cross-border merger** **U.K.**

- (1) If this section applies, the transfer of qualifying assets in the course of the merger is tax-neutral for the purposes of this Part.
- (2) For the purposes of this section an asset is a qualifying asset if—
  - (a) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
  - (b) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.
- (3) This section does not apply if section 818 (company reconstruction involving transfer of business) applies to any qualifying assets transferred in the course of the merger.
- (4) This section does not apply if—
  - (a) one or more of the merging companies is a transparent entity, and
  - (b) the assets and liabilities of a transparent entity are transferred to another company in the course of the merger.
- (5) This section applies only if the merger meets the genuine commercial transaction requirement (see section 831).
- (6) For the meaning of expressions used in this section, see section 823.

## **823 Interpretation of sections 821 and 822** **U.K.**

- (1) This section applies for the interpretation of sections 821 and 822 and this section.
- (2) “Transferor” means—
  - (a) in relation to a merger within section 821(2)(a), a company merging to form the SE,
  - (b) in relation to a merger within section 821(2)(b), a co-operative society merging to form the SCE, and
  - (c) in relation to a merger within section 821(2)(c) or (d), each company transferring all its assets and liabilities.
- (3) “Transferee” means—
  - (a) in relation to a merger within section 821(2)(a), the SE,
  - (b) in relation to a merger within section 821(2)(b), the SCE, and
  - (c) in relation to a merger within section 821(2)(c) or (d), the company to which assets and liabilities are transferred.
- (4) “Transparent entity” has the meaning given in section 820(4).
- (5) References to a company are references to any entity listed as a company in the Annex to the Mergers Directive.
- (6) In section 821 and this section “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.

## **824 Transfer of business of building society to company** **U.K.**

- (1) This section applies if—



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- (a) there is a transfer of the whole of a building society's business to a company (“the successor company”) in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986 (c. 53),
  - (b) the transfer includes intangible fixed assets,
  - (c) those assets are chargeable intangible assets in relation to the society immediately before the transfer, and
  - (d) those assets are chargeable intangible assets in relation to the successor company immediately after the transfer.
- (2) The transfer of those assets is tax-neutral for the purposes of this Part.
- (3) For the application of sections 780 and 785 in cases where this section applies, see section 825.
- (4) In that section “the successor company” has the same meaning as in this section.

**825 Application of sections 780 and 785 where transfer within section 824 occurs U.K.**

- (1) This section deals with the application of—
  - (a) section 780 (deemed realisation and reacquisition at market value), and
  - (b) section 785 (principal company becoming member of another group),where there is a transfer within section 824.
- (2) If, because of the transfer, a company ceases to be a member of the same group as the building society, that event does not cause section 780 or 785 to apply as respects any asset acquired by the company from the building society or any other member of the same group.
- (3) If the building society and the successor company are members of the same group at the time of the transfer but later cease to be, that later event does not cause section 780 or 785 to apply to any asset to which this subsection applies.
- (4) Subsection (3) applies to—
  - (a) any asset acquired by the successor company on or before the transfer from the building society or any other member of that same group, or
  - (b) any asset acquired from the building society or any other member of that group by a company other than the successor company that is a member of that group at the time of the transfer.
- (5) Subsection (6) applies if a company which is a member of the same group as the building society at the time of the transfer—
  - (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
  - (b) later ceases to be a member of that group.
- (6) Section 780 applies on that later event as if any asset to which this subsection applies that has not been acquired from the successor company had been so acquired.
- (7) Subsection (6) applies to—
  - (a) any asset acquired by the company from the building society when the company and the building society were members of the same group, or

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- (b) any asset acquired by the company from another company which is a member of the same group at the time of the transfer, when the company, the building society and the other company, were members of the same group.
- (8) Subsection (6) does not apply if—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa,
  - (b) those companies cease simultaneously to be members of the same group as the successor company, and
  - (c) those companies continue to be members of the same group as one another.

## 826 Amalgamation of, or transfer of engagements by, certain societies U.K.

- (1) This section applies if—
- (a) two or more societies to which this section applies amalgamate or there is a transfer of engagements from one such society to another,
  - (b) in the course of the amalgamation or transfer of engagements or as part of it intangible fixed assets are transferred from one society (“the transferor”) to another (“the transferee”),
  - (c) those assets are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (d) those assets are chargeable intangible assets in relation to the transferee immediately after the transfer.
- (2) The transfer of those assets is tax-neutral for the purposes of this Part.
- (3) This section applies to—
- (a) a building society,
  - (b) a registered industrial and provident society, and
  - (c) a co-operative association in relation to which section 486(1) and (8) of ICTA has effect as it has effect in relation to a registered industrial and provident society.

*Transfer of assets to non-UK resident company*

## 827 Claims to postpone charge on transfer U.K.

- (1) This section applies if—
- (a) a UK resident company carrying on a trade outside the United Kingdom through a permanent establishment (“the transferor”) transfers that trade or part of it to a non-UK resident company (“the transferee”),
  - (b) the transfer meets conditions A, B and C,
  - (c) the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer (“relevant assets”), and
  - (d) the transferor makes a claim under this section.
- (2) If this section applies, this Part applies in accordance with sections 828 to 830.
- (3) Condition A is that the transfer includes—
- (a) the whole assets of the transferor used for the purposes of the trade or part, or

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- (b) the whole of those assets other than cash.
- (4) Condition B is that the transfer is wholly or partly in exchange for securities consisting of—
  - (a) shares within subsection (5) that are issued by the transferee to the transferor, or
  - (b) shares within paragraph (a) and loan stock that is so issued.
- (5) Shares are within this subsection if they—
  - (a) amount in all to at least one quarter of the ordinary share capital of the transferee, or
  - (b) do so if taken together with any other shares in the transferee already held by the transferor.
- (6) Condition C is that the transfer meets the genuine commercial transaction requirement (see section 831).
- (7) No claim may be made under this section if a claim is made in relation to the transfer under section 807B(6) of ICTA (European cross-border transfers of business: application for section 807C of that Act to apply).
- (8) In sections 828 to 830 “transferor”, “transferee” and “relevant assets” have the same meaning as in this section.

## **828 Relief on transfer** **U.K.**

- (1) If the proceeds of realisation of a relevant asset exceed the cost of the asset recognised for tax purposes, the proceeds are treated as reduced.
- (2) If the securities are the whole consideration for the transfer, the reduction is by the amount of the excess.
- (3) If the securities are not the whole of that consideration, the reduction is by the appropriate proportion of the excess.
- (4) In subsection (3) “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

## **829 Charge on subsequent realisations** **U.K.**

- (1) If at any time after the transfer the transferor realises the whole or part of the securities held by it immediately before that time, the transferor must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.
- (2) In subsection (1)—
  - “the total deferred gain” means the sum of the amounts by which the proceeds of realisation of relevant assets were reduced under section 828(2) or (3), so far as not already taken into account under subsection (1) or (3) of this section, and
  - “the appropriate proportion” means the proportion that the market value of the part of the securities realised bears to the market value of the securities held immediately before the realisation.

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- (3) If at any time within 6 years after the transfer the transferee realises all or some of the relevant assets held by it immediately before that time, the transferor must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.
- (4) In subsection (3)—
  - “the total deferred gain” has the meaning given in subsection (2), and
  - “the appropriate proportion” means the proportion that the deferred gain attributable to the relevant assets realised bears to the deferred gain attributable to the relevant assets held immediately before the realisation.
- (5) For the purposes of subsection (4) the deferred gain attributable to relevant assets means the sum of the amounts by which the proceeds of realisation of those assets were reduced under section 828(2) or (3).
- (6) For cases where transfers are ignored for the purposes of subsection (1) or (3), see section 830.

### **830 Exclusion from section 829 of group transfers** U.K.

- (1) For the purposes of section 829(1), any disposal within section 171 of TCGA 1992 (transfers within a group) is ignored.
- (2) For the purposes of section 829(3), any transfer by one member of a group to another is ignored.
- (3) This subsection applies if—
  - (a) a person (“A”) acquires securities on a transfer that is ignored under subsection (1), and
  - (b) any previous transfer that has occurred was ignored under subsection (1) or (2).
- (4) If subsection (3) applies, a subsequent realisation of the securities by A is treated as a realisation by the transferor.
- (5) This subsection applies if—
  - (a) a person (“B”) acquires an asset on a transfer that is ignored under subsection (2), and
  - (b) no previous transfer has occurred that was not ignored under subsection (1) or (2).
- (6) If subsection (5) applies, a subsequent realisation of the asset by B is treated as a realisation by the transferee.

*The genuine commercial transaction requirement and clearance*

### **831 The genuine commercial transaction requirement and clearance** U.K.

- (1) For the purposes of this Chapter, a reconstruction, transfer or merger meets the genuine commercial transaction requirement if it—
  - (a) is effected for genuine commercial reasons, and

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- (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (2) The conditions in subsection (1) are treated as met if before the reconstruction, transfer or merger—
- (a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the appropriate applicant that they are satisfied that the requirements of subsection (1) will be met.
- (3) In subsection (2) “the appropriate applicant” means—
- (a) in the case of an application about a reconstruction within section 818(1)(a), the transferee (within the meaning of that section),
  - (b) in the case of an application about a transfer falling within section 820 because condition A in section 819(2) is met, the transferor and the transferee (within the meaning of section 819(2)),
  - (c) in the case of an application about a transfer falling within section 820 because condition B in section 819(3) is met, the transferor and the transferee (within the meaning of section 819(3)),
  - (d) in the case of an application about a merger falling within section 821(2), the transferor (as defined in section 823(2)), and
  - (e) in the case of an application about a transfer falling within section 827(1)(a), the transferor (within the meaning of that section).
- (4) For the procedure on such an application, see section 832.

### **832 Procedure on application for clearance** **U.K.**

- (1) This section applies in relation to an application under section 831(2).
- (2) The application must be in writing and must contain particulars of the operations that are to be effected.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).
- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

### **833 Decision on application for clearance** **U.K.**

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 831(2) to the applicant—
  - (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 832(3), within 30 days of the notice being complied with.

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- (2) If the Commissioners for Her Majesty's Revenue and Customs—
- (a) notify the applicant that they are not satisfied that the conditions in section 831(1) will be met, or
  - (b) do not notify their decision to the applicant within the time required by subsection (1),
- the applicant may within 30 days of the notification or of that time require them to transmit the application to the tribunal, together with any notice given and further particulars provided under section 832(3).
- (3) In that case any notification by the tribunal has effect for the purposes of section 831(2) (b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.
- (4) If any particulars provided under section 832 do not fully and accurately disclose all facts and considerations material for the decision—
- (a) of the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) of the tribunal,
- any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the tribunal is void.

## CHAPTER 12 **U.K.**

### RELATED PARTIES

#### *Introductory*

#### **834 Overview of Chapter **U.K.****

- (1) This Chapter deals with the question whether a person and a company are related parties for the purposes of this Part.
- (2) That question is relevant, in particular, for Chapter 13 (transactions between related parties).

*Meaning of “related party”, “control” and “major interest”*

#### **835 “Related party” **U.K.****

- (1) This section explains when a person (“A”) is a “related party” in relation to a company (“B”) for the purposes of this Part.
- (2) In a case where A is a company, A is a related party in relation to B if—
  - (a) A has control of, or holds a major interest in, B, or
  - (b) B has control of, or holds a major interest in, A.
- (3) In a case where A is a company, A is a related party in relation to B if A and B are both under the control of the same person (but see subsection (4)).
- (4) Subsection (3) does not apply if the person controlling both A and B is—
  - (a) the Crown,

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- (b) a Minister of the Crown or a government department,
  - (c) the Scottish Ministers,
  - (d) the National Assembly for Wales,
  - (e) a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
  - (f) a foreign sovereign power, or
  - (g) an international organisation.
- (5) A is a related party in relation to B if B is a close company and A is, or is an associate of—
- (a) a participator in B, or
  - (b) a participator in a company that has control of, or holds a major interest in, B.
- (6) In a case where A is a company, A is a related party in relation to B if B is another company in the same group.
- (7) A is treated as being a related party in relation to B if A would be so but for any person (other than an individual) being the subject of—
- (a) insolvency arrangements, or
  - (b) equivalent arrangements under the law of any country or territory, whether made when the person is solvent or insolvent.
- (8) In subsection (7) “insolvency arrangements” includes—
- (a) arrangements under which a person acts as the liquidator, provisional liquidator, receiver, administrator or administrative receiver of a company or firm, and
  - (b) voluntary arrangements proposed or approved in relation to a company or firm under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (9) In subsection (8)—
- “administrative receiver” has the meaning given in section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989,
- “administrator” means a person appointed to manage the affairs, business and property of the company or firm under Schedule B1 to that Act or Order,
- “receiver” means a person appointed as receiver of some or all of the property of the company or firm under an enactment or under an instrument issued for the purpose of representing security for, or the rights of creditors in respect of, any debt.
- (10) For the meaning of “control”, “major interest”, “associate”, “participator”, see sections 836, 837 and 841.

### 836 “Control” **U.K.**

- (1) For the purposes of this Chapter, in relation to a company, “control” means the power of a person to secure that the company's affairs are conducted in accordance with the person's wishes—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or



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- (b) as a result of powers conferred by the articles of association or other document regulating the company or any other company.
- (2) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has control of a company.

**837 “Major interest” U.K.**

- (1) For the purposes of this Chapter, a person has a “major interest” in a company if—
- (a) the person and one other person together have control of that company, and
  - (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.
- (2) The reference in subsection (1)(a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in section 836.
- (3) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has a major interest in a company.

*Rights and powers to be taken into account*

**838 General rule U.K.**

- (1) This section provides for a person (“A”) to be treated as having rights and powers where A's rights or powers are relevant in determining if a person—
- (a) has control of a company, or
  - (b) has a major interest in a company.
- (2) A is treated as having rights and powers that A—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (3) A is treated as having rights and powers of other persons, so far as they are required or may be required to be exercised in any one or more of the following ways—
- (a) on A's behalf,
  - (b) under A's direction, or
  - (c) for A's benefit.
- (4) A is treated as having rights and powers of a person connected with A (see section 842).
- (5) A is treated as having rights and powers that a person connected with A would be treated as having if that person were a person whose rights or powers are relevant in determining if a person has control of or a major interest in a company.
- (6) For the purposes of subsections (3) to (5), a person is treated as having rights or powers that the person—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.

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- (7) Subsection (3) does not apply to rights and powers conferred in relation to property of a borrower by the terms of any security relating to the borrower's loan.

### **839 Rights and powers held jointly U.K.**

- (1) References in this Chapter—
- (a) to rights and powers of a person, or
  - (b) to rights and powers that a person is or will become entitled to acquire,
- include rights or powers that are exercisable by that person, or when acquired will be exercisable by that person, only jointly with one or more other persons.
- (2) Subsection (1) is subject to section 840 (partnerships).

### **840 Partnerships U.K.**

- (1) The rights and powers of a person as a member of a firm are ignored unless the person has control of or a major interest in the firm.
- (2) Whether a person has control of or a major interest in a firm is determined in accordance with sections 836 to 839 as in relation to a company.
- (3) For the purposes of subsection (2), references in those sections to any other company must be read as including any other firm.

#### *Meaning of “participator” and “associate”*

### **841 “Participator” and “associate” U.K.**

- (1) In this Chapter “participator”, in relation to a close company, has the meaning it has for the purposes of Part 11 of ICTA (close companies) (see section 417(1) of that Act), except as provided in subsection (2).
- (2) “Participator” does not include a person just because the person is a loan creditor of the company within the meaning of that Part (see section 417(7) to (9) of ICTA).
- (3) In this Chapter “associate”, in relation to a participator in a close company, has the meaning given by section 417(3) of ICTA.

#### *Connected persons*

### **842 Introduction U.K.**

- (1) Section 843 explains what is meant in this Chapter when a person is referred to as being connected with another person.
- (2) If that section provides that one person (“A”) is connected with another person (“B”), B is connected with A too.
- (3) In that section—
- “relative” means brother, sister, ancestor or lineal descendant, and
  - “settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA (see section 620 of that Act).

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### **843 Who are connected persons** **U.K.**

- (1) An individual (“A”) is connected with another individual (“B”) if—
  - (a) A is B's spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B's spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B's spouse or civil partner.
- (2) A person in the capacity of a trustee of a settlement is connected with—
  - (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual, and
  - (c) any body corporate that is connected with the settlement.
- (3) For the purposes of subsection (2) a body corporate is connected with a settlement if—
  - (a) it is a close company (or not a close company only because it is not UK resident) and the participators include the trustees of the settlement, or
  - (b) it is controlled by a company within paragraph (a).
- (4) A person is connected with a company if they are related parties because of section 835(2) or (3).
- (5) For the purposes of subsection (4) and for the purposes of section 835 as it applies for the purposes of subsection (4)—
  - (a) “company” includes any body corporate or unincorporated association, but does not include a firm, and
  - (b) a unit trust scheme is treated as if it were a company and as if the rights of the unit holders were shares in the company.

## **CHAPTER 13** **U.K.**

### TRANSACTIONS BETWEEN RELATED PARTIES

#### *Introductory*

### **844 Overview of Chapter** **U.K.**

- (1) This Chapter sets out special rules relating to transactions between related parties.
- (2) Sections 845 to 849 are about the rule that transfers between a company and a related party are treated as being at market value.
- (3) Sections 850 and 851 set out other rules for transactions involving related parties.
- (4) See Chapter 12 for the meaning of “related parties”.

#### *Transfers treated as being at market value*

### **845 Transfer between company and related party treated as at market value** **U.K.**

- (1) The basic rule is that a transfer of an intangible asset—

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- (a) from a company to a related party, or
  - (b) to a company from a related party,
- is treated for all purposes of the Taxes Acts as being at market value (as respects both the company and the related party) if condition A or B is met.
- (2) Condition A is that the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer.
  - (3) Condition B is that the asset is a chargeable intangible asset in relation to the transferee immediately after the transfer.
  - (4) That rule is subject to—
    - (a) section 846 (transfers not at arm's length),
    - (b) section 847 (transfers involving other taxes),
    - (c) section 848 (tax-neutral transfers), and
    - (d) section 849 (transfers involving gifts of business assets).
  - (5) In subsection (1)—
    - “market value” means the price the asset might reasonably be expected to fetch on a sale in the open market, and
    - “the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

#### **846 Transfers not at arm's length** **U.K.**

- (1) Section 845 does not apply if the consideration for the transfer—
  - (a) falls to be adjusted for tax purposes under Schedule 28AA to ICTA (provision not at arm's length), or
  - (b) falls within that Schedule without falling to be so adjusted.
- (2) For the purposes of subsection (1)(b) the consideration for a transfer falls within that Schedule without falling to be adjusted under it if—
  - (a) the conditions in paragraph 1(1) of that Schedule are met, but
  - (b) the actual provision does not differ from the arm's length provision.
- (3) In subsection (2) “the actual provision” and “the arm's length provision” have the same meaning as in that Schedule (see paragraph 1(1) and paragraph 1(2) and (3) of that Schedule respectively).

#### **847 Transfers involving other taxes** **U.K.**

- (1) This section applies if—
  - (a) in a case where section 845(1) applies and the asset is transferred from the company to a related party, the transfer is at less than its market value,
  - (b) in a case where that section applies and the asset is transferred to the company from the related party, the transfer is at more than its market value, and
  - (c) conditions A and B apply.
- (2) Condition A is that the related party—
  - (a) is not a company, or

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- (b) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or, as the case may be, immediately before the transfer from it.
- (3) Condition B is that the transfer—
  - (a) gives rise to an amount to be taken into account in calculating any person's income, profits or losses for tax purposes because of a relevant provision, or
  - (b) would do so apart from section 845(1).
- (4) If this section applies, section 845(1) does not apply in relation to the calculation referred to in subsection (3) for the purposes of any relevant provision.
- (5) In this section “relevant provision” means—
  - (a) section 209 of ICTA (meaning of “distribution”), and
  - (b) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings).

#### **848 Tax-neutral transfers** U.K.

- (1) Section 845 does not apply if the transfer is tax-neutral for the purposes of this Part as a result of any provision in this Part.
- (2) For such provisions, see, in particular—
  - (a) section 775 (transfers within a group), and
  - (b) sections 818 to 826 (transfer of business or trade).

#### **849 Transfers involving gifts of business assets** U.K.

- (1) This section applies if—
  - (a) the asset is transferred to the company mentioned in section 845(1), and
  - (b) on a claim for relief under section 165 of TCGA 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under section 165(4)(a).
- (2) The transfer is treated for the purposes of this Part as being at market value, less the amount of the reduction.
- (3) Any necessary adjustments may be made, by way of assessment, amendment of returns or otherwise, regardless of any relevant time limits.

#### *Other rules*

#### **850 Part realisation involving related party acquisition: exclusion of roll-over relief** U.K.

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if there is a related party acquisition as a result of, or in connection with, the part realisation.
- (2) For this purpose there is a related party acquisition if a person who is a related party in relation to the company acquires an interest of any description—
  - (a) in the intangible fixed asset, or

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- (b) in an asset whose value is derived in whole or in part from that asset.

**851 Delayed payment of royalty by company to related party U.K.**

- (1) This section applies if—
- (a) a royalty is payable by a company to or for the benefit of a related party,
  - (b) the royalty is not paid in full within the period of 12 months after the end of the period of account in which a debit in respect of it is recognised by the company for accounting purposes, and
  - (c) credits representing the full amount of the royalty are not brought into account under this Part in any accounting period by the person to whom it is payable.
- (2) The royalty is brought into account for the purposes of this Part only when it is paid.

**CHAPTER 14 U.K.**

MISCELLANEOUS PROVISIONS

*Grants and other contributions to expenditure*

**852 Treatment of grants and other contributions to expenditure U.K.**

- (1) This section applies if a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.
- (2) A gain recognised in the company's profit and loss account in respect of the grant or other payment is treated for the purposes of section 721 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset.
- (3) This section does not apply to a grant within section 853.

**853 Grants to be left out of account for tax purposes U.K.**

- (1) This section applies to the following grants (“exempt grants”)—
- (a) grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants), and
  - (b) grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part.
- (2) A gain in respect of an exempt grant to a company is ignored for the purposes of this Part, even though it is recognised in determining the company's profit or loss.
- (3) This subsection applies if, as a result of an exempt grant being brought into account by the company to which it is made, there is a reduction—
- (a) in the amount of a loss recognised in determining the company's profit or loss, or
  - (b) in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes.
- (4) If subsection (3) applies, the amount of the reduction is added back for the purposes of this Part.

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### *Finance leasing*

#### **854 Finance leasing etc** **U.K.**

- (1) The Treasury may make provision by regulations as to the application of this Part in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease.
- (2) Section 855 is about the provision that the regulations may make.
- (3) References in this section and that section to a finance lease—
  - (a) have the meaning they have for accounting purposes, and
  - (b) include hire-purchase, conditional sale or other arrangements if they are of a similar character to a finance lease.
- (4) References to the finance lessor or finance lessee have a corresponding meaning.
- (5) Regulations under this section may be made so as to have effect from 1 April 2002.

#### **855 Further provision about regulations under section 854** **U.K.**

- (1) Regulations under section 854 may provide that this Part applies as if the asset were an intangible fixed asset of the finance lessor and not a financial asset, even though the asset is accounted for by the finance lessor as a financial asset.
- (2) The regulations may provide that this Part applies as if the amount at which the asset is recognised in the finance lessor's balance sheet were capitalised expenditure on an intangible fixed asset, but that—
  - (a) no election may be made under section 730 (writing down at fixed rate: election for fixed-rate basis) in respect of that amount, and
  - (b) that amount is not to be treated as capitalised expenditure for the purposes of section 756(2) (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets).
- (3) The regulations may provide that if an asset formerly recognised by the finance lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and so comes to be accounted for as a financial asset), the value of the asset so created is recognised as realisation proceeds of the intangible fixed asset on the change of accounting treatment.
- (4) The regulations may provide that assets partially excluded from this Part by sections 810 to 813 or section 902 (assets excluded except as respects royalties) are entirely excluded from this Part as respects the finance lessor if they—
  - (a) are subject to a finance lease, and
  - (b) are accounted for by the finance lessor as financial assets.
- (5) The regulations may provide for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which the finance lessee is liable to income tax.
- (6) The regulations may provide that an intangible asset counts as a pre-FA 2002 asset in the hands of the finance lessor if the finance lessee is—
  - (a) a company for which the asset was the whole or part of a pre-FA 2002 asset, or
  - (b) a person who is a related party in relation to such a company.



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- (7) The regulations may make incidental, supplemental, consequential and transitional provision and savings.
- (8) That provision may include modifications of the operation of other provisions of the Corporation Tax Acts.

*Values to be used in special cases*

**856 Assets acquired or realised together U.K.**

- (1) Any reference in this Part to the acquisition or realisation of an asset includes a reference to the acquisition or realisation of that asset together with other assets.
- (2) For the purposes of this Part assets acquired or realised as a result of one bargain are treated as acquired or realised together even though—
  - (a) separate prices are, or purport to be, agreed for separate assets, or
  - (b) there are, or purport to be, separate acquisitions or realisations of separate assets.
- (3) If assets are acquired together, any values allocated to particular assets by the company in accordance with generally accepted accounting practice must be accepted for the purposes of this Part.
- (4) If no such values are so allocated, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as referable to that asset.
- (5) If assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as proceeds of the realisation of that asset.

**857 Deemed market value acquisition: adjustment where nil accounting value U.K.**

- (1) This section applies if—
  - (a) a company is treated for the purposes of this Part as acquiring an asset at market value, but
  - (b) the accounting value of the asset transferred is nil in the hands of the transferee.
- (2) In such a case any reference in this Part to—
  - (a) the cost of the asset recognised for accounting purposes,
  - (b) the accounting value of the asset, or
  - (c) any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,is a reference to the cost, value or loss that would have been recognised if the asset had been acquired at market value.
- (3) If the asset is revalued, the revaluation is ignored.
- (4) In this section “revaluation” has the same meaning as in section 723 (see subsection (5) of that section) and “revalued” must be read accordingly.

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### *Fungible assets*

#### **858 Fungible assets U.K.**

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

#### *Assets ceasing to be or becoming chargeable intangible assets*

#### **859 Asset ceasing to be chargeable intangible asset: deemed realisation at market value U.K.**

- (1) If an asset ceases to be a chargeable intangible asset in relation to a company in any of the circumstances specified in subsection (2), this Part applies as if—
  - (a) immediately before the asset ceased to be a chargeable intangible asset in relation to the company, the company had realised the asset for its market value at that time, and
  - (b) the company had immediately reacquired it at that value.
- (2) The circumstances are—
  - (a) that the company ceases to be UK resident,
  - (b) in the case of a company that is not UK resident, any circumstances not involving the realisation of the asset by the company, and
  - (c) that the asset begins to be held for the purposes of a mutual trade or business.
- (3) Subsection (1) is subject to section 860.

#### **860 Asset ceasing to be chargeable intangible asset: postponement of gain U.K.**

- (1) This subsection applies if—
  - (a) section 859 applies because a company (“A”) ceases to be UK resident,
  - (b) immediately before A ceases to be UK resident the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a permanent establishment,
  - (c) the proceeds of the realisation of the asset that is treated as occurring under section 859 exceed the original cost of the asset recognised for tax purposes,
  - (d) immediately after A ceases to be UK resident it is a 75% subsidiary of another company (“B”) that is UK resident, and
  - (e) A and B so elect by notice given to an officer of Revenue and Customs not later than 2 years after the date on which A ceased to be UK resident.
- (2) If subsection (1) applies, this Part applies as if the proceeds of the realisation of the asset that is treated as occurring under section 859 were reduced to the original cost of the asset recognised for tax purposes.

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- (3) For the later treatment of the amount of the reduction under subsection (2), see sections 861 and 862.
- (4) In those sections—
  - (a) “the postponed gain” means the amount of that reduction, and
  - (b) references to “A” and “B” must be read in accordance with this section.

## **861 Treatment of postponed gain on subsequent realisation** **U.K.**

- (1) This section applies if A realises the asset to which section 860 applies before the end of the period of 6 years after the date on which it ceases to be UK resident.
- (2) B must bring into account for tax purposes—
  - (a) a credit equal to the postponed gain, or
  - (b) in the case of a part realisation, a credit equal to the appropriate proportion of the postponed gain.
- (3) The appropriate proportion is—

$$\frac{MVB - MVA}{MVB}$$

where—

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

MVA is the market value of the asset immediately after the part realisation.

- (4) Subsection (2) does not apply—
  - (a) so far as the postponed gain has already been brought into account on a previous part realisation, or
  - (b) if the postponed gain has already been brought into account under section 862.
- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

## **862 Treatment of postponed gain in other cases** **U.K.**

- (1) This section applies if at any time after A ceases to be UK resident—
  - (a) A ceases to be a 75% subsidiary of B on the disposal by B of ordinary shares of A,
  - (b) A ceases to be such a subsidiary otherwise than on such a disposal and later B disposes of such shares, or
  - (c) B ceases to be UK resident.
- (2) B must bring into account for tax purposes a credit equal to the postponed gain.
- (3) Subsection (2) does not apply so far as the postponed gain has already been brought into account under section 861.

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- (4) Any credit falling to be brought into account under subsection (2) because B ceases to be UK resident must be brought into account immediately before it does so.
- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

### **863 Asset becoming chargeable intangible asset** **U.K.**

- (1) This section applies if an asset becomes a chargeable intangible asset in relation to a company—
  - (a) on the company becoming UK resident,
  - (b) in the case of a company that is not UK resident, on the asset beginning to be held for the purposes of a trade carried on by the company in the United Kingdom through a permanent establishment, or
  - (c) on the asset ceasing to be held for the purposes of a mutual trade or business.
- (2) This Part applies as if—
  - (a) the company had acquired the asset immediately after it became a chargeable intangible asset in relation to the company, and
  - (b) had done so for its accounting value at that time.

*Matters to be ignored*

### **864 Tax avoidance arrangements to be ignored** **U.K.**

- (1) In determining whether a credit or a debit is to be brought into account under this Part and, if so, its amount, any tax avoidance arrangements are ignored.
- (2) Arrangements are “tax avoidance arrangements” for this purpose if their main object or one of their main objects is to enable a company—
  - (a) to obtain a debit under this Part to which it would not otherwise be entitled,
  - (b) to obtain a debit under this Part which exceeds that to which it would otherwise be entitled,
  - (c) to avoid having to bring a credit into account under this Part, or
  - (d) to reduce the amount of any such credit.
- (3) In this section—
 

“arrangements” includes any scheme, agreement or understanding, whether or not it is legally enforceable, and

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

### **865 Debits for expenditure not generally deductible for tax purposes** **U.K.**

- (1) No debit may be brought into account for tax purposes under this Part in respect of expenditure that is not generally deductible for tax purposes.
- (2) Expenditure is “not generally deductible for tax purposes” so far as revenue expenditure of that description incurred for the purposes of a trade would be non-deductible because of a provision specified in subsection (3).
- (3) Those provisions are—

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- (a) section 56 (car or motor cycle hire),
- (b) section 1298 (business entertainment and gifts),
- (c) section 1304 (crime-related payments), and
- (d) section 246(2) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).

*Delayed payments and bad debts*

**866 Delayed payment of employees' remuneration U.K.**

- (1) This subsection applies if—
  - (a) a debit in respect of employees' remuneration is recognised by a company for accounting purposes, and
  - (b) apart from this section, a debit in respect of the remuneration could be brought into account for the purposes of this Part for the period of account in which the debit is recognised.
- (2) No such debit may be so brought into account unless the remuneration is paid before the end of the period of 9 months beginning with the end of the period of account.
- (3) If the remuneration is paid after the end of the 9 month period, the debit may be brought into account for the purposes of this Part for the period of account in which it is paid.
- (4) Section 867 makes further provision relating to the application of this section.

**867 Provisions supplementing section 866 U.K.**

- (1) For the purposes of section 866 a debit in respect of employees' remuneration recognised for accounting purposes includes an amount reserved in the accounts of an employer with a view to its becoming employees' remuneration.
- (2) For the purposes of section 866 it does not matter if the debit is in respect of—
  - (a) particular employments, or
  - (b) employments generally.
- (3) Any adjustment required by section 866 of an accounting debit that is partly referable to an amount to which that section applies and partly to other matters must be made on a just and reasonable basis.
- (4) In making a calculation for tax purposes that has to be made before the end of the 9 month period mentioned in section 866(2), it must be assumed that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period.
- (5) But if the remuneration is subsequently paid before the end of the period, nothing in subsection (4) prevents the calculation being revised and any tax return being amended accordingly.
- (6) For the purposes of section 866 and this section, remuneration is paid when it—
  - (a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.

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- (7) In section 866 and this section—  
     “employee” includes an office-holder and so “employment” includes an office, and  
     “remuneration” means an amount which is or is treated as earnings for the purposes of ITEPA 2003.

### **868 Delayed payment of pension contributions** U.K.

- (1) This section applies if—
- (a) a debit in respect of pension contributions is recognised by a company for accounting purposes, and
  - (b) the contributions are not paid until after the end of the period of account in which the debit is recognised.
- (2) The contributions may be brought into account for the purposes of this Part only when they are paid.
- (3) For the purposes of this section “pension contributions” means—
- (a) sums paid by an employer by way of contributions under a registered pension scheme,
  - (b) sums paid to the trustees or managers of such a scheme that are treated as if they were the payment of contributions under the pension scheme (see section 199 of FA 2004), or
  - (c) expenses within section 246(3) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).
- (4) Any adjustment required by this section of an accounting debit that is partly referable to an amount to which this section applies and partly to other matters must be made on a just and reasonable basis.

### **869 Bad debts etc** U.K.

- (1) No debit may be brought into account for the purposes of this Part in respect of a debt owed to the company, except—
- (a) by way of impairment loss, or
  - (b) so far as the debt is released as part of a statutory insolvency arrangement.
- (2) If a debt is so released, any gain in respect of the release that is brought into account for accounting purposes by the debtor is disregarded for the purposes of this Part.
- (3) Any other gain in respect of an unpaid debt in respect of an intangible fixed asset that is brought into account by the debtor for accounting purposes is treated for the purposes of section 721 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset.
- (4) Any adjustment required by this section of an accounting gain or loss that is partly referable to an amount affected by this section and partly to other matters must be made on a just and reasonable basis.
- (5) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

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### *Controlled foreign companies*

#### **870 Assumptions for calculating chargeable profits** **U.K.**

- (1) In calculating the amount mentioned in section 747(6) of ICTA (chargeable profits of controlled foreign company), the following assumptions must be made when applying this Part.
- (2) It is assumed that any intangible fixed asset acquired or created by the company before the beginning of the first relevant accounting period was acquired or created by the company at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
- (3) The “first relevant accounting period” is the first accounting period—
  - (a) in respect of which an apportionment under section 747(3) of ICTA falls to be made, or
  - (b) which is an ADP exempt period.
- (4) It is assumed that the company—
  - (a) has not claimed any relief under Chapter 7 (roll-over relief in case of reinvestment), or
  - (b) made any provisional declaration of entitlement to such relief,and accordingly paragraph 4(1) of Schedule 24 to ICTA (assumption that all available reliefs have been claimed) is ignored to that extent.
- (5) But if notice is given in accordance with paragraph 4(2) of Schedule 24 to ICTA requesting that subsection (4) should not apply, it does not apply to such claims as are specified in the notice to the extent so specified.
- (6) Expressions used in this section that are defined for the purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies) have the same meaning in this section.
- (7) See, in particular, paragraph 1(6) of Schedule 24 to that Act for the meaning of “ADP exempt period”.
- (8) The assumption in subsection (2) does not affect the determination of the question whether this Part applies to an asset in accordance with section 882 (application of this Part to assets created or acquired on or after 1 April 2002).

## **CHAPTER 15** **U.K.**

### ADJUSTMENTS ON CHANGE OF ACCOUNTING POLICY

#### *Introductory*

#### **871 Introduction to Chapter** **U.K.**

- (1) This Chapter applies if—
  - (a) there is a change of accounting policy in drawing up a company's accounts from one period of account to the next, and
  - (b) the approach in each of those periods accords with the law and practice applicable in relation to that period.



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- (2) In this Chapter—
- (a) the first of those periods of account is referred to as “the earlier period”, and
  - (b) the next is referred to as “the later period”.
- (3) This Chapter applies, in particular, if—
- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
  - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

*Change of policy involving change of value*

**872 Adjustments in respect of change U.K.**

- (1) This section and section 873 apply if—
- (a) as a result of the change of accounting policy there is a difference (“the accounting difference”) between—
    - (i) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
    - (ii) the accounting value of that asset at the beginning of the later period, and
  - (b) no election has been made in respect of the asset under section 730 (writing down at fixed rate: election for fixed-rate basis).
- (2) If there is an increase in that value, a corresponding credit must be brought into account for tax purposes in the later period.
- (3) If there is a decrease in that value, a corresponding debit must be brought into account for tax purposes in the later period.
- (4) The amount of the credit or debit is—

$$D \times \frac{\text{WDVE}}{\text{AVE}}$$

where—

D is the accounting difference,

WDVE is the tax written-down value of the asset at the end of the earlier period, and

AVE is the accounting value of the asset at the end of the earlier period.

- (5) But if subsection (2) applies, the credit must not exceed—
- (a) the sum of debits brought into account for tax purposes in respect of the asset before the later period, less

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- (b) the sum of the credits so brought into account.
- (6) This section is subject to section 878 (exclusion of credits or debits brought into account under other provisions).

### **873 Effect of application of section 872 in later period and subsequently** **U.K.**

- (1) A credit or debit that is required to be brought into account under section 872 is treated as arising at the beginning of the later period (“the relevant time”).
- (2) If a credit is to be brought into account, the tax written-down value of the asset at the relevant time is the sum of—
  - (a) the tax written-down value of the asset at the end of the earlier period, and
  - (b) the credit.
- (3) If a debit is to be brought into account, the tax written-down value of the asset at the relevant time is—
  - (a) the tax written-down value of the asset at the end of the earlier period, less
  - (b) the debit.
- (4) After the relevant time the cost recognised for tax purposes is the sum of—
  - (a) the tax written-down value given by subsection (2) or (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) After the relevant time the tax written-down value is determined taking account only of subsequent credits and debits.

#### *Change of policy involving disaggregation*

### **874 Original asset not subject to fixed-rate writing down** **U.K.**

- (1) This section and section 875 apply if—
  - (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period,
  - (b) there is a difference (“the accounting difference”) between—
    - (i) the accounting value of the original asset at the end of the earlier period, and
    - (ii) the sum of the accounting values of the resulting assets at the beginning of the later period,
  - (c) no election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original asset, and
  - (d) no such election is subsequently made in respect of any of the resulting assets.
- (2) If the accounting difference is an increase, a corresponding credit must be brought into account for tax purposes in the later period.
- (3) If the accounting difference is a decrease, a corresponding debit must be brought into account for tax purposes in the later period.

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(4) The credit or debit is—

$$D \times \frac{WDVE}{AVE}$$

where—

D is the accounting difference,

WDVE is the tax written-down value of the original asset at the end of the earlier period, and

AVE is the accounting value of that asset at the end of that period.

(5) But if subsection (2) applies the credit must not exceed—

- (a) the sum of the debits brought into account for tax purposes in respect of the original asset before the later period, less
- (b) the sum of the credits so brought into account.

(6) This section is subject to section 878 (exclusion of credits or debits brought into account under other provisions).

**875 Effect of application of section 874 in later period and subsequently U.K.**

(1) A credit or debit that is required to be brought into account under section 874 is treated as arising at the beginning of the later period (“the relevant time”).

(2) If section 874(2) applies, the tax written-down value of each resulting asset at the relevant time is—

$$(WDVE + C) \times \frac{AV}{TAV}$$

where—

WDVE is the tax written-down value of the original asset at the end of the earlier period,

C is the credit,

AV is the accounting value of the resulting asset in question at the relevant time, and

TAV is the sum of the accounting values of all the resulting assets at the relevant time.

(3) If section 874(3) applies, the tax written-down value of each resulting asset at the relevant time is—

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$$(WDVE - D) \times \frac{AV}{TAV}$$

where—

WDVE, AV and TAV have the same meaning as in subsection (2), and

D is the debit.

- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is taken to be the sum of—
  - (a) the tax written-down value given by subsection (2) or, as the case may be, subsection (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

#### **876 Original asset subject to fixed-rate writing down U.K.**

- (1) This section applies if—
  - (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) an election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original asset.
- (2) That election has effect—
  - (a) in relation to the original asset, for periods up to and including the earlier period, and
  - (b) in relation to each of the resulting assets, for the later period and subsequent periods.
- (3) The tax written-down value of each resulting asset at the beginning of the later period (“the relevant time”) is—

$$WDVE \times \frac{AVL}{TAVL}$$

where—

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WDVE is the tax written-down value of the original asset at the end of the earlier period,

AVL is the accounting value of the asset in question at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is the sum of—
- (a) the tax written-down value given by subsection (3), and
  - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

#### **877 Election for fixed-rate writing down in relation to resulting asset U.K.**

- (1) This section applies if—
- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original undivided asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) no election under section 730 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original undivided asset.
- (2) An election under that section may be made in respect of any of the resulting assets.
- (3) But such an election may be made only within the period during which such an election could have been made in relation to the original undivided asset.
- (4) The effect of the election is that—
- (a) the original undivided asset is treated as if it had at all material times consisted of as many assets (“notional original assets”) as there are resulting assets,
  - (b) each notional original asset is taken to be the same asset as one of the resulting assets (its “corresponding resulting asset”),
  - (c) the appropriate proportion of every amount falling to be taken into account in relation to the original undivided asset is attributed to each of the notional original assets, and
  - (d) this Part applies in relation to each of the notional original assets and its corresponding resulting asset accordingly.
- (5) For the purposes of subsection (4)(c) the appropriate proportion of every amount falling to be taken into account in relation to the original undivided asset that is to be attributed to each notional original asset is found by reference to the notional original asset’s corresponding resulting asset.
- (6) The appropriate proportion in relation to each resulting asset is—

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# AVL

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# TAVL

where—

AVL is the accounting value of that resulting asset at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

## *Supplementary*

### **878 Exclusion of credits or debits brought into account under other provisions** **U.K.**

- (1) A credit or debit is not required to be brought into account under this Chapter so far as a credit or debit representing the accounting difference in question is brought into account for tax purposes under a provision specified in subsection (2).
- (2) Those provisions are—
  - (a) section 723 (revaluation),
  - (b) section 725 (reversal of previous accounting loss), or
  - (c) section 732 (reversal of previous accounting gain).

### **879 Subsequent events affecting asset subject to adjustment under this Chapter** **U.K.**

- (1) On a further change of accounting policy affecting an intangible fixed asset in relation to which this Chapter has applied, the previous provisions of this Chapter apply again.
- (2) On a subsequent part realisation affecting the asset in question, section 744 (effect of part realisation of asset) applies.

## **CHAPTER 16** **U.K.**

### PRE-FA 2002 ASSETS ETC

#### *Introduction*

### **880 Overview of Chapter** **U.K.**

This Chapter—

- (a) sets out a general rule limiting the application of this Part to certain assets (see section 882(1): application of this Part to assets created or acquired on or after 1 April 2002),

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- (b) makes provision about when assets are treated as created or acquired (see sections 883 to 889),
- (c) makes special provision about particular kinds of assets (see sections 890 to 897), and
- (d) provides how roll-over relief is to apply in some circumstances where assets excluded by the general rule mentioned in paragraph (a) are involved (see sections 898 and 899).

### 881 Meaning of “pre-FA 2002 assets” **U.K.**

Intangible fixed assets which are excluded from the application of this Part by the general rule mentioned in section 880(a) (subject to any express provision to the contrary) are referred to in this Part as “pre-FA 2002 assets”.

#### *General rule*

### 882 Application of this Part to assets created or acquired on or after 1 April 2002 **U.K.**

- (1) The general rule is that this Part applies only to intangible fixed assets of a company (“the company”) that—
  - (a) are created by the company on or after 1 April 2002,
  - (b) are acquired by the company on or after that date from a person who at the time of the acquisition is not a related party in relation to the company, or
  - (c) are acquired by the company on or after that date in case A, B or C from a person who at the time of the acquisition is a related party in relation to the company.
- (2) For provisions explaining when assets are treated as created or acquired, see sections 883 to 889.
- (3) Case A is where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition.
- (4) Case B is where the asset is acquired from a person (“the intermediary”) who acquired the asset on or after 1 April 2002 from a third person—
  - (a) who was not at the time of the intermediary's acquisition a related party in relation—
    - (i) to the intermediary, or
    - (ii) if the intermediary was not a company, to a company in relation to which the intermediary was a related party, and
  - (b) who is not, at the time of the acquisition by the company, a related party in relation to the company.
- (5) Case C is where the asset was created on or after 1 April 2002 by the person from whom it is acquired or any other person.
- (6) The general rule in subsection (1) is subject to—
  - (a) section 890 (fungible assets: application of section 858),
  - (b) section 892 (certain assets acquired on transfer of a business),
  - (c) section 893 (assets whose value derives from pre-FA 2002 assets),



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- (d) section 895 (assets acquired in connection with disposals of pre-FA 2002 assets),
  - (e) section 897 (application to pre-FA 2002 assets consisting of telecommunication rights),
  - (f) sections 898 and 899 (application of roll-over relief in relation to some pre-FA 2002 assets), and
  - (g) section 905 (pre-FA 2002 assets: Lloyd's syndicate capacity).
- (7) This section does not restrict the application of this Part in accordance with section 896 (application to royalties) (but see section 896(3)).

*When assets are treated as created or acquired*

### **883 Assets treated as created or acquired when expenditure incurred** **U.K.**

- (1) This section—
- (a) applies for the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002), and
  - (b) applies to all intangible assets except those to which the provisions specified in subsection (2) apply.
- (2) The provisions referred to in subsection (1)(b) are—
- (a) section 884 (internally-generated goodwill: time of creation),
  - (b) section 885 (certain other internally-generated assets: time of creation), and
  - (c) section 886 (assets representing production expenditure on films: time of creation).
- (3) An intangible asset to which this section applies is treated as created or acquired on or after 1 April 2002 so far as expenditure on its creation or acquisition is incurred on or after that date.
- (4) As to whether expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002, see sections 887 to 889.
- (5) If only part of the expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002—
- (a) this Part applies as if there were a separate asset representing the expenditure so incurred, and
  - (b) the alternative enactments apply as if there were a separate asset representing the expenditure not so incurred.
- (6) In subsection (5) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (7) Any apportionment necessary for the purposes of subsection (5) must be made on a just and reasonable basis.

### **884 Internally-generated goodwill: time of creation** **U.K.**

For the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002) internally-generated goodwill is treated as created before

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(and not on or after) 1 April 2002 if the business in question was carried on at any time before 1 April 2002 by the company or a related party.

### **885 Certain other internally-generated assets: time of creation** **U.K.**

- (1) This section—
  - (a) applies for the purposes of section 882 (application of this Part to assets created or acquired on or after 1 April 2002), and
  - (b) applies to an internally-generated asset representing non-qualifying expenditure.
- (2) In this section “non-qualifying expenditure” means expenditure that under the law as it was before 1 April 2002 is not qualifying expenditure for the purposes of any allowance under CAA 2001.
- (3) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure, this Part applies as if there were separate assets representing the non-qualifying expenditure and the other expenditure.
- (4) If this Part does not apply to the asset representing the non-qualifying expenditure, the alternative enactments also apply as if there were a separate asset representing that expenditure.
- (5) In subsection (4) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (6) Any apportionment necessary for the purposes of subsection (3) or (4) must be made on a just and reasonable basis.
- (7) An asset to which this section applies is treated for the purposes of section 882 as created before (and not on or after) 1 April 2002 if the asset in question was held at any time before that date by the company or a related party.

### **886 Assets representing production expenditure on films: time of creation** **U.K.**

- (1) In determining for the purposes of this Part whether an asset representing production expenditure on a film was created before 1 April 2002 or on or after that date, the asset is treated as created when the film is completed.
- (2) In this section—
  - (a) “completed” has the same meaning as in Part 15 (see section 1181(5)),
  - (b) “film” has the same meaning as in that Part (see section 1181), and
  - (c) “production expenditure” has the same meaning as in that Part (see section 1184).

*When expenditure treated as incurred*

### **887 General rule** **U.K.**

- (1) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred) the general rule is that expenditure on the acquisition of an asset is treated as incurred when it is recognised for accounting purposes.
- (2) This is subject to—

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section 888 (cases where chargeable gains rule applies), and  
section 889 (cases where capital allowances general rule applies).

### **888 Cases where chargeable gains rule applies** U.K.

- (1) This section applies if—
  - (a) expenditure on the acquisition of an asset does not qualify for any form of tax relief against income under the law as it was before 1 April 2002,
  - (b) that expenditure would be treated as incurred on or after that date under the general rule in section 887, and
  - (c) the relevant disposal of the asset is treated as occurring before that date for the purposes of TCGA 1992 or would be so treated under the law as it was before 1 April 2002.
- (2) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred), the expenditure is treated as incurred before 1 April 2002.
- (3) In subsection (1) “the relevant disposal” means the disposal on which the acquisition mentioned in subsection (1)(a) occurred.

### **889 Cases where capital allowances general rule applies** U.K.

- (1) This section applies if under the law as it was before 1 April 2002 expenditure on the creation or acquisition of an asset is qualifying expenditure for the purposes of any allowance under CAA 2001.
- (2) For the purposes of section 883 (assets treated as created or acquired when expenditure incurred) the expenditure is treated as incurred when an unconditional obligation to pay it arises.
- (3) For this purpose the fact that the whole or part of the expenditure is not required to be paid until a later date does not prevent there being an unconditional obligation to pay it.

#### *Fungible assets*

### **890 Fungible assets: application of section 858** U.K.

- (1) This section and section 891 apply for the purposes of this Chapter in relation to assets to which section 858 (treatment of fungible assets) applies.
- (2) Section 858 applies as if—
  - (a) pre-FA 2002 assets, and
  - (b) intangible fixed assets that are not pre-FA 2002 assets, were assets of different kinds.
- (3) If section 858 applies (whether or not it is a case where subsection (2) has effect)—
  - (a) a single asset comprising pre-FA 2002 assets is treated as itself being a pre-FA 2002 asset, and
  - (b) a single asset comprising intangible fixed assets that are not pre-FA 2002 assets is treated as itself being an asset to which this Part applies.

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## 891 Realisation and acquisition of fungible assets U.K.

- (1) Subsection (2) applies if—
  - (a) a company realises a fungible asset, and
  - (b) apart from section 890(2), the asset would be treated as part of a single asset comprising both pre-FA 2002 assets and assets that are not pre-FA 2002 assets.
- (2) The realisation is treated as diminishing the single asset of the company comprising pre-FA 2002 assets in priority to diminishing the single asset of the company comprising assets that are not pre-FA 2002 assets.
- (3) Fungible assets acquired by a company that would not otherwise be treated as pre-FA 2002 assets are so treated so far as they are identified, in accordance with the following rules, with pre-FA 2002 assets realised by the company.
- (4) Rule 1 is that assets acquired are identified with pre-FA 2002 assets of the same kind realised by the company within the period beginning 30 days before and ending 30 days after the date of the acquisition.
- (5) The reference in subsection (4) to assets “of the same kind” is to assets that are, or but for section 890(2) would be, treated as part of a single asset because of section 858.
- (6) Rule 2 is that assets realised earlier are identified before assets realised later.
- (7) Rule 3 is that assets acquired earlier are identified before assets acquired later.
- (8) In this section “fungible asset” means an intangible fixed asset to which section 858 applies.

*Assets treated as pre-FA 2002 assets*

## 892 Certain assets acquired on transfer of business U.K.

- (1) This section applies if—
  - (a) a company (“the transferor”) transfers to another company (“the transferee”) an asset that is a pre-FA 2002 asset in the hands of the transferor company,
  - (b) the transfer is one in relation to which the transferor is treated for the purposes of TCGA 1992 as disposing of the asset for a consideration that secures that neither a gain nor a loss accrues to it, and
  - (c) it is so treated because of a provision specified in subsection (2).
- (2) The provisions are—
  - (a) section 139 of TCGA 1992 (reconstruction involving transfer of business),
  - (b) section 140A of that Act (transfer or division of UK business), and
  - (c) section 140E of that Act (merger leaving assets within UK tax charge).
- (3) In the hands of the transferee the asset is treated for the purposes of this Part as a pre-FA 2002 asset.
- (4) This section does not apply if the transfer mentioned in subsection (1) occurred before 28 June 2002.

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### **893 Assets whose value derives from pre-FA 2002 assets** **U.K.**

- (1) This section applies if—
  - (a) on or after 1 April 2002 a company (“the acquiring company”) acquires an intangible fixed asset (“the acquired asset”) from a person (“the transferor”),
  - (b) the acquired asset is created on or after 1 April 2002,
  - (c) at the time of the acquisition the transferor and the acquiring company are related parties,
  - (d) the value of the acquired asset derives in whole or in part from any other asset (“the other asset”), and
  - (e) the other asset meets the preserved status conditions (see section 894).
- (2) In the hands of the acquiring company the acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset so far as its value derives from the other asset.
- (3) If only part of the value of the acquired asset derives from the other asset—
  - (a) this Part applies as if there were a separate asset representing the part of the value that does not so derive, and
  - (b) the alternative enactments apply as if there were a separate asset representing the part of the value that does so derive.
- (4) In subsection (3) “the alternative enactments” means the enactments that apply where this Part does not apply.
- (5) For the purposes of this section 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.
- (6) Section 894 supplements this section.

### **894 The preserved status conditions etc** **U.K.**

- (1) For the purposes of section 893(1) the other asset meets the preserved status conditions if subsections (2) and (3) apply.
- (2) This subsection applies if on or after 1 April 2002 the other asset—
  - (a) has been a pre-FA 2002 asset in the hands of the transferor at a time when the transferor and the acquiring company were related parties, or
  - (b) has been a pre-FA 2002 asset in the hands of any other person at a time when—
    - (i) the other person and the acquiring company were related parties, or
    - (ii) the other person and the transferor were related parties.
- (3) This subsection applies if the other asset has not at any time on or after 5 December 2005 been a chargeable intangible asset in the hands of—
  - (a) the acquiring company,
  - (b) a person who is a related party in relation to that company, or
  - (c) the transferor.
- (4) It does not matter for the purposes of section 893(1)(b) who created the acquired asset.

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- (5) Any apportionment necessary for the purposes of section 893(3) must be made on a just and reasonable basis.
- (6) Sections 883 to 889 (provisions explaining when assets are treated as created or acquired) apply for the purposes of section 893 as they apply for the purposes of section 882.
- (7) Expressions used in this section have the same meaning as in section 893.

## **895 Assets acquired in connection with disposals of pre-FA 2002 assets** **U.K.**

- (1) This section applies if—
  - (a) a person disposes of an asset which is a pre-FA 2002 asset in the person's hands at the time of the disposal,
  - (b) a company acquires an intangible fixed asset directly or indirectly in consequence of the disposal or otherwise in connection with it,
  - (c) the company and the person are related parties at the time of the disposal, and
  - (d) the acquired asset would be a chargeable intangible asset in the hands of the company at the time of the acquisition apart from this section.
- (2) The acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset in the company's hands.
- (3) For the purposes of this section—
  - (a) “asset”, in relation to any disposal, means any asset for the purposes of TCGA 1992,
  - (b) a person “disposes of” an asset if, for the purposes of that Act, the person makes a part disposal of the asset or any other disposal of it, and
  - (c) the time at which a disposal of an asset is made is the time at which it is made for the purposes of that Act.
- (4) For the purposes of this section it does not matter whether—
  - (a) the asset that the person disposes of is the same asset as the acquired asset,
  - (b) the acquired asset is acquired at the time of the disposal, or
  - (c) the acquired asset is acquired by merging assets or otherwise.

*Application of Part to royalties and telecommunication rights*

## **896 Application to royalties** **U.K.**

- (1) This Part—
  - (a) applies to royalties recognised for accounting purposes on or after 1 April 2002, and
  - (b) does not apply to royalties recognised for accounting purposes before that date.
- (2) But subsection (1) is subject to subsection (3).
- (3) This section does not authorise or require an amount to be brought into account in connection with the realisation of a pre-FA 2002 asset.
- (4) In this section “realisation” has the same meaning as in Chapter 4 (see section 734).

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## **897 Application to pre-FA 2002 assets consisting of telecommunication rights** **U.K.**

- (1) This Part applies to a pre-FA 2002 asset consisting of a licence or other right within Chapter 10 of Part 2 of ITTOIA (certain telecommunication rights) (see section 146 of that Act).
- (2) This Part applies in relation to such assets as if amounts brought into account for tax purposes under Schedule 23 to FA 2000 in accounting periods ending before 1 April 2002 had been so brought into account under this Part.
- (3) This subsection applies if the asset—
  - (a) was acquired before the beginning of the first accounting period ending on or after 1 April 2002, and
  - (b) was a chargeable intangible asset immediately after the beginning of that period.
- (4) If subsection (3) applies, the asset is treated for the purposes of Chapter 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of the first accounting period ending on or after 1 April 2002.

### *Roll-over relief for disposals of pre-FA 2002 assets*

## **898 Relief where assets disposed of on or after 1 April 2002** **U.K.**

- (1) This section applies if a company disposes of a pre-FA 2002 asset on or after 1 April 2002.
- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as if—
  - (a) references to the realisation of the old asset were references to its disposal,
  - (b) references to its being a chargeable intangible asset were references to its being a chargeable asset within TCGA 1992 (see section 900),
  - (c) references to the proceeds of its realisation were references to the net proceeds of disposal under that Act (see subsection (3)), and
  - (d) references to its cost recognised for tax purposes were references to the cost under that Act (see subsection (4)).
- (3) For the purposes of subsection (2)(c) the net proceeds of disposal under TCGA 1992 are taken to be the amount or value of the consideration for the disposal, less any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act.
- (4) For the purposes of subsection (2)(d) the cost under TCGA 1992 is taken to be an amount equal to the difference between—
  - (a) the net proceeds of disposal (as defined in subsection (3)), and
  - (b) the amount of the chargeable gain on the disposal.
- (5) Section 850 (part realisation involving related party acquisition: exclusion of roll-over relief) does not apply in a case where Chapter 7 applies because of this section.
- (6) References in this section to the disposal of an asset have the same meaning as in TCGA 1992.



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## **899 Relief where degrouping charge on asset arises on or after 1 April 2002** **U.K.**

- (1) This section applies if—
  - (a) a company is treated under section 179(3) or (6) of TCGA 1992 (degrouping charge) as having sold and reacquired a pre-FA 2002 asset, and
  - (b) under section 179(4) or (8) of that Act the gain is treated as accruing on or after 1 April 2002.
- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as specified in section 898(2) and with the additional modifications specified in subsections (3) to (5).
- (3) In section 755 (conditions relating to the old asset and its realisation), for the references to the old asset being a chargeable intangible asset throughout the period during which it was held by the company substitute references to its being a chargeable asset within TCGA 1992 throughout the period during which it was held by the company referred to in section 179 of that Act as “company B”.
- (4) In section 756(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute references—
  - (a) in a case within section 179(3) of TCGA 1992, to the time at which the gain is treated as accruing under section 179(4) of that Act, and
  - (b) in a case within subsection 179(6) of that Act, to the time at which the gain is treated as accruing under section 179(8) of that Act.
- (5) For references to the proceeds of realisation substitute references to the amount of the consideration for which the company is treated under TCGA 1992 as having sold and reacquired the asset.
- (6) For the meaning of “chargeable asset within TCGA 1992”, see section 900.
- (7) Section 850 (part realisation involving related party: exclusion of roll-over relief) does not apply in a case where Chapter 7 applies because of this section.

## **900 Meaning of “chargeable asset within TCGA” in sections 898 and 899** **U.K.**

- (1) For the purposes of sections 898 and 899 an asset is a chargeable asset within TCGA 1992 in relation to a company at any time if—
  - (a) any gain accruing to the company on the disposal of it at that time would be a chargeable gain within the meaning of that Act,
  - (b) condition A or condition B is met in relation to the company, and
  - (c) double tax relief is not available to the company at that time.
- (2) Condition A is that at that time the company is UK resident or ordinarily UK resident.
- (3) Condition B is that the gain would form part of the company's chargeable profits for corporation tax purposes as a result of section 10B of TCGA 1992 (non-resident company with United Kingdom permanent establishment).
- (4) For the purposes of subsection (1) double tax relief is available to the company if it would be treated for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gain accruing to it on a disposal of the asset.
- (5) References in this section to the disposal of an asset have the same meaning as in TCGA 1992.

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## CHAPTER 17 **U.K.**

### INSURANCE COMPANIES

#### *Effect of application of the I minus E basis: non-trading amounts*

#### **901 Effect of application of the I minus E basis: non-trading amounts **U.K.****

- (1) The effect of applying the I minus E basis for an accounting period in relation to life assurance business carried on by an insurance company is as follows.
- (2) Credits or debits falling to be brought into account under this Part in respect of intangible fixed assets of the company referable to that business are not brought into account as mentioned in section 747 (assets held for purposes of trade).
- (3) Instead, those credits or debits are brought into account under section 751 (non-trading gains and losses) as non-trading credits or, as the case may be, non-trading debits.

#### *Excluded assets and computer software*

#### **902 Excluded assets **U.K.****

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset so far as it is held by an insurance company for the purposes of its life assurance business.
- (2) Accordingly, section 810(1) (which makes provision in the same terms as subsection (1) in relation to assets held for the purposes of any mutual trade or business) does not apply in relation to assets held for the purposes of life assurance business.
- (3) Subsection (1) does not apply to computer software.
- (4) Sections 801 and 802 apply so far as assets are excluded by this section as they apply so far as assets are excluded because of sections 810 to 813.

#### **903 Elections to exclude capital expenditure on computer software **U.K.****

- (1) An insurance company that carries on life assurance business may make an election under section 815 (election to exclude capital expenditure on software) in respect of so much of any capital expenditure on computer software as is not referable to its basic life assurance and general annuity business.
- (2) In subsection (1) “capital expenditure” has the same meaning as if this section were in CAA 2001.

#### *Miscellaneous*

#### **904 Transfers of life assurance business: transfers of assets treated as tax-neutral **U.K.****

- (1) A transfer of intangible fixed assets to which this section applies is tax-neutral for the purposes of this Part (see section 776).

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- (2) This section applies to a transfer of intangible fixed assets if—
- (a) the assets are included in a transfer within subsection (3),
  - (b) immediately before the transfer the intangible fixed assets are chargeable intangible assets in relation to the company making the transfer, and
  - (c) immediately after the transfer the intangible fixed assets are chargeable intangible assets in relation to the company to which the transfer is made.
- (3) A transfer is within this subsection if it is—
- (a) a transfer of business consisting of the effecting or carrying out of long-term business which has effect under an insurance business transfer scheme, or
  - (b) a qualifying overseas transfer.

### **905 Pre-FA 2002 assets: Lloyd's syndicate capacity** **U.K.**

- (1) The general rule in section 882 (this Part not to apply to pre-FA 2002 assets) does not apply if the intangible fixed asset consists of the rights of a member of Lloyd's under a syndicate within the meaning of Chapter 5 of Part 4 of FA 1994 (taxation of corporate members of Lloyd's).
- (2) This Part applies in relation to the asset as respects amounts to be brought into account for tax purposes in accounting periods ending on or after 1 April 2002.
- (3) For the purposes of section 729(5) (writing down on accounting basis: calculation of amount of debit for tax purposes) as it applies to the first accounting period ending on or after 1 April 2002, the tax written down value of the asset must be calculated under section 742 in accordance with subsection (4).
- (4) That value must be calculated as if the debits to be deducted under section 742 included all accounting losses previously recognised in respect of the asset.
- (5) It does not matter for the purposes of subsection (4) if those accounting losses previously gave rise to a deduction for tax purposes.
- (6) This subsection applies if an asset within subsection (1)—
- (a) was acquired before the beginning of the first accounting period ending on or after 1 April 2002, and
  - (b) is a chargeable intangible asset immediately after the beginning of that period.
- (7) If subsection (6) applies, the asset is treated for the purposes of Chapter 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of the first accounting period ending on or after 1 April 2002.
- (8) For the purposes of this section, an asset is treated as acquired at the same time as it would be treated as acquired for the purposes of section 882 (see sections 883 to 885).

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## CHAPTER 18 **U.K.**

### PRIORITY RULES

#### **906 Priority of this Part for corporation tax purposes **U.K.****

- (1) The amounts to be brought into account in accordance with this Part in respect of any matter are the only amounts to be brought into account for corporation tax purposes in respect of that matter.
- (2) Subsection (1) is subject to any indication to the contrary.
- (3) In particular, see—
  - (a) section 1308 (expenditure brought into account in determining value of intangible asset), and
  - (b) section 83(2ZA) of FA 1989 (life assurance: receipts to be taken into account).

## PART 9 **U.K.**

### INTELLECTUAL PROPERTY: KNOW-HOW AND PATENTS

## CHAPTER 1 **U.K.**

### INTRODUCTION

#### **907 Overview of Part **U.K.****

- (1) This Part applies the charge to corporation tax on income to—
  - (a) profits from disposals of know-how (see Chapter 2), and
  - (b) profits from sales of patent rights (see Chapter 3).
- (2) This Part also provides for relief from corporation tax on patent income (see Chapter 4).
- (3) Chapter 5 contains supplementary provision relevant to Chapters 2 to 4.
- (4) This Part needs to be read in the light of Part 8 (intangible fixed assets).
- (5) See in particular the following provisions of Part 8, which are relevant to the application of that Part—
  - (a) section 713 (meaning of “intangible fixed asset”),
  - (b) Chapter 16 (which limits the application of Part 8 to assets which are not pre-FA 2002 assets within the meaning of section 881), and
  - (c) section 906 (which contains a rule about the priority of Part 8 for corporation tax purposes).

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## CHAPTER 2 **U.K.**

### DISPOSALS OF KNOW-HOW

#### **908 Charge to tax on profits from disposals of know-how **U.K.****

- (1) The charge to corporation tax on income applies to profits arising where consideration is received by a company—
  - (a) for the disposal of know-how, or
  - (b) for giving, or wholly or partly fulfilling, an undertaking which—
    - (i) is given in connection with a disposal of know-how, and
    - (ii) restricts or is designed to restrict any person's activities in any way.
- (2) For the purposes of subsection (1)(b), it does not matter whether or not the undertaking is legally enforceable.
- (3) Subsection (1) is subject to the exceptions in section 909.
- (4) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
  - (a) manufacturing or processing goods or materials,
  - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
  - (c) carrying out any agricultural, forestry or fishing operations.
- (5) In subsection (4)—
  - (a) “mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and
  - (b) “source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.

#### **909 Exceptions to charge under section 908 **U.K.****

- (1) Section 908 does not apply in the following cases.
- (2) Case A is if the consideration is brought into account under section 462 of CAA 2001 (disposal values).
- (3) Case B is if the consideration is dealt with in relation to the company receiving it as a trading receipt under section 177(2) (disposal of know-how if trade continues to be carried on).
- (4) Case C is if the consideration is dealt with in relation to the person receiving it as a capital receipt for goodwill under section 178(2) (disposal of know-how as part of disposal of all or part of a trade).
- (5) Case D is if the disposal of the know-how is by way of a sale and—
  - (a) the buyer is a body of persons over which the seller has control,
  - (b) the seller is a body of persons over which the buyer has control, or
  - (c) the buyer and the seller are both bodies of persons and another person has control over both of them.

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(6) In subsection (5) “body of persons” includes a firm.

## **910 Profits charged under section 908** **U.K.**

- (1) The profits charged under section 908 are—
  - (a) the amount of the consideration, less
  - (b) any expenditure incurred by the company wholly and exclusively in the acquisition or disposal of the know-how.
- (2) Such expenditure may not be taken into account more than once, whether under this section or otherwise.
- (3) This section needs to be read with section 926 (contributions to expenditure).

## **CHAPTER 3** **U.K.**

### SALES OF PATENT RIGHTS

#### *Introductory*

## **911 Overview of Chapter** **U.K.**

- (1) This Chapter—
  - (a) applies the charge to corporation tax on income to profits from sales of patent rights (see sections 912 and 913),
  - (b) contains provision about how the amount chargeable is taxed (see sections 914 to 918), and
  - (c) contains related provision, including provision relevant to the application of the Chapter (see sections 919 to 923).
- (2) Section 848 of ITA 2007, under which a sum representing income tax deducted under section 910 of that Act (deduction from payment to non-UK residents in respect of sale of patent rights) is treated as income tax paid by the recipient, is also relevant to the tax treatment of payments made to non-UK resident companies in respect of sales of patent rights.

#### *Charge to tax*

## **912 Charge to tax on profits from sales of patent rights** **U.K.**

- (1) The charge to corporation tax on income applies to profits from sales by a company of the whole or part of any patent rights.
- (2) Subsection (1) applies in the case of a non-UK resident company if the patent is granted under the laws of the United Kingdom.
- (3) In this Chapter “patent rights” means the right to do or authorise the doing of anything which, but for the right, would be an infringement of a patent.

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### 913 Profits charged under section 912 **U.K.**

- (1) A company's profits from the sale of the whole or part of patent rights are—
  - (a) any capital sum comprised in the proceeds of sale, less
  - (b) the deductible costs.
- (2) The deductible costs are—
  - (a) the capital cost (if any) of the rights sold, and
  - (b) any incidental expenses incurred by the company in connection with the sale.
- (3) If—
  - (a) the company acquired the rights sold, or the rights out of which they were granted, by purchase,
  - (b) the company has previously sold part of the purchased rights, and
  - (c) the proceeds of that sale, after deducting any incidental expenses, consisted wholly or partly of a capital sum,
 the capital cost is reduced by that sum.
- (4) References in this Chapter to the capital cost of patent rights are to any capital sum included in any price paid by the company to purchase—
  - (a) the rights, or
  - (b) the rights out of which they were granted.
- (5) This section needs to be read with sections 924 (relief for expenses: patent income) and 926 (contributions to expenditure).

*Spreading of charge to tax*

### 914 UK resident companies: proceeds of sale not received in instalments **U.K.**

- (1) This section applies if a company liable for tax under section 912—
  - (a) is UK resident, and
  - (b) does not receive the proceeds of sale in instalments.
- (2) The appropriate fraction of the amount chargeable is taxed—
  - (a) in the accounting period in which the company receives the proceeds of sale (“the period of receipt”), and
  - (b) in successive accounting periods, until the expiry of the 6-year period beginning at the start of the period of receipt.
- (3) The appropriate fraction is the same fraction of the amount chargeable as the accounting period in question is of 6 years (or, in the last period, such smaller fraction of that amount as has not already been taxed).
- (4) The company may elect that the whole of the amount chargeable is to be taxed instead in the period of receipt.
- (5) An election under subsection (4) must be made within the two-year period beginning at the end of the period of receipt.

### 915 UK resident companies: proceeds of sale received in instalments **U.K.**

- (1) This section applies if a company liable for tax under section 912—



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- (a) is UK resident, and
  - (b) receives the proceeds of sale in instalments.
- (2) The appropriate fraction of the amount chargeable in respect of each instalment is taxed—
  - (a) in the accounting period in which the company receives the instalment (“the period of receipt”), and
  - (b) in successive accounting periods, until the expiry of the 6-year period beginning at the start of the period of receipt.
- (3) The appropriate fraction of the amount chargeable in respect of an instalment is the same fraction of that amount as the accounting period in question is of 6 years (or, in the last period, such smaller fraction of the amount as has not already been taxed).
- (4) The company may elect that the whole of any instalment is to be taxed instead in the period of receipt.
- (5) An election under subsection (4) must be made within the two-year period beginning at the end of the period of receipt.

**916 Non-UK resident companies: proceeds of sale not received in instalments** **U.K.**

- (1) This section applies if a company liable for tax under section 912—
  - (a) is not UK resident, and
  - (b) does not receive the proceeds of sale in instalments.
- (2) The whole of the amount chargeable is taxed in the accounting period in which the company receives the proceeds (“the period of receipt”).
- (3) The company may elect instead that the amount chargeable—
  - (a) is to be treated as arising rateably in the accounting periods ending 6 years from the start of the period of receipt, and
  - (b) is taxed accordingly.
- (4) An election under subsection (3) must be made within the two-year period beginning at the end of the period of receipt.
- (5) The election has effect in relation to accounting periods of the company during which the company is within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.
- (6) Such repayments and assessments are to be made for each of the accounting periods affected as are necessary to give effect to the election.
- (7) Subsection (6) is subject to the qualifications in section 920 (adjustments where tax has been deducted).

**917 Non-UK resident companies: proceeds of sale received in instalments** **U.K.**

- (1) This section applies if a company liable for tax under section 912—
  - (a) is not UK resident, and
  - (b) receives the proceeds of sale in instalments.

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- (2) The amount chargeable in respect of each instalment is taxed in the accounting period in which the company receives the instalment (“the period of receipt”).
- (3) The company may, for any instalment, elect instead that the amount chargeable in respect of the instalment—
  - (a) is to be treated as arising rateably in the accounting periods ending 6 years from the start of the period of receipt, and
  - (b) is taxed accordingly.
- (4) An election under subsection (3) must be made within the two-year period beginning at the end of the period of receipt.
- (5) The election has effect in relation to accounting periods of the company during which the company is within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.
- (6) Such repayments and assessments are to be made for each of the accounting periods affected as are necessary to give effect to the election.
- (7) Subsection (6) is subject to the qualifications in section 920 (adjustments where tax has been deducted).

## 918 Winding up of a body corporate **U.K.**

- (1) If a body corporate which is liable for tax under section 912 commences to be wound up, any amounts falling within subsection (2) are taxed in the accounting period in which the winding up commences.
- (2) The amounts are—
  - (a) any amounts which would have been chargeable in later accounting periods under section 914(2) or 915(2) (UK resident companies: spreading of charge to tax), and
  - (b) any amounts which would have been chargeable in later accounting periods under section 916(3) or 917(3) (non-UK resident companies: election to spread charge to tax).

### *Miscellaneous*

## 919 Deduction of tax from payments to non-UK resident companies **U.K.**

- (1) This section applies if a non-UK resident company is liable for tax under section 912 on profits from the sale of the whole or part of any patent rights.
- (2) The rules in section 913 allowing the capital cost (if any) of the rights sold to be deducted in calculating the profits from the sale do not affect the amount of income tax which is to be deducted under section 910 of ITA 2007.
- (3) No election made by the company under section 916(3) or 917(3) (election to spread charge to tax) in relation to the proceeds of sale or any instalment affects the amount of income tax which is to be deducted under section 910 of ITA 2007.

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## **920 Adjustments where tax has been deducted** **U.K.**

Where any sum has been deducted from a payment under section 910 of ITA 2007, any adjustment necessary—

- (a) because of section 919(2), or
  - (b) because of an election under section 916(3) or 917(3),
- must be made by way of repayment of tax.

## **921 Licences connected with patents** **U.K.**

- (1) The acquisition of a licence in respect of a patent is treated for the purposes of this Chapter as a purchase of patent rights.
- (2) The grant of a licence in respect of a patent is treated for the purposes of this Chapter as a sale of part of patent rights.
- (3) But the grant by a person entitled to patent rights of an exclusive licence is treated for the purposes of this Chapter as a sale of the whole of those rights.
- (4) In subsection (3) “exclusive licence” means a licence to exercise the rights to the exclusion of the grantor and all other persons for the period remaining until the rights come to an end.

## **922 Rights to acquire future patent rights** **U.K.**

- (1) If a sum is paid to obtain a right to acquire future patent rights, then for the purposes of this Chapter—
  - (a) the payer is treated as purchasing patent rights for that sum, and
  - (b) the recipient is treated as selling patent rights for that sum.
- (2) If a person—
  - (a) pays a sum to obtain a right to acquire future patent rights, and
  - (b) subsequently acquires those rights,the expenditure is to be treated for the purposes of this Chapter as having been expenditure on the purchase of those rights.
- (3) In this section “a right to acquire future patent rights” means a right to acquire in the future patent rights relating to an invention in respect of which the patent has not yet been granted.

## **923 Sums paid for Crown use etc treated as paid under licence** **U.K.**

- (1) This section applies if an invention which is the subject of a patent is used by or for the service of—
  - (a) the Crown under sections 55 to 59 of the Patents Act 1977 (c. 37), or
  - (b) the government of a country outside the United Kingdom under corresponding provisions of the law of that country.
- (2) The use is treated for the purposes of this Chapter as having taken place under licence.
- (3) Sums paid in respect of the use are treated for the purposes of this Chapter as having been paid under a licence.

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## CHAPTER 4 U.K.

### RELIEF FROM CORPORATION TAX ON PATENT INCOME

#### 924 Relief for expenses: patent income U.K.

- (1) Relief may be claimed under this section for patent application and maintenance expenses.
- (2) In this section “patent application and maintenance expenses” means expenses incurred by a company in connection with—
  - (a) the grant or maintenance of a patent,
  - (b) the extension of the term of a patent, or
  - (c) a rejected or abandoned application for a patent,
 but not incurred for the purposes of any trade carried on by the company.
- (3) Relief may not be claimed under this section for patent application and maintenance expenses unless they are expenses which would, if incurred for the purposes of a trade, have been allowable as a deduction in calculating the profits of the trade.
- (4) This section needs to be read with section 926 (contributions to expenditure).

#### 925 How relief is given under section 924 U.K.

- (1) This section sets out how relief for expenses is given where a company makes a claim under section 924.
- (2) The amount of the expenses must be deducted from or set off against the company's income from patents for the accounting period in which the expenses were incurred.
- (3) If the amount to be allowed is greater than the amount of the company's income from patents for that accounting period, then (so long as the company remains within the charge to corporation tax) the excess must be deducted from or set off against the company's income from patents for the next accounting period, and so on for subsequent accounting periods, without the need for a further claim.
- (4) In this section “income from patents” means—
  - (a) royalties or other sums paid in respect of the use of a patent,
  - (b) amounts on which tax is payable under section 912, 918 or 1272, and
  - (c) amounts on which tax is payable under—
    - (i) section 472(5) of CAA 2001 (patent allowances: balancing charges), or
    - (ii) paragraph 100 of Schedule 3 to that Act (balancing charges in respect of pre-1st April 1986 expenditure on purchase of patent rights),
 but does not include any amount chargeable to income tax.
- (5) In this section references to a company's income from patents are to the income after any allowance has been deducted from or set off against it under section 480 of CAA 2001 (certain allowances against income from patents).

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## CHAPTER 5 U.K.

### SUPPLEMENTARY

#### 926 Contributions to expenditure U.K.

- (1) For the purposes of sections 910, 913 and 924, the general rule is that a company is to be regarded as not having incurred expenditure so far as it has been, or is to be, met (directly or indirectly) by—
  - (a) a public body, or
  - (b) a person other than the company.
- (2) In this Chapter “public body” means the Crown or any government, local authority or other public authority (whether in the United Kingdom or elsewhere).
- (3) The general rule does not apply to the expenses mentioned in section 913(2)(b) (incidental expenses incurred by a seller of patent rights).
- (4) The general rule is subject to the exception in section 927.

#### 927 Contributions not made by public bodies nor eligible for tax relief U.K.

- (1) A company is to be regarded as having incurred expenditure (despite section 926(1)) so far as the requirements in subsections (2) and (3) are met in relation to the expenditure.
- (2) The first requirement is that the person meeting the company's expenditure (“X”) is not a public body.
- (3) The second requirement is that—
  - (a) no allowance can be made under Chapter 2 of Part 11 of CAA 2001 (contribution allowances) in respect of X's expenditure, and
  - (b) the expenditure is not allowed to be deducted in calculating the profits of a trade, profession or vocation carried on by X.
- (4) When determining for the purposes of subsection (3)(a) whether such an allowance can be made, assume that X is within the charge to tax.

#### 928 Exchanges U.K.

- (1) In this Part references to the sale of property include the exchange of property.
- (2) In this section—
  - references to property include know-how, and
  - references to the sale of property include the disposal of know-how.
- (3) For the purposes of subsection (1), any provision of this Part referring to a sale has effect with the necessary modifications, including, in particular, those in subsections (4) and (5).
- (4) References to the proceeds of sale and to the price include the consideration for the exchange.
- (5) References to capital sums included in the proceeds of sale include references to so much of the consideration for the exchange as would have been a capital sum if it had been a money payment.

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## **929 Apportionment where property sold together** **U.K.**

- (1) Any reference in this Part to the sale of property includes the sale of that property together with other property.
- (2) In this section—
  - references to property include know-how, and
  - references to the sale of property include the disposal of know-how.
- (3) For the purposes of subsection (1), all property sold as a result of one bargain is to be treated as sold together even though—
  - (a) separate prices are, or purport to be, agreed for separate items of that property, or
  - (b) there are, or purport to be, separate sales of separate items of that property.
- (4) If an item of property is sold together with other property, then, for the purposes of the charges under sections 908 and 912—
  - (a) the net proceeds of the sale of that item are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to that item, and
  - (b) the expenditure incurred on the provision or purchase of that item is treated as being so much of the consideration given for all the property as, on a just and reasonable apportionment, is attributable to that item.

## **930 Questions about apportionments affecting two or more persons** **U.K.**

- (1) Any question about the way in which a sum is to be apportioned under section 929 must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (2) For the purposes of subsection (1) a question materially affects two or more taxpayers if at the time when the question falls to be determined it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

## **931 Meaning of “capital sums” etc** **U.K.**

Section 4 of CAA 2001 (meaning of “capital sums” etc) applies in relation to this Part as it applies in relation to that Act.

### **PART 10** **U.K.**

#### MISCELLANEOUS INCOME

### **CHAPTER 1** **U.K.**

#### INTRODUCTION

## **932 Overview of Part** **U.K.**

- (1) This Part applies the charge to corporation tax on income to—

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- (a) dividends of a non-UK resident company (see Chapter 2),
  - (b) beneficiaries' income from estates in administration (see Chapter 3),
  - (c) income from the holding of an office (see Chapter 4),
  - (d) income treated as received from unauthorised unit trusts (see Chapter 5),
  - (e) income treated as arising from the sale or other realisation of dividend coupons in respect of foreign holdings (see Chapter 6),
  - (f) annual payments not otherwise charged to corporation tax (see Chapter 7), and
  - (g) other income not otherwise charged to corporation tax (see Chapter 8).
- (2) Chapter 9 contains rules that give priority to provisions outside this Part in relation to matters that fall within Chapter 2, 5 or 6.
- (3) This Part needs to be read with Part 19 (general exemptions).

## CHAPTER 2 U.K.

### DIVIDENDS OF NON-UK RESIDENT COMPANIES

#### 933 Charge to tax on dividends of non-UK resident companies U.K.

- (1) The charge to corporation tax on income applies to dividends of a non-UK resident company.
- (2) In subsection (1) “dividends” does not include dividends of a capital nature.

## CHAPTER 3 U.K.

### BENEFICIARIES' INCOME FROM ESTATES IN ADMINISTRATION

#### *Introduction*

#### 934 Charge to tax on estate income U.K.

- (1) The charge to corporation tax on income applies to estate income.
- (2) In this Chapter—
  - “estate” means the estate of a deceased person (whether a UK estate or a foreign estate), and
  - “estate income” means the income treated under this Chapter as arising from an absolute, limited or discretionary interest in the whole or part of the residue of an estate.
- (3) If different parts of an estate are subject to different residuary dispositions, those parts are treated for the purposes of this Chapter as if they were separate estates.

#### 935 Absolute, limited and discretionary interests U.K.

- (1) A person has an absolute interest in the whole or part of the residue of an estate for the purposes of this Chapter if—
  - (a) the capital of the residue or that part is properly payable to the person, or



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- (b) it would be so payable if the residue had been ascertained.
- (2) A person has a limited interest in the whole or part of the residue of an estate during any period for the purposes of this Chapter if—
  - (a) the person does not have an absolute interest in it, and
  - (b) the income from it would be properly payable to the person if the residue had been ascertained at the beginning of that period.
- (3) A person has a discretionary interest in the whole or part of the residue of an estate for the purposes of this Chapter if—
  - (a) a discretion may be exercised in the person's favour, and
  - (b) on its exercise in the person's favour any of the income of the residue during the whole or part of the administration period (see section 938) would be properly payable to the person if the residue had been ascertained at the beginning of that period.
- (4) For the purposes of this section, an amount is only treated as properly payable to a person (“A”) if—
  - (a) it is properly payable to A, or to another person in A's right, for A's benefit, or
  - (b) A is a personal representative and subsection (5) applies.
- (5) The personal representatives of a deceased person (“B”) are to be treated as having an absolute or limited interest in the whole or part of the residue of the estate of another deceased person (“C”) if—
  - (a) they have a right in their capacity as B's personal representatives, and
  - (b) were the right vested in them for their own benefit, they would have that interest in C's estate.
- (6) For the purposes of subsection (4), it does not matter whether the amount is payable directly by the personal representatives or through a trustee or other person.

### 936 Meaning of “UK estate” and “foreign estate” **U.K.**

- (1) In this Chapter—
  - “UK estate”, in relation to a tax year, means an estate which meets conditions A and B, or condition C, for that year, and
  - “foreign estate”, in relation to a tax year, means an estate which is not a UK estate in relation to that year.
- (2) Condition A is that all the income of the estate either—
  - (a) has borne United Kingdom income tax by deduction, or
  - (b) is income in respect of which the personal representatives are directly assessable to United Kingdom income tax for the tax year.
- (3) Condition B is that none of the income of the estate is income for which the personal representatives are not liable to United Kingdom income tax for the tax year because they are not UK resident or not ordinarily UK resident.
- (4) For the purposes of conditions A and B, sums within section 963(3) or (4) (sums treated as bearing income tax) are ignored.
- (5) Condition C is that the aggregate income of the estate for the tax year consists only of sums within section 963(3) or (4).

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### *Types of estate income*

#### **937 Absolute interests in residue U.K.**

- (1) Income is treated as arising in an accounting period from a company's absolute interest in the whole or part of the residue of an estate if—
  - (a) the company has an assumed income entitlement for the accounting period in respect of the interest (see sections 948 to 952), and
  - (b) condition A or B is met.
- (2) Condition A is that a payment is made in respect of the interest in the accounting period and before the end of the administration period (see section 938).
- (3) Condition B is that the accounting period is the final accounting period (see section 938).
- (4) Income treated as arising as a result of this section is estate income for the purposes of this Chapter.

#### **938 Meaning of “the administration period”, “the final accounting period” and “the final tax year” U.K.**

- (1) In this Chapter “the administration period”, in relation to the estate of a deceased person, means the period beginning with the deceased's death and ending with the completion of the administration of the estate.
- (2) In the application of subsection (1) to Scotland, the reference to the completion of the administration is to be taken as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate, the free balance held in trust for the residuary legatees or for the persons with the right to the intestate estate has been ascertained.
- (3) In this Chapter “the final accounting period” means the accounting period in which the administration period ends.
- (4) In this Chapter “the final tax year” means the tax year in which the administration period ends.

#### **939 Limited interests in residue U.K.**

- (1) Income is treated as arising in an accounting period from a company's limited interest in the whole or part of the residue of an estate in cases A, B and C.
- (2) Case A is where—
  - (a) the interest has not ceased before the beginning of the accounting period, and
  - (b) a sum is paid in respect of the interest in that period and before the end of the administration period.
- (3) Case B is where—
  - (a) the accounting period is the final accounting period,
  - (b) the interest has not ceased before the beginning of that period, and
  - (c) a sum remains payable in respect of the interest at the end of the administration period.

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- (4) Case C is where—
- (a) the accounting period is a period before the final accounting period,
  - (b) the interest ceases in the accounting period, and
  - (c) a sum is paid in respect of the interest in a later accounting period but before the end of the administration period, or remains payable in respect of it at the end of the administration period.
- (5) This section does not apply to limited interests to which section 957 (successive interests: holders of limited interests) applies.
- (6) Income treated as arising as a result of this section or section 957 is estate income for the purposes of this Chapter.

#### 940 Discretionary interests in residue **U.K.**

- (1) Income is treated as arising in an accounting period from a company's discretionary interest in the whole or part of the residue of an estate if a payment is made in the accounting period in exercise of the discretion in the company's favour.
- (2) Income treated as arising as a result of this section is estate income for the purposes of this Chapter.

#### *Income charged*

#### 941 UK estates **U.K.**

- (1) In the case of a UK estate, tax is charged under section 934 on the amount of estate income treated as arising in the accounting period.
- (2) That amount is the basic amount of that income for the accounting period (see subsection (4)), grossed up by reference to the applicable rate for the relevant tax year (see section 946).
- (3) The gross amount is treated as having borne income tax by deduction at that rate.
- (4) In this Chapter “the basic amount”, in relation to estate income, has the meaning given by—
  - (a) section 943 (basic amount of estate income: absolute interests),
  - (b) section 944 (basic amount of estate income: limited interests),
  - (c) section 945 (basic amount of estate income: discretionary interests), and
  - (d) section 958 (basic amount of estate income: successive limited interests).

#### 942 Foreign estates **U.K.**

- (1) In the case of a foreign estate, tax is charged under section 934 on the amount of estate income treated as arising in the accounting period.
- (2) That amount depends on whether the estate income arising in the accounting period is paid from sums within section 963(3) or (4) (sums treated as bearing income tax).
- (3) So far as the estate income is paid from such sums, that amount is the basic amount of that income for the accounting period grossed up by reference to the applicable rate for the relevant tax year (see section 946).

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- (4) That gross amount is treated as having borne income tax by deduction at that rate.
- (5) So far as the estate income is not paid from sums within section 963(3) or (4), the amount of estate income treated as arising in the accounting period is the basic amount of that income for that period.

*Basic amount of estate income: general calculations rules*

**943 Absolute interests** **U.K.**

- (1) The basic amount of estate income relating to a company's absolute interest in the whole or part of the residue of an estate for an accounting period before the final accounting period is the lower of—
  - (a) the total of all sums paid in the accounting period in respect of that interest, and
  - (b) the amount of the company's assumed income entitlement for the accounting period in respect of it.
- (2) The basic amount for the final accounting period is equal to the amount of the company's assumed income entitlement for that accounting period in respect of that interest.
- (3) But if the residuary income of the estate for the final tax year is nil because the allowable estate deductions exceed the aggregate income of the estate, the basic amount for the final accounting period is reduced—
  - (a) where the company has an absolute interest in the whole of the residue of the estate, by an amount equal to the excess, and
  - (b) in any other case, by an amount equal to such part of the excess as is just and reasonable.
- (4) See sections 948 to 952 for the meaning of references to assumed income entitlement and residuary income of an estate.
- (5) See sections 947 and 949(2) for the meaning of aggregate income of an estate and allowable estate deductions respectively.
- (6) This section is subject to sections 953 to 956 (successive interests).

**944 Limited interests** **U.K.**

- (1) The basic amount of estate income relating to a company's limited interest in the whole or part of the residue of an estate for an accounting period is the total of the sums within section 939(2)(b), (3)(c) and (4)(c) for that period.
- (2) This does not apply, and section 958 applies instead, if the limited interest is one to which section 957 (successive interests: holders of limited interests) applies.

**945 Discretionary interests** **U.K.**

The basic amount of estate income relating to a company's discretionary interest in the whole or part of the residue of an estate for an accounting period is the total of the payments made in the accounting period in exercise of the discretion in favour of the company.

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#### 946 **Applicable rate for grossing up basic amounts of estate income** **U.K.**

- (1) The applicable rate by reference to which a basic amount of estate income is grossed up for the purposes of sections 941 and 942 depends on the rate at which income tax is borne by the aggregate income of the estate for the relevant tax year (see subsection (5)).
- (2) If the aggregate income of the estate all bears income tax at the same rate, the applicable rate is that rate.
- (3) If—
  - (a) different parts of the aggregate income of the estate bear income tax at different rates, and
  - (b) the same rate applies to all the income from which section 962 treats the basic amount as having been paid,
 the applicable rate is that rate.
- (4) If—
  - (a) different parts of the aggregate income of the estate bear income tax at different rates, and
  - (b) different rates apply to different parts of the income from which section 962 treats the basic amount as having been paid,
 each of those rates is the applicable rate by reference to which the corresponding part of the basic amount is grossed up.
- (5) In this Chapter “the relevant tax year” in relation to an amount of estate income, means the tax year in which the amount of estate income would be treated as arising if—
  - (a) the references in this Chapter to accounting periods were references to tax years, and
  - (b) section 950(3) (apportionment between accounting periods) were ignored.

#### 947 **Aggregate income of the estate** **U.K.**

- (1) For the purposes of this Chapter the aggregate income of the estate for a tax year is the total of the income and amounts specified in subsection (2), but excluding the income specified in subsection (5).
- (2) The income and amounts are—
  - (a) the income of the deceased's personal representatives in that capacity which is charged to United Kingdom income tax for the tax year,
  - (b) the income of the deceased's personal representatives in that capacity on which such tax would have been charged for the tax year if—
    - (i) it was income of a UK resident who was ordinarily UK resident, and
    - (ii) it was income from a source in the United Kingdom,
  - (c) any amount of income treated as arising to the personal representatives under section 410(4) (stock dividends) of ITTOIA that would be charged to income tax under Chapter 5 of Part 4 of that Act if income arising to personal representatives were so charged (see section 411 of that Act),
  - (d) in a case where section 419(2) of ITTOIA applies (release of loans to participator in close company: loans and advances to persons who die), the amount that would be charged to income tax under Chapter 6 of Part 4 of that Act apart from that section, and

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- (e) any amount that would have been treated as income of the personal representatives in that capacity under section 466 of ITTOIA if the condition in section 466(2) had been met (gains from contracts for life insurance).
- (3) In calculating the amount of the income within subsection (2)(a), any allowable deductions are to be taken into account.
- (4) In calculating the amount of the income within subsection (2)(b), any deductions which would be allowable if the income had been charged to United Kingdom income tax are to be deducted from the full amount of the income actually arising in the tax year.
- (5) The excluded income is—
  - (a) income to which any person is or may become entitled under a specific disposition, and
  - (b) income from property devolving on the personal representatives otherwise than as assets for payment of the deceased's debts.
- (6) In subsection (5)(a) “specific disposition” means a gift of specific property under a will, including—
  - (a) the disposition of personal chattels by section 46 of the Administration of Estates Act 1925 (c. 23) (succession on intestacy), and
  - (b) any disposition which under the law of another country has a similar effect to a gift of specific property by will under the law of England and Wales, but excluding real property included in a residuary gift made by will by a specific or general description of it or, in Scotland, heritable estate included in such a gift.

*Further provisions for calculating estate income relating to absolute interests*

#### **948 Assumed income entitlement U.K.**

- (1) Whether a company has an assumed income entitlement for an accounting period in respect of an absolute interest in the whole or part of the residue of an estate depends on the results of the following steps.

##### *Step 1*

Find the amount of the company's share of the residuary income of the estate that is attributable to that interest for that accounting period and each previous accounting period during which the company had that interest (see sections 949 to 951).

##### *Step 2*

If the estate is a UK estate in relation to any tax year by reference to which the amount of that share for any accounting period is determined under section 950, deduct from that amount income tax on that amount at the applicable rate for that year (see section 952).

##### *Step 3*

Add together the amounts found under step 1 after making any deductions necessary under step 2.

##### *Step 4*

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Add together the basic amounts relating to the company's absolute interest in respect of which the company was liable for corporation tax for all previous accounting periods (or would have been so liable if the company had been a company liable for corporation tax for those accounting periods).

- (2) For the purposes of this Chapter the company has an assumed income entitlement for the accounting period if the amount resulting from step 3 exceeds the amount resulting from step 4.
- (3) The assumed income entitlement is equal to the excess.
- (4) This section is subject to—
  - section 954 (successive absolute interests), and
  - section 955 (successive interests: assumed income entitlement of holder of absolute interest following limited interest).

#### 949 Residuary income of the estate **U.K.**

- (1) For the purposes of this Chapter the residuary income of an estate for a tax year is the aggregate income of the estate for that year, less the allowable estate deductions for that year.
- (2) The allowable estate deductions for a tax year are—
  - (a) all interest paid in that year by the personal representatives in that capacity (but see section 233(3) of IHTA 1984: exclusion of interest on unpaid inheritance tax),
  - (b) all annual payments for that year which are properly payable out of residue,
  - (c) all payments made in that year in respect of expenses incurred by the personal representatives in that capacity in the management of the assets of the estate, and
  - (d) any excess deductions from the previous tax year.

This is subject to subsections (3) to (5).

- (3) No sum is to be treated as an allowable estate deduction if it is allowable in calculating the aggregate income of the estate.
- (4) No sum is to be counted twice as an allowable estate deduction.
- (5) Payments in respect of expenses are only allowable estate deductions if they are properly chargeable to income (ignoring any specific direction in a will).
- (6) In this section “excess deductions from the previous tax year” means so much of the allowable deductions for the previous tax year as exceeded the aggregate income of the estate for that year.

#### 950 Shares of residuary income of estate **U.K.**

- (1) In the case of a company which has an absolute interest in the whole of the residue of an estate for a whole tax year, the company's share of the residuary income of the estate in respect of that interest for that year is equal to the whole of that income for that year.
- (2) In the case of a company which—



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- (a) has an absolute interest in the whole of the residue of an estate for part of the tax year, or
  - (b) an absolute interest in part of the residue of an estate for the whole or part of the tax year,
- the company's share of the residuary income of the estate for that year is a proportionate part of that income for that year.
- (3) The company's share of the residuary income of an estate in respect of an absolute interest for each of the accounting periods (if more than one) comprising a tax year is found by apportioning the company's share of the residuary income of the estate for that year between the accounting periods.
  - (4) Subsections (1) and (2) are subject to section 951 (reduction in share of residuary income of estate).

#### **951 Reduction in share of residuary income of estate** **U.K.**

- (1) This section applies if a company has an absolute interest in the whole or part of the residue of an estate at the end of the administration period and—
  - (a) the total of the company's shares of the residuary income of the estate in respect of that interest for all tax years (apart from this section), exceeds
  - (b) the total of all sums paid during or payable at the end of the administration period in respect of that interest to any person (grossed up where subsection (5) applies).
- (2) In the final accounting period the company's share of the residuary income of the estate is to be reduced by that excess.
- (3) If that excess is greater than the company's share of that income for the final accounting period, the company's share of that income for the previous accounting period is to be reduced, and so on.
- (4) If subsection (3) applies, all necessary adjustments and repayments of corporation tax are to be made.
- (5) For the purposes of calculating the total mentioned in subsection (1)(b)—
  - (a) if the estate is a UK estate in relation to a tax year in which a sum is paid, the sum is to be grossed up by reference to the basic rate for that year, and
  - (b) if the estate is a UK estate in relation to the final tax year, a sum payable at the end of the administration period is to be grossed up by reference to the basic rate for that year.
- (6) For the application of this section where two or more absolute interests in the whole or the same part of the residue are held successively by different persons, see section 954(5) and (6).

#### **952 Applicable rate for determining assumed income entitlement (UK estates)** **U.K.**

- (1) The applicable rate by reference to which income tax on a company's share of the residuary income of the estate is calculated for the purposes of step 2 of the calculation in section 948(1) depends on the rate at which income tax is borne by the aggregate income of the estate for the tax year in question.

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- (2) If the aggregate income of the estate all bears income tax at the same rate, the applicable rate is that rate.
- (3) If different parts of the aggregate income of the estate bear income tax at different rates, the applicable rate is the rate that applies to the income to which the company's share of the residuary income of the estate relates.
- (4) If different rates apply to different parts of that income, each of those rates is the applicable rate that applies to the corresponding part of the income to which the company's share of the residuary income of the estate relates.
- (5) For the purposes of this section, if there is more than one person with an absolute interest in the residue of the estate, such apportionments of parts of the aggregate income of the estate bearing income tax at different rates are to be made as are just and reasonable for their different interests.
- (6) Section 650(1) of ITTOIA 2005 (absolute interests) applies for the purposes of subsection (5) in the case of any person who is not a company chargeable to corporation tax.

#### *Successive interests*

### 953 Introduction **U.K.**

- (1) Sections 954 to 959 relate to cases where two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons.
- (2) For the purposes of this section and those sections, two interests are held successively even where one is not held immediately before or after the other.
- (3) It is assumed for the purposes of those sections—
  - (a) that each of the persons holding the interests in question is a company within the charge to corporation tax (but without prejudice to the references to interests ceasing otherwise than by death), and
  - (b) that in the case of a person who is not a company the person's accounting periods correspond with tax years.

### 954 Successive absolute interests **U.K.**

- (1) This section applies if two or more absolute interests in the whole or part of the residue of an estate are held successively during the administration period by different persons.
- (2) In determining whether a company with a later such interest (“the later holder”) has an assumed income entitlement in respect of that interest and, if so, its amount—
  - (a) the later holder's share of the residuary income of the estate in respect of that interest for any accounting period is to be treated as including the share of any person with a previous such interest (“a previous holder”), and
  - (b) the basic amounts relating to the later holder's interest are to be treated as including the basic amounts relating to any previous such interest.

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- (3) In applying subsection (2), all determinations under that subsection or section 955(2) that fall to be made in relation to a person with an earlier interest are to be made before determinations under those provisions relating to a person with a later interest.
- (4) A company which is a previous holder in the final accounting period is to be taxed for that period, in relation to the interest as to which that company is a previous holder, as if that period were not the final accounting period, and the later holder's assumed income entitlement is to be calculated accordingly (or, where the previous holder is not a company, having regard to the application of section 671(4) of ITTOIA 2005 to the previous holder).
- (5) The calculation under section 951(1)(a) and (b) (amount of reduction in the share of the residuary income of the company with an absolute interest at the end of the administration period) is to be made by reference to all the absolute interests taken together.
- (6) If the amount resulting from that calculation is greater than the total amount of the reductions which can be made under section 951(2) and (3), the share of the residuary income of the estate of the last previous holder of the interest for the last accounting period in which that last holder had that interest is to be reduced, and so on.
- (7) But if subsection (6) applies in a case where the last previous holder or any earlier previous holder is not a company, in applying that subsection regard must be had to the application of section 671(6) of ITTOIA 2005 to the previous holder.

**955 Assumed income entitlement of holder of absolute interest following limited interest U.K.**

- (1) This section applies if—
  - (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) each later interest arises or is created on the cessation of the previous interest otherwise than by death,
  - (c) at least one of the interests is an absolute interest, and
  - (d) at least one of the interests preceding that interest is a limited interest.
- (2) Rules A and B apply to determine in relation to such an absolute interest—
  - (a) whether the company with the interest has an assumed income entitlement in respect of the interest, and
  - (b) if so, its amount.
- (3) Rule A is that the company's share of the residuary income of the estate in respect of the absolute interest for any accounting period is treated as including any amount which would be included in it if—
  - (a) the interest had subsisted throughout the period when any such limited interest subsisted, and
  - (b) no such limited interest had ever subsisted.
- (4) Rule B is that the basic amounts relating to the absolute interest are treated as including the basic amounts relating to any such limited interest.

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## 956 Payments in respect of limited interests followed by absolute interests **U.K.**

- (1) This section applies if—
  - (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) each later interest arises or is created on the cessation of the previous interest otherwise than by death,
  - (c) at least one of the interests is an absolute interest, and
  - (d) at least one of the interests preceding that interest is a limited interest.
- (2) A sum to which a company (“C”) with such an absolute interest is entitled in respect of any such limited interest which is paid while C has the absolute interest is treated as paid in respect of the absolute interest (and not the limited interest).
- (3) Subsection (4) applies if—
  - (a) C's absolute interest ceases during the administration period, and
  - (b) a sum to which C is entitled in respect of any such limited interest—
    - (i) is paid after the absolute interest ceases but before the end of the administration period, or
    - (ii) remains payable at the end of it.
- (4) This Chapter applies as respects any such sum as if the limited interest had continued to subsist while that absolute interest subsisted and had been held by C.
- (5) Subsection (4) is subject to subsection (6).
- (6) For the purposes only of section 951 (reduction in share of residuary income of estate), any such sum is treated as paid or payable in respect of the absolute interest.

## 957 Holders of limited interests **U.K.**

- (1) This section applies if—
  - (a) two or more interests in the whole or part of the residue of an estate are held successively during the administration period by different persons,
  - (b) the earlier or, if there are more than two, the earliest of the interests is a limited interest, and
  - (c) each later interest arises or is created on the cessation of the previous interest otherwise than by death.
- (2) Income is treated as arising from a limited interest in the whole or part of the residue of the estate in an accounting period in cases A, B and C.
- (3) Case A is where—
  - (a) one of the successive interests subsists at the beginning of the accounting period of a company which has or has had one of the interests which is a limited interest (the “limited holder”),
  - (b) a sum is paid in respect of one of the interests in that period and before the end of the administration period, and
  - (c) the limited holder is entitled to receive the payment.
- (4) Case B is where—
  - (a) the accounting period of a limited holder is the final accounting period,
  - (b) one of the successive interests subsists at the beginning of that period,

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- (c) a sum remains payable in respect of one of the interests at the end of the administration period, and
  - (d) the limited holder is entitled to receive the payment.
- (5) Case C is where—
- (a) the accounting period of a limited holder is a period before the final accounting period,
  - (b) the last of the successive interests ceases in the accounting period,
  - (c) a sum is either—
    - (i) paid in respect of one of the interests in a later accounting period but before the end of the administration period, or
    - (ii) remains payable in respect of it at the end of the administration period, and
  - (d) the limited holder is entitled to receive the payment.

**958 Basic amount of estate income: successive limited interests U.K.**

The basic amount of estate income relating to a limited interest within section 957 for an accounting period is the total of the sums within section 957(3)(b), (4)(c) and (5)(c) for that period.

**959 Apportionments U.K.**

- (1) Such apportionments as are just and reasonable are to be made for the purposes of this Chapter if—
- (a) the part of a residuary estate in which an interest within any of the provisions specified in subsection (2) subsists does not wholly correspond with the part in which another such interest held successively subsists, or
  - (b) one of those interests is in the whole of the residuary estate and the other is only in part of it.
- (2) The provisions are—
- section 954 (successive absolute interests),
  - section 955 (successive interests: assumed income entitlement of holder of absolute interest following limited interest),
  - section 956 (successive interests: payments in respect of limited interests followed by absolute interests),
  - section 957 (successive interests: holders of limited interest) and,
  - section 958 (basic amount of estate income: successive limited interests).

*Relief where foreign estates have borne UK income tax*

**960 Relief in respect of tax relating to absolute interests U.K.**

- (1) This section applies if—
- (a) United Kingdom corporation tax has been charged on a company for an accounting period on estate income treated as arising from an estate under section 937 (estate income: absolute interests in residue),
  - (b) the estate is a foreign estate in relation to the relevant tax year, and

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- (c) United Kingdom income tax has already been borne by part of the aggregate income of the estate for the relevant tax year.
- (2) If the company makes a claim under this section, the corporation tax charged on the company on that estate income is to be reduced by an amount equal to—

$$T \times \frac{A}{B}$$

where—

T is the corporation tax charged on the company,

A is so much of the aggregate income of the estate as has already borne United Kingdom income tax for the relevant tax year, and

B is the aggregate income of the estate for the relevant tax year.

#### 961 Relief in respect of tax relating to limited or discretionary interests U.K.

- (1) This section applies if—
- (a) United Kingdom corporation tax has been charged on a company for an accounting period on estate income from an estate treated as arising under—
    - (i) section 939 (estate income: limited interests in residue), or
    - (ii) section 940 (estate income: discretionary interests in residue),
  - (b) the estate is a foreign estate in relation to the relevant tax year, and
  - (c) United Kingdom income tax has already been borne by part of the aggregate income of the estate for the relevant tax year.
- (2) If the company makes a claim under this section, the corporation tax charged on the company on that estate income is to be reduced by an amount equal to—

$$T \times \frac{A - C}{B - C}$$

where—

T is the corporation tax charged on the company,

A is so much of the aggregate income of the estate as has already borne United Kingdom income tax for the relevant tax year,

B is the aggregate income of the estate for the relevant tax year, and

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C is the amount of United Kingdom income tax already borne by the aggregate income of the estate for the relevant tax year.

### General

## 962 Income from which basic amounts are treated as paid **U.K.**

- (1) The part of the aggregate income of the estate from which a basic amount is treated as paid is determined by applying assumptions A and B in that order.
- (2) Assumption A is that if there are different persons with interests in the residue of the estate, payments in respect of their basic amounts are paid out of the different parts of the aggregate income of the estate in such proportions as are just and reasonable for their different interests.
- (3) Assumption B is that payments are made from those parts in the following order—
  - (a) income bearing income tax at the basic rate, and
  - (b) income bearing income tax at the dividend ordinary rate.
- (4) If some, but not all, of the aggregate income of the estate is income treated under section 963 as bearing income tax, assumption C is applied before assumptions A and B.
- (5) Assumption C is that the basic amount is paid from income that is not within section 963 before it is paid from income within that section.
- (6) Assumptions A and B then apply—
  - (a) first to determine the part of the income not within that section from which the basic amount is paid, and
  - (b) then to determine the part of the income within that section from which the basic amount is paid.

## 963 Income treated as bearing income tax **U.K.**

- (1) This section has effect for the purposes of—
  - section 946 (the applicable rate for grossing up basic amounts of estate income),
  - section 952 (applicable rate for determining assumed income entitlement (UK estates)), and
  - section 962 (income from which basic amounts are treated as paid).
- (2) If the aggregate income of the estate includes a sum within subsection (3) or (4), the sum is treated as bearing income tax at the rate specified for it in that subsection.
- (3) The following sums are treated as bearing income tax at the dividend ordinary rate—
  - (a) a sum charged under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.), or
  - (b) a sum that is part of the aggregate income of the estate because of falling within—
    - (i) section 947(2)(c) (stock dividends), or
    - (ii) section 947(2)(d) (release of loan to participator in close company where debt due from personal representatives).



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- (4) A sum that is part of the aggregate income of the estate because of falling within section 947(2)(e) (gains from life insurance contracts etc.) is treated as bearing income tax at the basic rate.
- (5) Income tax treated as borne under section 941(3) or 942(4) (gross amount of estate income treated as bearing tax at the applicable rate) is not repayable so far as the basic amount of the estate income in question is paid from sums within this section.

#### 964 Transfers of assets etc treated as payments **U.K.**

- (1) For the purposes of this Chapter—
  - (a) a transfer of assets, or
  - (b) the appropriation of assets by personal representatives to themselves,
 is treated as the payment of an amount equal to the assets' value at the date of transfer or appropriation.
- (2) The set off or release of a debt is treated for the purposes of this Chapter as the payment of an amount equal to it.
- (3) If at the end of the administration period—
  - (a) there is an obligation to transfer assets to any person, or
  - (b) personal representatives are entitled to appropriate assets to themselves,
 an amount equal to the assets' value at that time is treated as payable then for the purposes of this Chapter.
- (4) If at the end of the administration period—
  - (a) there is an obligation to release or set off a debt owed by any person, or
  - (b) personal representatives are entitled to release or set off a debt in their own favour,
 a sum equal to the debt is treated as payable then for the purposes of this Chapter.

#### 965 Assessments, adjustments and claims after the administration period **U.K.**

- (1) This subsection applies if after the administration period ends it is apparent that a company is liable for corporation tax on estate income for any accounting period for which it previously appeared not to be so liable or to be liable for tax on a lesser amount.
- (2) If subsection (1) applies—
  - (a) the company may be assessed and taxed for the accounting period, and
  - (b) any relief or additional relief to which the company may be entitled for the accounting period is to be allowed if a claim is made.
- (3) This subsection applies if after the administration period ends it is apparent that a company which previously appeared to be liable for corporation tax on estate income for any accounting period is not so liable or is liable for tax on a lesser amount.
- (4) If subsection (3) applies—
  - (a) all necessary adjustments and repayments of corporation tax for the accounting period are to be made, and
  - (b) if the company has been allowed relief which exceeds the relief that could have been given by reference to the amount actually charged for the

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accounting period, the excess is to be treated as chargeable for that accounting period under the charge to corporation tax on income.

- (5) An assessment or adjustment made for the purposes of this Chapter or a claim made as a result of this Chapter may be made after the end of the period otherwise allowed if it is made on or before the third anniversary of the 31 January following the accounting period in which the administration period ends.

#### **966 Power to obtain information from personal representatives and beneficiaries** **U.K.**

- (1) An officer of Revenue and Customs may by notice require a person within subsection (2) to provide the officer with such particulars as the officer thinks necessary for the purposes of this Chapter.
- (2) A person is within this subsection if—
  - (a) the person is or has been a personal representative, or
  - (b) the person has or has had an absolute or limited interest in the whole or part of the residue of the deceased person's estate.
- (3) The notice must specify the period within which the particulars must be provided.
- (4) That period must be at least 28 days.

#### **967 Statements relating to estate income** **U.K.**

- (1) If a company within subsection (2) requests it in writing, a personal representative of a deceased person must provide the company with a statement showing—
  - (a) the amount treated as estate income arising from the company's interest in the whole or part of the deceased person's estate for which the company is liable to corporation tax for an accounting period, and
  - (b) the amount of any tax at the applicable rate which any such amount is treated as having borne.
- (2) A company is within this subsection if—
  - (a) it has or has had an absolute or limited interest in the whole or part of the residue of the estate, or
  - (b) estate income has arisen to it from a discretionary interest it has or has had in the whole or part of the residue of the estate.
- (3) A statement under subsection (1) must be in writing.
- (4) The duty to comply with a request under this section is enforceable by the company which made it.

#### *Supplementary*

#### **968 Meaning of “personal representatives”** **U.K.**

In this Chapter “personal representatives”, in relation to a person who has died, means—

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and

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- (b) in a territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased.

## CHAPTER 4 U.K.

### INCOME FROM HOLDING AN OFFICE

#### 969 Charge to tax on income from holding an office U.K.

- (1) The charge to corporation tax on income applies to income from the holding of an office.
- (2) The amount of any income charged to tax under this section is to be calculated in accordance with income tax principles and all questions as to any of the following matters are to be determined in accordance with income tax law and practice as if accounting periods were years of assessment—
  - (a) the amounts which are or are not to be taken into account as a person's income from the holding of an office,
  - (b) the amounts which are or are not to be taken into account in calculating a person's income from the holding of an office,
  - (c) the amounts which are or are not to be charged to tax as a person's income from the holding of an office, and
  - (d) the time when any such amount is to be treated as arising.
- (3) Subsection (2) is subject to the provisions of the Corporation Tax Acts.
- (4) Accordingly—
  - (a) for corporation tax purposes income from the holding of an office is to be calculated under Part 2 of ITEPA 2003 (employment income) and the provisions applicable to that Part, and
  - (b) any provision of the Income Tax Acts (other than ITTOIA 2005 or ITA 2007) which has the effect of conferring an exemption from income tax in relation to income from the holding of an office has the corresponding effect for corporation tax purposes, unless otherwise provided.
- (5) For the purposes of this section “income tax law” means, in relation to an accounting period of a company, the law applying to the charge on individuals of income tax for the tax year in which the period ends, but does not include—
  - (a) such of the enactments of the Income Tax Acts as make special provision for individuals in relation to matters referred to in subsection (2), or
  - (b) ITA 2007.
- (6) In this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

#### 970 Rule restricting deductions for bad debts U.K.

- (1) This section applies only to debts to which Part 5 (loan relationships) does not apply.
- (2) In calculating the income of an office held by a company, no deduction is allowed in respect of a debt owed to the company, except—
  - (a) by way of impairment loss, or

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- (b) so far as the debt is released wholly and exclusively for the purposes of the office as part of a statutory insolvency arrangement.
- (3) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

## CHAPTER 5 U.K.

### DISTRIBUTIONS FROM UNAUTHORISED UNIT TRUSTS

#### 971 Overview of Chapter U.K.

- (1) This Chapter—
  - (a) applies the charge to corporation tax on income to amounts which unit holders in unauthorised unit trust schemes are treated in certain circumstances as receiving from the scheme, and
  - (b) provides for the calculation of the amount treated as received.
- (2) The following are also relevant to the tax treatment of such amounts in the hands of the unit holder—
  - (a) section 848 of ITA 2007 (under which a sum representing income tax treated as deducted under section 941 of that Act (deemed deduction by trustees of income tax from deemed payments to unit holders) is treated as income tax paid by the unit holder), and
  - (b) section 7(2) of ICTA (set off of income tax deducted at source against corporation tax).

#### 972 Charge to tax under this Chapter U.K.

- (1) The charge to corporation tax on income applies to income treated as received by a unit holder from a unit trust scheme to which this section applies.
- (2) For the purposes of this Chapter a unit holder is treated as receiving such income if an amount is shown in the scheme's accounts as income available for payment to unit holders or for investment.
- (3) This section applies to a unit trust scheme if—
  - (a) the scheme is an unauthorised unit trust, and
  - (b) the trustees of the scheme are UK resident.
- (4) “Unauthorised unit trust” has the meaning given by section 989 of ITA 2007.

#### 973 Amount of income treated as received U.K.

- (1) The amount of the income which a unit holder is treated as receiving under section 972(2) is its gross amount and is calculated by reference to distribution periods.
- (2) To calculate the gross amount of the income treated as received by a unit holder for a distribution period—

*Step 1*

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Calculate the unit holder's share of the unit trust scheme's available income by applying the formula—

$$\text{SAI} \times \frac{R}{\text{TR}}$$

where—

SAI is the total amount shown in the scheme's accounts as income available for payment to unit holders or for investment,

R is the unit holder's rights, and

TR is all the unit holders' rights.

*Step 2*

Gross up the unit holder's share of the scheme's available income by reference to the basic rate for the tax year in which the income from the scheme is treated as received.

- (3) The income from a scheme for a distribution period is treated as received on the date or latest date provided by the terms of the scheme for any distribution for the period, unless that date is more than 12 months after it ends.
- (4) If—
  - (a) that date is more than 12 months after the distribution period ends, or
  - (b) no date is so provided,
 the income for the period is treated as received on the last day of the period.
- (5) In this section “distribution period” means a period over which income from the investments subject to the trusts is aggregated to ascertain the amount available for distribution to unit holders.  
 This is subject to subsections (6) and (7).
- (6) If the scheme does not provide for distribution periods, its distribution periods are taken to be successive periods of 12 months, the first of which began with the day on which the scheme took effect.
- (7) If the scheme provides for a distribution period of more than 12 months, each successive period of 12 months within that period and any remaining period of less than 12 months are taken to be distribution periods.

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## CHAPTER 6 U.K.

### SALE OF FOREIGN DIVIDEND COUPONS

#### 974 Charge to tax under this Chapter U.K.

- (1) The charge to corporation tax on income applies to income treated under subsection (2) as arising from foreign holdings.
- (2) Income is treated as arising from such holdings in the following cases.
- (3) The first case is where a bank's office in the United Kingdom—
  - (a) pays over the proceeds of a sale or other realisation of dividend coupons in respect of the holdings which has been effected by the bank, or
  - (b) carries such proceeds into an account.
- (4) The second case is where proceeds of sale arise from a sale of dividend coupons in respect of the holdings by a person who is not a bank or a dealer to a person dealing in coupons in the United Kingdom.
- (5) The amount of the income that is treated as arising is equal to the proceeds of the sale or realisation.
- (6) In this section “bank” has the meaning given by section 840A of ICTA.

#### 975 Meaning of “foreign holdings” etc U.K.

- (1) In this Chapter “foreign holdings” means shares outside the United Kingdom that are issued by or on behalf of a non-UK resident body of persons.
- (2) In section 974 “dividend coupons” means coupons for dividends payable in respect of foreign holdings.
- (3) In this Chapter “coupons” includes—
  - (a) warrants, and
  - (b) bills of exchange that purport to be drawn or made in payment of dividends payable in respect of foreign holdings.

## CHAPTER 7 U.K.

### ANNUAL PAYMENTS NOT OTHERWISE CHARGED

#### 976 Overview of Chapter U.K.

- (1) This Chapter—
  - (a) applies the charge to corporation tax on income to annual payments not otherwise charged to corporation tax (see section 977), and
  - (b) provides for an exemption (see section 978).
- (2) The following are also relevant to the tax treatment of annual payments within this Chapter—
  - (a) section 687A(3) of ICTA (discretionary payments by trustees to companies),

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- (b) section 494 of ITA 2007 (grossing up of discretionary payment and payment of income tax),
- (c) section 848 of ITA 2007 (under which a sum representing income tax deducted under Chapter 6 or 7 of Part 15 of that Act (deduction from annual payments, patent royalties and other payments connected with intellectual property) from an annual payment within this Chapter is treated as income tax paid by the recipient), and
- (d) Chapter 8 of Part 15 of ITA 2007 (special provision in relation to royalties).

**977 Charge to tax on annual payments not otherwise charged U.K.**

- (1) The charge to corporation tax on income applies to annual payments that are not otherwise within the application of that charge under the Corporation Tax Acts.
- (2) Subsection (1) does not apply to annual payments in respect of which no liability to corporation tax arises because of an exemption.
- (3) The frequency with which payments are made is ignored in determining whether they are annual payments for the purposes of this Chapter.

**978 Exemption for payments by persons liable to pool betting duty U.K.**

- (1) No liability to corporation tax arises under this Chapter in respect of a payment which meets conditions A and B.
- (2) Condition A is that the payment is made, in consequence of a reduction in pool betting duty, by a person liable to that duty.
- (3) Condition B is that the payment is in order to meet (directly or indirectly) capital expenditure incurred in improving the safety or comfort of spectators at a ground to be used for the purposes of playing association football.

**CHAPTER 8 U.K.**

INCOME NOT OTHERWISE CHARGED

**979 Charge to tax on income not otherwise charged U.K.**

- (1) The charge to corporation tax on income applies to income that is not otherwise within the application of that charge under the Corporation Tax Acts.
- (2) Subsection (1) does not apply to—
  - (a) annual payments,
  - (b) income in respect of which no liability to corporation tax arises because of an exemption, or
  - (c) deemed income.

**980 Exemption for commercial occupation of woodlands in UK U.K.**

- (1) No liability to corporation tax arises under this Chapter in respect of income arising from the commercial occupation of woodlands in the United Kingdom.



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- (2) For this purpose the occupation of woodlands is commercial if the woodlands are managed—
- (a) on a commercial basis, and
  - (b) with a view to the realisation of profits.

## **981 Exemption for gains on financial futures** U.K.

- (1) No liability to corporation tax arises under this Chapter in respect of a gain arising to a company in the course of dealing in—
- (a) financial futures,
  - (b) traded options, or
  - (c) financial options.
- (2) The reference in subsection (1) to a gain arising in the course of dealing in financial futures includes a gain regarded as so arising under section 143(3) of TCGA 1992 (gains arising from transactions otherwise than in the course of dealing on a recognised futures exchange, involving authorised persons).
- (3) In this section—
- “financial futures” means financial futures which are for the time being dealt in on a recognised futures exchange,
  - “financial option” has the meaning given by section 144(8)(c) of TCGA 1992,
  - “recognised futures exchange” means the London International Financial Futures Exchange and any other futures exchange which is for the time being designated for the purposes of that Act by order made by the Commissioners for Her Majesty’s Revenue and Customs under section 288(6) of that Act, and
  - “traded option” has the meaning given by section 144(8)(b) of that Act.

## **CHAPTER 9** U.K.

### PRIORITY RULES

## **982 Provisions which must be given priority over this Part** U.K.

- (1) Any income, so far as it falls within—
- (a) Chapter 2, 5 or 6, and
  - (b) Chapter 2 of Part 3,
- is dealt with under Part 3.
- (2) Any income, so far as it falls within—
- (a) Chapter 2, 5 or 6, and
  - (b) Chapter 3 of Part 4 so far as the Chapter relates to a UK property business,
- is dealt with under Part 4.

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## PART 11 **U.K.**

### RELIEF FOR PARTICULAR EMPLOYEE SHARE ACQUISITION SCHEMES

#### CHAPTER 1 **U.K.**

##### SHARE INCENTIVE PLANS

###### *Introductory*

### 983 **Overview of Chapter** **U.K.**

- (1) This Chapter is about deductions relating to approved share incentive plans.
- (2) Section 984 relates to the interpretation of this Chapter.
- (3) Sections 985 and 986 set out—
  - (a) how effect is given to deductions allowed under this Chapter, and
  - (b) how amounts treated as received under this Chapter are dealt with.
- (4) Sections 987 and 988 deal with deductions allowed for the costs of setting up plans and their running expenses.
- (5) Sections 989 to 993 deal with deductions allowed for payments used to acquire shares for plan trusts.
- (6) Sections 994 to 997 deal with other deductions relating to free shares, matching shares, partnership shares and dividend shares.
- (7) Section 998 deals with the withdrawal of deductions if approval for a plan is withdrawn.

### 984 **Chapter to form part of SIP code etc** **U.K.**

- (1) This Chapter forms part of the SIP code (see section 488 of ITEPA 2003).
- (2) Therefore expressions used in this Chapter and contained in the index at the end of Schedule 2 to ITEPA 2003 have the meaning indicated by that index.
- (3) Subsection (4) applies if any of a participant's plan shares are forfeited.
- (4) For the purposes of this Chapter the shares are treated as acquired by the trustees—
  - (a) when the forfeiture occurs, and
  - (b) for no consideration.

###### *Deductions and receipts: general*

### 985 **References to a deduction being allowed to a company** **U.K.**

- (1) References in this Chapter to a deduction being allowed to a company are to be read in accordance with this section (and references to a deduction being made are to be read in that light).

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- (2) If a deduction is allowed to a company, the deduction is made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to subsections (3) and (4).

- (3) If the company is a company with investment business (as defined in section 1218), the amount of the deduction is treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (2) applies instead).

- (4) If the company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of the deduction is treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (5) So far as this Chapter provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

## **986 Treatment of receipts under Chapter U.K.**

- (1) This section applies if a company is treated under this Chapter as receiving an amount.
- (2) If the company is carrying on a trade or property business in respect of which it is within the charge to corporation tax, the amount is treated as a receipt of that trade or business.
- (3) If the company has permanently ceased to carry on a trade or property business in respect of which it was within the charge to corporation tax, the amount is treated as a post-cessation receipt of that trade or business (see Chapter 15 of Part 3).
- (4) Otherwise, the amount is treated as a receipt chargeable under the charge to corporation tax on income.

*Deductions relating to setting up and running costs*

## **987 Deduction for costs of setting up an approved share incentive plan U.K.**

- (1) This section applies if a company incurs expenses in setting up a share incentive plan that is approved by an officer of Revenue and Customs.
- (2) A deduction for the expenses is allowed to the company.
- (3) But no deduction is allowed under this section if before the approval—
  - (a) an employee acquires rights under the plan, or
  - (b) the trustees acquire shares for the purposes of the plan.
- (4) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred, the deduction is allowed for the period of account in which the approval is given.
- (5) No other deduction is allowed in respect of expenses for which a deduction is allowed under this section.

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## 988 Deductions for running expenses of an approved share incentive plan **U.K.**

- (1) This section applies if a company incurs expenses in contributing to the expenses of the trustees in running an approved share incentive plan.
- (2) This Chapter does not affect the deductions that, apart from this Chapter, are allowed to the company in relation to those expenses incurred by it.
- (3) For the purposes of this section expenses of the trustees in running an approved share incentive plan do not include expenses incurred in acquiring shares for the purposes of the plan other than expenses within subsection (4).
- (4) The expenses within this subsection are—
  - (a) interest paid on money borrowed by the trustees for the purpose of acquiring the shares, and
  - (b) any of the following—
    - (i) fees,
    - (ii) commission,
    - (iii) stamp duty,
    - (iv) stamp duty reserve tax, and
    - (v) other incidental costs similar to any mentioned in sub-paragraphs (i) to (iv).

*Deductions relating to payments used to acquire shares*

## 989 Deduction for contribution to plan trust **U.K.**

- (1) A deduction is allowed to a company (“the paying company”) if—
  - (a) the paying company makes a payment to the trustees of an approved share incentive plan to enable them to acquire shares in the paying company or a company that controls it,
  - (b) the trustees apply the payment to acquire such shares,
  - (c) the trustees do not acquire the shares from a company, and
  - (d) at the end of the interim period the condition in subsection (2) is met in relation to the company in which the trustees acquire the shares.
- (2) The condition is that the trustees hold shares in the company for the plan trust that—
  - (a) constitute at least 10% of the ordinary share capital of the company, and
  - (b) carry rights to at least 10% of—
    - (i) any profits available for distribution to shareholders of the company, and
    - (ii) any assets of the company available for distribution to shareholders on a winding up.
- (3) For the purposes of subsection (2) shares that have been appropriated to, and acquired on behalf of, an employee under the plan are to be treated as held by the trustees for the plan trust so long as the shares are still subject to the plan.
- (4) The deduction is allowed for the period of account in which the interim period ends.
- (5) The amount of the deduction is an amount equal to the payment mentioned in subsection (1)(a).

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- (6) If the deduction is made, no other deduction is allowed in relation to the payment (except as specified in section 991).
- (7) In this section “the interim period” means the period of 12 months beginning with the date on which the trustees acquire the shares as mentioned in subsection (1)(b).

## **990 Withdrawal of deduction under section 989** **U.K.**

- (1) If—
  - (a) a deduction is made under section 989, and
  - (b) condition A or B is met,an officer of Revenue and Customs may by notice direct that the deduction is withdrawn.
- (2) Condition A is that less than 30% of the acquired shares have been awarded under the plan before the end of the period of 5 years beginning with the date on which the trustees acquire them.
- (3) Condition B is that not all the acquired shares have been awarded under the plan before the end of the period of 10 years beginning with the date on which the trustees acquire them.
- (4) If a direction is made, the paying company is treated as receiving an amount equal to the deduction.
- (5) The amount is treated as received when the direction is made.
- (6) For the purposes of this section and sections 991 to 993—
  - (a) “the acquired shares” means the shares acquired by the trustees as mentioned in section 989(1)(b), and
  - (b) if the trustees acquire shares on different days, assume that shares acquired on an earlier day are awarded under the plan before those acquired on a later day.

## **991 Another deduction to be allowed if all acquired shares are awarded** **U.K.**

- (1) This section applies if—
  - (a) a direction is made under section 990, and
  - (b) at any time after the making of the direction the condition in subsection (2) is met.
- (2) The condition is that all the acquired shares are awarded under the plan.
- (3) A deduction is allowed to the paying company for the period of account in which the condition is first met.
- (4) The amount of the deduction is an amount equal to the payment mentioned in section 989(1)(a).

## **992 Award of shares to excluded employee** **U.K.**

- (1) This section applies if—
  - (a) a deduction is made under section 989 or 991, and

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- (b) a number of the acquired shares are awarded under the plan to an excluded employee.
- (2) An employee is excluded if, at the time the shares are awarded to the employee, the earnings from the relevant employment are not (or would not be if there were any) general earnings—
  - (a) to which section 15 of ITEPA 2003 applies, or
  - (b) to which a section listed in section 20(1) of ITEPA 2003 applies.
- (3) “The relevant employment” means the employment because of which the shares are awarded to the employee.
- (4) The paying company is treated as receiving an amount equal to the relevant proportion of the deduction.
- (5) The relevant proportion is the proportion that the number of shares awarded to the excluded employee bears to the total number of the acquired shares.
- (6) The amount is treated as received when the shares are awarded to the excluded employee.

### **993 Plan termination notice** U.K.

- (1) This section applies if—
  - (a) a deduction has been made under section 989,
  - (b) the deduction has not been withdrawn under section 990,
  - (c) the paying company issues a plan termination notice under paragraph 89 of Schedule 2 to ITEPA 2003 in relation to the plan, and
  - (d) not all the acquired shares have been awarded under the plan before the issue of that notice.
- (2) The paying company is treated as receiving an amount equal to the relevant proportion of the deduction.
- (3) The relevant proportion is the proportion that the number of the acquired shares not awarded bears to the total number of the acquired shares.
- (4) The amount is treated as received when the paying company issues the plan termination notice.

#### *Deductions relating to provision of certain types of shares*

### **994 Deduction for providing free or matching shares** U.K.

- (1) This section applies if, under an approved share incentive plan, shares are awarded to employees as free or matching shares because of their employment with a company (“the employing company”).
- (2) A deduction is allowed to the employing company for the period of account in which the shares are awarded to the employees.
- (3) The amount of the deduction is an amount equal to the market value of the shares awarded to the employees.

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- (4) But if the shares are awarded to the employees under a group plan, the amount of the deduction is an amount equal to the relevant proportion of the total market value of the shares included in the award.
- (5) The relevant proportion is the proportion that the number of shares awarded to the employees bears to the total number of shares included in the award.
- (6) For the purposes of this section—
  - (a) the market value of shares is their market value when they are acquired by the trustees of the plan trust, and
  - (b) if the trustees acquire shares on different days, assume that shares acquired on an earlier day are awarded before those acquired on a later day.
- (7) No deduction, other than one under this section, is allowed to the employing company or any associated company in relation to the provision of the shares awarded to the employees.
- (8) But subsection (7)—
  - (a) does not prevent a deduction being allowed under section 987 in relation to expenses incurred by a company in setting up a share incentive plan, and
  - (b) is subject to section 988.
- (9) If the shares are awarded to the employees because of their employment with two or more companies, only one of those companies can make a deduction under this section in relation to the award.
- (10) This section is subject to section 996.

## **995 Deduction for additional expense in providing partnership shares** **U.K.**

- (1) This section applies if—
  - (a) under an approved share incentive plan, partnership shares are awarded to employees because of their employment with a company (“the employing company”), and
  - (b) the market value of the shares when they were acquired by the trustees of the plan trust exceeds the partnership share money paid by the participants to acquire those shares.
- (2) A deduction is allowed to the employing company for the period of account in which the shares are awarded.
- (3) The amount of the deduction is an amount equal to the excess mentioned in subsection (1)(b).
- (4) No deduction, other than one under this section, is allowed to the employing company or any associated company in relation to the provision of the shares.
- (5) But subsection (4)—
  - (a) does not prevent a deduction being allowed under section 987 in relation to expenses incurred by a company in setting up a share incentive plan, and
  - (b) is subject to section 988.



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- (6) If the shares are awarded to the employees because of their employment with two or more companies, only one of those companies may make a deduction under this section in relation to the award.
- (7) This section is subject to section 996.

#### **996 Shares excluded from sections 994 and 995 U.K.**

- (1) No deduction is allowed under section 994 or 995 in relation to shares to which any of exclusions 1 to 5 applies.
- (2) Exclusion 1 applies to shares awarded to an excluded employee.
- (3) For the purposes of subsection (2) an employee is excluded if, at the time the shares are awarded to the employee, the earnings from the employee's employment with the employing company are not (or would not be if there were any) chargeable earnings—
  - (a) to which section 15 of ITEPA 2003 applies, or
  - (b) to which a section listed in section 20(1) of ITEPA 2003 applies.
- (4) Exclusion 2 applies to shares in a company that are liable to depreciate substantially in value for reasons that do not apply generally to shares in that company.
- (5) Exclusion 3 applies to shares in relation to which a deduction has been made by the employing company or an associated company in relation to the provision of the shares for the plan trust or for another trust.
- (6) For the purposes of subsection (5)—
  - (a) it does not matter upon what basis that deduction was made or what the nature or purpose of the other trust is, and
  - (b) if the trustees of the plan trust acquire shares on different days, in determining whether the same shares have been provided to more than one trust, assume that shares acquired on an earlier day are awarded under the plan trust before those acquired on a later day.
- (7) Exclusion 4 applies to shares acquired by the trustees of the plan trust as a result of a payment in relation to which a deduction is made under section 989 or 991.
- (8) Exclusion 5 applies to shares awarded after having been forfeited by a participant.

#### **997 No deduction for expenses in providing dividend shares U.K.**

- (1) No deduction is allowed to a company for expenses in providing shares that are acquired on behalf of employees under an approved share incentive plan as dividend shares.
- (2) This is subject to section 988.

*Withdrawal of approval for a plan*

#### **998 Withdrawal of deductions if approval for share incentive plan withdrawn U.K.**

- (1) This section applies if—

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- (a) a deduction is made by a company under section 989, 991, 994 or 995 in relation to an approved share incentive plan, and
  - (b) the approval for the plan is withdrawn.
- (2) An officer of Revenue and Customs may by notice direct that the deduction is withdrawn.
- (3) If a direction is made, the company is treated as receiving an amount equal to the deduction.
- (4) The amount is treated as received when the direction is made.

## CHAPTER 2 **U.K.**

### SAYE OPTION SCHEMES, COMPANY SHARE OPTION SCHEMES AND EMPLOYEE SHARE OPTIONS TRUSTS

#### **999 Deduction for costs of setting up SAYE option scheme or CSOP scheme **U.K.****

- (1) This section applies if—
- (a) a company incurs expenses in setting up a scheme within subsection (2) that is approved by an officer of Revenue and Customs, and
  - (b) no employee or director acquires rights under the scheme before it is approved.
- (2) The schemes within this subsection are—
- (a) SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and
  - (b) CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

The references in subsection (1) to a scheme being approved are to it being approved under Schedule 3 or 4 to ITEPA 2003 (as the case may be).

- (3) A deduction for the expenses is to be made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to subsections (4) and (5).

- (4) If the company is a company with investment business (as defined in section 1218), the expenses are treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (3) applies instead).

- (5) If the company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the expenses are treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (6) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred—
- (a) for the purposes of subsection (3) the deduction is to be made for the period of account in which the approval is given, or
  - (b) for the purposes of subsection (4) or (5) the expenses are treated as referable to the accounting period in which the approval is given.

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- (7) So far as this section provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

### **1000 Deduction for costs of setting up employee share ownership trust** **U.K.**

- (1) This section applies if a company incurs expenses in setting up a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989).
- (2) A deduction for the expenses is to be made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to subsections (3) and (4).

- (3) If the company is a company with investment business (as defined in section 1218), the expenses are treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (2) applies instead).

- (4) If the company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the expenses are treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (5) If the trust is established more than 9 months after the end of the period of account in which the expenses are incurred—
- (a) for the purposes of subsection (2) the deduction is to be made for the period of account in which the trust is established, or
  - (b) for the purposes of subsection (3) or (4) the expenses are treated as referable to the accounting period in which the trust is established.
- (6) For the purposes of subsection (5) a trust is established when the deed under which it is established is executed.
- (7) So far as this section provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

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## PART 12 U.K.

### OTHER RELIEF FOR EMPLOYEE SHARE ACQUISITIONS

#### CHAPTER 1 U.K.

##### INTRODUCTION

###### *Introductory*

#### 1001 Overview of Part U.K.

- (1) This Part provides for corporation tax relief in relation to employee share acquisitions.
- (2) Sections 1002 to 1005 relate to the interpretation of this Part.
- (3) Chapter 2 provides for relief if shares are acquired by an employee or another person because of the employee's employment by a company.
- (4) Chapter 3 provides for relief if—
  - (a) an employee or another person obtains an option to acquire shares because of the employee's employment by a company, and
  - (b) shares are acquired pursuant to the option.
- (5) Chapter 4 provides for additional relief in cases involving restricted shares.
- (6) Chapter 5 provides for additional relief in cases involving convertible shares or convertible securities that are not shares.
- (7) Chapter 6 deals with the relationship between the reliefs under this Part and other reliefs.

###### *Interpretation*

#### 1002 “Employment” U.K.

- (1) This section explains how references in this Part to employment (and related expressions) are to be read.
- (2) “Employment” includes a former or prospective employment.
- (3) References to employment by a company include references to holding an office with that company.
- (4) Members of a company whose affairs are managed by its members are treated as holding an office with the company.

#### 1003 “Shares” etc U.K.

- (1) In this Part “shares” includes—
  - (a) an interest in shares, and
  - (b) stock or an interest in stock.

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- (2) For the purposes of this Part shares are acquired by a person when the person acquires a beneficial interest in them (and not, if different, when they are conveyed or transferred).

#### 1004 Groups, consortiums and commercial associations of companies **U.K.**

- (1) This section applies for the purposes of this Part.
- (2) Two companies are members of the same group if one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company.
- (3) “Group transfer” means a transfer of a business, or a part of a business, from one company that is a member of a group to another company that is, or two or more companies that are, members of the group.
- (4) A company is a parent company of another company if that other company is its 51% subsidiary.
- (5) A company (“the consortium company”) is owned by a consortium if—
- (a) five or fewer companies (“the shareholding companies”) between them beneficially own at least 75% of the consortium company's ordinary share capital, and
  - (b) each of the shareholding companies beneficially owns at least 10% of that capital.
- (6) Each shareholding company is a member of the consortium.
- (7) For the purposes of subsection (5) the shareholdings of members of a group of companies are to be treated as held by a single company.
- (8) And, in such a case, a member of the group of companies is a member of the consortium if the member beneficially owns some of the consortium company's ordinary share capital.
- (9) “Commercial association of companies” means a company together with such of its associated companies (as defined in section 416 of ICTA) as carry on businesses that are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking.

#### 1005 Other definitions **U.K.**

In this Part—

“convertible securities” has the same meaning as in Chapter 3 of Part 7 of ITEPA 2003 (see section 436 of that Act),

“convertible shares” means shares that are—

- (a) convertible securities, or
- (b) an interest in convertible securities,

“the employee” has the meaning given by section 1007(1)(a) or 1015(1)(a) (as the case may be),

“the employing company” has the meaning given by section 1007(1) or 1015(1) (as the case may be),

“listed company” means a company—

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- (a) whose shares are listed on a recognised stock exchange, and
  - (b) which is neither a close company nor a company that would be a close company if it were UK resident,
    - “market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of that Act),
    - “option” includes any right to acquire shares,
    - “ordinary shares” means shares forming part of a company's ordinary share capital,
    - “the qualifying business” has the meaning given by section 1007(1)(b) or 1015(1)(b) (as the case may be),
    - “the recipient” has the meaning given by section 1007(1) or 1015(1) (as the case may be),
    - “the relevant employment” has the meaning given by section 1007(1)(b) or 1015(1)(b) (as the case may be), and
    - “restricted shares” means shares that are—
      - (a) restricted securities, or
      - (b) a restricted interest in securities,
- for the purposes of Chapter 2 of Part 7 of ITEPA 2003 (see sections 423 and 424 of that Act).

## CHAPTER 2 U.K.

### RELIEF IF SHARES ACQUIRED BY EMPLOYEE OR OTHER PERSON

#### *Introductory*

#### **1006 Overview of Chapter U.K.**

- (1) This Chapter provides for relief if shares are acquired by an employee or another person because of the employee's employment by a company.
- (2) Sections 1007 to 1009 set out the requirements that must be met for relief to be available.
- (3) Sections 1010 to 1012 set out how the amount of relief is calculated.
- (4) Section 1013 sets out how the relief is given.

#### *Requirements to be met for relief to be available*

#### **1007 Basic requirements for relief under Chapter 2 U.K.**

- (1) Relief under this Chapter is available to a company (“the employing company”) if—
  - (a) a person (“the employee”) has employment with the employing company,
  - (b) that employment (“the relevant employment”) is in relation to a business within subsection (2) (“the qualifying business”),
  - (c) the employee or another person acquires shares because of the relevant employment,

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- (d) the conditions set out in sections 1008 and 1009 are met as mentioned in those sections, and
- (e) relief under Chapter 3 is not available to the employing company in relation to the acquisition of the shares.

The person who acquires the shares is, in that capacity, called “the recipient”.

- (2) A business is within this subsection so far as—
  - (a) the business is carried on by the employing company, and
  - (b) the employing company is within the charge to corporation tax in relation to the profits of the business.

### **1008 Conditions relating to shares acquired** U.K.

- (1) Each of the following conditions must be met in relation to the shares acquired.

#### *Condition 1*

The shares are ordinary shares that are fully paid-up and not redeemable.

#### *Condition 2*

The shares are—

- (a) shares of a class listed on a recognised stock exchange,
- (b) shares in a company that is not under the control of another company, or
- (c) shares in a company that is under the control of a listed company.

#### *Condition 3*

The shares are shares in—

- (a) the employing company,
- (b) a company that, when the shares are acquired, is a parent company of the employing company,
- (c) a company that, when the shares are acquired, is a member of a consortium that owns the employing company,
- (d) a company that, when the shares are acquired, is a member of a consortium that owns a parent company of the employing company, or
- (e) a company within subsection (2).

- (2) A company (“company A”) is within this subsection if when the shares are acquired—
  - (a) the employing company or a parent company of the employing company is a member of a consortium that owns another company (“company B”), and
  - (b) company A is—
    - (i) a member of that consortium or a parent company of a member of that consortium, and
    - (ii) a member of the same commercial association of companies as company B.

### **1009 Conditions relating to employee's income tax position** U.K.

- (1) If the shares acquired are not restricted shares, the following conditions must be met in relation to the income tax position of the employee.



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### *Condition 1*

The employee is subject to a charge under ITEPA 2003 in relation to the acquisition of the shares.

### *Condition 2*

Section 446UA of ITEPA 2003 does not apply in relation to the shares.

- (2) If the shares acquired are restricted shares, the following condition must be met in relation to the income tax position of the employee.

#### *The Condition*

The employee—

- (a) has, as a result of the acquisition of the shares, earnings within Chapter 1 of Part 3 of ITEPA 2003 from the relevant employment that are subject to the charge under Part 2 of that Act, or
  - (b) is not within paragraph (a) but will be subject to a charge under ITEPA 2003 as a result of section 426 of that Act if an event occurs in relation to the shares that is a chargeable event for the purposes of that section.
- (3) Subsection (4) applies if—
- (a) the conditions are, or the condition is, not met, but
  - (b) the conditions or the condition would be met if at all material times the employee had been a UK employee.
- (4) This Chapter applies as if the employee had been a UK employee as mentioned in subsection (3)(b).
- (5) The employee is a UK employee if—
- (a) the employee is UK resident and ordinarily UK resident, and
  - (b) the duties of the relevant employment are performed in the United Kingdom.

### *Calculation of amount of relief*

## **1010 Calculation of relief if shares are neither restricted nor convertible U.K.**

- (1) If the shares acquired are neither restricted shares nor convertible shares, the amount of relief to be given is an amount equal to—
- (a) the market value of the shares when they are acquired, less
  - (b) the total amount or value of any consideration given by any person in relation to the acquisition of the shares.

This is subject to section 1012.

- (2) The consideration mentioned in subsection (1)(b) does not include the performance of any duties of, or in connection with, the relevant employment.
- (3) A just and reasonable apportionment is to be made of any consideration given partly in relation to the acquisition of the shares and partly in relation to other matters.

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### **1011 Calculation of relief if shares are restricted or convertible** **U.K.**

- (1) If the shares acquired are restricted shares or convertible shares (or both), the amount of relief to be given is calculated as follows.

This is subject to section 1012.

- (2) If the shares are restricted shares, the amount of relief is equal to the amount that, as a result of the acquisition of the shares, is earnings of the employee within Chapter 1 of Part 3 of ITEPA 2003 from the relevant employment.
- (3) If the shares are convertible shares, the amount of relief is equal to the amount that, as a result of the acquisition of the shares, is earnings of the employee within Chapter 1 of Part 3 of ITEPA 2003 from the relevant employment.

In calculating the employee's earnings for this purpose the market value of the shares is to be determined as if they were not convertible shares.

- (4) For the purposes of subsections (2) and (3) “earnings” does not include any amount of exempt income (within the meaning of section 8 of ITEPA 2003).
- (5) If the shares are both restricted and convertible, the total amount of relief is whichever is the greater of the amounts of relief given by subsections (2) and (3) (or, if the amount is the same in each case, that amount).

### **1012 Reduction in amount of relief** **U.K.**

- (1) This section applies if the relevant employment is in relation to both the qualifying business and a business (or part of a business) that is not within section 1007(2).
- (2) The amount of relief is to be reduced by a just and reasonable amount.

*Giving of relief*

### **1013 How the relief is given** **U.K.**

- (1) The relief is given for the accounting period in which the shares are acquired.
- (2) The amount of relief is allowed as a deduction in calculating the profits of the qualifying business for corporation tax purposes (subject to subsections (3) and (4)).
- (3) If the employing company is a company with investment business (as defined in section 1218), the amount of relief is treated as expenses of management of the company.

But this subsection does not apply if the qualifying business is a property business (in which case subsection (2) applies instead).

- (4) If the employing company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of relief is treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (5) If the relevant employment is in relation to more than one business (or part of a business) within section 1007(2), the relief is to be apportioned on a just and reasonable basis.

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## CHAPTER 3 U.K.

### RELIEF IF EMPLOYEE OR OTHER PERSON OBTAINS OPTION TO ACQUIRE SHARES

#### *Introductory*

#### 1014 Overview of Chapter U.K.

- (1) This Chapter provides for relief if—
  - (a) an employee or another person obtains an option to acquire shares because of the employee's employment by a company, and
  - (b) shares are acquired pursuant to the option.
- (2) Sections 1015 to 1017 set out the requirements that must be met for relief to be available.
- (3) Sections 1018 to 1020 set out how the amount of relief is calculated.
- (4) Section 1021 sets out how the relief is given.
- (5) Sections 1022 and 1023 deal with cases in which a person obtains an option to acquire shares in a company and that company is subsequently taken over.
- (6) Section 1024 provides for relief to be given to a successor company if the qualifying business is transferred by group transfers.

#### *Requirements to be met for relief to be available*

#### 1015 Basic requirements for relief under Chapter 3 U.K.

- (1) Relief under this Chapter is available to a company (“the employing company”) if—
  - (a) a person (“the employee”) has employment with the employing company,
  - (b) that employment (“the relevant employment”) is in relation to a business within subsection (2) (“the qualifying business”),
  - (c) the employee or another person obtains an option to acquire shares because of the relevant employment,
  - (d) the person who obtains the option acquires shares pursuant to the option, and
  - (e) the conditions set out in sections 1016 and 1017 are met as mentioned in those sections.

The person who obtains the option is, in that capacity, called “the recipient”.

- (2) A business is within this subsection so far as—
  - (a) the business is carried on by the employing company, and
  - (b) the employing company is within the charge to corporation tax in relation to the profits of the business.
- (3) If—
  - (a) the recipient dies, and
  - (b) subsequently another person acquires shares pursuant to the option,this Chapter applies as if the recipient were alive and the shares were acquired by the recipient.

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## 1016 Conditions relating to shares acquired **U.K.**

- (1) Each of the following conditions must be met in relation to the shares acquired.

### *Condition 1*

The shares are ordinary shares that are fully paid-up and not redeemable.

### *Condition 2*

The shares are—

- (a) shares of a class listed on a recognised stock exchange,
- (b) shares in a company that is not under the control of another company, or
- (c) shares in a company that is under the control of a listed company.

### *Condition 3*

The shares are shares in—

- (a) the employing company,
- (b) a company that, when the option is obtained, is a parent company of the employing company,
- (c) a company that, when the option is obtained, is a member of a consortium that owns the employing company,
- (d) a company that, when the option is obtained, is a member of a consortium that owns a parent company of the employing company,
- (e) a company within subsection (2), or
- (f) a qualifying successor company (see section 1022).

- (2) A company (“company A”) is within this subsection if when the option is obtained—

- (a) the employing company or a parent company of the employing company is a member of a consortium that owns another company (“company B”), and
- (b) company A is—
  - (i) a member of that consortium or a parent company of a member of that consortium, and
  - (ii) a member of the same commercial association of companies as company B.

## 1017 Condition relating to employee's income tax position **U.K.**

- (1) The following condition must be met in relation to the income tax position of the employee.

### *The Condition*

The acquisition of the shares is a chargeable event in relation to the employee for the purposes of section 476 of ITEPA 2003 (whether or not an amount counts as employment income of the employee because of that event).

- (2) Subsection (3) applies if the condition—
- (a) is not met, but
  - (b) would be met if at all material times the employee had been a UK employee.
- (3) This Chapter applies as if the employee had been a UK employee as mentioned in subsection (2)(b).

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- (4) The employee is a UK employee if—
  - (a) the employee is UK resident and ordinarily UK resident, and
  - (b) the duties of the relevant employment are performed in the United Kingdom.
- (5) If the employee is dead when the shares are acquired, the condition is to be treated as met if it would have been met had the employee been alive.

#### *Calculation of amount of relief*

### **1018 Calculation of relief if shares are neither restricted nor convertible** U.K.

- (1) If the shares acquired are neither restricted shares nor convertible shares, the amount of relief to be given is an amount equal to—
  - (a) the market value of the shares when they are acquired, less
  - (b) the total amount or value of any consideration given by any person in relation to the obtaining of the option or to the acquisition of the shares.

This is subject to section 1020.

- (2) The consideration mentioned in subsection (1)(b) does not include—
  - (a) the performance of any duties of, or in connection with, the relevant employment, and
  - (b) an amount paid or payable by the employee because of—
    - (i) an agreement within paragraph 3A(2) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) or of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), or
    - (ii) an election under paragraph 3B of either of those Schedules.
- (3) A just and reasonable apportionment is to be made of any consideration given partly in relation to the obtaining of the option or the acquisition of the shares and partly in relation to other matters.

### **1019 Calculation of relief if shares are restricted or convertible** U.K.

- (1) If the shares acquired are restricted shares or convertible shares (or both), the amount of relief to be given is calculated as follows.

This is subject to section 1020.

- (2) If the shares are restricted shares, the amount of relief is equal to—
  - (a) the amount that counts as employment income of the employee under section 476 of ITEPA 2003 in relation to the acquisition of the shares, or
  - (b) if the option is a qualifying option (within the meaning of the EMI code), the amount that would have so counted apart from the EMI code.
- (3) If the shares are convertible shares, the amount of relief is equal to—
  - (a) the amount that counts as employment income of the employee under section 476 of ITEPA 2003 in relation to the acquisition of the shares, or
  - (b) if the option is a qualifying option (within the meaning of the EMI code), the amount that would have so counted apart from the EMI code;

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and in calculating the employee's employment income for this purpose the market value of the shares is to be determined as if they were not convertible shares.

- (4) For the purposes of subsections (2) and (3)—
- (a) no account is to be taken of any relief under section 481 or 482 of ITEPA 2003, and
  - (b) “the EMI code” has the meaning given by section 527(3) of that Act.
- (5) If the shares are both restricted and convertible, the total amount of relief is whichever is the greater of the amounts of relief given by subsections (2) and (3) (or, if the amount is the same in each case, that amount).
- (6) If the employee is dead when the shares are acquired, the amount of relief is to be calculated as if the employee were alive.

## **1020 Reduction in amount of relief** **U.K.**

- (1) This section applies if the relevant employment is in relation to both the qualifying business and a business (or part of a business) that is not within section 1015(2).
- (2) The amount of relief is to be reduced by a just and reasonable amount.

### *Giving of relief*

## **1021 How the relief is given** **U.K.**

- (1) The relief is given for the accounting period in which the shares are acquired.
- (2) The amount of relief is allowed as a deduction in calculating the profits of the qualifying business for corporation tax purposes (subject to subsections (3) and (4)).
- (3) If the employing company is a company with investment business (as defined in section 1218), the amount of relief is treated as expenses of management of the company.

But this subsection does not apply if the qualifying business is a property business (in which case subsection (2) applies instead).

- (4) If the employing company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of relief is treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (5) If the relevant employment is in relation to more than one business (or part of a business) within section 1015(2), the relief is to be apportioned on a just and reasonable basis.

### *Takeovers and transfers of businesses*

## **1022 Takeover of company whose shares are subject to option** **U.K.**

- (1) This section applies if—
  - (a) a person (“P”) obtains a qualifying option to acquire shares in a company,
  - (b) subsequently there is a takeover of that company,

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- (c) P, by agreement with the acquiring company, releases P's rights under the qualifying option in consideration of P's obtaining another option (“the new option”), and
- (d) the new option is an option to acquire shares in a qualifying company.

Section 1023 explains what is meant by “qualifying option”, “takeover”, “the acquiring company” and “qualifying company”.

- (2) This Chapter applies as if shares acquired pursuant to the new option are acquired pursuant to the qualifying option.
- (3) The company whose shares are subject to the new option is a qualifying successor company for the purposes of paragraph (f) of condition 3 in section 1016 (condition relating to shares acquired).
- (4) In calculating the amount of any relief resulting from this section—
  - (a) any consideration given in relation to the obtaining of the new option is treated as consideration given in relation to the obtaining of the qualifying option, and
  - (b) any consideration given in relation to the acquisition of shares pursuant to the new option is treated as consideration given in relation to the acquisition of shares pursuant to the qualifying option.

The consideration covered by paragraph (a) does not include the consideration mentioned in subsection (1)(c).

### **1023 Supplementary provision for purposes of section 1022** **U.K.**

- (1) This section applies for the purposes of section 1022.
- (2) An option is a qualifying option if condition 3 in section 1016 would be met in relation to shares acquired pursuant to the option.
- (3) There is a takeover of a company when another company (“the acquiring company”) acquires control of it.
- (4) The following companies are qualifying companies—
  - (a) the acquiring company,
  - (b) a company that, when the takeover occurs, is a parent company of the acquiring company,
  - (c) a company that, when the takeover occurs, is a member of a consortium that owns the acquiring company,
  - (d) a company that, when the takeover occurs, is a member of a consortium that owns a parent company of the acquiring company, and
  - (e) a company within subsection (5).
- (5) A company (“company A”) is within this subsection if when the takeover occurs—
  - (a) the acquiring company or a parent company of the acquiring company is a member of a consortium that owns another company (“company B”), and
  - (b) company A is—
    - (i) a member of that consortium or a parent company of a member of that consortium, and
    - (ii) a member of the same commercial association of companies as company B.



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## 1024 Transfer of qualifying business by group transfers **U.K.**

- (1) This section applies in relation to relief to be given under this Chapter if—
  - (a) during the option period, the whole, or substantially the whole, of the qualifying business is transferred, and
  - (b) conditions A and B are met.
- (2) Condition A is that—
  - (a) the transfer is a group transfer, or
  - (b) if there is more than one transfer, all the transfers are group transfers.
- (3) Condition B is that, as a result of the transfer or transfers, at the end of the option period—
  - (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
  - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.
- (4) The relief is to be given to—
  - (a) the successor company, or
  - (b) whichever one of the successor companies is nominated by them,
 instead of the employing company (and references to the employing company in section 1021(3) and (4) are to be read as references to the company to which the relief is to be given).
- (5) In this section “the option period” means the period—
  - (a) beginning when the option is obtained, and
  - (b) ending when the shares are acquired.

## CHAPTER 4 **U.K.**

### ADDITIONAL RELIEF IN CASES INVOLVING RESTRICTED SHARES

## 1025 Additional relief available if shares acquired are restricted shares **U.K.**

- (1) This Chapter applies if—
  - (a) relief (“the original relief”) is available under Chapter 2 or 3 in relation to an acquisition of restricted shares, and
  - (b) after the acquisition—
    - (i) an event that is a chargeable event in relation to the restricted shares for the purposes of section 426 of ITEPA 2003 occurs, or
    - (ii) Chapter 2 of Part 7 of ITEPA 2003 ceases to apply to the restricted shares because the employee dies (see section 421B(4) and (6) of that Act).

For the purposes of paragraph (a) it does not matter if the amount of relief is calculated as nil.

- (2) Relief under this Chapter is available to the employing company.

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- (3) Subsection (4) applies if section 426 of ITEPA 2003—
  - (a) does not apply in relation to the restricted shares, but
  - (b) would apply if at all material times the employee had been a UK employee.
- (4) This Chapter applies as if the employee had been a UK employee as mentioned in subsection (3)(b).
- (5) The employee is a UK employee if—
  - (a) the employee is UK resident and ordinarily UK resident, and
  - (b) the duties of the relevant employment are performed in the United Kingdom.
- (6) If—
  - (a) the original relief is available as a result of section 1015(3) (death of recipient), and
  - (b) the recipient is not the employee,this Chapter applies as if the recipient were alive and the restricted shares were acquired by the recipient.
- (7) If the original relief is available as a result of section 1022 (takeover of company whose shares are subject to an option), this Chapter applies as if the restricted shares were acquired pursuant to the qualifying option mentioned in that section.
- (8) To find out what accounting period the relief is given for and how to calculate the amount of relief, see—
  - (a) section 1026 for relief available as a result of the occurrence of a chargeable event, and
  - (b) section 1027 for relief available as a result of the employee's death.Those sections are supplemented by section 1028.
- (9) Section 1029 provides for the relief to be given to a successor company if the qualifying business is transferred by group transfers.

#### **1026 Relief available on occurrence of chargeable event U.K.**

- (1) This section applies in relation to relief available as a result of the occurrence of a chargeable event.
- (2) The relief is given for the accounting period in which the chargeable event occurs.
- (3) The amount of relief is equal to the amount that counts as employment income of the employee under section 426 of ITEPA 2003 in relation to the chargeable event.
- (4) For the purposes of subsection (3) the following are to be ignored—
  - (a) any relief under section 428A of ITEPA 2003,
  - (b) section 446E(6) of ITEPA 2003, and
  - (c) the amount of any non-commercial increase (as defined in section 446K(4) of ITEPA 2003) in the market value of the restricted shares after their acquisition.

#### **1027 Relief available on death of employee U.K.**

- (1) This section applies in relation to relief available as a result of the employee's death.

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- (2) The relief is given for the accounting period in which the employee dies.
- (3) The amount of relief is equal to the amount that would have counted as employment income of the employee under section 426 of ITEPA 2003 had a chargeable event within section 427(3)(c) of that Act occurred immediately before Chapter 2 of Part 7 of that Act ceased to apply to the restricted shares because of the employee's death.
- (4) For the purposes of subsection (3)—
  - (a) the amount of expenses resulting from section 428(6) of ITEPA 2003 is to be treated as nil, and
  - (b) the following are to be ignored—
    - (i) sections 428(9) and 446E(6) of ITEPA 2003, and
    - (ii) the amount of any non-commercial increase (as defined in section 446K(4) of ITEPA 2003) in the market value of the restricted shares after their acquisition.

#### **1028 Supplementary provision for purposes of sections 1026 and 1027 U.K.**

- (1) If section 1012 or 1020 (reduction in amount of relief) applies in relation to the original relief, that section applies in relation to the relief under this Chapter as it applies in relation to the original relief.
- (2) For the purposes of the giving of the relief under this Chapter—
  - (a) if the original relief is available under Chapter 2, apply section 1013(2) to (5), and
  - (b) if the original relief is available under Chapter 3, apply section 1021(2) to (5).

#### **1029 Transfer of qualifying business by group transfers U.K.**

- (1) This section applies in relation to relief to be given under this Chapter if—
  - (a) during the interim period (see subsections (5) to (7)), the whole, or substantially the whole, of the qualifying business is transferred, and
  - (b) conditions A and B are met.
- (2) Condition A is that—
  - (a) the transfer is a group transfer, or
  - (b) if there is more than one transfer, all the transfers are group transfers.
- (3) Condition B is that, as a result of the transfer or transfers, at the end of the interim period—
  - (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
  - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.
- (4) The relief is to be given to—
  - (a) the successor company, or
  - (b) whichever one of the successor companies is nominated by them,

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instead of the employing company (and references to the employing company in section 1013(3) and (4) or 1021(3) and (4) (as applied by section 1028(2)) are to be read as references to the company to which the relief is to be given).

- (5) “The interim period” is to be read in accordance with subsections (6) and (7).
- (6) The interim period begins—
  - (a) if the original relief is available under Chapter 2, when the restricted shares are acquired, and
  - (b) if the original relief is available under Chapter 3, when the option is obtained.
- (7) The interim period ends—
  - (a) if the relief under this Chapter is available as a result of the occurrence of a chargeable event, when the chargeable event occurs, and
  - (b) if the relief under this Chapter is available as a result of the employee's death, when the employee dies.

## CHAPTER 5 U.K.

### ADDITIONAL RELIEF IN CASES INVOLVING CONVERTIBLE SECURITIES

#### 1030 Application of Chapter U.K.

- (1) This Chapter applies if relief under Chapter 2 or 3 is available in relation to an acquisition of convertible shares.
- (2) This Chapter also applies if—
  - (a) there is an acquisition of convertible securities that are not shares, and
  - (b) relief under Chapter 2 or 3 would have been available in relation to the acquisition but for the fact that the securities were not shares in relation to which all the conditions set out in section 1008 or 1016 were met.
- (3) For the purposes of subsections (1) and (2)(b) it does not matter if the amount of relief is calculated or would have been calculated as nil.
- (4) In this Chapter—
  - “the acquired securities” means the convertible shares mentioned in subsection (1) or the convertible securities mentioned in subsection (2),
  - “convertible securities” includes an interest in convertible securities, and
  - “the original relief” means the relief mentioned in subsection (1) or (2)(b).
- (5) If the original relief is or would have been available as a result of section 1015(3) (death of recipient), this Chapter applies as if the recipient were alive and the acquired securities were acquired by the recipient.
- (6) If the original relief is or would have been available as a result of section 1022 (takeover of company whose shares are subject to an option), this Chapter applies as if the acquired securities were acquired pursuant to the qualifying option mentioned in that section.

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### 1031 Additional relief available if shares acquired are convertible shares etc **U.K.**

- (1) Relief under this Chapter is available to the employing company if, after the acquisition of the acquired securities, a chargeable event (see section 1032) occurs in relation to those securities.
- (2) Relief under this Chapter is also available to the employing company if the employee—
  - (a) is dead when that acquisition occurs, or
  - (b) dies after that acquisition.
- (3) But relief resulting from subsection (2) does not become available until the occurrence of the first event (referred to in this Chapter as “the relief event”) occurring after the employee's death that would have been a chargeable event in relation to the acquired securities had the employee been alive.
- (4) To find out what accounting period the relief is given for and how to calculate the amount of relief, see—
  - (a) section 1033 for relief available as a result of the occurrence of a chargeable event, and
  - (b) section 1034 for relief available as a result of the employee's death.

Those sections are supplemented by section 1035.
- (5) Section 1036 provides for the relief to be given to a successor company if the qualifying business is transferred by group transfers.

### 1032 Meaning of “chargeable event” **U.K.**

- (1) In this Chapter “chargeable event” means an event that—
  - (a) is a chargeable event for the purposes of section 438 of ITEPA 2003,
  - (b) is within section 439(3)(a) of ITEPA 2003, and
  - (c) is within subsection (2).
- (2) An event is within this subsection if it is the conversion of convertible securities into shares in relation to which—
  - (a) if the original relief is or would have been available under Chapter 2, all the conditions set out in section 1008 are met, or
  - (b) if the original relief is or would have been available under Chapter 3, all the conditions set out in section 1016 are met (ignoring paragraph (f) of condition 3).
- (3) Subsection (4) applies if section 438 of ITEPA 2003—
  - (a) does not apply in relation to the acquired securities, but
  - (b) would apply if at all material times the employee had been a UK employee.
- (4) This Chapter applies as if the employee had been a UK employee as mentioned in subsection (3)(b).
- (5) The employee is a UK employee if—
  - (a) the employee is UK resident and ordinarily UK resident, and
  - (b) the duties of the relevant employment are performed in the United Kingdom.

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### **1033 Relief available on occurrence of chargeable event** U.K.

- (1) This section applies in relation to relief available as a result of the occurrence of a chargeable event.
- (2) The relief is given for the accounting period in which the chargeable event occurs.
- (3) The amount of relief is equal to the amount that counts as employment income of the employee under section 438 of ITEPA 2003 in relation to the chargeable event.
- (4) For the purposes of subsection (3) the following are to be ignored—
  - (a) any relief under section 442A of ITEPA 2003, and
  - (b) sections 446G and 446H of ITEPA 2003.

### **1034 Relief available following death of employee** U.K.

- (1) This section applies in relation to relief available as a result of the employee's death.
- (2) The relief is given for the accounting period in which the relief event occurs.
- (3) The amount of relief is equal to the amount that would have counted as employment income of the employee under section 438 of ITEPA 2003 in relation to the relief event had the employee been alive.
- (4) For the purposes of subsection (3) sections 446G and 446H of ITEPA 2003 are to be ignored.

### **1035 Supplementary provision for purposes of sections 1033 and 1034** U.K.

- (1) If section 1012 or 1020 (reduction in amount of relief) applies or would have applied in relation to the original relief, that section applies in relation to the relief under this Chapter as it applies or would have applied in relation to the original relief.
- (2) For the purposes of the giving of the relief under this Chapter—
  - (a) if the original relief is or would have been available under Chapter 2, apply section 1013(2) to (5), and
  - (b) if the original relief is or would have been available under Chapter 3, apply section 1021(2) to (5).

### **1036 Transfer of qualifying business by group transfers** U.K.

- (1) This section applies in relation to relief to be given under this Chapter if—
  - (a) during the interim period (see subsections (5) to (7)), the whole, or substantially the whole, of the qualifying business is transferred, and
  - (b) conditions A and B are met.
- (2) Condition A is that—
  - (a) the transfer is a group transfer, or
  - (b) if there is more than one transfer, all the transfers are group transfers.
- (3) Condition B is that, as a result of the transfer or transfers, at the end of the interim period—

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- (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
  - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.
- (4) The relief is to be given to—
- (a) the successor company, or
  - (b) whichever one of the successor companies is nominated by them,
- instead of the employing company (and references to the employing company in section 1013(3) and (4) or 1021(3) and (4) (as applied by section 1035(2)) are to be read as references to the company to which the relief is to be given).
- (5) “The interim period” is to be read in accordance with subsections (6) and (7).
- (6) The interim period begins—
- (a) if the original relief is or would have been available under Chapter 2, when the acquired securities are acquired, and
  - (b) if the original relief is or would have been available under Chapter 3, when the option is obtained.
- (7) The interim period ends—
- (a) if the relief under this Chapter is available as a result of the occurrence of a chargeable event, when the chargeable event occurs, and
  - (b) if the relief under this Chapter is available as a result of the employee's death, when the relief event occurs.

## CHAPTER 6 U.K.

### RELATIONSHIP BETWEEN RELIEF UNDER THIS PART AND OTHER RELIEFS

#### 1037 Priority of Chapter 1 of Part 11 U.K.

- (1) Deductions available under Chapter 1 of Part 11 (relief for particular employee share acquisition schemes: share incentive plans) are to be given priority over relief under this Part.
- (2) No relief is available under this Part in relation to shares in respect of which a deduction is allowable, or has been made, under that Chapter.

#### 1038 Exclusion of other deductions U.K.

- (1) If relief under this Part is or, apart from condition 2 in section 1009(1), would be available for an accounting period, no other deduction in relation to expenses within subsection (2) is allowed for the purpose of calculating any company's profits for corporation tax purposes for any accounting period.
- (2) The expenses within this subsection are the expenses directly related to the provision of the shares.



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- (3) They include, in a case in which the shares are acquired under an employee share scheme, any amount paid or payable by the employing company in relation to the participation of the employee in the scheme.
- (4) But they do not include in such a case—
  - (a) expenses incurred in setting up the scheme,
  - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme,
  - (c) the costs of borrowing for the purposes of the scheme, or
  - (d) fees, commission, stamp duty, stamp duty reserve tax, and similar incidental expenses of acquiring the shares.
- (5) “Employee share scheme” means a scheme or arrangement for enabling shares to be acquired because of persons' employment.

## PART 13 U.K.

### ADDITIONAL RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

## CHAPTER 1 U.K.

### INTRODUCTION

#### *Introductory*

### 1039 Overview of Part U.K.

- (1) This Part provides for corporation tax relief for expenditure on research and development.
- (2) Relief under this Part is in addition to any deduction given under section 87 for the expenditure.
- (3) Relief under Chapters 2 to 4 is available to a company which is a small or medium-sized enterprise, in particular—
  - (a) Chapter 2 provides for relief where the cost of in-house direct research and development or contracted out research and development is incurred by the company,
  - (b) Chapter 3 provides for relief where research and development is contracted out to the company, and
  - (c) Chapter 4 provides for relief for research and development expenditure which is subsidised or in respect of which the company is prevented from obtaining relief under Chapter 2 by the cap on aid imposed by section 1113.
- (4) Relief under Chapter 5 is available to large companies (and insurance companies treated as large companies).
- (5) Chapter 6 contains further provision in relation to relief under Chapters 2 to 5, in particular—

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- (a) section 1081 provides for certain insurance companies to be treated as large companies,
  - (b) section 1082 contains provision about expenditure of group companies,
  - (c) section 1083 contains provision in relation to refunds of certain expenditure on which relief has been obtained (treating part of those refunds as income chargeable to tax), and
  - (d) section 1084 contains an anti-avoidance provision dealing with artificially inflated claims for relief or R&D tax credits (as to which, see subsection (7) below).
- (6) Relief under Chapter 7 is available to companies (whether they are small or medium-sized enterprises or large companies) where expenditure is incurred on vaccine or medicine research.
- (7) Chapters 2 and 7 also provide for the payment of tax credits (“R&D tax credits”) where a company which is a small or medium-sized enterprise—
- (a) obtains relief under Chapter 2 or 7, and
  - (b) makes, or is treated as making, a trading loss.
- (8) Chapter 8 contains provision limiting the amount of relief available under Chapter 2 or 7 in relation to expenditure on a particular research and development project.
- (9) Chapter 9 contains supplementary provision, including definitions.
- (10) For information about the procedure for making claims under this Part see Schedule 18 to FA 1998, in particular Part 9A of that Schedule (claims for R&D tax reliefs).

**1040 Relief may be available under more than one Chapter of Part U.K.**

Expenditure may be eligible for relief under more than one Chapter of this Part.

*Interpretation*

**1041 “Research and development” U.K.**

In this Part “research and development” has the meaning given by section 837A of ICTA.

**1042 “Relevant research and development” U.K.**

- (1) In this Part “relevant research and development”, in relation to a company, means research and development—
- (a) related to a trade carried on by the company, or
  - (b) from which it is intended that a trade to be carried on by the company will be derived.
- (2) Research and development related to a trade carried on by a company includes—
- (a) research and development which may lead to or facilitate an extension of the trade, and
  - (b) research and development of a medical nature which has a special relation to the welfare of workers employed in the trade.

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- (3) But any reference to “relevant research and development” which applies for the purposes of Chapter 7 (relief for SMEs and large companies: vaccine research etc) is to be read as if subsection (2)(b) were omitted.

## CHAPTER 2 U.K.

### RELIEF FOR SMES: COST OF R&D INCURRED BY SME

#### *Introductory*

#### 1043 Overview of Chapter U.K.

- (1) This Chapter provides for relief for companies which are small or medium-sized enterprises for expenditure on—
- (a) in-house direct research and development, or
  - (b) contracted out research and development,
- where the cost of the research and development is incurred by the company.
- (2) The reliefs available are—
- (a) an additional deduction under section 1044, or
  - (b) a deemed trading loss under section 1045.
- (3) Sections 1046 to 1053 contain provision relevant to the reliefs available under this Chapter, namely—
- (a) provision preventing a company from making a claim or election for relief if it is not a going concern (see section 1046),
  - (b) information about elections under section 1045 for a deemed trading loss (see section 1047),
  - (c) information about the treatment of a deemed trading loss (see section 1048),
  - (d) a restriction on consortium relief where relief is obtained (see section 1049),
  - (e) provision about when a company meets the R&D threshold for the purposes of obtaining relief (see section 1050), and
  - (f) provision about when a company's expenditure is “qualifying Chapter 2 expenditure” for those purposes (see sections 1051 to 1053).
- (4) Sections 1054 to 1062 deal with R&D tax credits which can be claimed if a company—
- (a) obtains relief under this Chapter, and
  - (b) makes, or is treated as making, a trading loss.

#### *Reliefs*

#### 1044 Additional deduction in calculating profits of trade U.K.

- (1) A company is entitled to corporation tax relief for an accounting period if it meets each of conditions A to D.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.

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- (3) Condition B is that the company meets the R&D threshold in the period (see section 1050).
- (4) Condition C is that the company carries on a trade in the period.
- (5) Condition D is that the company has qualifying Chapter 2 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.
- (6) For the company to obtain the relief it must make a claim.  
 See section 1046 (which prevents a company from making a claim if it is not a going concern).
- (7) The relief is an additional deduction in calculating the profits of the trade for the period.
- (8) The amount of the additional deduction is 75% of the qualifying Chapter 2 expenditure.
- (9) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (10) For the meaning of “qualifying Chapter 2 expenditure” see section 1051.

**1045 Alternative treatment for pre-trading expenditure: deemed trading loss** U.K.

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1050).
- (4) Condition C is that the company has incurred qualifying Chapter 2 expenditure in the period which—
  - (a) is not allowable as a deduction in calculating for corporation tax purposes the profits of a trade carried on by it at the time the expenditure was incurred, but
  - (b) would have been so allowable had it, at that time, been carrying on a trade consisting of the activities in respect of which the expenditure was incurred.
- (5) For the company to obtain the relief it must make an election.  
 See section 1046 (which prevents a company from making an election if it is not a going concern).
- (6) The relief is that the company is treated as if it had made a trading loss in the period.
- (7) The trading loss is equal to 175% of the qualifying Chapter 2 expenditure.
- (8) If a company makes an election under this section in respect of qualifying Chapter 2 expenditure, section 61 (pre-trading expenses) does not apply to the expenditure.
- (9) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (10) For the meaning of “qualifying Chapter 2 expenditure” see section 1051.

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- (11) See also section 1137, which makes provision about the accounting periods of a company which is not within the charge to corporation tax.

*Reliefs: further provision*

**1046 Relief only available where company is going concern** **U.K.**

- (1) A company may only make—
- (a) a claim under section 1044, or
  - (b) an election under section 1045,
- at a time when it is a going concern.
- (2) For the purposes of this section a company is a going concern if—
- (a) its latest published accounts were prepared on a going concern basis, and
  - (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under this Chapter or Chapter 7.
- (3) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

**1047 Elections under section 1045** **U.K.**

- (1) An election under section 1045 must specify the accounting period in respect of which it is made.
- (2) The election must be made by notice in writing to an officer of Revenue and Customs.
- (3) The notice must be given before the end of the period of two years beginning immediately after the end of the accounting period to which the election relates.

**1048 Treatment of deemed trading loss under section 1045** **U.K.**

- (1) This section applies if under section 1045 a company is treated as making a trading loss in an accounting period.
- (2) The trading loss may not be set off against profits of a preceding accounting period under section 393A(1)(b) or 393B(3) of ICTA unless the company is entitled to relief under section 1045 for the earlier period.
- (3) Subsection (4) applies if—
- (a) the company begins, in the accounting period or a later period, to carry on a trade, and
  - (b) the trade is derived from the research and development in relation to which the relief mentioned in subsection (1) was obtained.
- (4) In that case, so far as—
- (a) the company has not obtained relief in respect of the trading loss under any other provision, and
  - (b) the loss has not been surrendered under section 403(1) of ICTA (surrender of relief to group or consortium members),

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the trading loss is to be treated as if it were a loss of that trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits).

- (5) Subsection (4) is subject to section 1062 (restriction on losses carried forward where tax credit claimed).

#### 1049 Restriction on consortium relief **U.K.**

- (1) This section applies if—
- (a) a company claims relief under section 1044 or elects to obtain relief under section 1045 in respect of an accounting period,
  - (b) at any time during the period the company is owned by a consortium, and
  - (c) at least one of the members of the consortium is a large company.
- (2) The amount of the relief obtained in respect of the accounting period may not be surrendered by the company to another company, for the purposes of a consortium group relief claim, unless the other company is a small or medium-sized enterprise.
- (3) A “consortium group relief claim” means a claim to group relief under section 402(3) of ICTA (group relief available between members of consortia).

#### *Threshold*

#### 1050 R&D threshold **U.K.**

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its total qualifying R&D expenditure for the period is at least—
- (a) £10,000, if the accounting period is a period of 12 months, or
  - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times \text{£ } 10,000$$

where X is the number of days in the accounting period.

- (3) A company's “total qualifying R&D expenditure” for an accounting period is the sum of—
- (a) its qualifying Chapter 2 expenditure (see section 1051),
  - (b) its qualifying Chapter 3 expenditure (see section 1065), and
  - (c) its qualifying Chapter 4 expenditure (see section 1070),
- that is deductible in the period.
- (4) Subsections (5) to (7) apply for the purpose of determining whether expenditure is deductible in an accounting period.

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- (5) A company's qualifying Chapter 2 expenditure is deductible in an accounting period if—
- (a) it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company, or
  - (b) it would have been allowable as such a deduction had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred.
- (6) For the purposes of subsection (5)(a), section 61 (pre-trading expenses treated as incurred when trading begins) is to be ignored.
- (7) Each of the following—
- (a) a company's qualifying Chapter 3 expenditure, and
  - (b) a company's qualifying Chapter 4 expenditure,
- is deductible in an accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (8) Expenditure allowable as a deduction for the purposes of subsection (7) includes expenditure so allowable because of section 61 (pre-trading expenses).

### *Qualifying expenditure*

#### **1051 Qualifying Chapter 2 expenditure** **U.K.**

For the purposes of this Part a company's “qualifying Chapter 2 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1052), and
- (b) its qualifying expenditure on contracted out research and development (see section 1053).

#### **1052 Qualifying expenditure on in-house direct R&D** **U.K.**

- (1) A company's “qualifying expenditure on in-house direct research and development” means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is—
- (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software or consumable items (see section 1125),
  - (c) qualifying expenditure on externally provided workers (see section 1127), or
  - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (4) Condition C is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (5) Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.



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- (6) Condition E is that the expenditure is not subsidised (see section 1138).
- (7) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

### **1053 Qualifying expenditure on contracted out R&D U.K.**

- (1) A company's "qualifying expenditure on contracted out research and development" means expenditure—
  - (a) which is incurred by it in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136), and
  - (b) in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is attributable to relevant research and development undertaken on behalf of the company.
- (3) Condition B is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (4) Condition C is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (5) Condition D is that the expenditure is not subsidised (see section 1138).
- (6) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

*Tax credit: entitlement and payment*

### **1054 Entitlement to and payment of tax credit U.K.**

- (1) A company is entitled to an R&D tax credit for an accounting period if it has a Chapter 2 surrenderable loss in the period (see section 1055).
- (2) For the company to obtain an R&D tax credit in respect of all or part of the Chapter 2 surrenderable loss it must make a claim.  
 See section 1057 (which prevents a company from making a claim if it is not a going concern).
- (3) The amount of an R&D tax credit to which the company is entitled is determined in accordance with section 1058.
- (4) If a company makes a claim for an R&D tax credit to which it is entitled for an accounting period, an officer of Revenue and Customs must pay to the company the amount of the credit.  
 This is subject to section 1060.
- (5) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (6) See also section 1062, which restricts the carry forward of losses where a company claims an R&D tax credit.

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### **1055 Meaning of “Chapter 2 surrenderable loss” U.K.**

- (1) For the purposes of this Chapter a company has a “Chapter 2 surrenderable loss” if in an accounting period—
  - (a) it obtains an additional deduction under section 1044 in calculating the profits of a trade and it makes a trading loss in that period in the trade, or
  - (b) it is treated as making a trading loss under section 1045.
- (2) If relief is obtained under section 1044 the amount of the Chapter 2 surrenderable loss is—
  - (a) so much of the trading loss as is unrelieved, or
  - (b) if less, 175% of the qualifying Chapter 2 expenditure in respect of which the relief was obtained.
- (3) If relief is obtained under section 1045 the amount of the Chapter 2 surrenderable loss is so much of the trading loss as is unrelieved.

### **1056 Amount of trading loss which is “unrelieved” U.K.**

- (1) This section applies for the purposes of section 1055.
- (2) The amount of a trading loss that is “unrelieved” is the amount of the loss reduced by—
  - (a) any relief that was or could have been obtained by the company making a claim under section 393A(1)(a) of ICTA to set the loss against profits of the same accounting period,
  - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) or 393B(3) of that Act (losses set against profits of an earlier accounting period), and
  - (c) any loss surrendered under section 403(1) of that Act (surrender of relief to group or consortium members).
- (3) No account is to be taken for this purpose of any losses—
  - (a) brought forward from an earlier accounting period under section 393(1) of ICTA, or
  - (b) carried back from a later accounting period under section 393A(1)(b) or 393B(3) of that Act.

### **1057 Tax credit only available where company is going concern U.K.**

- (1) A company may only make a claim under section 1054 at a time when it is a going concern.
- (2) If a company ceases to be a going concern after making a claim under section 1054, it is treated as if it had not made the claim (and accordingly there is treated as having been no payment of R&D tax credit to carry interest under section 826 of ICTA).
- (3) Subsection (2) does not apply so far as the claim relates to an amount that was paid or applied before the company ceased to be a going concern.
- (4) For the purposes of this section a company is a going concern if—
  - (a) its latest published accounts were prepared on a going concern basis, and

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- (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under this Chapter or Chapter 7.
- (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

*Amount of tax credit*

**1058 Amount of tax credit** U.K.

- (1) The amount of the R&D tax credit to which a company is entitled for an accounting period is—
  - (a) 14% of the amount of the Chapter 2 surrenderable loss for the period, or
  - (b) if less, the total amount of the company's PAYE and NIC liabilities for payment periods ending in the accounting period.
- (2) The Treasury may by order replace the percentage for the time being specified in subsection (1)(a) with a different percentage.
- (3) An order under subsection (2) may contain incidental, supplemental, consequential and transitional provision and savings.

**1059 Total amount of company's PAYE and NIC liabilities** U.K.

- (1) The total amount of the company's PAYE and NIC liabilities for a payment period is the sum of—
  - (a) amount A, and
  - (b) amount B.
- (2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.
- (3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.
- (4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.
- (5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

*Supplementary*

**1060 Payment of tax credit** U.K.

- (1) This section applies if an R&D tax credit for an accounting period is payable to a company under this Chapter.
- (2) The amount payable in respect of—
  - (a) the R&D tax credit, or

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- (b) interest on the credit payable under section 826 of ICTA, may be applied in discharging any liability of the company to pay corporation tax.
- (3) So far as the amount is so applied, the duty of the officer of Revenue and Customs to pay the credit under section 1054(4) is discharged.
- (4) Subsection (5) applies if the company's tax return for the accounting period is enquired into by an officer of Revenue and Customs.
- (5) In that case—
  - (a) no payment in respect of the R&D tax credit for the period need be made before the officer's enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
  - (b) the officer may make a payment on a provisional basis of such amount as the officer thinks fit.
- (6) No payment need be made in respect of the R&D tax credit if the company has outstanding PAYE and NIC liabilities for the period.
- (7) A company has outstanding PAYE and NIC liabilities for an accounting period if it has not paid to an officer of Revenue and Customs any amount that it is required to pay—
  - (a) under PAYE regulations, or
  - (b) in respect of Class 1 national insurance contributions, for payment periods ending in the accounting period.

**1061 Tax credit payment not income of company** **U.K.**

A payment in respect of an R&D tax credit under this Chapter is not income of the company for any tax purposes.

**1062 Restriction on losses carried forward where tax credit claimed** **U.K.**

- (1) This section applies if a company claims an R&D tax credit to which it is entitled for an accounting period.
- (2) For the purposes of section 393 of ICTA (relief of trading losses against future trading profits) the company's trading loss for the period is treated as reduced by the amount of the surrendered loss for the period.
- (3) The “amount of the surrendered loss” for the period means the amount of the Chapter 2 surrenderable loss in respect of which the company claims an R&D tax credit for the period.

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## CHAPTER 3 **U.K.**

### RELIEF FOR SMES: R&D SUB-CONTRACTED TO SME

#### *Relief*

#### 1063 Additional deduction in calculating profits of trade **U.K.**

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1064).
- (4) Condition C is that the company has qualifying Chapter 3 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is an additional deduction in calculating the profits of the trade for the period.
- (7) The amount of the additional deduction is 30% of the qualifying Chapter 3 expenditure.
- (8) For the meaning of “qualifying Chapter 3 expenditure” see section 1065.
- (9) See also—
  - (a) section 1082 for provision about research and development expenditure of group companies, and
  - (b) section 1083 for provision about refunds of qualifying Chapter 3 expenditure.

#### *Threshold*

#### 1064 R&D threshold **U.K.**

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its total qualifying R&D expenditure for the period is at least—
  - (a) £10,000, if the accounting period is a period of 12 months, or
  - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

$$\frac{X}{365} \times \text{£ } 10,000$$

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where X is the number of days in the accounting period.

- (3) A company's "total qualifying R&D expenditure" for an accounting period is the sum of—
  - (a) its qualifying Chapter 2 expenditure (see section 1051),
  - (b) its qualifying Chapter 3 expenditure (see section 1065), and
  - (c) its qualifying Chapter 4 expenditure (see section 1070),that is deductible in the period.
- (4) A company's expenditure is deductible in an accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) Expenditure allowable as a deduction for the purposes of subsection (4) includes expenditure so allowable because of section 61 (pre-trading expenses).

#### *Qualifying expenditure*

### **1065 Qualifying Chapter 3 expenditure** **U.K.**

- (1) For the purposes of this Part a company's "qualifying Chapter 3 expenditure" means expenditure incurred by it that meets conditions A and B.
- (2) Condition A is that the expenditure is incurred on research and development contracted out to the company by—
  - (a) a large company, or
  - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (3) A "chargeable trade" is—
  - (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
  - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.
- (4) Condition B is that the expenditure is expenditure to which section 1066 or 1067 applies.

### **1066 Expenditure on sub-contracted R&D undertaken in-house** **U.K.**

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the research and development is undertaken by the company itself.
- (3) Condition B is that the expenditure is—
  - (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software or consumable items (see section 1125),
  - (c) qualifying expenditure on externally provided workers (see section 1127), or
  - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).

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- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

### **1067 Expenditure on sub-contracted R&D not undertaken in-house** U.K.

- (1) This section applies to expenditure on research and development contracted out to a company if conditions A, B and C are met.
- (2) Condition A is that the expenditure is incurred in making payments to—
  - (a) a qualifying body,
  - (b) an individual, or
  - (c) a firm, each member of which is an individual,
 in respect of research and development contracted out by the company to the body, individual or firm.
- (3) Condition B is that the research and development is undertaken by the body, individual or firm itself.
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

## **CHAPTER 4** U.K.

### RELIEF FOR SMEs: SUBSIDISED AND CAPPED EXPENDITURE ON R&D

#### *Relief*

### **1068 Additional deduction in calculating profits of trade** U.K.

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1069).
- (4) Condition C is that the company has expenditure within subsection (5) which is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (5) The expenditure within this subsection is—
  - (a) qualifying Chapter 4 expenditure (see section 1070), and
  - (b) capped R&D expenditure (see section 1073).
- (6) For the company to obtain the relief it must make a claim.



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- (7) The relief is an additional deduction in calculating the profits of the trade for the period.
- (8) The amount of the additional deduction is 30% of the expenditure mentioned in subsection (4).
- (9) See section 1083 for provision about refunds of qualifying Chapter 4 expenditure and capped R&D expenditure.

### *Threshold*

#### **1069 R&D threshold** **U.K.**

If a company meets the R&D threshold in an accounting period for the purposes of Chapter 3 (see section 1064) it also meets the R&D threshold in the period for the purposes of this Chapter.

### *Qualifying expenditure*

#### **1070 Qualifying Chapter 4 expenditure** **U.K.**

For the purposes of this Part a company's "qualifying Chapter 4 expenditure" means—

- (a) its subsidised qualifying expenditure on in-house direct research and development (see section 1071), and
- (b) its subsidised qualifying expenditure on contracted out research and development (see section 1072).

#### **1071 Subsidised qualifying expenditure on in-house direct R&D** **U.K.**

- (1) A company's "subsidised qualifying expenditure on in-house direct research and development" means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is subsidised (see section 1138).
- (3) Condition B is that the expenditure is—
  - (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software or consumable items (see section 1125),
  - (c) qualifying expenditure on externally provided workers (see section 1127), or
  - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).
- (4) Condition C is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (5) Condition D is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (6) Condition E is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.

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- (7) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (3)(a), (b) or (c) is attributable to relevant research and development.

### 1072 Subsidised qualifying expenditure on contracted out R&D **U.K.**

- (1) A company's "subsidised qualifying expenditure on contracted out research and development" means expenditure—
- (a) which is incurred by it in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136), and
  - (b) in relation to which each of conditions A to F is met.
- (2) Condition A is that the expenditure is subsidised (see section 1138).
- (3) Condition B is that the sub-contractor is—
- (a) a qualifying body,
  - (b) an individual, or
  - (c) a firm, each member of which is an individual.
- (4) Condition C is that the body, individual or firm concerned undertakes the contracted out research and development itself.
- (5) Condition D is that the expenditure is attributable to relevant research and development in relation to the company.
- (6) Condition E is that any intellectual property created as a result of the research and development to which the expenditure is attributable is, or will be, vested in the company (whether alone or with other persons).
- (7) Condition F is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (8) Sections 1124, 1126 and 1132 contain provision about when particular kinds of expenditure are attributable to relevant research and development.

### 1073 Capped R&D expenditure **U.K.**

For the purposes of this Part a company's "capped R&D expenditure" is any expenditure—

- (a) in respect of which the company is not entitled to relief under Chapter 2 merely because of section 1113 (cap on R&D aid),
- (b) which is not qualifying Chapter 3 expenditure, and
- (c) which would have been qualifying Chapter 5 expenditure had the company been a large company throughout the accounting period in question.

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## CHAPTER 5 U.K.

### RELIEF FOR LARGE COMPANIES

#### *Relief*

#### **1074 Additional deduction in calculating profits of trade U.K.**

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company is a large company throughout the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1075).
- (4) Condition C is that the company carries on a trade in the period.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is an additional deduction in calculating the profits of the trade for the period.
- (7) The amount of the additional deduction is 30% of the qualifying Chapter 5 expenditure which—
  - (a) is incurred by the company, and
  - (b) is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.
- (8) For the meaning of “qualifying Chapter 5 expenditure” see section 1076.
- (9) See also—
  - (a) section 1080 for special provision about insurance companies,
  - (b) section 1082 for provision about research and development expenditure of group companies, and
  - (c) section 1083 for provision about refunds of qualifying Chapter 5 expenditure.

#### *Threshold*

#### **1075 R&D threshold U.K.**

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its qualifying Chapter 5 expenditure for the period is at least—
  - (a) £10,000, if the accounting period is a period of 12 months, or
  - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

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$$\frac{X}{365} \times \text{£ } 10,000$$

where X is the number of days in the accounting period.

- (3) A company's qualifying Chapter 5 expenditure is “for” the accounting period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (4) Expenditure allowable as a deduction for the purposes of subsection (3) includes expenditure so allowable because of section 61 (pre-trading expenses).
- (5) For the meaning of “qualifying Chapter 5 expenditure” see section 1076.

#### *Qualifying expenditure*

#### **1076 Qualifying Chapter 5 expenditure** U.K.

For the purposes of this Part a company's “qualifying Chapter 5 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1077),
- (b) its qualifying expenditure on contracted out research and development (see section 1078), and
- (c) its qualifying expenditure on contributions to independent research and development (see section 1079).

#### **1077 Qualifying expenditure on in-house direct R&D** U.K.

- (1) A company's “qualifying expenditure on in-house direct research and development” means expenditure incurred by it in relation to which conditions A, B and C are met.
- (2) Condition A is that the expenditure is—
  - (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software or consumable items (see section 1125),
  - (c) qualifying expenditure on externally provided workers (see section 1127), or
  - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).
- (3) Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.
- (4) Condition C is that, if the expenditure is incurred in carrying on activities contracted out to the company, the activities are contracted out by—
  - (a) a large company, or
  - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (5) A “chargeable trade” is—

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- (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
  - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.
- (6) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (2)(a), (b) or (c) is attributable to relevant research and development.

#### **1078 Qualifying expenditure on contracted out R&D U.K.**

- (1) A company's "qualifying expenditure on contracted out research and development" means expenditure incurred by it in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
  - (b) an individual, or
  - (c) a firm, each member of which is an individual,
- in respect of research and development contracted out by the company to the body, individual or firm concerned ("the contracted out R&D").
- (3) Condition B is that the body, individual or firm concerned undertakes the contracted out R&D itself.
- (4) Condition C is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) Condition D is that, if the contracted out R&D is itself contracted out to the company, it is contracted out by—
- (a) a large company, or
  - (b) any person otherwise than in the course of carrying on a chargeable trade.
- (6) A "chargeable trade" is—
- (a) a trade, profession or vocation carried on wholly or partly in the United Kingdom, the profits of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, or
  - (b) a trade carried on wholly or partly in the United Kingdom, the profits of which are chargeable to corporation tax under Chapter 2 of Part 3 of this Act.
- (7) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

#### **1079 Qualifying expenditure on contributions to independent R&D U.K.**

- (1) A company's "qualifying expenditure on contributions to independent research and development" means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
  - (b) an individual, or
  - (c) a firm, each member of which is an individual,

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for the purpose of funding research and development carried on by the body, individual or firm concerned (“the funded R&D”).

- (3) Condition B is that the funded R&D is relevant research and development in relation to the company.
- (4) Condition C is that the funded R&D is not contracted out to the qualifying body, individual or firm concerned by another person.
- (5) Condition D is that, if the payment is made to an individual, the company is not connected with the individual when the payment is made.
- (6) Condition E is that, if the payment is made to a firm (other than a qualifying body), the company is not connected with any member of the firm when the payment is made.

#### *Insurance companies*

### **1080 Entitlement to relief: I minus E basis** U.K.

- (1) This section applies if, for an accounting period, an insurance company is charged to tax under the I minus E basis in respect of its life assurance business.
- (2) Any additional deduction to which the company would otherwise be entitled under section 1074 is to be treated as expenses payable falling to be brought into account at Step 3 of section 76(7) of ICTA (insurance companies: amount of expenses deduction).
- (3) Section 1074 does not apply to allow any deduction in any calculation of the profits of the company's life assurance business made in accordance with the provisions applicable for the purposes of section 35 (charge on trade profits).

But this is subject to subsection (4).

- (4) Section 1074 has effect in relation to any gross roll-up business of the company as if the references to the trade carried on by the company were references to the gross roll-up business (and subsection (2) does not apply in relation to that business).

## **CHAPTER 6** U.K.

### CHAPTERS 2 TO 5: FURTHER PROVISION

### **1081 Insurance companies treated as large companies** U.K.

- (1) This section applies if an insurance company—
  - (a) carries on life assurance business in an accounting period, and
  - (b) is a small or medium-sized enterprise in the period.
- (2) For the purposes of Chapters 2 to 5 the company is to be treated as if it were not such an enterprise in the period.
- (3) Accordingly the company is to be treated as a large company for the purposes of Chapter 5.

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## **1082 R&D expenditure of group companies** **U.K.**

- (1) This section applies if—
  - (a) a company (“A”) incurs expenditure on making a payment to another company (“B”) in respect of activities contracted out by A to B,
  - (b) the activities would, if carried out by A, be research and development of A (taken together with A's other activities), and
  - (c) A and B are members of the same group at the time the payment is made.
- (2) If the activities are undertaken by B itself, they are to be treated for the purposes of Chapters 3 and 5 (so far as it would not otherwise be the case) as research and development undertaken by B itself.
- (3) If B makes a payment to a third party (“C”), any of the activities—
  - (a) contracted out by B to C, and
  - (b) undertaken by C itself,are to be treated for the purposes of Chapters 3 and 5 (so far as it would not otherwise be the case) as research and development contracted out by B to C.
- (4) For the purposes of this section A and B are members of the same group if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief).

## **1083 Refunds of expenditure treated as income chargeable to tax** **U.K.**

- (1) This section applies if a company receives a payment (“the refund”) refunding the whole or any part of expenditure—
  - (a) to which subsection (2) applies, and
  - (b) in respect of which the company obtains relief under Chapter 3, 4 or 5.
- (2) This subsection applies to—
  - (a) qualifying Chapter 3 expenditure to which section 1067 applies (expenditure on sub-contracted R&D not undertaken in-house),
  - (b) qualifying Chapter 4 expenditure (subsidised expenditure on R&D),
  - (c) capped R&D expenditure, and
  - (d) qualifying Chapter 5 expenditure which is—
    - (i) qualifying expenditure on contracted out research and development under section 1078, or
    - (ii) qualifying expenditure on contributions to independent research and development under section 1079.
- (3) 30% of the refund is to be treated as income of the company chargeable to tax under Chapter 2 of Part 3 for the accounting period in which the refund is made.
- (4) But subsection (3) does not apply if, because of section 1080(4) (gross roll-up business), the relief obtained in respect of the expenditure concerned is an additional deduction in calculating for corporation tax purposes the profits of gross roll-up business of the company.
- (5) In that case 30% of the refund is to be treated as income which is—
  - (a) referable to the gross roll-up business, and
  - (b) chargeable, for the accounting period in which the refund is made, under the charge to corporation tax on income.



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## **1084 Artificially inflated claims for relief or tax credit** **U.K.**

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (a) determining for an accounting period relief to which a company is entitled under Chapters 2 to 5, and
  - (b) determining for an accounting period R&D tax credits to which a company is entitled under Chapter 2.
- (3) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
  - (a) relief under Chapters 2 to 5 to which it would not otherwise be entitled,
  - (b) relief under Chapters 2 to 5 of a greater amount than that to which it would otherwise be entitled,
  - (c) an R&D tax credit under Chapter 2 to which it would not otherwise be entitled, or
  - (d) an R&D tax credit under Chapter 2 of a greater amount than that to which it would otherwise be entitled.
- (4) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

## **CHAPTER 7** **U.K.**

### RELIEF FOR SMEs AND LARGE COMPANIES: VACCINE RESEARCH ETC

#### *Introductory*

## **1085 Overview of Chapter** **U.K.**

- (1) This Chapter provides for relief for expenditure incurred by companies (whether they are small or medium-sized enterprises or large companies) on research and development relating to vaccine or medicine research.
- (2) Section 1086 defines “qualifying R&D activity” (that is, the research and development in relation to which relief under this Chapter is available).
- (3) The reliefs available are—
  - (a) a deduction under section 1087 (the amount of which is determined under section 1089 or 1091), or
  - (b) if the company is a small or medium-sized enterprise, a deemed trading loss under section 1092.
- (4) Section 1094 prevents a company which is a small or medium-sized enterprise from making a claim or election for relief if it is not a going concern.
- (5) Sections 1095 to 1102 contain provision relevant to the reliefs available under this Chapter, namely—

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- (a) information about elections under section 1092 of a deemed trading loss (see section 1095),
  - (b) information about the treatment of a deemed trading loss (see section 1096),
  - (c) provision about when a company meets the R&D threshold for the purposes of obtaining relief (see section 1097),
  - (d) provision about when a company's expenditure is “qualifying Chapter 7 expenditure” for those purposes and when such expenditure is “for” an accounting period (see sections 1098 to 1102).
- (6) Sections 1103 to 1111 deal with R&D tax credits which can be claimed if a company—
- (a) is a small or medium-sized enterprise,
  - (b) obtains relief under this Chapter, and
  - (c) makes, or is treated as making, a trading loss.
- (7) Section 1112 contains an anti-avoidance provision dealing with artificially inflated claims for relief or R&D tax credits under this Chapter.
- (8) See also section 1137 for provision about the accounting periods of a company which is not within the charge to corporation tax.

#### **1086 Meaning of “qualifying R&D activity” U.K.**

- (1) For the purposes of this Chapter “qualifying R&D activity” means research and development relating to—
- (a) vaccines or medicines for the prevention or treatment of tuberculosis,
  - (b) vaccines or medicines for the prevention or treatment of malaria,
  - (c) vaccines for the prevention of infection by human immunodeficiency virus, or
  - (d) vaccines or medicines for the prevention of the onset, or for the treatment, of acquired immune deficiency syndrome resulting from infection by human immunodeficiency virus in prescribed clades only.
- (2) For the purposes of subsection (1) “prescribed clade” means clade A, C, D or E or such other clade or clades as the Treasury may by regulations prescribe.
- (3) The Treasury may make provision by regulations further defining the purposes referred to in subsection (1).
- (4) In subsection (1) references to vaccines or medicines are to vaccines or medicines for use in humans.

#### *Reliefs*

#### **1087 Deduction in calculating profits of trade U.K.**

- (1) A company is entitled to corporation tax relief for an accounting period if it meets conditions A, B and C.
- (2) Condition A is that the company has incurred expenditure which is qualifying Chapter 7 expenditure for the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1097).

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- (4) Condition C is that the company is carrying on a trade in the period.
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is a deduction in calculating the profits of the trade for the period.
- (7) For the amount of the deduction see—
  - (a) section 1089 if the company is a small or medium-sized enterprise in the period, and
  - (b) section 1091 if the company is a large company throughout the period.
- (8) This section is subject to section 1113 (cap on total R&D aid in relation to a particular research and development project).
- (9) See also—
  - (a) section 1088 for the declaration that a large company is required to make in a claim under this section,
  - (b) section 1094, which prevents a company which is a small or medium-sized enterprise from making a claim if it is not a going concern,
  - (c) section 1098 for the meaning of “qualifying Chapter 7 expenditure”, and
  - (d) sections 1099 and 1100 for the meaning of qualifying Chapter 7 expenditure “for” an accounting period.

#### **1088 Large companies: declaration about effect of relief** U.K.

- (1) This section applies if a large company claims relief under section 1087.
- (2) The claim must include a declaration that the availability of the relief claimed has resulted in an increase in—
  - (a) the amount, scope or speed of the research and development undertaken by the company, or
  - (b) the company's expenditure on research and development.

#### **1089 SMEs: amount of deduction** U.K.

- (1) This section applies if—
  - (a) a company makes a claim under section 1087 for relief to which it is entitled for an accounting period, and
  - (b) the company is a small or medium-sized enterprise in the period.
- (2) The amount of the deduction under that section is 40% of the company's qualifying Chapter 7 expenditure for the period (see sections 1098 and 1099).
- (3) The deduction is in addition to any other deduction in respect of the expenditure.
- (4) Subsection (2) is subject to the modification contained in section 1090 for larger SMEs.
- (5) Expenditure taken into account for the purpose of determining the amount of the deduction may include expenditure which is qualifying Chapter 7 expenditure for the accounting period because of section 1099(1)(b) (pre-trading expenditure).
- (6) This is despite the fact that the expenditure is unrelated to the trade mentioned in section 1087(4).

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### **1090 Modification of section 1089 for larger SMEs** **U.K.**

- (1) Subsection (2) applies if a company which makes a claim under section 1087 for relief to which it is entitled for an accounting period—
  - (a) is a larger SME in the period, and
  - (b) obtains an R&D tax credit for the period under Chapter 2.
- (2) Section 1089 has effect in relation to the company as if for subsection (2) there were substituted—

“(2) The amount of the deduction under that section is 40% of so much of the company's qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2.”

### **1091 Large companies: amount of deduction** **U.K.**

- (1) This section applies if—
  - (a) a company makes a claim under section 1087 for relief to which it is entitled for an accounting period, and
  - (b) the company is a large company throughout the period.
- (2) The amount of the deduction under that section is the sum of—
  - (a) amount A, and
  - (b) amount B.
- (3) Amount A is 40% of so much of the company's qualifying Chapter 7 expenditure for the period as is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (4) Amount B is 140% of so much of the company's qualifying Chapter 7 expenditure for the period that is not so allowable.
- (5) The deduction is in addition to any other deduction in respect of the expenditure.
- (6) See sections 1098 and 1100 for the meaning of “qualifying Chapter 7 expenditure” and provision about when such expenditure is “for” an accounting period.

### **1092 SMEs: deemed trading loss for pre-trading expenditure** **U.K.**

- (1) A company is entitled to corporation tax relief for an accounting period if it meets each of conditions A to D.
- (2) Condition A is that the company is a small or medium-sized enterprise in the period.
- (3) Condition B is that the company meets the R&D threshold in the period (see section 1097).
- (4) Condition C is that the company has incurred expenditure which is qualifying Chapter 7 expenditure for the period as a result of section 1099(1)(b) (“pre-trading qualifying Chapter 7 expenditure”).
- (5) Condition D is that the company is not carrying on a trade in the period.
- (6) For the company to obtain the relief it must make an election.

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See section 1094 (which prevents a company from making an election if it is not a going concern).

- (7) The relief is that the company is treated as if it had made a trading loss in the period.
- (8) The amount of the trading loss is—
  - (a) 40% of so much of the pre-trading qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is also entitled to relief under Chapter 2, and
  - (b) 140% of so much of the pre-trading qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2,
 but this is subject to section 1093.
- (9) If a company makes an election under this section in respect of pre-trading qualifying expenditure, section 61 (pre-trading expenses) does not apply to the expenditure.
- (10) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (11) See also section 1137 for provision about the accounting periods of a company which is not within the charge to corporation tax.
- (12) See sections 1098 and 1099 for the meaning of “qualifying Chapter 7 expenditure” and provision about when such expenditure is “for” an accounting period.

### **1093 Modification of section 1092 for larger SMEs U.K.**

- (1) Subsection (2) applies if a company which makes a claim under section 1087 for relief to which it is entitled for an accounting period—
  - (a) is a larger SME in the period, and
  - (b) obtains an R&D tax credit for the period under Chapter 2.
- (2) Section 1092 has effect in relation to the company as if subsection (8)(a) were omitted.

### **1094 Relief only available to SME where company is going concern U.K.**

- (1) A company which is a small or medium-sized enterprise may only make—
  - (a) a claim under section 1087, or
  - (b) an election under section 1092,
 at a time when it is a going concern.
- (2) For the purposes of this section a company is a going concern if—
  - (a) its latest published accounts were prepared on a going concern basis, and
  - (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under Chapter 2 or this Chapter.
- (3) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

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### *Deemed trading loss: further provision*

#### **1095 Elections under section 1092 U.K.**

- (1) An election under section 1092 must specify the accounting period in respect of which it is made.
- (2) The election must be made by notice in writing to an officer of Revenue and Customs.
- (3) The notice must be given before the end of the period of two years beginning immediately after the end of the accounting period to which the election relates.

#### **1096 Treatment of deemed trading loss under section 1092 U.K.**

- (1) This section applies if under section 1092 a company is treated as making a trading loss in an accounting period.
- (2) The trading loss may not be set off against profits of a preceding accounting period under section 393A(1)(b) of ICTA unless the company is entitled to relief under section 1092 for the earlier period.
- (3) Subsection (4) applies if—
  - (a) the company begins, in the accounting period or a later period, to carry on a trade, and
  - (b) the trade is derived from the research and development in relation to which the relief mentioned in subsection (1) was obtained.
- (4) In that case, so far as—
  - (a) the company has not obtained relief in respect of the trading loss under any other provision, and
  - (b) the loss has not been surrendered under section 403(1) of ICTA (surrender of relief to group or consortium members),the trading loss is to be treated as if it were a loss of that trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits).
- (5) Subsection (4) is subject to section 1111 (restriction on losses carried forward where tax credit claimed).

### *Threshold*

#### **1097 R&D threshold U.K.**

- (1) For the purposes of this Chapter a company meets the R&D threshold in an accounting period if its qualifying Chapter 7 expenditure for the period is at least—
  - (a) £10,000, if the accounting period is a period of 12 months, or
  - (b) the amount given by subsection (2), if the accounting period is a period of less than 12 months.
- (2) The amount referred to in subsection (1)(b) is—

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$$\frac{X}{365} \times \text{£ } 10,000$$

where X is the number of days in the accounting period.

- (3) See sections 1098, 1099 and 1100 for the meaning of “qualifying Chapter 7 expenditure” and provision about when such expenditure is “for” an accounting period.

### *Qualifying expenditure*

#### **1098 Meaning of “qualifying Chapter 7 expenditure” U.K.**

For the purposes of this Part a company's “qualifying Chapter 7 expenditure” means—

- (a) its qualifying expenditure on in-house direct research and development (see section 1101), and
- (b) its qualifying expenditure on contracted out research and development (see section 1102).

#### **1099 SMEs: qualifying expenditure “for” an accounting period U.K.**

- (1) If a company is a small or medium-sized enterprise in an accounting period, its qualifying Chapter 7 expenditure is “for” the period if—
  - (a) it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company, or
  - (b) it would have been so allowable had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred.
- (2) For the purposes of subsection (1)(a) section 61 (pre-trading expenses treated as incurred when trading begins) is to be ignored.

#### **1100 Large companies: qualifying expenditure “for” an accounting period U.K.**

- (1) If a company is a large company throughout an accounting period, its qualifying Chapter 7 expenditure is “for” the period if it is allowable as a deduction in calculating for corporation tax purposes the profits for the period of a trade carried on by the company.
- (2) Expenditure allowable as a deduction for the purposes of subsection (1) includes expenditure so allowable because of section 61 (pre-trading expenses).

#### **1101 Qualifying expenditure on in-house direct R&D U.K.**

- (1) A company's “qualifying expenditure on in-house direct research and development” means expenditure incurred by it in relation to which each of conditions A to E is met.



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- (2) Condition A is that the expenditure is attributable to qualifying R&D activity (see section 1086) undertaken by the company itself.
- (3) Condition B is that the qualifying R&D activity to which the expenditure is attributable is relevant research and development in relation to the company.
- (4) Condition C is that the expenditure is—
  - (a) incurred on staffing costs (see section 1123),
  - (b) incurred on software or consumable items (see section 1125),
  - (c) qualifying expenditure on externally provided workers (see section 1127), or
  - (d) incurred on relevant payments to the subjects of a clinical trial (see section 1140).
- (5) Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- (6) Condition E is that the expenditure is not subsidised (see section 1138).
- (7) See sections 1124, 1126 and 1132 for provision about when expenditure within subsection (4)(a), (b) or (c) is attributable to relevant research and development.

#### **1102 Qualifying expenditure on contracted out R&D U.K.**

- (1) A company's "qualifying expenditure on contracted out research and development" means expenditure in relation to which each of conditions A to D is met.
- (2) Condition A is that the expenditure is incurred in making the qualifying element of a sub-contractor payment (see sections 1134 to 1136) to a sub-contractor.
- (3) Condition B is that the expenditure is attributable to qualifying R&D activity (see section 1086) undertaken by the sub-contractor itself.
- (4) Condition C is that the R&D activity to which the expenditure is attributable is relevant research and development in relation to the company.
- (5) Condition D is that the expenditure is not subsidised (see section 1138).
- (6) See sections 1124, 1126 and 1132 for provision about when particular kinds of expenditure are attributable to relevant research and development.

*Tax credit: entitlement and payment*

#### **1103 Entitlement to and payment of tax credit U.K.**

- (1) A company is entitled to an R&D tax credit for an accounting period if—
  - (a) it is a small or medium-sized enterprise in the period, and
  - (b) it has a Chapter 7 surrenderable loss in the period (see section 1104).
- (2) For a company to obtain an R&D tax credit in respect of all or part of the Chapter 7 surrenderable loss it must make a claim.

See section 1106 (which prevents a company from making a claim if it is not a going concern).

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- (3) The amount of an R&D tax credit to which the company is entitled is determined in accordance with section 1107.
- (4) If a company makes a claim for an R&D tax credit to which it is entitled for an accounting period, an officer of Revenue and Customs must pay to the company the amount of the credit.  
  
This is subject to section 1109.
- (5) This section is subject to section 1113 (cap on R&D aid in relation to a particular research and development project).
- (6) See also section 1111, which restricts the carry forward of losses where a company claims an R&D tax credit.

#### 1104 Meaning of “Chapter 7 surrenderable loss” **U.K.**

- (1) For the purposes of this Chapter a company has a “Chapter 7 surrenderable loss” if in an accounting period—
  - (a) it obtains a deduction under section 1087 in calculating the profits of a trade and it makes a trading loss in that period in the trade, or
  - (b) it is treated as making a trading loss under section 1092.
- (2) If relief is obtained under section 1087 the amount of the Chapter 7 surrenderable loss is—
  - (a) amount A, or
  - (b) if less, amount B.
- (3) Amount A is so much of the trading loss as is unrelieved.
- (4) Amount B is the sum of—
  - (a) the total amount deductible under section 1087, and
  - (b) so much of the company's qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2,
 but this is subject to subsection (5).
- (5) If the company is a larger SME, amount B is 140% of so much of the company's qualifying Chapter 7 expenditure for the period as is expenditure in respect of which the company is not entitled to relief under Chapter 2.
- (6) If relief is obtained under section 1092 the amount of the Chapter 7 surrenderable loss is so much of the trading loss as is unrelieved.

#### 1105 Amount of trading loss which is “unrelieved” **U.K.**

- (1) This section applies for the purposes of section 1104.
- (2) The amount of a trading loss that is “unrelieved” is the amount of the loss reduced by—
  - (a) any relief that was or could have been obtained by the company making a claim under section 393A(1)(a) of ICTA to set the loss against profits of the same accounting period,

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- (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of that Act (losses set against profits of an earlier accounting period),
  - (c) any loss surrendered under section 403(1) of that Act (surrender of relief to group or consortium members), and
  - (d) the amount of any Chapter 2 surrenderable loss (as defined by section 1055) in respect of which an R&D tax credit is claimed under Chapter 2.
- (3) No account is to be taken for this purpose of any losses—
- (a) brought forward from an earlier accounting period under section 393(1) of ICTA, or
  - (b) carried back from a later accounting period under section 393A(1)(b) of that Act.

#### **1106 Tax credit only available where company is going concern U.K.**

- (1) A company may only make a claim under section 1103 at a time when it is a going concern.
- (2) If a company ceases to be a going concern after making a claim under section 1103, it is treated as if it had not made the claim (and accordingly there is treated as having been no payment of R&D tax credit to carry interest under section 826 of ICTA).
- (3) Subsection (2) does not apply so far as the claim relates to an amount that was paid or applied before the company ceased to be a going concern.
- (4) For the purposes of this section a company is a going concern if—
  - (a) its latest published accounts were prepared on a going concern basis, and
  - (b) nothing in those accounts indicates that they were only prepared on that basis because of an expectation that the company would receive relief or R&D tax credits under Chapter 2 or this Chapter.
- (5) Section 436(2) of the Companies Act 2006 (meaning of “publication” of documents) has effect for the purposes of this section.

#### *Amount of tax credit*

#### **1107 Amount of tax credit U.K.**

- (1) The amount of the R&D tax credit to which a company is entitled for an accounting period is 16% of the amount of the Chapter 7 surrenderable loss for the period.
- (2) Subsection (1) is subject to the limit set out in subsection (3).
- (3) The limit is that the total of the R&D tax credits to which the company is entitled for the accounting period under Chapter 2 and this Chapter is not to exceed the total amount of the company's PAYE and NIC liabilities for payment periods ending in the accounting period (see section 1108).
- (4) The Treasury may by order replace the percentage for the time being specified in subsection (1) with a different percentage.
- (5) An order under subsection (4) may contain incidental, supplemental, consequential and transitional provision and savings.

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## **1108 Total amount of company's PAYE and NIC liabilities** **U.K.**

- (1) The total amount of the company's PAYE and NIC liabilities for a payment period is the sum of—
  - (a) amount A, and
  - (b) amount B.
- (2) Amount A is the amount of income tax for which the company is required to account to an officer of Revenue and Customs for the payment period under PAYE regulations.
- (3) In calculating amount A disregard any deduction the company is authorised to make in respect of child tax credit or working tax credit.
- (4) Amount B is the amount of Class 1 national insurance contributions for which the company is required to account to an officer of Revenue and Customs for the payment period.
- (5) In calculating amount B disregard any deduction the company is authorised to make in respect of payments of statutory sick pay, statutory maternity pay, child tax credit or working tax credit.

### *Supplementary*

## **1109 Payment of tax credit** **U.K.**

- (1) This section applies if an R&D tax credit for an accounting period is payable to a company under this Chapter.
- (2) The amount payable in respect of—
  - (a) the R&D tax credit, or
  - (b) interest on the credit payable under section 826 of ICTA,
 may be applied in discharging any liability of the company to pay corporation tax.
- (3) So far as the amount is so applied, the duty of the officer of Revenue and Customs to pay the credit under section 1103(4) is discharged.
- (4) Subsection (5) applies if the company's tax return for the accounting period is enquired into by an officer of Revenue and Customs.
- (5) In that case—
  - (a) no payment in respect of the R&D tax credit for the period need be made before the officer's enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
  - (b) the officer may make a payment on a provisional basis of such amount as the officer thinks fit.
- (6) No payment need be made in respect of the R&D tax credit if the company has outstanding PAYE and NIC liabilities for the period.
- (7) A company has outstanding PAYE and NIC liabilities for an accounting period if it has not paid to an officer of Revenue and Customs any amount that it is required to pay—
  - (a) under PAYE regulations, or
  - (b) in respect of Class 1 national insurance contributions,
 for payment periods ending in the accounting period.

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#### **1110 Tax credit payment not income of company** **U.K.**

A payment in respect of an R&D tax credit under this Chapter is not income of the company for any tax purposes.

#### **1111 Restriction on losses carried forward where tax credit claimed** **U.K.**

- (1) This section applies if a company claims an R&D tax credit to which it is entitled for an accounting period.
- (2) For the purposes of section 393 of ICTA (relief of trading losses against future trading profits) the company's trading loss for the period is treated as reduced by the amount of the surrendered loss for the period.
- (3) The “amount of the surrendered loss” for the period means the amount of the Chapter 7 surrenderable loss in respect of which the company claims an R&D tax credit for the period.

#### *Tax avoidance*

#### **1112 Artificially inflated claims for relief or tax credit** **U.K.**

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (a) determining for an accounting period relief to which a company is entitled under this Chapter, and
  - (b) determining for an accounting period R&D tax credits to which a company is entitled under this Chapter.
- (3) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
  - (a) relief under this Chapter to which it would not otherwise be entitled,
  - (b) relief under this Chapter of a greater amount than that to which it would otherwise be entitled,
  - (c) an R&D tax credit under this Chapter to which it would not otherwise be entitled, or
  - (d) an R&D tax credit under this Chapter of a greater amount than that to which it would otherwise be entitled.
- (4) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

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## CHAPTER 8 U.K.

### CAP ON AID FOR R&D

#### 1113 Cap on R&D aid under Chapter 2 or 7 U.K.

- (1) A company is only entitled to qualifying R&D relief in respect of expenditure attributable to a research and development project if, or so far as, the condition in subsection (2) is met at that time.
- (2) The condition is that the total R&D aid in respect of expenditure by the company attributable to the project would not exceed 7.5 million euros.
- (3) In subsection (2) “total R&D aid” means the total R&D aid calculated—
  - (a) in accordance with section 1114, and
  - (b) as if a claim or election had been made for the R&D relief mentioned in subsection (1).
- (4) In this Chapter “qualifying R&D relief” means any relief or R&D tax credit under—
  - (a) Chapter 2 (relief for SMEs: cost of R&D incurred by SME), or
  - (b) Chapter 7 (relief for SMEs and large companies: expenditure on vaccine research etc).
- (5) The Treasury may by regulations—
  - (a) increase the amount specified in subsection (2), and
  - (b) amend this Chapter (apart from this section).

#### 1114 Total R&D aid U.K.

For the purposes of section 1113 the total R&D aid, in respect of expenditure by a company (“the claimant”) attributable to a research and development project, is calculated as follows—

$$A = (TC + R + (P \times CT)) - (N \times CT)$$

where—

A is the total R&D aid,

TC is the tax credits (see section 1115),

R is the actual reduction in tax liability (see section 1116),

P is the potential relief (see section 1117),

CT is the main rate of corporation tax at the time when the total R&D aid is calculated, and

N is the notional relief (see section 1118).

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### 1115 “The tax credits” **U.K.**

- (1) In section 1114 “the tax credits” means the total R&D tax credits that have been paid to the claimant under Chapter 2 or 7 in respect of expenditure attributable to the research and development project.
- (2) An R&D tax credit that has been claimed but not paid or applied is treated for the purposes of subsection (1) as if it had been paid.
- (3) Subsection (2) does not apply if the claimant has been informed by Her Majesty's Revenue and Customs that the R&D tax credit will not be paid or applied.

### 1116 “The actual reduction in tax liability” **U.K.**

- (1) In section 1114 “the actual reduction in tax liability” means the sum of—
  - (a) amounts within subsection (2), and
  - (b) amounts within subsection (3).
- (2) The amounts within this subsection are those by which the liability of the claimant to pay corporation tax has been reduced in any accounting period in consequence of qualifying R&D relief in respect of expenditure attributable to the research and development project.
- (3) The amounts within this subsection are those by which the liability of any other company (“C”) to pay corporation tax has been reduced in any accounting period in consequence of a surrendered loss.
- (4) A “surrendered loss” means a loss which—
  - (a) is surrendered to C by the claimant under section 402 of ICTA (surrender of relief between members of groups and consortia), and
  - (b) arises in consequence of qualifying R&D relief in respect of expenditure attributable to the project.

### 1117 “The potential relief” **U.K.**

- (1) In section 1114 “the potential relief” means the total amount of any qualifying R&D relief (other than an R&D tax credit)—
  - (a) in respect of which the claimant has made a claim or election, but
  - (b) which, as at the day on which the total R&D aid is calculated in accordance with section 1114, has not been brought into account by the claimant or by any other company.
- (2) Qualifying R&D relief is not to be counted for the purposes of subsection (1) if the claimant has been informed by Her Majesty's Revenue and Customs that it is not entitled to the relief.

### 1118 “The notional relief” **U.K.**

- (1) In section 1114 “the notional relief” means the total amount of relief that the claimant could have claimed under Chapter 5 (relief for large companies) in any accounting period in respect of qualifying expenditure attributable to the research and development project if the claimant had been a large company throughout the period.



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- (2) “Qualifying expenditure” means expenditure that, in the accounting period in question, was—
- (a) qualifying Chapter 2 expenditure (see section 1051), or
  - (b) qualifying Chapter 7 expenditure (see section 1098).

## CHAPTER 9 **U.K.**

### SUPPLEMENTARY

#### *SMEs and large companies*

#### 1119 “Small or medium-sized enterprise” **U.K.**

- (1) In this Part “small or medium-sized enterprise” means a micro, small or medium-sized enterprise as defined in Commission Recommendation (EC) No 2003/361, but subject to the qualifications in section 1120.
- (2) The Treasury may by order amend this section or section 1120 to substitute a different definition of “small or medium-sized enterprise” for the purposes of this Part.
- (3) This section is subject to section 1081 (insurance companies to be treated as large companies for purposes of Chapters 2 to 5).

#### 1120 Qualifications to section 1119 **U.K.**

- (1) This section contains qualifications to the definition of small or medium-sized enterprise in section 1119.
- (2) The qualifications are—

##### *Qualification 1*

In Article 2(1) of the Annex, the references to 250 persons, 50 million euros and 43 million euros are to be read as references to 500 persons, 100 million euros and 86 millions euros (respectively).

##### *Qualification 2*

If each of conditions A to D is met, Article 4(2) of the Annex is to be disregarded in determining whether a company (“C”) is within the definition of small or medium-sized enterprise in section 1119 for an accounting period in which C exceeds the employee limit or the financial limits.

- (3) Condition A is that C is a micro, small or medium-sized enterprise as defined in the Recommendation (or would be if the Annex were read as set out in qualification 1), disregarding any partner enterprise or linked enterprise.
- (4) Condition B is that a partner enterprise or linked enterprise to which C is related exceeds the employee limit or both of the financial limits, disregarding the number of employees, the annual turnover and the annual balance sheet totals of C.
- (5) Condition C is that the number of employees, annual turnover or annual balance sheet total (as the case may be) of the partner enterprise or linked enterprise to which C is

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related has been taken into account in determining whether C exceeded the employee limit or the financial limits.

- (6) Condition D is that, taken alone, C satisfies the employee limit and at least one of the financial limits.
- (7) In this section—
- (a) references to the Recommendation are to the Commission Recommendation mentioned in section 1119(1),
  - (b) references to the Annex are to the Annex to the Recommendation,
  - (c) references to the employee limit are to the limit on the number of employees contained in Article 2(1) of the Annex (read as set out in qualification 1), and
  - (d) references to the financial limits are to the limits on the annual turnover and balance sheet totals contained in Article 2(1) of the Annex (read as set out in qualification 1).

**1121 “Larger SME” U.K.**

References in this Part to a “larger SME” are to a company which is a small or medium-sized enterprise by virtue of qualification 1 in section 1120.

**1122 “Large company” U.K.**

In this Part “large company” means a company that is not a small or medium-sized enterprise.

*Staffing costs*

**1123 “Staffing costs” U.K.**

- (1) For the purposes of this Part the staffing costs of a company are amounts to which subsection (2), (3), (4), (5) or (7) applies.
- (2) This subsection applies to an amount paid by the company to a director or an employee of the company which—
- (a) is earnings consisting of money, and
  - (b) is paid because of the director's or employee's employment.
- (3) This subsection applies to an amount paid by the company to a director or an employee of the company, other than an amount paid in respect of benefits in kind, if—
- (a) the amount is paid in respect of expenses paid by the director or employee, and
  - (b) the amount is paid because of the director's or employee's employment.
- (4) This subsection applies to secondary Class 1 national insurance contributions paid by the company.
- (5) This subsection applies to compulsory contributions paid by the company in respect of benefits for directors or employees of the company under the social security legislation of an EEA State (other than the United Kingdom) or Switzerland.
- (6) In subsection (5) “social security legislation” means legislation relating to any of the branches of social security listed in Article 3(1) of Regulation (EC) No. 883/2004 of

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the European Parliament and of the Council on the co-ordination of social security systems (as amended from time to time).

- (7) This subsection applies to contributions paid by the company to a pension fund operated for the benefit of directors or employees of the company.
- (8) In subsection (7) “pension fund” means a scheme, fund or other arrangement established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pension benefits.

For this purpose “scheme” includes a deed, agreement or series of agreements.

- (9) In subsection (8) “pension benefits” means pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits).

#### 1124 **Staffing costs: attributable expenditure** **U.K.**

- (1) This section applies for the purposes of this Part to identify when staffing costs are attributable to relevant research and development.
- (2) The costs which are so attributable are those paid to, or in respect of, directors or employees who are directly and actively engaged in relevant research and development.
- (3) Subsection (4) applies if a director or employee is partly engaged directly and actively in relevant research and development.
- (4) The appropriate proportion of the staffing costs relating to the director or employee is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if persons provide services, such as secretarial or administrative services, in support of activities carried on by others.
- (6) Those persons are not, as a result of providing those services, to be treated as themselves directly and actively engaged in those activities.

*Software or consumable items*

#### 1125 **“Software or consumable items”** **U.K.**

- (1) For the purposes of this Part expenditure on software or consumable items means expenditure on—
- (a) computer software, or
  - (b) consumable or transformable materials.
- (2) For the purposes of subsection (1)(b) consumable or transformable materials include water, fuel and power.

#### 1126 **Software or consumable items: attributable expenditure** **U.K.**

- (1) This section applies for the purposes of this Part to identify when expenditure on software or consumable items is attributable to relevant research and development.

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- (2) Expenditure on software or consumable items is so attributable if the software or consumable items are employed directly in relevant research and development.
- (3) Subsection (4) applies if software or consumable items are partly employed directly in relevant research and development.
- (4) The appropriate proportion of the expenditure on the software or consumable items is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if software or consumable items are employed in the provision of services, such as secretarial or administrative services, in support of other activities.
- (6) The software or consumable items are not, as a result of their employment in the provision of those services, to be treated as themselves directly employed in those activities.

#### *Qualifying expenditure on externally provided workers*

### **1127 “Qualifying expenditure on externally provided workers” U.K.**

- (1) For the purposes of this Part a company incurs expenditure on externally provided workers if—
  - (a) it makes a payment (a “staff provision payment”) to another person (the “staff provider”), and
  - (b) the payment is in respect of the supply to the company, by or through the staff provider, of the services of any externally provided workers.
- (2) The company's qualifying expenditure on externally provided workers is determined in accordance with section 1129 or 1131.
- (3) In sections 1128 to 1131 references to “staff provider” and “staff provision payment” are to be read in accordance with subsection (1).

### **1128 “Externally provided worker” U.K.**

- (1) For the purposes of this Part a person is an “externally provided worker” in relation to a company if each of conditions A to G is met.
- (2) Condition A is that the worker is an individual.
- (3) Condition B is that the worker is not a director or employee of the company.
- (4) Condition C is that the worker personally provides, or is under an obligation personally to provide, services to the company.
- (5) Condition D is that the worker is subject to (or to the right of) supervision, direction or control by the company as to the manner in which those services are provided.
- (6) Condition E is that the worker's services are supplied to the company through a staff provider (whether or not the worker is a director or employee of the staff provider or any other person).
- (7) Condition F is that the worker provides, or is under an obligation to provide, those services personally to the company under the terms of a contract between the worker and the staff provider.

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- (8) Condition G is that the provision of those services does not constitute the carrying on of activities contracted out by the company.

### 1129 **Qualifying expenditure on externally provided workers: connected persons** **U.K.**

- (1) This section applies if—
- (a) a company makes a staff provision payment,
  - (b) the company and the staff provider are connected, and
  - (c) in accordance with generally accepted accounting practice, the whole of the staff provision payment and all of the staff provider's relevant expenditure have been brought into account in determining the staff provider's profit or loss for a relevant period.
- (2) The company's qualifying expenditure on externally provided workers is—
- (a) the entire staff provision payment, or
  - (b) if less, an amount equal to the staff provider's relevant expenditure.
- (3) “Relevant expenditure” of the staff provider means expenditure that—
- (a) is incurred by the staff provider in providing for the company the externally provided workers to whom the staff provision payment relates,
  - (b) is not of a capital nature, and
  - (c) is incurred on staffing costs or agency workers' remuneration.
- (4) “Relevant period” means a period—
- (a) for which accounts are drawn up for the staff provider, and
  - (b) that ends not more than 12 months after the end of the company's period of account in which the staff provision payment is, in accordance with generally accepted accounting practice, brought into account in determining the company's profit or loss.
- (5) In section 1123 (meaning of “staffing costs”), which applies for the purpose of determining whether the staff provider's expenditure meets the requirements of subsection (3)(c), references to a company are to be read as references to the staff provider.
- (6) “Agency workers' remuneration”, in the case of any person who is an externally provided worker in relation to the company, means remuneration that—
- (a) is receivable by the worker under or in consequence of the contract mentioned in section 1128(7), but
  - (b) does not constitute employment income of the worker apart from Chapter 7 of Part 2 of ITEPA 2003 (application of provisions to agency workers).
- (7) Any apportionment of expenditure of the company or staff provider necessary for the purposes of this section is to be made on a just and reasonable basis.

### 1130 **Election for connected persons treatment** **U.K.**

- (1) A company and a staff provider who are not connected may jointly elect that section 1129 is to apply to them as if they were connected.

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- (2) Any such election must be made in relation to all staff provision payments paid under the same contract or other arrangement.
- (3) The election must be made by notice in writing to an officer of Revenue and Customs.
- (4) The notice must be given before the end of the period of two years beginning immediately after the end of the company's accounting period in which the contract or other arrangement is entered into.
- (5) An election under this section is irrevocable.

### **1131 Qualifying expenditure on externally provided workers: other cases** U.K.

- (1) This section applies if—
  - (a) a company makes a staff provision payment,
  - (b) the company and the staff provider are not connected persons, and
  - (c) no election is made under section 1130.
- (2) The company's qualifying expenditure on externally provided workers is 65% of the staff provision payment.

### **1132 External workers: attributable expenditure** U.K.

- (1) This section applies for the purposes of this Part to identify when qualifying expenditure on externally provided workers is attributable to relevant research and development.
- (2) Qualifying expenditure on externally provided workers is so attributable if the workers are directly and actively engaged in relevant research and development.
- (3) Subsection (4) applies if an externally provided worker is partly engaged directly and actively in relevant research and development.
- (4) The appropriate proportion of the qualifying expenditure relating to the worker is treated as attributable to relevant research and development.
- (5) Subsection (6) applies if persons provide services (such as secretarial or administrative services) in support of activities carried on by others.
- (6) Those persons are not, as a result of providing those services, to be treated as themselves directly and actively engaged in those activities.

#### *Sub-contractor payments*

### **1133 “Sub-contractor” and “sub-contractor payment”** U.K.

- (1) In this Part a “sub-contractor payment” means a payment made by a company to another person (“the sub-contractor”) in respect of research and development contracted out by the company to that person.
- (2) Sections 1134 to 1136 apply if a company makes a sub-contractor payment.
- (3) They apply for the purpose of determining the qualifying element of the payment for the purposes of—

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section 1053(1)(a),  
 section 1072(1)(a), and  
 section 1102(2).

### 1134 Qualifying element of sub-contractor payment: connected persons U.K.

- (1) This section applies if—
  - (a) a company makes a sub-contractor payment,
  - (b) the company and the sub-contractor are connected, and
  - (c) in accordance with generally accepted accounting practice, the whole of the sub-contractor payment and all of the sub-contractor's relevant expenditure have been brought into account in determining the sub-contractor's profit or loss for a relevant period.
- (2) The qualifying element of the sub-contractor payment is—
  - (a) the entire payment, or
  - (b) if less, an amount equal to the sub-contractor's relevant expenditure.
- (3) “Relevant expenditure” of the sub-contractor means expenditure that—
  - (a) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,
  - (b) is not of a capital nature,
  - (c) is incurred on staffing costs, software or consumable items or relevant payments to the subjects of a clinical trial or is qualifying expenditure on externally provided workers, and
  - (d) is not subsidised.
- (4) “Relevant period” means a period—
  - (a) for which accounts are drawn up for the sub-contractor, and
  - (b) that ends not more than 12 months after the end of the company's period of account in which the sub-contractor payment is, in accordance with generally accepted accounting practice, brought into account in determining the company's profit or loss.
- (5) In the following sections, which apply for the purpose of determining whether a sub-contractor's expenditure meets the requirements of subsection (3)(c) and (d)—
  - (a) section 1123 (staffing costs),
  - (b) sections 1127 to 1131 (qualifying expenditure on externally provided workers), and
  - (c) section 1138 (subsidised expenditure),
 references to a company are to be read as references to the sub-contractor.
- (6) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this section is to be made on a just and reasonable basis.

### 1135 Election for connected persons treatment U.K.

- (1) A company and a sub-contractor who are not connected may jointly elect that section 1134 is to apply to them as if they were connected.



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- (2) Any such election must be made in relation to all sub-contractor payments paid under the same contract or other arrangement.
- (3) The election must be made by notice in writing to an officer of Revenue and Customs.
- (4) The notice must be given before the end of the period of two years beginning immediately after the end of the company's accounting period in which the contract or other arrangement is entered into.
- (5) An election under this section is irrevocable.

### **1136 Qualifying element of sub-contractor payment: other cases** U.K.

- (1) This section applies if—
  - (a) a company makes a sub-contractor payment,
  - (b) the company and the sub-contractor are not connected persons, and
  - (c) no election is made under section 1135.
- (2) The qualifying element of the sub-contractor payment is 65% of the sub-contractor payment.

#### *Miscellaneous*

### **1137 Accounting periods: company not within charge to corporation tax** U.K.

- (1) This section applies to a company if—
  - (a) it is not within the charge to corporation tax, and
  - (b) it incurs qualifying Chapter 2 expenditure or qualifying Chapter 7 expenditure.
- (2) For the purposes of this Part the company is treated as having the accounting periods it would have if—
  - (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
  - (b) it had started to carry on that trade when it started to carry on relevant research and development.

### **1138 “Subsidised expenditure”** U.K.

- (1) For the purposes of this Part a company's expenditure is treated as subsidised—
  - (a) if a notified State aid is, or has been, obtained in respect of—
    - (i) the whole or part of the expenditure, or
    - (ii) any other expenditure (whenever incurred) attributable to the same research and development project,
  - (b) to the extent that a grant or subsidy (other than a notified State aid) is obtained in respect of the expenditure,
  - (c) to the extent that it is otherwise met directly or indirectly by a person other than the company.
- (2) In this section “notified State aid” means a State aid notified to and approved by the European Commission.

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- (3) For this purpose the following are not State aids—
- (a) relief under this Part, and
  - (b) R&D tax credits under this Part.
- (4) For the purposes of this Part a notified State aid, grant, subsidy or payment that is not allocated to particular expenditure is to be allocated to expenditure of the recipient on a just and reasonable basis.

**1139 “Intellectual property” U.K.**

In this Part “intellectual property” means—

- (a) industrial information or techniques likely to assist in—
  - (i) the manufacture or processing of goods or materials, or
  - (ii) the working of a mine, oil well or other source of mineral deposits or the winning of access to them, or
  - (iii) the carrying out of any agricultural, forestry or fishing operations,
- (b) a patent, trade mark, registered design, copyright, design right or plant breeder's right, and
- (c) a right under the law of a country outside the United Kingdom which corresponds or is similar to any of those falling within paragraph (b).

**1140 “Relevant payments to the subjects of a clinical trial” U.K.**

- (1) For the purposes of this Part “relevant payment”, in relation to a subject of a clinical trial, means a payment made to the subject for participating in the trial.
- (2) For the purposes of this Part “clinical trial” means an investigation in human subjects undertaken in connection with the development of a health care treatment or procedure.

**1141 “Payment period” U.K.**

In this Part a “payment period” means a period—

- (a) which ends on the fifth day of a month, and
- (b) for which the company is liable to account for income tax and national insurance contributions to an officer of Revenue and Customs.

**1142 “Qualifying body” U.K.**

- (1) For the purposes of this Part “qualifying body” means—
  - (a) a charity,
  - (b) an institution of higher education,
  - (c) an association of a description specified in section 508 of ICTA (scientific research organisation),
  - (d) a health service body within the meaning of section 519A(2) of that Act, or
  - (e) any other body prescribed, or of a description prescribed, by the Treasury, by order, for the purposes of this Part.
- (2) In subsection (1)(b) “institution of higher education” means—

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- (a) an institution within the higher education sector within the meaning of the Further and Higher Education Act 1992 (c. 13),
  - (b) an institution within the higher education sector within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 (c. 37) or a central institution within the meaning of the Education (Scotland) Act 1980 (c. 44), or
  - (c) a higher education institution within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993 (S.I. 1993/2810 (N.I. 12)).
- (3) An order under this section is to have effect in relation to the accounting periods or expenditure specified in the order.
- (4) The order may specify accounting periods beginning, or expenditure incurred, before the time the order is made.

## PART 14 U.K.

### REMEDIATION OF CONTAMINATED LAND

## CHAPTER 1 U.K.

### INTRODUCTION

#### *Introductory*

### 1143 Overview of Part U.K.

- (1) This Part provides for corporation tax relief for expenditure on land in the United Kingdom, where the expenditure is incurred for the purpose of remedying contamination of the land.
- (2) The reliefs available under Chapter 2 are—
  - (a) a deduction in calculating the profits of a UK property business or a trade carried on by a company for expenditure which is capital expenditure, and
  - (b) an additional deduction for expenditure which is allowed as a deduction in calculating the profits of such a business or trade.
- (3) Chapter 3 provides for the payment of tax credits (“land remediation tax credits”) where a company—
  - (a) obtains relief under Chapter 2, and
  - (b) makes a loss in a UK property business or a trade.
- (4) Chapter 4 contains provision about—
  - (a) the relief available to a company which carries on life assurance business, and
  - (b) the payment of tax credits (“life assurance company tax credits”) to such a company.
- (5) Chapter 5 contains an anti-avoidance provision dealing with artificially inflated claims for relief under this Part or tax credits.
- (6) Chapter 6 contains supplementary provision, including definitions.

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- (7) For information about the procedure for making claims under this Part see Schedule 18 to FA 1998, in particular Part 9B (claims relating to remediation of contaminated land) of that Schedule.

### *Basic definitions*

#### **1144 “Qualifying land remediation expenditure” U.K.**

- (1) For the purposes of this Part a company's “qualifying land remediation expenditure” means expenditure incurred by it in relation to which each of conditions A to E is met.
- (2) Condition A is that it is expenditure on land all or part of which is in a contaminated state (see section 1145).
- (3) Condition B is that the expenditure would not have been incurred if the land had not been in a contaminated state.
- (4) Condition C is that it is expenditure on relevant land remediation undertaken by the company itself or on its behalf (see section 1146).
- (5) Condition D is that the expenditure is—
  - (a) incurred on staffing costs (see section 1170),
  - (b) incurred on materials (see section 1172), or
  - (c) qualifying expenditure on sub-contracted land remediation (see sections 1174 to 1176).
- (6) Condition E is that the expenditure is not subsidised (see section 1177).
- (7) See also section 1173 for provision about some cases in which condition B is treated as met.

#### **1145 Land “in a contaminated state” U.K.**

- (1) For the purposes of this Part land is in a contaminated state if (and only if) it is in such a condition, because of substances in, on or under the land, that—
  - (a) harm is being caused or there is the possibility of harm being caused, or
  - (b) pollution of controlled waters is being, or is likely to be, caused.
- (2) For the purposes of this Part a nuclear site is not land in a contaminated state.
- (3) “Nuclear site” means—
  - (a) any site in respect of which a nuclear site licence is for the time being in force, or
  - (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end.
- (4) In subsection (3) “nuclear site licence”, “licensee” and “period of responsibility” have the same meaning as in the Nuclear Installations Act 1965 (c. 57).

#### **1146 “Relevant land remediation” U.K.**

- (1) For the purposes of this Part “relevant land remediation”, in relation to land acquired by a company, means—

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- (a) activities in relation to which conditions A and B are met, and
  - (b) if there are such activities, relevant preparatory activity.
- (2) Condition A is that the activities comprise the doing of any works, the carrying out of any operations or the taking of any steps in relation to—
- (a) the land in question,
  - (b) any controlled waters affected by that land, or
  - (c) any land adjoining or adjacent to that land.
- (3) Condition B is that the purpose of the activities is—
- (a) to prevent or minimise, or remedy or mitigate the effects of, any harm, or any pollution of controlled waters, by virtue of which the land is in a contaminated state, or
  - (b) to restore the land or waters to their former state.
- (4) For the purposes of subsection (1)(b) “relevant preparatory activity” means activity—
- (a) which comprises the doing of anything for the purpose of assessing the condition of—
    - (i) the land in question,
    - (ii) any controlled waters affected by that land, or
    - (iii) any land adjoining or adjacent to that land, and
  - (b) which is connected to such activities within subsection (1)(a) as are undertaken by the company itself or on its behalf.
- (5) For the purposes of this section controlled waters are “affected by” land in a contaminated state if (and only if) the land in question is in such a condition, because of substances in, on or under the land, that pollution of those waters is being, or is likely to be, caused.

## CHAPTER 2 U.K.

### RELIEFS FOR EXPENDITURE ON CONTAMINATED LAND

#### 1147 Deduction for capital expenditure U.K.

- (1) A company is entitled to relief for an accounting period if conditions A, B and C are met.
- (2) Condition A is that land in the United Kingdom is, or has been, acquired by the company for the purposes of a UK property business or a trade carried on by it.
- (3) Condition B is that at the time of the acquisition all or part of the land is or was in a contaminated state.
- (4) Condition C is that the company incurs capital expenditure which is qualifying land remediation expenditure in respect of the land.
- (5) For the company to obtain the relief it must make an election.
- (6) The relief is that for corporation tax purposes the capital expenditure is allowed as a deduction in calculating the profits of the UK property business or the trade for the period in which the expenditure is incurred.

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- (7) For the purposes of this section capital expenditure incurred for the purposes of a UK property business or a trade by a company about to carry on the business or trade is to be treated as incurred by the company—
- (a) on the first day on which it does carry it on, and
  - (b) in the course of doing so.
- (8) Relief is not available under this section in relation to so much of the qualifying land remediation expenditure as represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

**1148 Election under section 1147** U.K.

- (1) An election under section 1147 must specify the accounting period in respect of which it is made.
- (2) The election must be made by notice in writing to an officer of Revenue and Customs.
- (3) The notice must be given before the end of the period of two years beginning immediately after the end of the accounting period to which the election relates.

**1149 Additional deduction for qualifying land remediation expenditure** U.K.

- (1) A company is entitled to corporation tax relief for an accounting period if each of conditions A to D is met.
- (2) Condition A is that land in the United Kingdom is, or has been, acquired by the company for the purposes of a UK property business or a trade carried on by it.
- (3) Condition B is that at the time of acquisition all or part of the land is or was in a contaminated state.
- (4) Condition C is that the company carries on a UK property business or a trade in the accounting period.
- (5) Condition D is that the company incurs qualifying land remediation expenditure in respect of the land which is allowable as a deduction in calculating for corporation tax purposes the profits of the business or the trade for the period.
- (6) For the company to obtain the relief it must make a claim.
- (7) The relief is an additional deduction in calculating the profits of the business or the trade for the period.
- (8) The amount of the additional deduction is 50% of the qualifying land remediation expenditure.

**1150 No relief if company responsible for contamination** U.K.

A company is not entitled to relief under this Chapter in respect of expenditure on land all or part of which is in a contaminated state if the land is in that state wholly or partly as a result of any thing done, or omitted to be done, at any time by—

- (a) the company, or
- (b) a person with a relevant connection to the company (see section 1178).

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## CHAPTER 3 U.K.

### LAND REMEDIATION TAX CREDIT

#### *Entitlement and payment*

#### **1151 Entitlement to and payment of tax credit U.K.**

- (1) A company is entitled to a land remediation tax credit for an accounting period if it has a qualifying land remediation loss in the period (see section 1152).
- (2) For the company to obtain a land remediation tax credit in respect of all or part of the qualifying land remediation loss it must make a claim.
- (3) The amount of a land remediation tax credit to which the company is entitled is determined in accordance with section 1154.
- (4) If a company claims a land remediation tax credit to which it is entitled for an accounting period, an officer of Revenue and Customs must pay to the company the amount of the credit.

This is subject to section 1155.

- (5) See also section 1158, which restricts the carry forward of losses where a company claims a land remediation tax credit.

#### **1152 Meaning of “qualifying land remediation loss” U.K.**

- (1) For the purposes of this Chapter a company has a “qualifying land remediation loss” in an accounting period if in the period—
  - (a) it obtains an additional deduction under section 1149 in calculating the profits of a UK property business or a trade, and
  - (b) it makes a UK property business loss in the business or a trading loss in the trade.
- (2) The amount of the qualifying land remediation loss is—
  - (a) so much of the UK property business loss or trading loss as is unrelieved (see section 1153), or
  - (b) if less, 150% of the qualifying land remediation expenditure in respect of which the relief was obtained.

#### **1153 Amount of a loss which is “unrelieved” U.K.**

- (1) The amount of a UK property business loss or trading loss that is “unrelieved” is the amount of the loss reduced by—
  - (a) any relief obtained by the company under section 392A(1) of ICTA, or that was or could have been obtained by it making a claim under section 393A(1) (a) of ICTA, to set the loss against profits of the same accounting period,
  - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of ICTA (losses set against profits of an earlier accounting period), and
  - (c) any loss surrendered under section 403(1) of ICTA (surrender of relief to group or consortium members).



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- (2) No account is to be taken for this purpose of—
- (a) any UK property business losses or trading losses brought forward from an earlier accounting period under section 392A(2) or 393(1) of ICTA, or
  - (b) any trading losses carried back from a later accounting period under section 393A(1)(b) of ICTA.
- (3) Subsections (4) to (7) apply (instead of subsection (1)) to determine the amount of a UK property business loss that is “unrelieved” in an accounting period (“the relevant accounting period”) in a case where, as a result of section 432AB(3) of ICTA, the loss is treated for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section.
- (4) If in the relevant accounting period no amount falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA (unrelieved expenses carried forward), no amount of the UK property business loss is unrelieved.
- (5) If in the relevant accounting period there is an amount which falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA, the amount of the UK property business loss that is unrelieved is—
- (a) the amount which so falls to be carried forward, or
  - (b) if less, the amount of the UK property business loss.
- (6) In determining for the purposes of subsection (4) or (5) whether there is an amount which falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA, no account is to be taken of the amounts specified in subsection (7).
- (7) Those amounts are amounts—
- (a) brought forward from an earlier accounting period, and
  - (b) treated for the purposes of section 76 of ICTA as expenses payable which fall to be brought into account for the relevant accounting period in accordance with—
    - (i) Step 7 in section 76(7) of ICTA, as a result of a previous application of section 76(12) or (13) of that Act, or
    - (ii) Step 3 in section 76(7) of ICTA, as a result of section 391 of this Act (carry forward of surplus deficit).
- (8) If—
- (a) the company is an insurance company, and
  - (b) it is treated under section 432AA of ICTA as carrying on more than one UK property business,
- references in this section to a UK property business loss are to be read in accordance with section 432AB(4) of ICTA (aggregation of losses).

*Amount of tax credit*

**1154 Amount of tax credit** U.K.

- (1) The amount of the land remediation tax credit to which a company is entitled for an accounting period is 16% of the amount of the qualifying land remediation loss for the period.

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- (2) The Treasury may by order replace the percentage for the time being specified in subsection (1) with a different percentage.
- (3) An order under subsection (2) may contain incidental, supplemental, consequential and transitional provision and savings.

### *Supplementary*

#### **1155 Payment of tax credit U.K.**

- (1) This section applies if a land remediation tax credit for an accounting period is payable to a company.
- (2) The amount payable in respect of—
  - (a) the land remediation tax credit, or
  - (b) interest on the credit payable under section 826 of ICTA,may be applied in discharging any liability of the company to pay corporation tax.
- (3) So far as the amount is so applied, the duty of the officer of Revenue and Customs to pay the credit under section 1151(4) is discharged.
- (4) Subsection (5) applies if the company's tax return for the accounting period is enquired into by an officer of Revenue and Customs.
- (5) In that case—
  - (a) no payment in respect of the land remediation tax credit for the period need be made before the officer's enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998), but
  - (b) an officer may make a payment on a provisional basis of such amount as the officer thinks fit.
- (6) No payment need be made in respect of the land remediation tax credit if the company has outstanding PAYE and NIC liabilities for the period.
- (7) A company has outstanding PAYE and NIC liabilities for an accounting period if it has not paid to an officer of Revenue and Customs any amount that it is required to pay—
  - (a) under PAYE regulations, or
  - (b) in respect of Class 1 national insurance contributions,for payment periods ending in the accounting period.
- (8) “Payment period” means a period—
  - (a) which ends on the 5th day of a month, and
  - (b) for which the company is liable to account for income tax and national insurance contributions to an officer of Revenue and Customs.

#### **1156 Tax credit payment not income of company U.K.**

A payment in respect of a land remediation tax credit is not income of the company for any tax purposes.

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### 1157 Exclusion for capital gains purposes of certain expenditure **U.K.**

- (1) This section applies if in an accounting period a payment is made to a company in respect of a land remediation tax credit.
- (2) The qualifying land remediation expenditure in respect of which the payment is made is to be treated as if it were excluded by section 39 of TCGA 1992 from the sums allowable under section 38 of that Act.

### 1158 Restriction on losses carried forward where tax credit claimed **U.K.**

- (1) For the purposes of section 392A of ICTA (UK property business losses carried forward) a company's UK property business loss for an accounting period in which it claims a land remediation tax credit to which it is entitled is treated as reduced by the amount of the surrendered loss for the period.
- (2) For the purposes of section 393 of ICTA (relief of trading losses against future trading profits) a company's trading loss for an accounting period in which it claims a land remediation tax credit to which it is entitled is treated as reduced by the amount of the surrendered loss for the period.
- (3) Subsection (4) applies (instead of subsection (1)) if in an accounting period—
  - (a) as a result of section 432AB(3) of ICTA, a company's UK property business loss is treated for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section,
  - (b) an amount falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA (unrelieved expenses carried forward), and
  - (c) the company claims a land remediation tax credit for the period.
- (4) The amount which falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA is treated as reduced by the amount of the surrendered loss for the period.
- (5) References in this section to “the amount of the surrendered loss” for an accounting period are to the amount of any qualifying land remediation loss in respect of which a land remediation tax credit is claimed for the period.

## CHAPTER 4 **U.K.**

### SPECIAL PROVISION FOR LIFE ASSURANCE BUSINESS

#### *General*

### 1159 Limitation on relief under Chapter 2 **U.K.**

- (1) Chapter 2 does not apply to allow an insurance company—
  - (a) any deduction under section 1147, or
  - (b) any additional deduction under section 1149,
 in calculating in accordance with the provisions mentioned in subsection (2) the profits for an accounting period which arise to the company from its life assurance business or from its gross roll-up business.

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- (2) The provisions referred to in subsection (1) are those applicable for the purposes of section 35 (charge on trade profits).

*I minus E basis*

**1160 Provision in respect of I minus E basis** **U.K.**

The remaining provisions of this Chapter apply if, for an accounting period, an insurance company is charged to tax under the I minus E basis in respect of its life assurance business.

*Relief for qualifying Chapter 4 expenditure*

**1161 Relief in respect of I minus E basis: enhanced expenses payable** **U.K.**

- (1) A company is entitled to relief for an accounting period if conditions A, B and C are met.
- (2) Condition A is that land in the United Kingdom is a management asset of the company.
- (3) Condition B is that at the time of acquisition of the land by the company all or part of the land is or was in a contaminated state (see section 1145).
- (4) Condition C is that the company incurs qualifying Chapter 4 expenditure in the accounting period in respect of the land (see section 1162).
- (5) For the company to obtain the relief it must make a claim.
- (6) The relief is that the company may treat 150% of the qualifying Chapter 4 expenditure as expenses payable which fall to be brought into account for the accounting period at Step 1 in section 76(7) of ICTA (deduction for expenses payable).
- (7) For the purposes of this section land is a management asset of a company if it is—
  - (a) an asset provided for use or used for the management of life assurance business carried on by the company, or
  - (b) an asset in respect of which expenditure is being incurred with a view to such use by the company.

**1162 Meaning of “qualifying Chapter 4 expenditure”** **U.K.**

For the purposes of this Chapter a company's “qualifying Chapter 4 expenditure” in an accounting period means—

- (a) its qualifying land remediation expenditure in the period, less
- (b) the amount (if any) which as a result of paragraph (a) of Step 1 in section 76(7) of ICTA is not to be brought into account at that step as expenses payable for the period.

**1163 No relief if company responsible for contamination** **U.K.**

A company is not entitled to relief under section 1161 in respect of expenditure on land all or part of which is in a contaminated state if the land is in that state wholly or partly as a result of any thing done, or omitted to be done, at any time by—

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- (a) the company, or
- (b) a person with a relevant connection to the company (see section 1178).

*Life assurance company tax credits*

**1164 Entitlement to tax credit U.K.**

- (1) A company is entitled to a life assurance company tax credit for an accounting period if it has a qualifying life assurance business loss in the period (see section 1165).
- (2) For the company to obtain a life assurance company tax credit in respect of all or part of the qualifying life assurance business loss it must make a claim.
- (3) The amount of a life assurance company tax credit to which the company is entitled is determined in accordance with section 1166.
- (4) See also section 1168, which restricts the carry forward of expenses payable where a company claims a life assurance company tax credit.

**1165 Meaning of “qualifying life assurance business loss” U.K.**

- (1) For the purposes of this Chapter a company has a “qualifying life assurance business loss” in an accounting period (“the relevant accounting period”) if in the period—
  - (a) it is entitled to relief under section 1161, and
  - (b) an amount falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA (unrelieved expenses carried forward).
- (2) In determining for the purposes of subsection (1)(b) whether there is an amount which falls to be carried forward to a subsequent accounting period under section 76(12) of ICTA, no account is to be taken of the amounts specified in subsection (3).
- (3) Those amounts are amounts—
  - (a) brought forward from an earlier accounting period, and
  - (b) treated for the purposes of section 76 of ICTA as expenses payable which fall to be brought into account for the relevant accounting period in accordance with—
    - (i) Step 7 in section 76(7) of ICTA, as a result of a previous application of section 76(12) or (13) of that Act, or
    - (ii) Step 3 in section 76(7) of ICTA, as a result of section 391 of this Act (carry forward of surplus deficit).
- (4) The amount of the qualifying life assurance business loss is—
  - (a) the amount which falls to be carried forward as mentioned in subsection (1)(b), or
  - (b) if less, 150% of the qualifying Chapter 4 expenditure in respect of which the relief was obtained.

**1166 Amount of tax credit U.K.**

- (1) The amount of the life assurance company tax credit to which a company is entitled for an accounting period is 16% of the amount of the qualifying life assurance business loss for the period.

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- (2) The Treasury may by order replace the percentage for the time being specified in subsection (1) with a different percentage.
- (3) An order under subsection (2) may contain incidental, supplemental, consequential and transitional provision and savings.

#### **1167 Payment of tax credit etc U.K.**

- (1) The provisions mentioned in subsection (2) have effect in relation to a life assurance company tax credit subject to the modifications set out in subsection (3).
- (2) The provisions referred to in subsection (1) are—
  - section 1151(4) (payment of tax credit by officer of Revenue and Customs);
  - section 1155 (supplementary provision about payment of tax credit);
  - section 1156 (tax credit payment not income of company);
  - section 1157 (qualifying expenditure excluded for capital gains purposes).
- (3) The modifications referred to in subsection (1) are as follows—
  - (a) for any reference to a land remediation tax credit substitute a reference to a life assurance company tax credit, and
  - (b) in section 1157(2) for the reference to qualifying land remediation expenditure substitute a reference to qualifying Chapter 4 expenditure.

#### **1168 Restriction on carrying forward expenses payable where tax credit claimed U.K.**

- (1) This section applies if a company claims a life assurance company tax credit to which it is entitled for an accounting period.
- (2) For the purposes of section 76 of ICTA the amount which may be—
  - (a) carried forward from the accounting period under subsection (12) of that section, and
  - (b) brought into account in accordance with Step 7 in subsection (7) of that section,is treated as reduced by the amount of the surrendered loss for the period.
- (3) The “amount of the surrendered loss” for the period means the amount of the qualifying life assurance business loss in respect of which the land remediation tax credit is claimed for the period.

### **CHAPTER 5 U.K.**

#### TAX AVOIDANCE

#### **1169 Artificially inflated claims for relief or tax credit U.K.**

- (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be disregarded for the purposes mentioned in subsection (2).
- (2) Those purposes are determining for an accounting period the amount of—

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- (a) any relief to which a company is entitled under Chapter 2,
  - (b) any land remediation tax credits to which a company is entitled under section 1151,
  - (c) any relief to which a company carrying on life assurance business is entitled under section 1161, and
  - (d) any life assurance company tax credits to which such a company is entitled under section 1164.
- (3) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
- (a) relief under Chapter 2 to which the company would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled,
  - (b) a land remediation tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled,
  - (c) relief under section 1161 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
  - (d) a life assurance company tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (4) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

## CHAPTER 6 **U.K.**

### SUPPLEMENTARY

#### 1170 “Staffing costs” **U.K.**

- (1) For the purposes of this Part the staffing costs of a company are amounts to which any of subsections (2) to (5) applies.
- (2) This subsection applies to an amount paid by the company to a director or an employee of the company which—
  - (a) is earnings consisting of money, and
  - (b) is paid because of the director's or employee's employment.
- (3) This subsection applies to an amount paid by the company to a director or an employee of the company, other than an amount paid in respect of benefits in kind, if—
  - (a) the amount is paid in respect of expenses paid by the director or employee, and
  - (b) the amount is paid because of the director's or employee's employment.
- (4) This subsection applies to secondary Class 1 national insurance contributions paid by the company.
- (5) This subsection applies to contributions paid by the company to a pension fund operated for the benefit of directors or employees of the company.
- (6) In subsection (5) “pension fund” means a scheme, fund or other arrangement established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pension benefits.

For this purpose “scheme” includes a deed, agreement or series of agreements.



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- (7) In subsection (6) “pension benefits” means pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits).

#### **1171 Staffing costs attributable to relevant land remediation U.K.**

- (1) This section applies for the purposes of this Part to identify the staffing costs of a company which are attributable to relevant land remediation.
- (2) The costs which are so attributable are those paid to, or in respect of, directors or employees who are directly and actively engaged in relevant land remediation.
- (3) Subsection (4) applies if a director (“D”) or employee (“E”) is partly engaged directly and actively in relevant land remediation.
- (4) In that case—
- if the time D or E spends so engaged is less than 20% of D's or E's total working time, none of the staffing costs relating to D or E is treated as attributable to relevant land remediation,
  - if the time D or E spends so engaged is more than 80% of D's or E's total working time, the whole of the staffing costs relating to D or E is treated as attributable to relevant land remediation, and
  - in any other case, the appropriate proportion of the staffing costs relating to D or E is treated as attributable to relevant land remediation.
- (5) Subsection (6) applies if persons provide services (such as secretarial or administrative services) in support of activities carried on by others.
- (6) Those persons are not, as a result of providing those services, to be treated as themselves directly and actively engaged in those activities.

#### **1172 Expenditure on materials U.K.**

For the purposes of this Part expenditure on materials is attributable to relevant land remediation if the materials are employed directly in the relevant land remediation.

#### **1173 Expenditure incurred because of contamination U.K.**

- (1) This section applies to identify cases in which the condition in section 1144(3) is to be treated as met (expenditure incurred because land in contaminated state).
- (2) If the only reason that expenditure on the land is increased is that the land is in a contaminated state, the amount by which the expenditure is increased is to be treated as expenditure meeting the condition in section 1144(3).
- (3) Subsection (4) applies if the main purpose of any works done, operations carried out or steps taken is—
- to prevent or minimise, or remedy or mitigate the effects of, any harm, or any pollution of controlled waters, by virtue of which the land is in a contaminated state, or
  - to restore the land or waters to their former state.

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- (4) Expenditure on such works, operations or steps is to be treated as meeting the condition in section 1144(3).
- (5) This section does not affect the width of the provision made by section 1144(3).

#### **1174 Sub-contractor payments** **U.K.**

- (1) Sections 1175 and 1176 apply if a company makes a sub-contractor payment.
- (2) They apply for the purpose of determining the amount of the payment which is “qualifying expenditure on sub-contracted land remediation” for the purposes of section 1144(5).
- (3) In this Chapter, a “sub-contractor payment” means a payment made by a company to another person (“the sub-contractor”) in respect of relevant land remediation contracted out by the company to that person.

#### **1175 “Qualifying expenditure on sub-contracted land remediation”: connected persons** **U.K.**

- (1) This section applies if—
  - (a) a company makes a sub-contractor payment,
  - (b) the company and the sub-contractor are connected, and
  - (c) in accordance with generally accepted accounting practice, the whole of the sub-contractor payment and all of the sub-contractor's relevant expenditure have been brought into account in determining the sub-contractor's profit or loss for a relevant period.
- (2) The amount of the sub-contractor payment which is “qualifying expenditure on sub-contracted land remediation” is—
  - (a) the entire payment, or
  - (b) if less, an amount equal to the sub-contractor's relevant expenditure.
- (3) “Relevant expenditure” of the sub-contractor means expenditure that—
  - (a) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,
  - (b) is not of a capital nature,
  - (c) is incurred on staffing costs or materials, and
  - (d) is not subsidised.
- (4) “Relevant period” means a period—
  - (a) for which accounts are drawn up for the sub-contractor, and
  - (b) that ends not more than 12 months after the end of the company's period of account in which the sub-contractor payment is, in accordance with generally accepted accounting practice, brought into account in determining the company's profit or loss.
- (5) In the following sections, which apply for the purpose of determining whether a sub-contractor's expenditure meets the requirements of subsection (3)(c) and (d)—
  - (a) section 1170 (staffing costs), and
  - (b) section 1177 (subsidised expenditure),
 references to a company are to be read as references to the sub-contractor.

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- (6) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this section is to be made on a just and reasonable basis.

**1176 “Qualifying expenditure on sub-contracted land remediation”: other cases** **U.K.**

- (1) This section applies if—
- (a) a company makes a sub-contractor payment, and
  - (b) the company and the sub-contractor are not connected persons.
- (2) The amount of the sub-contractor payment which is “qualifying expenditure on sub-contracted land remediation” is the entire payment.

**1177 “Subsidised expenditure”** **U.K.**

- (1) For the purposes of this Part a company's expenditure is treated as subsidised to the extent that—
- (a) a grant or subsidy is obtained in respect of the expenditure, or
  - (b) it is otherwise met directly or indirectly by a person other than the company.
- (2) For the purposes of this a grant, subsidy or payment that is not allocated to particular expenditure is to be allocated to expenditure of the recipient on a just and reasonable basis.

**1178 Persons having a “relevant connection” to a company** **U.K.**

For the purposes of this Part a person has a “relevant connection” to a company in a case where the company's land is in a contaminated state wholly or partly as a result of any thing done, or omitted to be done, by the person if—

- (a) the person is or was connected to the company when any such thing is or was done, or omitted to be done, by the person,
- (b) the person is or was connected to the company at the time when the land in question is or was acquired by the company, or
- (c) the person is or was connected to the company at any time when relevant land remediation is or was undertaken (whether by the company itself or on its behalf).

**1179 Other definitions** **U.K.**

In this Part —

“controlled waters”—

- (a) in relation to England and Wales, has the same meaning as in Part 3 of the Water Resources Act 1991 (c. 57),
- (b) in relation to Scotland, has the same meaning as in section 30A of the Control of Pollution Act 1974 (c. 40), and
- (c) in relation to Northern Ireland, means water in waterways and underground strata (as defined in Article 2(2) of the Water (Northern Ireland) Order 1999 (S.I. 1999/662 (N.I. 6)),

“harm” means—

- (a) harm to the health of living organisms,

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- (b) interference with the ecological systems of which any living organisms form part,
  - (c) offence to the senses of human beings, or
  - (d) damage to property,
- “land” means any estate, interest or rights in or over land,  
“pollution of controlled waters” means the entry into controlled waters of—
- (a) any poisonous, noxious or polluting matter, or
  - (b) any solid waste matter,
- “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour, and  
“UK property business loss” has the same meaning as in section 392A of ICTA.

## PART 15 U.K.

### FILM PRODUCTION

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

- C9** Pt. 15 applied (with modifications) by S.I. 2007/1050, regs. 3-12 (as amended (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. 131](#) (with [Sch. 2 Pts. 1, 2](#)))

## CHAPTER 1 U.K.

### INTRODUCTION

#### *Introductory*

#### 1180 Overview of Part U.K.

- (1) This Part is about film production.
- (2) Sections 1181 to 1187 contain definitions and other provisions about interpretation that apply for the purposes of this Part.  
  
See, in particular, section 1182 which explains how a company comes to be treated as the film production company in relation to a film.
- (3) Chapter 2 is about the taxation of the activities of a film production company and includes—
  - (a) provision for the company's activities in relation to its film to be treated as a separate trade, and
  - (b) provision about the calculation of the profits and losses of that trade.
- (4) Chapter 3 is about relief (called “film tax relief”) which can be given to a film production company—
  - (a) by way of additional deductions to be made in calculating the profits or losses of the company's separate trade, or

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- (b) by way of a payment (a “film tax credit”) to be made on the company's surrender of losses from that trade.
- (5) Chapter 4 is about the relief which can be given for losses made by a film production company in its separate trade including provision for certain such losses to be transferred to other separate trades.
- (6) Chapter 5 provides—
  - (a) for relief under Chapters 3 and 4 to be given on a provisional basis, and
  - (b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

### *Interpretation*

#### **1181 “Film” etc U.K.**

- (1) This section applies for the purposes of this Part.
- (2) “Film” includes any record, however made, of a sequence of visual images that is capable of being used as a means of showing that sequence as a moving picture.
- (3) Each part of a series of films is treated as a separate film, unless—
  - (a) the films form a series with not more than 26 parts,
  - (b) the combined playing time is not more than 26 hours, and
  - (c) the series constitutes a self-contained work or is a series of documentaries with a common theme,in which case the films are treated as a single film.
- (4) References to a film include the film soundtrack.
- (5) A film is completed when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

#### **1182 “Film production company” U.K.**

- (1) For the purposes of this Part “film production company” is to be read in accordance with this section.
- (2) There cannot be more than one film production company in relation to a film.
- (3) A company that (otherwise than in partnership)—
  - (a) is responsible—
    - (i) for pre-production, principal photography and post-production of the film, and
    - (ii) for delivery of the completed film,
  - (b) is actively engaged in production planning and decision-making during pre-production, principal photography and post-production, and
  - (c) directly negotiates, contracts and pays for rights, goods and services in relation to the film,is the film production company in relation to the film.
- (4) In relation to a qualifying co-production, a company that (otherwise than in partnership)—

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- (a) is a co-producer, and
  - (b) makes an effective creative, technical and artistic contribution to the film, is the film production company in relation to the film.
- (5) If there is more than one company meeting the description in subsection (3) or (4), the company that is most directly engaged in the activities referred to in that subsection is the film production company in relation to the film.
- (6) If there is no company meeting the description in subsection (3) or (4), there is no film production company in relation to the film.
- (7) A company may elect to be regarded as a company which does not meet the description in subsection (3) or (4).
- (8) The election—
- (a) must be made by the company by being included in its company tax return for an accounting period (and may be included in the return originally made or by amendment), and
  - (b) may be withdrawn by the company only by amending its company tax return for that accounting period.
- (9) The election has effect in relation to films which commence principal photography in that or any subsequent accounting period.

### 1183 “Film-making activities” etc **U.K.**

- (1) In this Part “film-making activities”, in relation to a film, means the activities involved in development, pre-production, principal photography and post-production of the film.
- (2) If all or any of the images in a film are generated by computer, references in this Part to principal photography are to be read as references to, or as including, the generation of those images.
- (3) The Treasury may by regulations—
- (a) amend subsections (1) and (2),
  - (b) provide that specified activities are or are not to be regarded as film-making activities or as film-making activities of a particular description, and
  - (c) provide that, in relation to a specified description of film, references to film-making activities of a particular description are to be read as references to such activities as may be specified.

“Specified” means specified in the regulations.

### 1184 “Production expenditure”, “core expenditure” and “limited-budget film” **U.K.**

- (1) In this Part, in relation to a film—
- “production expenditure” means expenditure on film-making activities in connection with the film, and
  - “core expenditure” means production expenditure on pre-production, principal photography and post-production.
- (2) For the purposes of this Part a “limited-budget film” is a film whose core expenditure is £20 million or less.

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- (3) In determining if a film is a limited-budget film, any core expenditure that—
- (a) is incurred by a person under or as a result of a transaction entered into directly or indirectly between that person and a connected person, and
  - (b) might have been expected to have been of a greater amount (“the arm's length amount”) if the transaction had been between independent persons dealing at arm's length,
- is treated as having been of an amount equal to the arm's length amount.

**1185 “UK expenditure” etc U.K.**

- (1) In this Part “UK expenditure”, in relation to a film, means expenditure on goods or services that are used or consumed in the United Kingdom.
- (2) Any apportionment of expenditure as between UK expenditure and non-UK expenditure for the purposes of this Part is to be made on a just and reasonable basis.
- (3) The Treasury may by regulations amend subsection (1).

**1186 “Qualifying co-production” and “co-producer” U.K.**

In this Part—

- (a) “qualifying co-production” means a film that falls to be treated as a national film in the United Kingdom as a result of an agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority, and
- (b) “co-producer” means a person who is a co-producer for the purposes of the agreement mentioned in paragraph (a).

**1187 “Company tax return” U.K.**

In this Part “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1)).

**CHAPTER 2 U.K.**

TAXATION OF ACTIVITIES OF FILM PRODUCTION COMPANY

*Separate film trade*

**1188 Activities of film production company treated as a separate trade U.K.**

- (1) This Chapter applies for corporation tax purposes to a company that is the film production company in relation to a film.
- (2) The company's activities in relation to the film are treated as a trade separate from any other activities of the company (including any activities in relation to any other film).
- (3) In this Chapter the separate trade is called “the separate film trade”.
- (4) The company is treated as beginning to carry on the separate film trade—
  - (a) when pre-production begins, or



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- (b) if earlier, when any income from the film is received by the company.

### 1189 Calculation of profits or losses of separate film trade **U.K.**

- (1) This section applies for the purpose of calculating the profits or losses of the separate film trade.
- (2) For the first period of account the following are brought into account—
  - (a) as a debit, the costs of the film incurred (and represented in work done) to date, and
  - (b) as a credit, the proportion of the estimated total income from the film treated as earned at the end of that period.
- (3) For subsequent periods of account the following are brought into account—
  - (a) as a debit, the difference between the amount of the costs of the film incurred (and represented in work done) to date and the corresponding amount for the previous period, and
  - (b) as a credit, the difference between the proportion of the estimated total income from the film treated as earned at the end of that period and the corresponding amount for the previous period.
- (4) The proportion of the estimated total income treated as earned at the end of a period of account is given by—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred (and represented in work done),

T is the estimated total cost of the film, and

I is the estimated total income from the film.

*Supplementary*

### 1190 Income from the film **U.K.**

- (1) References in this Chapter to income from the film are to any receipts by the company in connection with the making or exploitation of the film.
- (2) This includes—
  - (a) receipts from the sale of the film or rights in it,
  - (b) royalties or other payments for use of the film or aspects of it (for example, characters or music),
  - (c) payments for rights to produce games or other merchandise, and
  - (d) receipts by the company by way of a profit share agreement.

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- (3) Receipts that (apart from this subsection) would be regarded as of a capital nature are treated as being of a revenue nature.

#### **1191 Costs of the film** **U.K.**

- (1) References in this Chapter to the costs of the film are to expenditure incurred by the company on—
  - (a) film-making activities in connection with the film, or
  - (b) activities with a view to exploiting the film.
- (2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) Expenditure that (apart from this subsection) would be regarded as of a capital nature only because it is incurred on the creation of an asset (the film) is treated as being of a revenue nature.

#### **1192 When costs are taken to be incurred** **U.K.**

- (1) For the purposes of this Chapter costs are incurred when they are represented in the state of completion of the work in progress.
- (2) Accordingly—
  - (a) payments in advance of work to be done are ignored until the work has been carried out, and
  - (b) deferred payments are recognised to the extent that the work is represented in the state of completion.
- (3) The costs incurred on the film are taken to include an amount that has not been paid only if it is the subject of an unconditional obligation to pay.
- (4) If an obligation is linked to income being earned from the film, no amount is to be brought into account in respect of the costs of the obligation unless an appropriate amount of income is or has been brought into account.

#### **1193 Pre-trading expenditure** **U.K.**

- (1) This section applies if, before the company began to carry on the separate film trade, it incurred expenditure on development of the film.
- (2) The expenditure may be treated as expenditure of the separate film trade and as if incurred immediately after the company began to carry on that trade.
- (3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.
- (4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

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## 1194 Estimates **U.K.**

Estimates for the purposes of this Chapter must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

### CHAPTER 3 **U.K.**

#### FILM TAX RELIEF

##### *Introductory*

## 1195 Availability and overview of film tax relief **U.K.**

- (1) This Chapter applies for corporation tax purposes to a company that is the film production company in relation to a film.
- (2) Relief under this Chapter (“film tax relief”) is available to the company if the conditions specified in the following sections are met in relation to the film—
  - (a) section 1196 (intended theatrical release),
  - (b) section 1197 (British film), and
  - (c) section 1198 (UK expenditure).
- (3) Film tax relief is given by way of—
  - (a) additional deductions (see sections 1199 and 1200), and
  - (b) film tax credits (see sections 1201 to 1203).
- (4) Sections 1204 to 1207 contain provision about unpaid costs, artificially inflated claims and confidentiality of information.
- (5) In this Chapter “the separate film trade” means the company's separate trade in relation to the film (see section 1188).
- (6) See Schedule 18 to FA 1998 (in particular, Part 9D) for information about the procedure for making claims for film tax relief.

##### *Conditions of relief*

## 1196 Intended theatrical release **U.K.**

- (1) The film must be intended for theatrical release.
- (2) For this purpose—
  - (a) “theatrical release” means exhibition to the paying public at the commercial cinema, and
  - (b) a film is not regarded as intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- (3) Whether this condition is met is determined for each accounting period of the company during which film-making activities are carried on in relation to the film, in accordance with the following rules.

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- (4) If at the end of an accounting period the film is intended for theatrical release, the condition is treated as having been met throughout that period (subject to subsection (5)(b)).
- (5) If at the end of an accounting period the film is not intended for theatrical release, the condition—
  - (a) is treated as having been not met throughout that period, and
  - (b) cannot be met in any subsequent accounting period.

This does not affect any entitlement of the company to relief in an earlier accounting period for which the condition was met.

#### 1197 **British film** **U.K.**

The film must be certified by the Secretary of State as a British film under Schedule 1 to the Films Act 1985 (c. 21).

#### 1198 **UK expenditure** **U.K.**

- (1) At least 25% of the core expenditure on the film incurred—
  - (a) in the case of a British film other than a qualifying co-production, by the company, and
  - (b) in the case of a qualifying co-production, by the co-producers, must be UK expenditure.
- (2) The Treasury may by regulations amend the percentage specified in subsection (1).

#### *Additional deductions*

#### 1199 **Additional deduction for qualifying expenditure** **U.K.**

- (1) If film tax relief is available to the company, it may (on making a claim) make an additional deduction in respect of qualifying expenditure on the film.
- (2) The deduction is made in calculating the profit or loss of the separate film trade.
- (3) In this Chapter “qualifying expenditure” means core expenditure on the film that falls to be taken into account under Chapter 2 in calculating the profit or loss of the separate film trade for tax purposes.
- (4) The Treasury may by regulations—
  - (a) amend subsection (3), and
  - (b) provide that expenditure of a specified description is or is not to be regarded as qualifying expenditure.

#### 1200 **Amount of additional deduction** **U.K.**

- (1) For the first period of account during which the separate film trade is carried on, the amount of the additional deduction is given by—

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$$E \times R$$

where—

E is—

- (a) so much of the qualifying expenditure as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure, and

R is the rate of enhancement (see subsection (3)).

- (2) For any period of account after the first, the amount of the additional deduction is given by—

$$(E \times R) - P$$

where—

E is—

- (a) so much of the qualifying expenditure incurred to date as is UK expenditure, or
- (b) if less, 80% of the total amount of qualifying expenditure incurred to date,

R is the rate of enhancement (see subsection (3)), and

P is the total amount of the additional deductions given for previous periods.

- (3) The rate of enhancement is—
  - (a) for a limited-budget film, 100%, and
  - (b) for any other film, 80%.
- (4) The Treasury may by regulations amend the percentage specified in subsection (1) or (2).

#### *Film tax credits*

### **1201 Film tax credit claimable if company has surrenderable loss U.K.**

- (1) If film tax relief is available to the company, it may claim a film tax credit for an accounting period in which it has a surrenderable loss.
- (2) The company's surrenderable loss in any period is—
  - (a) the company's loss for the period in the separate film trade, or
  - (b) if less, the available qualifying expenditure for the period.
- (3) For the first period of account during which the separate film trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1200(1).

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- (4) For any period of account after the first, the available qualifying expenditure is given by—

$$E - S$$

where—

E is the amount that is E for that period for the purposes of section 1200(2), and

S is the total amount surrendered in previous periods under section 1202(1).

### 1202 Surrendering of loss and amount of film tax credit **U.K.**

- (1) The company may surrender the whole or part of its surrenderable loss in an accounting period.
- (2) If the company surrenders the whole or part of that loss, the amount of the film tax credit to which it is entitled for the accounting period is given by—

$$L \times R$$

where—

L is the amount of the loss surrendered, and

R is the payable credit rate (see subsection (3)).

- (3) The payable credit rate is—
- (a) for a limited-budget film, 25%, and
  - (b) for any other film, 20%.
- (4) The company's loss in the separate film trade for the accounting period is reduced by the amount surrendered.

### 1203 Payment in respect of film tax credit **U.K.**

- (1) If the company—
- (a) is entitled to a film tax credit for an accounting period, and
  - (b) makes a claim,
- the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) must pay to the company the amount of the credit.
- (2) An amount payable in respect of—
- (a) a film tax credit, or
  - (b) interest on a film tax credit under section 826 of ICTA,
- may be applied in discharging any liability of the company to pay corporation tax.

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To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.

- (3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of a film tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).

In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.

- (4) No payment need be made in respect of a film tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period—
- (a) under PAYE regulations,
  - (b) under section 966 of ITA 2007 (visiting performers), or
  - (c) in respect of Class 1 contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (5) A payment in respect of a film tax credit is not income of the company for any tax purpose.

#### *Miscellaneous*

#### **1204 No account to be taken of amount if unpaid U.K.**

- (1) In determining for the purposes of this Chapter the amount of costs incurred on a film at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.
- (2) This is without prejudice to the operation of section 1192.

#### **1205 Artificially inflated claims for additional deduction or film tax credit U.K.**

- (1) So far as a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it is to be ignored in determining for any period—
- (a) any additional deduction which a company may make under this Chapter, and
  - (b) any film tax credit to be given to a company.
- (2) Arrangements are entered into wholly or mainly for a disqualifying purpose if their main object, or one of their main objects, is to enable a company to obtain—
- (a) an additional deduction under this Chapter to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
  - (b) a film tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.
- (3) “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.



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## **1206 Confidentiality of information** U.K.

- (1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to the Secretary of State for the purposes of the Secretary of State's functions under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for the purposes of film tax relief).
- (2) Information so disclosed may be disclosed to the UK Film Council.
- (3) A person to whom information is disclosed under subsection (1) or (2) may not otherwise disclose it except—
  - (a) for the purposes of the Secretary of State's functions under Schedule 1 to the Films Act 1985,
  - (b) if the disclosure is authorised by an enactment,
  - (c) in pursuance of an order of a court,
  - (d) for the purposes of a criminal investigation or legal proceedings (whether criminal or civil) connected with the operation of that Schedule or this Part,
  - (e) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
  - (f) with the consent of each person to whom the information relates.

## **1207 Wrongful disclosure** U.K.

- (1) A person (“X”) commits an offence if—
  - (a) X discloses revenue and customs information relating to a person (as defined in section 19(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11)),
  - (b) the identity of the person to whom the information relates is specified in the disclosure or can be deduced from it, and
  - (c) the disclosure contravenes section 1206(3) above.
- (2) If a person (“Y”) is charged with an offence under subsection (1), it is a defence for Y to prove that Y reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (3) A person guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (4) A prosecution for an offence under subsection (1) may be brought in England and Wales only—
  - (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (5) A prosecution for an offence under subsection (1) may be brought in Northern Ireland only—
  - (a) by the Commissioners for Her Majesty's Revenue and Customs, or

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- (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (6) In the application of this section—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44), or
  - (b) in Northern Ireland,
- the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

## CHAPTER 4 U.K.

### FILM LOSSES

#### 1208 Application of sections 1209 and 1210 U.K.

- (1) Sections 1209 and 1210 apply to a company that is the film production company in relation to a film.
- (2) In those sections—
  - “the completion period” means the accounting period of the company—
    - (a) in which the film is completed, or
    - (b) if the company does not complete the film, in which it abandons film-making activities in relation to the film,
  - “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which the company, or any other person, is chargeable to tax,
  - “pre-completion period” means an accounting period of the company before the completion period, and
  - “the separate film trade” means the company's separate trade in relation to the film (see section 1188).

#### 1209 Restriction on use of losses while film in production U.K.

- (1) This section applies if in a pre-completion period a loss is made in the separate film trade.
- (2) The loss is not available for loss relief except to the extent that it may be carried forward under section 393(1) of ICTA to be set against profits of the separate film trade in a subsequent period.

#### 1210 Use of losses in later periods U.K.

- (1) This section applies to the following accounting periods of the company (“relevant later periods”)—
  - (a) the completion period, and
  - (b) any subsequent accounting period during which the separate film trade continues.
- (2) Subsection (3) applies if a loss made in the separate film trade is carried forward under section 393(1) of ICTA from a pre-completion period to a relevant later period.

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- (3) So much (if any) of the loss as is not attributable to film tax relief (see subsection (6)) may be treated for the purposes of loss relief as if it were a loss made in the period to which it is carried forward.
- (4) Subsection (5) applies if in a relevant later period a loss is made in the separate film trade.
- (5) The amount of the loss that may be—
  - (a) set against other profits of the same or an earlier period under section 393A of ICTA, or
  - (b) surrendered as group relief under section 403 of that Act,is restricted to the amount (if any) that is not attributable to film tax relief (see subsection (6)).
- (6) The amount of a loss in any period that is attributable to film tax relief is calculated by deducting from the total amount of the loss the amount there would have been if there had been no additional deduction under Chapter 3 in that or any earlier period.
- (7) This section does not apply to a loss to the extent that it is carried forward or surrendered under section 1211.

## 1211 Terminal losses **U.K.**

- (1) This section applies if—
  - (a) a company (“company A”) is the film production company in relation to a qualifying film,
  - (b) company A ceases to carry on its separate trade in relation to that film (“trade X”) (see section 1188), and
  - (c) if company A had not ceased to carry on trade X, it could have carried forward an amount under section 393(1) of ICTA to be set against profits of trade X in a later period (“the terminal loss”).
- (2) If on cessation of trade X company A—
  - (a) is the film production company in relation to another qualifying film, and
  - (b) is carrying on its separate trade in relation to that film (“trade Y”),it may (on making a claim) make an election under subsection (3).
- (3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 393(1) of ICTA to be set against the profits of trade Y of the first accounting period beginning after the cessation and so on.
- (4) Subsection (5) applies if on cessation of trade X—
  - (a) there is another company (“company B”) that is the film production company in relation to a qualifying film,
  - (b) company B is carrying on its separate trade in relation to that film (“trade Z”), and
  - (c) company B is in the same group as company A for the purposes of Chapter 4 of Part 10 of ICTA (group relief).
- (5) Company A may surrender the terminal loss (or a part of it) to company B.
- (6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 393(1) of ICTA to be set against

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the profits of trade Z of the first accounting period beginning after the cessation and so on.

- (7) The Treasury may, in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6), make provision by regulations corresponding, subject to such adaptations or other modifications as appear to them to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).
- (8) “Qualifying film” means a film in relation to which the conditions for film tax relief are met (see section 1195(2)).

## CHAPTER 5 U.K.

### PROVISIONAL ENTITLEMENT TO RELIEF

#### 1212 Introduction U.K.

- (1) In this Chapter—
- “the company” means the film production company in relation to a film,
  - “the completion period” means the accounting period of the company—
    - (a) in which the film is completed, or
    - (b) if the company does not complete the film, in which it abandons film-making activities in relation to it,
  - “interim accounting period” means any earlier accounting period of the company during which film-making activities are carried on in relation to the film,
  - “interim certificate” and “final certificate” refer to certificates under Schedule 1 to the Films Act 1985 (c. 21) (certification of films as British films for purposes of film tax relief),
  - “the separate film trade” means the company's separate trade in relation to the film (see section 1188), and
  - “special film relief” means—
    - (a) film tax relief, or
    - (b) relief under section 1211 (transfer of terminal losses from one qualifying film to another).
- (2) The company's company tax return for the completion period must state that the film has been completed or that the company has abandoned film-making activities in relation to it (as the case may be).

#### 1213 Certification as a British film U.K.

- (1) The company is not entitled to special film relief for an interim accounting period unless its company tax return for the period is accompanied by an interim certificate.
- (2) If an interim certificate ceases to be in force (otherwise than on being superseded by a final certificate) or is revoked, the company—
- (a) is not entitled to special film relief for any period for which its entitlement depended on the certificate, and
  - (b) must amend accordingly its company tax return for any such period.

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- (3) If the film is completed by the company—
  - (a) its company tax return for the completion period must be accompanied by a final certificate,
  - (b) if that requirement is met, the final certificate has effect for the completion period and for any interim accounting period, and
  - (c) if that requirement is not met, the company—
    - (i) is not entitled to special film relief for any period, and
    - (ii) must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) If the company abandons film-making activities in relation to the film—
  - (a) its company tax return for the completion period may be accompanied by an interim certificate, and
  - (b) the abandonment of film-making activities does not affect any entitlement to special film relief in that or any previous accounting period.
- (5) If a final certificate is revoked, the company—
  - (a) is not entitled to special film relief for any period, and
  - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

#### **1214 The UK expenditure condition** **U.K.**

- (1) The company is not entitled to special film relief for an interim accounting period unless—
  - (a) its company tax return for the period states the amount of planned core expenditure on the film that is UK expenditure, and
  - (b) that amount is such as to indicate that the condition in section 1198 (the UK expenditure condition) will be met on completion of the film.

If those requirements are met, the company is provisionally treated in relation to that period as if that condition was met.

- (2) If such a statement is made but it subsequently appears that the condition will not be met on completion of the film, the company—
  - (a) is not entitled to special film relief for any period for which its entitlement depended on such a statement, and
  - (b) must amend accordingly its company tax return for any such period.
- (3) When the film is completed or the company abandons film-making activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the amount of the core expenditure on the film that is UK expenditure.
- (4) If that statement shows that the condition in section 1198 is not met, the company—
  - (a) is not entitled to special film relief for any period, and
  - (b) must amend accordingly its company tax return for any period for which such relief was claimed.

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### 1215 Film tax relief on basis that film is limited-budget film **U.K.**

- (1) The company is not entitled to film tax relief for an interim accounting period on the basis that the film is a limited-budget film unless—
- (a) its company tax return for the period states the amount of planned core expenditure on the film, and
  - (b) that amount is such as to indicate that the condition in section 1184(2) (definition of “limited-budget film”) will be met on completion of the film.

In that case, the film is provisionally treated in relation to that period as if that condition was met.

- (2) If it subsequently appears that the condition will not be met on completion of the film, the company—
- (a) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
  - (b) must amend accordingly its company tax return for any such period for which such relief has been claimed on that basis.
- (3) When the film is completed or the company abandons film-making activities in relation to it (as the case may be), the company's company tax return for the completion period must be accompanied by a final statement of the core expenditure on the film.
- (4) Subsection (5) applies if that statement shows—
- (a) that the film is not a limited-budget film, or (as the case may be)
  - (b) that, having regard to the proportion of work on the film that was completed, the film would not have been a limited-budget film had it been completed.
- (5) The company—
- (a) is not entitled to film tax relief for any period on the basis that the film is a limited-budget film, and
  - (b) must amend accordingly its company tax return for any period for which such relief was claimed on that basis.

### 1216 Time limit for amendments and assessments **U.K.**

Any amendment or assessment necessary to give effect to the provisions of this Chapter may be made despite any limitation on the time within which an amendment or assessment may normally be made.

## PART 16 **U.K.**

### COMPANIES WITH INVESTMENT BUSINESS

## CHAPTER 1 **U.K.**

### INTRODUCTION

### 1217 Overview of Part **U.K.**

- (1) This Part contains special rules for companies with investment business.

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- (2) Chapters 2 and 3 provide relief for certain expenses of a company with investment business that are not relieved elsewhere.
- (3) Chapter 4 contains some restrictions on the relief.
- (4) There are provisions imposing liability to corporation tax in—
  - (a) section 1229 (claw back of relief), and
  - (b) Chapter 5 (companies with investment business: receipts).

## **1218 “Company with investment business” and “investment business” U.K.**

- (1) In this Part “company with investment business” means a company whose business consists wholly or partly of making investments.
- (2) But a credit union is not a company with investment business for the purposes of this Part.
- (3) References in this Part to a company's investment business are to be construed in accordance with section 1219(2).

But this subsection does not affect the interpretation of the expression “company with investment business”.

## **CHAPTER 2 U.K.**

### MANAGEMENT EXPENSES

#### *Relief for expenses of management*

## **1219 Expenses of management of a company's investment business U.K.**

- (1) In calculating the total profits for an accounting period of a company with investment business a deduction is allowed for expenses of management of the company's investment business which are referable to that period.
- (2) For the purposes of this section expenses of management are expenses of management of a company's investment business so far as—
  - (a) they are in respect of so much of the company's investment business as consists of making investments, and
  - (b) the investments concerned are not held for an unallowable purpose during the accounting period to which the expenses are referable.
- (3) But—
  - (a) no deduction is allowed under this section for expenses of a capital nature, and
  - (b) no deduction is allowed under this section for expenses so far as they are otherwise deductible from total profits, or in calculating any component of total profits.

There is an exception to paragraph (a) in section 1221(1).

- (4) Any apportionment needed for the purposes of subsection (2) must be made on a just and reasonable basis.



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(5) The amount deductible under subsection (1) may be reduced under section 1222.

## 1220 Meaning of “unallowable purpose” **U.K.**

- (1) For the purposes of section 1219, investments are held for an unallowable purpose during an accounting period so far as they are held during the period—
  - (a) for a purpose that is not a business or other commercial purpose of the company, or
  - (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.
- (2) For the purposes of subsection (1)(a) investments are not held for a business or other commercial purpose if they are held directly or indirectly in consequence of, or otherwise in connection with, any arrangements for securing a tax advantage.
- (3) In subsection (2) “arrangements for securing a tax advantage” means arrangements the main purpose, or one of the main purposes, of which is to secure—
  - (a) the allowance of a deduction (or increased deduction) under section 1219, or
  - (b) any other tax advantage.
- (4) Any apportionment needed for the purposes of subsection (1) must be made on a just and reasonable basis.
- (5) In this section—
  - (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
  - (b) “tax advantage” has the meaning given by section 840ZA of ICTA.

## 1221 Amounts treated as expenses of management **U.K.**

- (1) Section 1219(3)(a) (no deduction allowed for expenses of a capital nature) does not apply to amounts that are treated as expenses of management under—
  - (a) Chapter 3 (amounts treated as expenses of management),
  - (b) section 985(3) (share incentive plans: how relief is given),
  - (c) section 999(4) (deduction for costs of setting up SAYE option scheme or CSOP scheme),
  - (d) section 1000(3) (deduction for costs of setting up employee share ownership trust),
  - (e) section 1013(3) (employee share acquisitions: relief if shares acquired by employee or other person),
  - (f) section 1021(3) (employee share acquisitions: relief if employee or other person acquires option to obtain shares),
  - (g) paragraph 4(1A) of Schedule 23A to ICTA (manufactured dividends and interest), or
  - (h) section 196 of FA 2004 (employers' contributions to pension schemes),
 or any other provision of the Corporation Tax Acts.
- (2) Amounts that are treated as expenses of management under any provision listed in subsection (3) are deductible under section 1219 as if they were expenses of management of the company's investment business.

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- (3) The provisions are—
- (a) section 999(4) (deduction for costs of setting up SAYE option scheme or CSOP scheme),
  - (b) section 1000(3) (deduction for costs of setting up employee share ownership trust),
  - (c) section 1233 (excess capital allowances),
  - (d) section 1235 (employees seconded to charities and educational establishments),
  - (e) section 1236 (payroll deduction schemes),
  - (f) section 1237 (counselling and other outplacement services),
  - (g) section 1238 (retraining courses),
  - (h) section 1239 (redundancy payments and approved contractual payments),
  - (i) section 1242 (additional payments),
  - (j) section 1245 (payments to Export Credits Guarantee Department).

## **1222 Income from a source not charged to tax** U.K.

- (1) This section applies to a UK resident company if—
- (a) income arises to the company from a source not charged to tax,
  - (b) the company has the source in the course of carrying on its investment business, and
  - (c) the income is not franked investment income.
- (2) This section applies to a non-UK resident company if—
- (a) income arises to the company from a source not charged to tax,
  - (b) the company has the source in the course of carrying on its investment business through a permanent establishment in the United Kingdom,
  - (c) the source is property or rights used by, or held by or for, that establishment, and
  - (d) the income is not franked investment income.
- (3) The amount of that income is deducted from the amount (if any) that would otherwise be deductible under section 1219 for the accounting period in which the income arises.

## **1223 Carrying forward expenses of management and other amounts** U.K.

- (1) This section applies if, in an accounting period of a company with investment business, any amount falling within subsection (2) cannot be deducted in full because the profits from which the amount is deductible are insufficient.
- (2) The amounts are—
- (a) expenses of management deductible under section 1219,
  - (b) charges on income paid in the accounting period, so far as they are paid for the purposes of the company's investment business, and
  - (c) amounts brought forward to the period under this section.
- (3) The excess is treated for the purposes of section 1219 as expenses of management deductible for the next accounting period.

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- (4) For the purposes of this section a charge on income which arises from a disposal such as is mentioned in section 587B(1) of ICTA (gifts of shares, securities and real property to charities etc) is taken to be paid when the disposal is made.
- (5) See also section 392A(3) of ICTA (which is about unused Schedule A losses).

*Accounting period to which expenses are referable*

**1224 Accounting period to which expenses are referable U.K.**

- (1) Sections 1225 to 1227 explain which is the accounting period to which expenses of management are referable.
- (2) But those sections do not affect any provision—
- (a) in Chapter 3, or
  - (b) elsewhere in the Corporation Tax Acts,
- which provides for amounts to be treated as expenses of management referable to an accounting period.

**1225 Accounts conforming with GAAP U.K.**

- (1) If—
- (a) expenses of management are debited in accounts drawn up by a company for a period of account,
  - (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and
  - (c) the period of account coincides with an accounting period,
- the expenses of management are referable to that accounting period.
- (2) If—
- (a) expenses of management are debited in accounts drawn up by a company for a period of account, and
  - (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but
  - (c) the period of account does not coincide with an accounting period,
- the expenses of management are apportioned between any accounting periods that fall within the period of account (and are referable to accounting periods so far as they are apportioned to them).
- (3) An apportionment under subsection (2) must be made in accordance with section 1311 (time basis) or, if it appears that that method would work unreasonably or unjustly, on a just and reasonable basis.

**1226 Accounts not conforming with GAAP U.K.**

- (1) Subsection (2) applies if—
- (a) a company incurs expenses of management, and
  - (b) the company draws up accounts for a particular period of account, and

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- (c) the expenses of management would have been debited in those accounts if they had been treated in those accounts in accordance with generally accepted accounting practice, but
  - (d) they are not debited in those accounts in accordance with generally accepted accounting practice.
- (2) The expenses of management are referable to the accounting period to which they would have been referable under section 1225(1) or (2) if they had been debited in those accounts in accordance with generally accepted accounting practice.

### 1227 Accounts not drawn up **U.K.**

- (1) If—
- (a) a company does not draw up accounts, or does not draw them up for a particular period, and
  - (b) as a result, expenses of management are not referable to an accounting period under section 1225 or 1226,
- take the following steps to determine the accounting period to which they are referable.

- (2) The steps are—

#### *Step 1*

Assume that for each accounting period of the company that does not coincide with, or fall within, any period of account there is a period of account that coincides with it.

#### *Step 2*

If it would be in accordance with UK generally accepted accounting practice to debit the expenses of management, or any part of them, in accounts drawn up by the company for that deemed period of account, assume that they are so debited.

#### *Step 3*

Making those assumptions, apply section 1225(1).

#### *Claw back of relief*

### 1228 Credits that reverse debits **U.K.**

For the purposes of sections 1229 and 1230, a credit reverses the whole or part of a debit in any case where the credit falls to be made because—

- (a) the sum represented in whole or in part by the debit is paid and then wholly or partly repaid, or
- (b) the sum represented by the debit is never paid.

### 1229 Claw back of relief **U.K.**

- (1) This section applies if—
- (a) a credit is brought into account by a company in a period of account (“the period of the credit”),
  - (b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company,

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- (c) the debit (or part of it) represents expenses of management deductible under section 1219 for an accounting period which ends before, or at the same time as, the period of the credit, and
- (d) the expenses of management are not expenses brought forward to that period under section 1223.

For cases involving an absence of accounts see also section 1231.

- (2) The reversal amount (see section 1230) is dealt with in accordance with subsection (3) or (5).
- (3) If the period of the credit coincides with an accounting period of the company—
  - (a) the reversal amount is, as far as possible, applied in reducing (but not below nil) the company's expenses of management belonging to that period, and
  - (b) if not all of the amount can be applied in that way, the remainder is to be treated as a receipt of the company chargeable for that period under the charge to corporation tax on income.
- (4) For the purposes of subsection (3), the expenses of management belonging to a period are the expenses of management that are deductible for that period, excluding any amounts brought forward under section 1223.
- (5) If the period of the credit does not coincide with an accounting period of the company—
  - (a) the reversal amount is apportioned between any accounting periods that fall within the period of the credit, and
  - (b) paragraphs (a) and (b) of subsection (3) are applied to any amount that is apportioned to an accounting period.
- (6) An apportionment under subsection (5) must be made in accordance with section 1311 (time basis) or, if it appears that that method would work unreasonably or unjustly, on a just and reasonable basis.

### **1230 Meaning of “reversal amount” U.K.**

- (1) This section gives the meaning of “reversal amount” for the purposes of this Part.
- (2) If a credit reverses the whole or part of a debit, the reversal amount is found as follows.

#### *Step 1*

Take however much of the credit reverses the debit.

#### *Step 2*

Reduce that (if applicable) to however much of the credit reverses the part of the debit that represents expenses of management deductible under section 1219.

#### *Step 3*

Reduce that (if applicable) to exclude any part of the credit that represents sums otherwise taken into account in calculating for corporation tax purposes the profits and losses of the company for the relevant accounting period or an earlier accounting period.

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- (3) In this section “relevant accounting period” means the latest accounting period of the company that falls wholly or partly within the period of the credit (see section 1229(1)(a)).

### **1231 Absence of accounts** **U.K.**

- (1) This section sets out how section 1229 operates if a company has an accounting period that neither coincides with nor falls within any period of account.
- (2) Section 1229 operates as if—
- (a) there were a period of account of the company that coincides with that accounting period, and
  - (b) in calculating for accounting purposes the company's profits and losses for that period of account, amounts were brought into account in accordance with UK generally accepted accounting practice.
- (3) The references in section 1251(3)(b) (car or motor cycle hire) to credits and debits include credits and debits that are deemed to be made by virtue of this section.

## **CHAPTER 3** **U.K.**

### AMOUNTS TREATED AS EXPENSES OF MANAGEMENT

#### *Preliminary*

### **1232 Chapter applies to amounts not otherwise relieved** **U.K.**

The following provisions of this Chapter treat amounts as expenses of management only so far as the amounts—

- (a) would not otherwise be treated as expenses of management for the purposes of Chapter 2, and
- (b) are not otherwise deductible from total profits, or in calculating any component of total profits.

#### *Excess capital allowances*

### **1233 Excess capital allowances** **U.K.**

- (1) This section applies if a company with investment business is entitled to allowances by virtue of section 15(1)(g) of CAA 2001 (qualifying activities include managing investments).
- (2) So far as effect cannot be given to the allowances under section 253(2) of CAA 2001, the allowances are treated for the purposes of Chapter 2—
- (a) as expenses of management, and
  - (b) as referable to the accounting period for which the company is entitled to the allowances.

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### *Payments for restrictive undertakings*

#### **1234 Payments for restrictive undertakings** **U.K.**

- (1) This section applies if a payment—
  - (a) is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and
  - (b) is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by a company with investment business.
- (2) The payment is treated for the purposes of Chapter 2 as expenses of management.

### *Seconded employees*

#### **1235 Employees seconded to charities and educational establishments** **U.K.**

- (1) This section applies if a company carrying on a business that consists wholly or partly of making investments (“the employer”) makes the services of a person employed for the purposes of the business available to—
  - (a) a charity, or
  - (b) an educational establishment,
 on a basis that is stated and intended to be temporary.
- (2) Expenses of the employer that are attributable to the employee's employment during the period of the secondment are treated for the purposes of Chapter 2 as expenses of management.
- (3) In this section—
  - “educational establishment” has the same meaning as in section 70, and
  - “the period of the secondment” means the period for which the employee's services are made available to the charity or educational establishment.

### *Contributions to agents' expenses*

#### **1236 Payroll deduction schemes** **U.K.**

- (1) This section applies if—
  - (a) a company with investment business (“the employer”) is liable to make payments to an individual,
  - (b) income tax falls to be deducted from those payments as a result of PAYE regulations, and
  - (c) the employer withholds sums from those payments in accordance with an approved scheme and pays the sums to an approved agent.
- (2) Expenses falling within subsection (3) are treated for the purposes of Chapter 2 as expenses of management.
- (3) Expenses fall within this subsection if they are incurred by the employer in making a payment to the agent for expenses which—
  - (a) have been incurred, or



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- (b) are to be incurred,  
by the agent in connection with the agent's functions under the scheme.
- (4) In this section “approved agent” and “approved scheme” have the same meaning as in section 714 of ITEPA 2003.

### *Counselling and retraining expenses*

#### **1237 Counselling and other outplacement services** **U.K.**

- (1) This section applies if—
  - (a) a company with investment business (“the employer”) incurs counselling expenses,
  - (b) the expenses are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer, and
  - (c) the relevant conditions are met.
- (2) The expenses are treated for the purposes of Chapter 2 as expenses of management.
- (3) In this section “counselling expenses” means expenses incurred—
  - (a) in the provision of services to the employee in connection with the cessation of the office or employment,
  - (b) in the payment or reimbursement of fees for such provision, or
  - (c) in the payment or reimbursement of travelling expenses in connection with such provision.
- (4) In this section “the relevant conditions” means—
  - (a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and
  - (b) in the case of travel expenses, condition E for those purposes.

#### **1238 Retraining courses** **U.K.**

- (1) This section applies if—
  - (a) a company with investment business (“the employer”) incurs retraining course expenses,
  - (b) they are incurred in relation to a person (“the employee”) who holds or has held an office or employment under the employer, and
  - (c) the relevant conditions are met.
- (2) The expenses are treated for the purposes of Chapter 2 as expenses of management.
- (3) In this section—
  - “retraining course expenses” means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and
  - “the relevant conditions” means—
    - (a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and
    - (b) in the case of travel expenses, the conditions in subsection (5) of that section.

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- (4) If—
- (a) an employer's liability to corporation tax for an accounting period is determined on the assumption that a deduction for expenditure is allowed by virtue of this section, and
  - (b) the deduction would not otherwise have been allowed,
- subsections (2) to (6) of section 75 (retraining courses: recovery of tax) apply.

*Redundancy payments etc*

**1239 Redundancy payments and approved contractual payments** U.K.

- (1) Sections 1240 to 1242 apply if—
  - (a) a company with investment business (“the employer”) makes a redundancy payment or an approved contractual payment to another person (“the employee”),
  - (b) the payment is in respect of the employee's employment wholly in the employer's investment business or partly in the employer's investment business and partly in one or more other capacities, and
  - (c) expenses of management of the business are deductible under section 1219.
- (2) For the purposes of this section and sections 1240 to 1243 “redundancy payment” means a redundancy payment payable under—
  - (a) Part 11 of the Employment Rights Act 1996 (c. 18), or
  - (b) Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (3) For the purposes of this section and those sections—
 

“contractual payment” means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is “approved” if, in respect of that agreement, an order is in force under—

  - (a) section 157 of the Employment Rights Act 1996, or
  - (b) Article 192 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

**1240 Payments in respect of employment wholly in employer's business** U.K.

- (1) This section applies if the payment is in respect of the employee's employment wholly in the employer's investment business.
- (2) The amount of the payment is treated for the purposes of Chapter 2 as expenses of management.
- (3) The deduction allowable by virtue of this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.
- (4) If the payment is referable (see sections 1224 to 1227) to an accounting period beginning after the business has permanently ceased to be carried on, it is treated as referable to the last accounting period in which the business was carried on.

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#### **1241 Payments in respect of employment in more than one capacity** **U.K.**

- (1) This section applies if the payment is in respect of the employee's employment with the employer—
  - (a) partly in the employer's investment business, and
  - (b) partly in one or more other capacities.
- (2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
  - (a) the employment in the investment business, and
  - (b) the employment in the other capacities.
- (3) The part of the payment apportioned to the employment in the investment business is treated as a payment in respect of the employee's employment wholly in the investment business for the purposes of section 1240.

#### **1242 Additional payments** **U.K.**

- (1) This section applies if the employer's business, or part of it, ceases (permanently) to be carried on and the employer makes a payment to the employee in addition to—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (2) If—
  - (a) the additional payment would not otherwise be deductible under section 1219, but
  - (b) that is only because the business, or the part of the business, has ceased to be carried on,the additional payment is deductible under section 1219 as expenses of management.
- (3) The deduction under this section is limited to 3 times the amount of—
  - (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (4) If the payment is referable to an accounting period beginning after the business or the part of the business has ceased to be carried on, it is treated as referable to the last accounting period in which the business, or the part concerned, was carried on.

#### **1243 Payments made by the Government** **U.K.**

- (1) This section applies if—
  - (a) a redundancy payment or an approved contractual payment is payable by a company with investment business (“the employer”),
  - (b) a payment to which subsection (2) applies is made in respect of the payment, and
  - (c) expenses of management of the business are deductible under section 1219.
- (2) This subsection applies to—

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- (a) payments made by the Secretary of State under section 167 of the Employment Rights Act 1996 (c. 18), and
  - (b) payments made by the Department for Employment and Learning under Article 202 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (3) So far as the employer reimburses the Secretary of State or Department for the payment, sections 1240 to 1242 apply as if the payment were—
- (a) a redundancy payment, or
  - (b) an approved contractual payment, made by the employer.

*Contributions to local enterprise organisations or urban regeneration companies*

#### **1244 Contributions to local enterprise organisations or urban regeneration companies U.K.**

- (1) This section applies if a company with investment business (“the contributor”) incurs expenses in making a contribution (whether in cash or in kind)—
- (a) to a local enterprise organisation, or
  - (b) to an urban regeneration company.
- (2) The expenses are treated for the purposes of Chapter 2 as expenses of management.
- (3) But if, in connection with the making of the contribution, the contributor or a connected person—
- (a) receives a disqualifying benefit of any kind, or
  - (b) is entitled to receive such a benefit,
- the amount of the deduction allowed for the expenses under section 1219 by virtue of this section is restricted to the amount of the expenses less the value of the benefit.
- (4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit—
- (a) from the local enterprise organisation or urban regeneration company concerned, or
  - (b) from anyone else.
- (5) In this section “disqualifying benefit” means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be deductible as expenses of management under section 1219.
- (6) Sections 83 (meaning of “local enterprise organisation”) and 86 (meaning of “urban regeneration company”) apply for the purposes of this section as they apply for the purposes of section 82.

*Export Credits Guarantee Department*

#### **1245 Payments to Export Credits Guarantee Department U.K.**

- (1) This section applies if—

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- (a) a sum is payable by a company with investment business to the Export Credits Guarantee Department, and
  - (b) the sum is payable under an agreement entered into as a result of arrangements made under section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or with a view to entering into such an agreement.
- (2) The sum is treated for the purposes of Chapter 2 as expenses of management.

#### *Levies under FISMA 2000*

### **1246 Levies under FISMA 2000** U.K.

- (1) Sums—
- (a) spent by a company with investment business in paying a levy, or
  - (b) paid by a company with investment business as a result of an award of costs under costs rules,
- are treated for the purposes of Chapter 2 as expenses of management.
- (2) In this section “costs rules” has the meaning given by section 92(2).
- (3) In this section “levy” has the meaning given by section 92(3).

## **CHAPTER 4** U.K.

### **RULES RESTRICTING DEDUCTIONS**

### **1247 Introduction** U.K.

- (1) This Chapter contains provisions that restrict the deduction of expenses of management under section 1219.
- (2) Other provisions that prohibit or restrict the deduction of expenses of management under section 1219 include—
- (a) section 1290 (employee benefit contributions),
  - (b) section 1298 (business entertainment and gifts),
  - (c) section 1302 (social security contributions),
  - (d) section 1303 (penalties, interest and VAT surcharges),
  - (e) section 1304 (crime-related payments),
  - (f) section 200 of FA 2004 (no other relief for employers in connection with contributions),
  - (g) section 246 of FA 2004 (restriction of deduction for non-contributory provision).
- (3) See also section 196A of FA 2004 (employers' contributions: power to restrict relief).

### **1248 Expenses in connection with arrangements for securing a tax advantage** U.K.

- (1) No deduction is allowed under section 1219 for any particular expenses of management if any part of those expenses is incurred directly or indirectly in

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consequence of, or otherwise in connection with, any arrangements for securing a tax advantage.

- (2) In subsection (1) “arrangements for securing a tax advantage” means arrangements the main purpose, or one of the main purposes, of which is to secure—
  - (a) the allowance of a deduction (or increased deduction) under section 1219, or
  - (b) any other tax advantage.
- (3) Subsection (1) does not apply if, as a result of paragraph 7A of Schedule 23A to ICTA (manufactured payments under arrangements having an unallowable purpose), the company incurring the expenses is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the expenses.
- (4) The reference in subsection (1) to expenses of management includes amounts treated by any provision as deductible under section 1219.
- (5) In this section—
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
  - “relevant tax relief” has the same meaning as in paragraph 7A of Schedule 23A to ICTA, and
  - “tax advantage” has the meaning given by section 840ZA of ICTA.

#### **1249 Unpaid remuneration U.K.**

- (1) This section applies if—
  - (a) an amount is charged in respect of employees' remuneration in the accounts for a period of a company with investment business,
  - (b) the amount would apart from this section be deductible under section 1219 as expenses of management, and
  - (c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) If the remuneration is paid after the end of that period of 9 months, the deduction for it is allowed for the period of account in which it is paid (and not in accordance with the timing rule in section 1219(1)).
- (3) No deduction is allowed for the remuneration under section 1219 if it is not paid.

#### **1250 Unpaid remuneration: supplementary U.K.**

- (1) For the purposes of section 1249 an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.
- (2) For the purposes of section 1249 it does not matter whether an amount is charged for—
  - (a) particular employments, or
  - (b) employments generally.
- (3) If the profits of the company are calculated before the end of the 9 month period mentioned in section 1249(1)(c)—

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- (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.
- (4) For the purposes of this section and section 1249 remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (5) In this section and section 1249—
- “employee” includes an office-holder and “employment” therefore includes an office, and
  - “remuneration” means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of ITEPA 2003.

#### 1251 Car or motor cycle hire **U.K.**

- (1) Subsection (2) applies if, in calculating the total profits of a company with investment business, a deduction is allowed under section 1219 for expenses incurred on the hiring of a car or motor cycle—
- (a) which is not a qualifying hire car or motor cycle, and
  - (b) the retail price of which when new exceeds £12,000.
- (2) The amount of the deduction which would otherwise be allowable is reduced by multiplying the amount by the fraction—

$$\frac{\pounds 12,000 + RP}{2 \times RP}$$

where RP is the retail price of the car or motor cycle when new.

- (3) Subsection (4) applies if a deduction for expenses is reduced as a result of subsection (2), or a corresponding provision, and—
- (a) subsequently—
    - (i) there is a rebate (however described) of the hire charges, or
    - (ii) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency agreement, and
  - (b) a credit representing the rebate, or the amount released, reverses (in whole or in part) a debit representing the expenses.
- (4) In applying subsection (2) of section 1230 (calculation of the reversal amount for the purposes of the claw back rules)—
- (a) take the amount given by Step 1,



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- (b) multiply that amount by the fraction set out in subsection (2) above (instead of applying Step 2), and
  - (c) apply Step 3 to the amount given by paragraph (b).
- (5) In this section “corresponding provision” means—
- (a) section 56(2) (car or motor cycle hire: trade profits and property income),
  - (b) section 48(2) of ITTOIA 2005 (car or motor cycle hire: trade profits and property income), or
  - (c) section 76ZN(2) of ICTA (car or motor cycle hire: expenses of insurance companies).
- (6) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(b) or (2).
- (7) Sections 57 (meaning of “car or motor cycle” and other expressions) and 58 (hiring cars with low CO<sub>2</sub> emissions before 1 April 2013) apply for the purposes of this section as they apply for the purposes of section 56.

## CHAPTER 5 **U.K.**

### COMPANIES WITH INVESTMENT BUSINESS: RECEIPTS

#### 1252 **Industrial development grants** **U.K.**

- (1) If a company with investment business receives a payment by way of a grant under—
- (a) section 7 or 8 of the Industrial Development Act 1982 (c. 52), or
  - (b) Article 7, 9 or 30 of the Industrial Development (Northern Ireland) Order 1982 (S.I. 1982/1083 (N.I. 15)),
- the payment is to be treated as an amount to which the charge to corporation tax on income applies.
- (2) Subsection (1) does not apply if—
- (a) the grant is designated as made towards the cost of specified capital expenditure,
  - (b) the grant is designated as compensation for the loss of capital assets, or
  - (c) the grant is for all or part of a corporation tax liability (including one that has already been met).
- (3) Tax is not charged under this section if the payment is taken into account (under another provision) in calculating profits for corporation tax purposes.

#### 1253 **Contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits** **U.K.**

- (1) This section applies if—
- (a) a deduction has been made under section 1219 by virtue of section 1244 (contributions to local enterprise agencies or urban regeneration companies: expenses of management), and
  - (b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.

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- (2) The contributor is to be treated as receiving, when the benefit is received, an amount—
  - (a) which is equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction), and
  - (b) to which the charge to corporation tax on income applies.
- (3) In this section “disqualifying benefit” has the same meaning as in section 1244.

#### **1254 Repayments under FISMA 2000 U.K.**

- (1) If as a result of a repayment provision a payment—
  - (a) is made to a company with an investment business, and
  - (b) is not brought into account as a receipt of a trade under section 104, or as a receipt of a property business as a result of section 210,the payment is to be treated as an amount to which the charge to corporation tax on income applies.
- (2) In this section “repayment provision” means—
  - (a) any provision made by virtue of section 136(7) or 214(1)(e) of FISMA 2000, or
  - (b) any provision made by scheme rules for fees to be refunded in specified circumstances.
- (3) In this section “scheme rules” means the rules referred to in paragraph 14(1) of Schedule 17 to FISMA 2000.

### **CHAPTER 6 U.K.**

#### **SUPPLEMENTARY**

#### **1255 Meaning of some accounting terms U.K.**

- (1) Any reference in sections 1225 to 1227 to expenses of management being debited in accounts is to those expenses being brought into account as a debit in—
  - (a) the company's profit and loss account or income statement, or
  - (b) a statement of total recognised gains and losses, statement of changes in equity or other statement of items brought into account in calculating the company's profits and losses for accounting purposes.
- (2) In section 1229(1) “brought into account” means brought into account in—
  - (a) the company's profit and loss account or income statement, or
  - (b) a statement of total recognised gains and losses, statement of changes in equity or other statement of items brought into account in calculating the company's profits and losses for accounting purposes.
- (3) In this Part—

“credit” means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account, and

“debit” means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.

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## PART 17 U.K.

### PARTNERSHIPS

#### *Introduction*

#### 1256 Overview of Part U.K.

- (1) This Part contains some special rules about partnerships.
- (2) For restrictions that in some circumstances affect relief for losses, and certain other reliefs, for a company that is a member of a partnership see section 116 of ICTA (arrangements for transferring relief).

#### 1257 General provisions U.K.

- (1) In this Act persons carrying on a trade in partnership are referred to collectively as a “firm”.
- (2) This section and sections 1259 to 1266 are expressed to apply to trades, but unless otherwise indicated (whether expressly or by implication) also apply to businesses that are not trades.
- (3) In those sections as applied by subsection (2)—
  - (a) references to a trade are references to a business, and
  - (b) references to the profits of a trade are references to the income arising from a business.

#### 1258 Assessment of firms U.K.

Unless otherwise indicated (whether expressly or by implication), a firm is not to be regarded for corporation tax purposes as an entity separate and distinct from the partners.

#### *Calculation of partners' shares*

#### 1259 Calculation of firm's profits and losses U.K.

- (1) This section applies if a firm carries on a trade and any partner in the firm (“the partner”) is a company within the charge to corporation tax.
- (2) For any accounting period of the firm, the amount of the profits of the trade (“the amount of the firm's profits”) is taken to be the amount determined, in relation to the partner, in accordance with subsection (3) or (4).
- (3) If the partner is UK resident—
  - (a) determine what would be the amount of the profits of the trade chargeable to corporation tax for that period if a UK resident company carried on the trade, and
  - (b) take that to be the amount of the firm's profits.
- (4) If the partner is non-UK resident—

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- (a) determine what would be the amount of the profits of the trade chargeable to corporation tax for that period if a non-UK resident company carried on the trade, and
  - (b) take that to be the amount of the firm's profits.
- (5) The amount of any losses of the trade for an accounting period of the firm is calculated, in relation to the partner, in the same way as the amount of any profits.
- (6) This section is subject to section 1260.

#### **1260 Section 1259: supplementary U.K.**

- (1) In determining under section 1259 the profits of a trade for any accounting period no account is taken of any losses for another accounting period.
- (2) Profits and losses are determined under section 1259 on the basis that no interest paid or other distribution made by the firm is a distribution for the purposes of section 1305(1) (which provides that no deduction is allowed for dividends or other distributions).

#### **1261 Accounting periods of firms U.K.**

- (1) In this Part references to an accounting period of a firm which carries on a trade are to a period that would be an accounting period of the firm if the firm were a company.
- (2) For the purposes of subsection (1) it is to be assumed that the company by reference to which the accounting periods of the firm are determined (“the deemed company”)—
  - (a) is UK resident,
  - (b) acquires a source of income on the occurrence of an event that falls within subsection (3),
  - (c) ceases to trade on the occurrence of an event that falls within subsection (4), and
  - (d) ceases to trade, and immediately afterwards starts to trade, on the occurrence of a change in the persons carrying on the trade falling within subsection (5).

Paragraph (a) is subject to subsection (6).

- (3) An event falls within this subsection if—
  - (a) immediately before the event no company carries on the trade in partnership, and
  - (b) immediately after the event the trade is carried on in partnership by persons who include a company.
- (4) An event falls within this subsection if—
  - (a) immediately before the event the trade is carried on in partnership by persons who include a company, and
  - (b) immediately after the event no company carries on the trade in partnership.
- (5) A change in the persons carrying on the trade falls within this subsection if—
  - (a) both immediately before and immediately after the change the trade is carried on in partnership by persons who include a company, but
  - (b) no company which carried on the trade immediately before the change continues to carry it on after the change.

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- (6) For the purpose of determining, in relation to a partner, the accounting periods by reference to which profits are to be calculated under section 1259, the residence of the deemed company at any time is to be taken to be the same as the partner's.

### 1262 Allocation of firm's profits or losses between partners **U.K.**

- (1) For any accounting period of a firm a partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax purposes in accordance with the firm's profit-sharing arrangements during that period.

This is subject to sections 1263 and 1264.

- (2) If a firm pays charges on income, a partner's share of the charges is determined for corporation tax purposes in accordance with the firm's profit-sharing arrangements during the accounting period of the firm in which the charges are paid.
- (3) For the purposes of subsection (2) a charge on income which arises from a disposal such as is mentioned in section 587B(1) of ICTA (gifts of shares, securities and real property to charities etc) is taken to be paid when the disposal is made.
- (4) In this section and sections 1263 and 1264 “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade and the liabilities of the partners to share in the losses of the trade.

### 1263 Profit-making period in which some partners have losses **U.K.**

- (1) For any accounting period of a firm, if—
- the calculation under section 1259 in relation to a partner (“company A”) produces a profit, and
  - company A's share determined under section 1262 is a loss, company A's share of the profit of the trade is neither a profit nor a loss.
- (2) For any accounting period of a firm, if—
- the calculation under section 1259 in relation to company A produces a profit,
  - company A's share determined under section 1262 is a profit, and
  - the comparable amount for at least one other partner is a loss,
- company A's share of the profit of the trade is the amount produced by the formula in subsection (3).
- (3) The formula is—

$$FP \times \frac{PP}{PP + TCP}$$

where—

FP is the amount of the firm's profit calculated under section 1259 in relation to company A,

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PP is the amount determined under section 1262 to be company A's profit, and

TCP is the total of the comparable amounts attributed to other partners under Step 3 in subsection (4) that are profits.

- (4) The comparable amount for each partner other than company A is determined as follows.

*Step 1*

Take the firm's profit calculated under section 1259 in relation to company A.

*Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant accounting period the shares of that profit that are attributable to each of the other partners.

*Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

- (5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not within the charge to corporation tax.

**1264 Loss-making period in which some partners have profits** **U.K.**

- (1) For any accounting period of a firm, if—
- (a) the calculation under section 1259 in relation to a partner (“company A”) produces a loss, and
  - (b) company A's share determined under section 1262 is a profit, company A's share of the loss of the trade is neither a profit nor a loss.
- (2) For any accounting period of a firm, if—
- (a) the calculation under section 1259 in relation to company A produces a loss,
  - (b) company A's share determined under section 1262 is a loss, and
  - (c) the comparable amount for at least one other partner is a profit, company A's share of the loss of the trade is the amount produced by the formula in subsection (3).
- (3) The formula is—

$$FL \times \frac{PL}{PL + TCL}$$

where—

FL is the amount of the firm's loss calculated under section 1259 in relation to company A,

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PL is the amount determined under section 1262 to be company A's loss, and

TCL is the total of the comparable amounts attributed to other partners under Step 3 in subsection (4) that are losses.

- (4) The comparable amount for each partner other than company A is determined as follows.

*Step 1*

Take the firm's loss calculated under section 1259 in relation to company A.

*Step 2*

Determine in accordance with the firm's profit-sharing arrangements during the relevant accounting period the shares of that loss that are attributable to each of the other partners.

*Step 3*

Each such share is the comparable amount for the partner to whom it is attributed.

- (5) In subsections (2) to (4) “partner” means any partner in the firm, whether or not within the charge to corporation tax.

**1265 Apportionment of profit share between partner's accounting periods U.K.**

- (1) This section applies if—
- (a) a share of a profit or loss calculated for an accounting period of a firm is allocated to a company under any of sections 1262 to 1264, and
  - (b) the accounting period of the firm does not coincide with an accounting period of the company.
- (2) The share of the profit or loss must be apportioned between the accounting periods of the company in which the accounting period of the firm falls.

*Firms with a foreign element*

**1266 Resident partners and double taxation agreements U.K.**

- (1) This section applies if—
- (a) a UK resident company (“the partner”) is a member of a firm which—
    - (i) resides outside the United Kingdom, or
    - (ii) carries on a trade the control and management of which is outside the United Kingdom, and
  - (b) by virtue of any arrangements having effect under section 788 of ICTA (“the arrangements”) any of the income of the firm is relieved from corporation tax in the United Kingdom.
- (2) The partner is liable to corporation tax on the partner's share of the income of the firm despite the arrangements.
- (3) If the partner's share of the income of the firm consists of or includes a share in a qualifying distribution made by a UK resident company, the partner (and not the firm)



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is, despite the arrangements, entitled to the share of the tax credit which corresponds to the partner's share of the distribution.

- (4) For the purposes of this section the members of a firm include any company which is entitled to a share of the income of the firm.

#### *Adjustment on change of basis*

### **1267 Various rules for trades and property businesses U.K.**

- (1) In the case of a trade or property business carried on by a firm, the amount of any adjustment under—
- (a) Chapter 14 of Part 3 (adjustment on change of basis: trades), or
  - (b) section 262 (giving effect to positive and negative adjustments: property businesses),
- is calculated as if the firm were a UK resident company.
- (2) Each partner's share of any amount brought into account as a receipt under Chapter 14 of Part 3, or section 262, is determined according to the firm's profit-sharing arrangements for the 12 months ending immediately before the date on which the new basis was adopted.
- (3) A change in the persons carrying on a trade from one period of account to the next does not prevent Chapter 14 of Part 3 applying in relation to the trade so long as a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (4) A change in the persons carrying on a property business from one period of account to the next does not prevent section 262 applying (by virtue of section 261) in relation to the property business so long as a company carrying on the property business in partnership immediately before the change continues to carry it on in partnership after the change.
- (5) Sections 1259 to 1264 do not apply so far as subsection (1) or (2) applies.

### **1268 Election for spreading under Chapter 14 of Part 3 U.K.**

- (1) A change in the persons carrying on a trade does not constitute the permanent cessation of the trade for the purposes of section 186 (mark to market: election for spreading) so long as a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (2) Any election under section 186 must be made jointly by all the persons who have been members of the firm in the period of 12 months ending immediately before the date on which the new basis was adopted.

### **1269 Interpretation of sections 1267 and 1268 U.K.**

In sections 1267 and 1268—

- (a) “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade or property business (as the case requires), and
- (b) references to the date on which the new basis was adopted are to the first day of the first period of account for which it was adopted.

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### Miscellaneous

#### 1270 Special provisions about farming and property income **U.K.**

- (1) The rule in section 36(2) (farming trades) operates in relation to firms so that—
  - (a) all farming in the United Kingdom which a firm carries on, other than farming carried on as part of another trade, is treated as one trade, but
  - (b) the farming carried on by a firm which is treated as one trade is not included in any farming trade of any partner in the firm.
- (2) Section 205 (UK property business) operates in relation to firms so that—
  - (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's UK property business, but
  - (b) each business or transaction included in the firm's UK property business is not included in any UK property business of any partner in the firm.
- (3) Section 206 (overseas property business) operates in relation to firms so that—
  - (a) every business and transaction mentioned in that section carried on, or entered into, by a firm constitutes the firm's overseas property business, but
  - (b) each business or transaction included in the firm's overseas property business is not included in any overseas property business of any partner in the firm.

#### 1271 Sale of patent rights: effect of partnership changes **U.K.**

- (1) This section applies if each of the following conditions is met—
  - (a) a person (“the trader”) sells the whole or part of any patent rights in carrying on a trade,
  - (b) tax is chargeable under section 912 of this Act or section 587 of ITTOIA 2005 on the proceeds of the sale or on any instalment of those proceeds,
  - (c) the tax is chargeable in one or more accounting periods or tax years (referred to in this section as “the tax charge periods”),
  - (d) there is a change in the persons carrying on the trade at any time between the beginning of the first of those tax charge periods and the end of the last of them, and
  - (e) the partnership condition and the continuity condition are met.
- (2) The partnership condition is that—
  - (a) the trader is a firm at the time of the sale, or
  - (b) the trade is carried on in partnership at any time between the beginning of the first of the tax charge periods and the end of the last of them.
- (3) The continuity condition is—
  - (a) in the case of an amount chargeable under section 912, that a company which carried on the trade in partnership immediately before the change continues to carry it on in partnership after the change, or
  - (b) in the case of an amount chargeable under section 587 of ITTOIA 2005, that a person who carried on the trade immediately before the change continues to carry it on after the change.
- (4) Any amounts chargeable in respect of the proceeds or instalment that would (apart from this section) be treated in accordance with Chapter 3 of Part 9 of this Act or Chapter 2 of Part 5 of ITTOIA 2005 as profits of the seller of the patent rights

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chargeable in tax charge periods falling wholly after the change are treated for corporation tax purposes—

- (a) as proceeds, arising at a constant daily rate during the remainder of the relevant period, of a sale of patent rights by the person or persons carrying on the trade after the change, and
  - (b) if the trade is carried on in partnership after the change, as arising to the partners in shares calculated in accordance with the firm's profit-sharing arrangements.
- (5) If the change occurs during the course of a tax charge period—
- (a) any company that would, but for this section, have been charged to corporation tax in that period on a sum (“S”) in respect of the proceeds or instalment is so charged on a fraction of S proportionate to the length of the part of the period before the change, and
  - (b) the balance of S not dealt with under paragraph (a) is treated for the purposes of this section and section 861 of ITTOIA 2005 (sale of patent rights: effect of partnership changes) as if it were an amount such as is described in subsection (4).
- (6) In this section “the remainder of the relevant period” means—
- (a) if one or more tax charge periods begins after the tax charge period in which the change occurs, the period beginning immediately after the change and ending 6 years after the beginning of the first of the tax charge periods, or
  - (b) otherwise, the period beginning immediately after the change and ending at the end of the tax charge period in which the change occurs.
- (7) In this section “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade.

## **1272 Sale of patent rights: effect of later cessation of trade** **U.K.**

- (1) This section applies if—
- (a) a person sells the whole or part of any patent rights in carrying on a trade,
  - (b) by virtue of section 1271 amounts are chargeable to corporation tax under section 912 as profits of one or more companies for the time being carrying on the trade in partnership,
  - (c) a partner which is a company ceases to carry on the trade after that, and
  - (d) no company which carried on the trade immediately before the cessation continues to carry on the trade in partnership immediately after the cessation.
- (2) Any amounts mentioned in subsection (1)(b) which would have been chargeable in any accounting period of a company later than that in which the cessation occurred are charged in the accounting period of the company in which the cessation occurred.

## **1273 Limited liability partnerships** **U.K.**

- (1) For corporation tax purposes, if a limited liability partnership carries on a trade or business with a view to profit—
- (a) all the activities of the limited liability partnership are treated as carried on in partnership by its members (and not by the limited liability partnership as such),

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- (b) anything done by, to or in relation to the limited liability partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and
- (c) the property of the limited liability partnership is treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade or business with a view to profit.

- (2) For all purposes, except as otherwise provided, in the Corporation Tax Acts—
  - (a) references to a firm include a limited liability partnership in relation to which subsection (1) applies,
  - (b) references to members of a firm include members of such a limited liability partnership,
  - (c) references to a company do not include such a limited liability partnership, and
  - (d) references to members of a company do not include members of such a limited liability partnership.
- (3) Subsection (1) continues to apply in relation to a limited liability partnership which no longer carries on any trade or business with a view to profit—
  - (a) if the cessation is only temporary, or
  - (b) during a period of winding up following a permanent cessation, provided that—
    - (i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and
    - (ii) the period of winding up is not unreasonably prolonged.

This is subject to subsection (4).

- (4) Subsection (1) ceases to apply in relation to a limited liability partnership—
  - (a) on the appointment of a liquidator or (if earlier) the making of a winding up order by the court, or
  - (b) on the occurrence of any event under the law of a territory outside the United Kingdom corresponding to an event specified in paragraph (a).

## PART 18 U.K.

### UNREMITTABLE INCOME

#### 1274 Unremittable income: introduction U.K.

- (1) This Part applies if—
  - (a) a company is liable for corporation tax on income arising in a territory outside the United Kingdom, and
  - (b) the income is unremittable.
- (2) For the purposes of this Part, income is unremittable if conditions A and B are met.
- (3) Condition A is that the income cannot be transferred to the United Kingdom by the company which is liable for corporation tax in respect of the income because of—

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- (a) the laws of the territory where the income arises,
  - (b) executive action of its government, or
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.
- (4) Condition B is that the company which is liable for corporation tax in respect of the income has not realised it outside that territory for an amount in sterling or in another currency which the company is not prevented from transferring to the United Kingdom.

#### **1275 Claim for relief for unremittable income U.K.**

- (1) If a company liable for corporation tax on unremittable income makes a claim for relief under this section in respect of that income, it is not taken into account for corporation tax purposes.
- (2) Subsection (1) is subject to section 1276.
- (3) No claim under this section may be made in respect of any income so far as an ECGD payment has been made in relation to it.
- (4) In subsection (3) “ECGD payment” means a payment made by the Export Credits Guarantee Department under an agreement entered into as a result of arrangements made under—
- (a) section 2 of the Export and Investment Guarantees Act 1991 (c. 67) (insurance in connection with overseas investment), or
  - (b) section 11 of the Export Guarantees and Overseas Investment Act 1978 (c. 18).
- (5) A claim under this section must be made before the expiry of 2 years after the end of the accounting period in which the income arises.

#### **1276 Withdrawal of relief U.K.**

- (1) This section applies if—
- (a) a claim under section 1275 has been made in relation to any income, and
  - (b) either—
    - (i) the income ceases to be unremittable, or
    - (ii) an ECGD payment is made in relation to it.
- (2) In this section “ECGD payment” has the meaning given by section 1275(4).
- (3) If income ceases to be unremittable, the income is treated as arising on the date on which it ceases to be unremittable.
- (4) If an ECGD payment is made in relation to income, the income is treated, to the extent of the payment, as arising on the date on which the ECGD payment is made.
- (5) The income treated as arising under subsection (3) or (4), and any tax payable in respect of it under the law of the territory where it arises, are taken into account for corporation tax purposes at their value at the date on which the income is treated as arising.
- (6) Subsections (3) to (5) do not apply so far as the income has already been treated as arising as a result of this section.

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## 1277 Income charged on withdrawal of relief after source ceases **U.K.**

- (1) This section applies if—
  - (a) income is treated as arising as a result of section 1276, and
  - (b) at the time it is so treated the company which would have become liable for corporation tax as a result of that section—
    - (i) has permanently ceased to carry on the trade or property business from which the income arises, or
    - (ii) in the case of income from another source, has ceased to possess that source.
- (2) In the case of income from a trade—
  - (a) the income is treated as a post-cessation receipt for the purposes of Chapter 15 of Part 3 (trading income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 189 (extent of charge to tax) is omitted.
- (3) In the case of income from a property business—
  - (a) the income is treated as a post-cessation receipt from a UK property business for the purposes of Chapter 9 of Part 4 (property income: post-cessation receipts), but
  - (b) in the application of that Chapter to that income, section 281 (extent of charge to tax) is omitted.
- (4) In the case of income from another source, the income is taxed as if the company continued to possess that source.

## 1278 Valuing unremittable income **U.K.**

- (1) If no claim is made under section 1275 in relation to unremittable income arising in a territory outside the United Kingdom, the amount of the income to be taken into account for corporation tax purposes is determined as follows.
- (2) If the currency in which the income is denominated has a generally recognised market value in the United Kingdom, the amount is determined by reference to that value.
- (3) In any other case, the amount is determined according to the official rate of exchange of the territory where the income arises.

## PART 19 **U.K.**

### GENERAL EXEMPTIONS

#### *Profits from FOTRA securities*

## 1279 Exemption of profits from securities free of tax to residents abroad (“FOTRA securities”) **U.K.**

- (1) No liability to corporation tax arises in respect of profits from a FOTRA security or a loan relationship represented by such a security if conditions A and B are met.
- (2) Subsection (1) is subject to subsection (5).

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- (3) Condition A is that the profits are stated in the exemption condition to be exempt from corporation tax.
- (4) Condition B is that any requirements for obtaining the exemption imposed by the security's conditions of issue are met.
- (5) This section does not affect the need to claim repayment of tax within the time limit applicable for a claim.
- (6) Section 1280 applies for the interpretation of this section.

### **1280 Section 1279: supplementary provision** **U.K.**

- (1) In this section and section 1279 “FOTRA security” means—
  - (a) a security issued with a condition about exemption from taxation authorised by section 22 of F(No.2)A 1931,
  - (b) a gilt-edged security which was issued before 6th April 1998 and without any such condition (other than 3½% War Loan 1952 Or After), or
  - (c) 3½% War Loan 1952 Or After.
- (2) In section 1279 “the exemption condition” has the meaning given by subsections (3) to (5), according to the kind of FOTRA security involved.
- (3) In relation to a security within subsection (1)(a), it means the condition authorised by section 22 of F(No.2)A 1931.
- (4) In relation to a security within subsection (1)(b), it means a condition with which 7.25% Treasury Stock 2007 was first issued, being a condition treated by section 161(1) of FA 1998 (non-FOTRA securities)—
  - (a) as a condition with which the security within subsection (1)(b) was issued, and
  - (b) as a condition authorised in relation to its issue by section 22 of F(No.2)A 1931.
- (5) In relation to 3½% War Loan 1952 Or After, it means a condition of its issue authorised by section 47 of F(No.2)A 1915.
- (6) In this section “gilt-edged security” means a security which—
  - (a) is a gilt-edged security for the purposes of TCGA 1992 (see Schedule 9 to that Act), or
  - (b) will be such a security on the making of an order under paragraph 1 of Schedule 9 to that Act if the making of the order is anticipated in the prospectus under which the security is issued.

### *Income from savings certificates*

### **1281 Income from savings certificates** **U.K.**

- (1) No liability to corporation tax arises in respect of income from authorised savings certificates.
- (2) A savings certificate is authorised so far as its acquisition was not prohibited by regulations made by the Treasury limiting a person's holding.



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- (3) In this section “savings certificates” means—
- (a) savings certificates issued under—
    - (i) section 12 of the National Loans Act 1968 (c. 13) (power of Treasury to borrow),
    - (ii) section 7 of the National Debt Act 1958 (c. 6) (power of Treasury to issue national savings certificates), or
    - (iii) section 59 of FA 1920 (power to borrow on national savings certificates),
  - (b) war savings certificates, as defined in section 9(3) of the National Debt Act 1972 (c. 65), or
  - (c) savings certificates issued under any enactment forming part of the law of Northern Ireland and corresponding to section 12 of the National Loans Act 1968.
- (4) But subsection (3)(c) does not include Ulster Savings Certificates (for which there are special rules in section 1282).

## **1282 Income from Ulster Savings Certificates** **U.K.**

- (1) No liability to corporation tax arises in respect of income from authorised Ulster Savings Certificates if condition A or B is met.
- (2) Condition A is that —
  - (a) the holder purchased them, and
  - (b) at the time of the purchase the holder was resident in Northern Ireland.
- (3) Condition B is that the holder is so resident when they are repaid.
- (4) An Ulster Savings Certificate is authorised so far as its acquisition was not prohibited by regulations made by the Department of Finance and Personnel limiting a person's holding.
- (5) The exemption under this section requires a claim.
- (6) In this Part “Ulster Savings Certificates” means savings certificates issued or treated as issued under section 15 of the Exchequer and Financial Provisions Act (Northern Ireland) 1950 (c. 3 (N.I.)).

### *Miscellaneous*

## **1283 Interest from tax reserve certificates** **U.K.**

No liability to corporation tax arises in respect of interest from tax reserve certificates issued by the Treasury.

## **1284 Housing grants** **U.K.**

- (1) No liability to corporation tax arises in respect of a payment if it is made—
  - (a) under an enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, and

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- (b) by way of grant or other contribution towards expenses.
- (2) It does not matter whether—
  - (a) the payment is made to the person who incurs the expenses, or
  - (b) the expenses have been, or are to be, incurred.
- (3) Subsection (1) does not apply so far as the payment is made towards an expense which is deductible in calculating income for any corporation or income tax purpose.

#### **1285 UK company distributions** U.K.

- (1) Corporation tax is not chargeable on dividends or other distributions of a UK resident company.
- (2) Dividends and other distributions of a UK resident company are not taken into account as receipts in any calculation of income for corporation tax purposes.
- (3) Subsection (1) does not prevent any dividends or other distributions from being taken into account in the calculation of chargeable gains.
- (4) Subsections (1) and (2) are subject to any exceptions made in the Corporation Tax Acts.
- (5) For exceptions see in particular—
  - (a) section 130 (traders receiving distributions etc), and
  - (b) section 219(4) and (4A) of FA 1994 (Lloyd's underwriters: taxation of profits).

#### **1286 VAT repayment supplements** U.K.

No liability to corporation tax arises in respect of a sum paid by way of supplement under section 79 of VATA 1994 (VAT repayment supplements).

#### **1287 Incentives to use electronic communications** U.K.

No liability to corporation tax arises in respect of anything received by way of incentive under any regulations made in accordance with Schedule 38 to FA 2000 (regulations for providing incentives for electronic communications).

### **PART 20** U.K.

#### GENERAL CALCULATION RULES

### **CHAPTER 1** U.K.

#### RESTRICTION OF DEDUCTIONS

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

- C10** Pt. 20 Ch. 1 applied by 1989 c. 26, s. 85(2BA) (as substituted (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. 348\(4\)](#) (with [Sch. 2 Pts. 1, 2](#)))

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### Unpaid remuneration

#### 1288 Unpaid remuneration **U.K.**

- (1) This section applies if—
  - (a) an amount is charged in respect of employees' remuneration in a company's accounts for a period,
  - (b) the amount would, apart from this section, be deductible in calculating income from any source for corporation tax purposes, and
  - (c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) If the remuneration is paid after the end of that period of 9 months, the deduction for it is allowed for the period of account in which it is paid.
- (3) No deduction is allowed for the remuneration if it is not paid.
- (4) Provision corresponding to that made by this section is made by—
  - (a) section 1249 (in relation to expenses of management of a company's investment business), and
  - (b) section 76ZL of ICTA (in relation to the expenses of insurance companies).

#### 1289 Unpaid remuneration: supplementary **U.K.**

- (1) For the purposes of section 1288 an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.
- (2) For the purposes of section 1288 it does not matter whether an amount is charged for—
  - (a) particular employments, or
  - (b) employments generally.
- (3) If the income is calculated before the end of the 9 month period mentioned in section 1288(1)(c)—
  - (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.
- (4) For the purposes of this section and section 1288 remuneration is paid when it—
  - (a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (5) In this section and section 1288—
 

“employee” includes an office-holder and “employment” therefore includes an office, and

“remuneration” means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of ITEPA 2003.

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### *Employee benefit contributions*

#### **1290 Employee benefit contributions** **U.K.**

- (1) This section applies if, in calculating for corporation tax purposes the profits of a company (“the employer”) of a period of account, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).
- (2) No deduction is allowed for the contributions for the period except so far as—
  - (a) qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.
- (3) An amount disallowed under subsection (2) is allowed as a deduction for a subsequent period of account so far as—
  - (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or
  - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (4) This section does not apply to any deduction that is allowable—
  - (a) for anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) for contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
  - (c) for contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions,
  - (d) for contributions under an accident benefit scheme,
  - (e) under Chapter 1 of Part 11 (share incentive plans),
  - (f) under section 67 of FA 1989 (qualifying employee share ownership trusts), or
  - (g) under Part 12 (other relief for employee share acquisitions).
- (5) For the purposes of subsection (4)(c) “qualifying overseas pension scheme” and “relevant migrant member” have the same meaning as in Schedule 33 to FA 2004 (see paragraphs 4 to 6 of that Schedule).
- (6) See also—
  - section 1291 (making of “employee benefit contributions”),
  - section 1292 (provision of qualifying benefits),
  - section 1293 (timing and amount of certain qualifying benefits),
  - section 1294 (provision or payment out of employee benefit contributions),
  - section 1295 (profits calculated before end of 9 month period),
  - section 1296 (interpretation of sections 1290 to 1296),
  - section 1297 (some special rules for companies carrying on a life assurance business).

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### 1291 Making of “employee benefit contributions” **U.K.**

- (1) For the purposes of section 1290 an “employee benefit contribution” is made if, as a result of any act or omission—
  - (a) property is held, or may be used, under an employee benefit scheme, or
  - (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).
- (2) For this purpose “employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, present or former employees of the employer.

### 1292 Provision of qualifying benefits **U.K.**

- (1) For the purposes of section 1290 qualifying benefits are provided if there is—
  - (a) a payment of money, or
  - (b) a transfer of assets,
 which meets condition A, B, C or D.
- (2) Condition A is that the payment or transfer gives rise both to an employment income tax charge and to an NIC charge.
- (3) Condition B is that the payment or transfer would give rise to both charges if—
  - (a) the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
  - (b) the person in respect of whose employment the payment or transfer was made met at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6) of the Contributions and Benefits Act.
- (4) Condition C is that the payment or transfer is made in connection with the termination of the recipient's employment with the employer.
- (5) Condition D is that the payment or transfer is made under an employer-financed retirement benefits scheme.
- (6) None of the conditions is met if the payment or transfer is by way of loan.
- (7) In this section—
 

“the Contributions and Benefits Act” means—

  - (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

“employment income tax charge” means a charge to tax under ITEPA 2003 (whether on the recipient or on someone else), and

“NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), section 10 (Class 1A contributions) or section 10A (Class 1B contributions) of the Contributions and Benefits Act.

### 1293 Timing and amount of certain qualifying benefits **U.K.**

- (1) If the provision of a qualifying benefit—
  - (a) takes the form of a payment of money, and

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- (b) is not made under an employer-financed retirement benefits scheme, the benefit is provided for the purposes of section 1290 when the money is treated as received for the purposes of Chapter 4 of Part 2 of ITEPA 2003 (applying the rules in section 18 of that Act (receipt of money earnings)).
- (2) If the provision of a qualifying benefit takes the form of a transfer of an asset, the amount provided for the purposes of section 1290 is the total of—
  - (a) the amount (if any) spent on the asset by a scheme manager, and
  - (b) in a case where the asset was transferred to a scheme manager by the employer, the amount of the deduction that would be allowable as mentioned in subsection (1) of that section in respect of the transfer.
- (3) But if the amount given by subsection (2) is more than the amount that—
  - (a) is charged to tax under ITEPA 2003 in respect of the transfer, or
  - (b) would be so charged if condition B in section 1292 were met,the deduction allowable under section 1290(2) or (3) is limited to that lower amount.

#### **1294 Provision or payment out of employee benefit contributions** **U.K.**

- (1) For the purposes of section 1290(2)(a)—
  - (a) any qualifying benefits provided, or
  - (b) any qualifying expenses paid,by a scheme manager after the receipt by the scheme manager of employee benefit contributions are treated as being provided or paid out of the contributions.
- (2) The rule in subsection (1) operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 1290(2)(a).
- (3) For the purposes of section 1290(3)(a) any qualifying benefits provided by a scheme manager after the receipt by the scheme manager of employee benefit contributions are treated as being provided out of the contributions.
- (4) The rule in subsection (3) operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 1290(2)(a) or (3)(a).
- (5) For the purposes of this section no account is taken of any other amount received or paid by the scheme manager.

#### **1295 Profits calculated before end of 9 month period** **U.K.**

- (1) This section applies if the income of the period of account mentioned in section 1290(1) is calculated before the end of the 9 month period mentioned in section 1290(2).
- (2) It must be assumed, in making the calculation, that any benefits, expenses or contributions which are not provided, paid or made when the calculation is made will not be provided, paid or made before the end of that period.
- (3) But if the benefits, expenses or contributions are subsequently provided, paid or made before the end of that period, nothing in this section prevents the calculation being revised and any tax return being amended accordingly.

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## 1296 Interpretation of sections 1290 to 1296 **U.K.**

(1) In this section and sections 1290 to 1295—

“accident benefit scheme” means an employee benefit scheme under which benefits may be provided only by reason of a person's disablement, or death, caused by an accident occurring during the person's service as an employee of the employer,

“employee benefit contribution” is to be read in accordance with section 1291(1),

“employee benefit scheme” has the meaning given by section 1291(2),

“the employer” is to be read in accordance with section 1290(1),

“employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act),

“qualifying benefits” is to be read in accordance with section 1292,

“qualifying expenses” includes any expenses of a scheme manager (other than the provision of benefits to employees of the employer)—

(a) which are incurred in operating the employee benefit scheme, and

(b) which, if incurred by the employer, would be deductible in calculating for corporation tax purposes the employer's profits of any period of account, and

“scheme manager” means a person who administers an employee benefit scheme (acting in that capacity).

(2) A reference in this section and sections 1290 to 1295 to a company's employee includes the holder of an office under that company, and “employment” is to be read accordingly.

## 1297 Life assurance business **U.K.**

(1) This section applies if the employer is a company in relation to which section 76 of ICTA applies (expenses of companies carrying on life assurance business).

(2) In determining for the purposes of section 1290(1) whether a deduction would otherwise be allowable, the effect of section 86 of FA 1989 (spreading of relief for acquisition expenses) is ignored.

(3) But section 1290(3) is subject to that section if, in accordance with subsection (2) above, an amount is allowed as a deduction for a particular period under section 1290(3).

(4) For the purposes of section 86 of FA 1989, the employee benefit contributions are treated as expenses payable for that period which fall to be included at Step 1 in section 76(7) of ICTA.

(5) For the purposes of sections 1290 to 1296—

(a) any reference to a deduction for employee benefit contributions is to be read as a reference to an amount being brought into account under section 76 of ICTA as expenses payable, and

(b) references to deduction are to be read in that light.



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### *Business entertainment and gifts*

#### **1298 Business entertainment and gifts U.K.**

- (1) This section applies if a company incurs expenses in providing entertainment or gifts in connection with a business which it carries on.
- (2) The general rule is that—
  - (a) no deduction is allowed for the expenses in calculating income from any source for corporation tax purposes,
  - (b) no deduction is allowed under section 1219 for the expenses, and
  - (c) expenses to which this section applies are not to be brought into account under section 76 of ICTA (expenses of companies carrying on life assurance business) as expenses payable.
- (3) The general rule prohibits the deduction, or the bringing into account, of expenses which are incurred—
  - (a) in paying sums to or on behalf of an employee of the company, or
  - (b) in putting sums at the disposal of an employee of the company,if (and only if) the sums are paid, or put at the employee's disposal, exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift.
- (4) The general rule is subject to exceptions—
  - for entertainment (see section 1299), and
  - for gifts (see section 1300).
- (5) For the purposes of this section and those two sections—
  - (a) “employee” includes a director of the company and a person engaged in the management of the company,
  - (b) “entertainment” includes hospitality of any kind, and
  - (c) the expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.

#### **1299 Business entertainment: exceptions U.K.**

- (1) The prohibition in section 1298 on deducting, or bringing into account, expenses incurred in providing entertainment does not apply in either of cases A and B.
- (2) Case A is where—
  - (a) the entertainment is of a kind which it is the company's business to provide, and
  - (b) the entertainment is provided in the ordinary course of the business either for payment or free of charge in order to advertise to the public generally.
- (3) Case B is where the entertainment is provided for employees of the company unless—
  - (a) the entertainment is also provided for others, and
  - (b) the provision of the entertainment for the employees is incidental to its provision for the others.

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### **1300 Business gifts: exceptions** **U.K.**

- (1) The prohibition in section 1298 on deducting, or bringing into account, expenses incurred in providing gifts does not apply in any of cases A, B, C and D.
- (2) Case A is where—
  - (a) the gift is of an item which it is the company's business to provide, and
  - (b) the item is given away in the ordinary course of the business in order to advertise to the public generally.
- (3) Case B is where the gift incorporates a conspicuous advertisement for the company unless—
  - (a) the gift is food, drink, tobacco or a token or voucher exchangeable for goods, or
  - (b) the cost of the gift to the company, together with any other gifts (except food, drink, tobacco or a token or voucher exchangeable for goods) given to the same person in the same accounting period, exceeds £50.

The Treasury may by order amend the sum for the time being specified in paragraph (b) so as to increase it.
- (4) Case C is where gifts are provided for employees of the company unless—
  - (a) gifts are also provided for others, and
  - (b) the provision of the gifts for the employees is incidental to the provision of gifts for the others.
- (5) Case D is where the gift is given to—
  - (a) a charity,
  - (b) the Historic Buildings and Monuments Commission for England, or
  - (c) the Trustees of the National Heritage Memorial Fund.

#### *Miscellaneous*

### **1301 Restriction of deductions for annual payments** **U.K.**

- (1) In calculating a company's income from any source, no deduction is allowed for an annual payment which meets the conditions in subsections (2) to (6).
- (2) The payment must be a payment charged to—
  - (a) income tax under Part 5 of ITTOIA 2005 otherwise than as relevant foreign income, or
  - (b) corporation tax under Chapter 7 of Part 10 (annual payments not otherwise charged).
- (3) The payment must be made under a liability incurred for consideration in money or money's worth all or any of which—
  - (a) consists of, or of the right to receive, a dividend, or
  - (b) is not required to be brought into account in calculating for corporation tax purposes the income of the company making the payment.
- (4) The payment must not be a payment of income—
  - (a) which arises under a settlement made by one party to a marriage or civil partnership by way of provision for the other—

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- (i) after the dissolution or annulment of the marriage or civil partnership, or
  - (ii) while they are separated under an order of a court, or under a separation agreement, or if the separation is likely to be permanent, and
- (b) which is payable to, or applicable for the benefit of, the other party.
- (5) The payment must not be made to an individual under a liability incurred at any time in consideration of the individual surrendering, assigning or releasing an interest in settled property to or in favour of a person with a subsequent interest.
- (6) The payment must not be a payment of an annuity granted in the ordinary course of a business of granting annuities.
- (7) In subsection (2) “relevant foreign income” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007).
- (8) In the application of this section to Scotland the reference in subsection (5) to settled property is to be read as a reference to property held in trust.

### 1302 Social security contributions **U.K.**

- (1) No deduction is allowed for corporation tax purposes for any contribution paid by any person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) But this prohibition does not apply to an employer's contribution.
- (3) For this purpose “an employer's contribution” means—
- (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,
- within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 or of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (4) Subsection (1) does not apply to the calculation of income from the holding of an office (in relation to which section 969 applies income tax principles, those including section 360A of ITEPA 2003 which corresponds to this section).

### 1303 Penalties, interest and VAT surcharges **U.K.**

- (1) In calculating profits for any corporation tax purpose, no deduction is allowed for any penalty or interest mentioned in the first column of the following table.
- (2) This is the table—

<i>Penalty or interest</i>	<i>Description of tax, levy or duty</i>
Penalty under any of sections 60 to 70 of VATA 1994	Value added tax
Interest under section 74 of VATA 1994	

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Penalty under any of sections 8 to 11 of FA 1994	Excise duties
Penalty under any of paragraphs 12 to 19 of Schedule 7 to FA 1994	Insurance premium tax
Interest under paragraph 21 of that Schedule	
Penalty under any provision of Part 5 of Schedule 5 to FA 1996	Landfill tax
Interest under paragraph 26 or 27 of that Schedule	
Penalty under any provision of Schedule 6 to FA 2000	Climate change levy
Interest under any of paragraphs 70, 81 to 85 and 109 of that Schedule	
Penalty under any provision of Part 2 of FA 2001	Aggregates levy
Interest under any of paragraphs 5 to 9 of Schedule 5 to, paragraph 6 of Schedule 8 to and paragraph 5 of Schedule 10 to FA 2001	
Penalty under section 25 or 26 of FA 2003	Customs, export and import duties
Penalty under any provision of Part 4 of FA 2003	Stamp duty land tax
Interest under any provision of that Part	
Interest required to be paid by regulations made under section 71 of FA 2004 (construction industry)	Income tax

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- (3) In calculating profits for any corporation tax purpose, no deduction is allowed for any surcharge under section 59 of VATA 1994.

### 1304 Crime-related payments **U.K.**

- (1) In calculating income from any source for corporation tax purposes, no deduction is allowed for any expenses to which subsection (4) or (5) applies.
- (2) No deduction is allowed under section 1219 (expenses of management of a company's investment business) for any expenses to which subsection (4) or (5) applies.
- (3) Expenses to which subsection (4) or (5) applies are not to be brought into account under section 76 of ICTA (expenses of companies carrying on life assurance business) as expenses payable.
- (4) This subsection applies to expenses incurred—
  - (a) in making a payment if the making of the payment constitutes a criminal offence, or

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- (b) in making a payment outside the United Kingdom if the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence in that part.
- (5) This subsection applies to expenses incurred in making a payment induced by a demand which constitutes—
- (a) the offence of blackmail under section 21 of the Theft Act 1968 (c. 60) (England and Wales),
  - (b) the offence of extortion (Scotland), or
  - (c) the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) (Northern Ireland).

### **1305 Dividends and other distributions** **U.K.**

- (1) In the calculation of a company's profits for corporation tax purposes, no deduction is allowed in respect of a dividend or other distribution.
- (2) Subsection (1) is subject to any provision of the Corporation Tax Acts expressly authorising a deduction.
- (3) In this section “profits” has the same meaning as in Part 2.

## **CHAPTER 2** **U.K.**

### **OTHER GENERAL RULES**

#### *Miscellaneous profits and losses*

### **1306 Losses calculated on same basis as miscellaneous income** **U.K.**

- (1) The same rules apply for corporation tax purposes in calculating a company's miscellaneous losses as apply in calculating corresponding miscellaneous income.
- (2) This is subject to any express provision to the contrary.
- (3) In this section—
  - (a) “miscellaneous income” means profits or other income of the company charged to corporation tax under or by virtue of a provision to which section 834A of ICTA applies, and
  - (b) “miscellaneous losses” means losses in transactions in respect of which the company is within the charge to corporation tax under or by virtue of such a provision.
- (4) Provision corresponding to that made by this section is made by—
  - (a) section 47 (in relation to trades), and
  - (b) section 210 (in relation to property businesses).

### **1307 Apportionment etc of miscellaneous profits and losses to accounting period** **U.K.**

- (1) This section applies if—

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- (a) income is chargeable to corporation tax under or by virtue of any provision to which section 834A of ICTA applies, and
  - (b) any period for which accounts are drawn up (a “period of account”) does not coincide with an accounting period.
- (2) For this purpose the reference to any provision to which section 834A of ICTA applies is to be read as if subsection (3) of that section were omitted (exclusion of Chapter 8 of Part 10 so far as relating to income which arises from a source outside the United Kingdom).
- (3) Any of the following steps may be taken if they are necessary in order to arrive at the profits or losses of the accounting period—
- (a) apportioning the profits or losses of a period of account to the parts of that period falling in different accounting periods, and
  - (b) adding the profits or losses of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (4) The steps must be taken by reference to the number of days in the periods concerned.

*Expenditure on research and development*

**1308 Expenditure brought into account in determining value of intangible asset U.K.**

- (1) Subsection (2) applies if a company—
- (a) incurs expenditure on research and development which is not of a capital nature, and
  - (b) brings the expenditure into account in determining the value of an intangible asset.
- (2) The expenditure is not prevented from being allowed as a deduction in calculating for corporation tax purposes the company's profits, just because it is brought into account as mentioned in subsection (1)(b).
- (3) Subsection (2) applies, in particular, for the purposes of—
- (a) section 87 (expenses of research and development), and
  - (b) Part 13.
- (4) Subsection (5) applies if, in accordance with subsection (2), expenditure is both—
- (a) brought into account in determining the value of an intangible asset, and
  - (b) allowed as a deduction in calculating profits.
- (5) No deduction may be made in calculating for corporation tax purposes the profits of the company in respect of the writing down of so much of the value of the intangible asset as is attributable to the expenditure.
- (6) Subsection (2) does not allow expenditure as a deduction in calculating a company's profits for an accounting period so far as—
- (a) a deduction has been made in respect of it in calculating the company's profits for a previous accounting period, or
  - (b) the company has benefited from a tax relief in respect of it for a previous accounting period under Part 13.

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- (7) In this section—
- “intangible asset” has the meaning it has for accounting purposes, and
  - “research and development” has the meaning given by section 837A of ICTA.

### *Visiting performers*

## **1309 Payments treated as made to visiting performers** U.K.

- (1) This section applies if a payment or transfer made to a company within the charge to corporation tax is treated under section 13(5) of ITTOIA 2005 as made instead to the performer.
- (2) The company is treated for corporation tax purposes as if the payment or transfer had not been made to it.
- (3) Subsection (2) does not apply in such circumstances as may be prescribed by regulations.
- (4) Regulations—
  - (a) may provide that any liability to corporation tax which would apart from subsection (2) arise in relation to the payment or transfer is not to arise (or is to arise so far as prescribed),
  - (b) may make provision generally for giving effect to subsection (2), and
  - (c) may make different provision for different cases or descriptions of cases.
- (5) In this section—
  - “payment” and “transfer” have the same meaning as in section 13 of ITTOIA 2005,
  - “regulations” means regulations made by the Treasury.

## **PART 21** U.K.

### OTHER GENERAL PROVISIONS

#### *Orders and regulations*

## **1310 Orders and regulations** U.K.

- (1) Any power of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make any order or regulations under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Subsection (2) does not apply if the order or regulations are made under—
  - (a) section 86 (meaning of “urban regeneration company”),



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- (b) section 1325(2) (power to make transitional or saving provision in connection with the coming into force of this Act),
  - (c) section 1329(3) (power to appoint a day for the commencement of certain provisions of this Act),
  - (d) paragraph 42 of Schedule 2 (lease premiums: time limits for claims for repayment of tax), or
  - (e) any of the provisions mentioned in subsection (4) (which provides for affirmative resolution procedure).
- (4) An order or regulations made under—
- (a) section 1183(3) (meaning of “film-making activities” etc),
  - (b) section 1185(3) (meaning of “UK expenditure” etc),
  - (c) section 1198(2) (UK expenditure),
  - (d) section 1199(4) (additional deduction for qualifying expenditure),
  - (e) section 1200(4) (amount of additional deduction), or
  - (f) paragraph 130 of Schedule 2 (application of Part 15 etc to films not completed before 1 January 2007),
- may only be made if a draft of the instrument containing the order or regulations has been laid before and approved by resolution of the House of Commons.
- (5) If an order under section 521(1) (power to amend Chapter 6 of Part 6: alternative finance arrangements)—
- (a) includes such amendments as are mentioned in subsection (2)(b) of that section (introduction of new provision into the alternative finance provisions), or
  - (b) amends an enactment not contained in the alternative finance provisions (within the meaning of section 521),
- this section has effect as if section 521(1) were included in the list in subsection (4).

*Apportionment to different periods*

**1311 Apportionment to different periods** **U.K.**

- (1) Any apportionment to different periods which falls to be made under this Act is to be made on a time basis according to the respective lengths of the periods.
- (2) This section is subject to provision to the contrary.

*Interpretation*

**1312 Abbreviated references to Acts** **U.K.**

In this Act—

- “CAA 2001” means the Capital Allowances Act 2001 (c. 2),
- “FA”, followed by a year, means the Finance Act of that year,
- “F(No.2)A”, followed by a year, means the Finance (No.2) Act of that year,
- “FISMA 2000” means the Financial Services and Markets Act 2000 (c. 8),
- “ICTA” means the Income and Corporation Taxes Act 1988 (c. 1),
- “IHTA 1984” means the Inheritance Tax Act 1984 (c. 51),

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“ITA 2007” means the Income Tax Act 2007 (c. 3),  
“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1),  
“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5),  
“TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12),  
“TMA 1970” means the Taxes Management Act 1970 (c. 9), and  
“VATA 1994” means the Value Added Tax Act 1994 (c. 23).

### 1313 Activities in UK sector of continental shelf **U.K.**

- (1) Any profits—
- (a) from exploration or exploitation activities carried on in the UK sector of the continental shelf, or
  - (b) from exploration or exploitation rights,
- are treated for corporation tax purposes as profits from activities or property in the United Kingdom.
- (2) Any profits arising to a non-UK resident company—
- (a) from exploration or exploitation activities, or
  - (b) from exploration or exploitation rights,
- are treated for corporation tax purposes as profits of a trade carried on by the company in the United Kingdom through a permanent establishment in the United Kingdom.
- (3) In this section—
- “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf,
- “exploration or exploitation rights” means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets, and
- “the UK sector of the continental shelf” means the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (c. 29).

### 1314 Meaning of “caravan” **U.K.**

- (1) In this Act “caravan” means—
- (a) a structure designed or adapted for human habitation which is capable of being moved by being towed or being transported on a motor vehicle or trailer, or
  - (b) a motor vehicle designed or adapted for human habitation,
- but does not include railway rolling stock which is on rails forming part of a railway system or any tent.
- (2) A structure composed of two sections—
- (a) separately constructed, and
  - (b) designed to be assembled on a site by means of bolts, clamps or other devices,
- is not prevented from being a caravan just because it cannot, when assembled, be lawfully moved on a highway (or, in Scotland or Northern Ireland, road) by being towed or being transported on a motor vehicle or trailer.

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### 1315 Claims and elections **U.K.**

In this Act any reference to a claim or election is to a claim or election in writing.

### 1316 Meaning of “connected” persons and “control” **U.K.**

- (1) Section 839 of ICTA (how to tell whether persons are connected) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).
- (2) Section 840 of ICTA (meaning of control in relation to a body corporate) applies for the purposes of this Act unless otherwise indicated (whether expressly or by implication).

### 1317 Meaning of “farming” and related expressions **U.K.**

- (1) In this Act “farming” means the occupation of land wholly or mainly for the purposes of husbandry, but does not include market gardening (see subsection (5)).
- (2) In subsection (1) “husbandry” includes (for example)—
  - (a) hop growing, and
  - (b) the breeding and rearing of horses and the grazing of horses in connection with those activities.
- (3) For the purposes of this Act the cultivation of short rotation coppice is regarded as husbandry and not as forestry.
- (4) In this Act “woodlands” does not include land on which short rotation coppice is cultivated.
- (5) In this Act “market gardening” means the occupation of land as a garden or nursery for the purpose of growing produce for sale.
- (6) For the purposes of this section “short rotation coppice” means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than 10 years.

### 1318 Meaning of grossing up **U.K.**

- (1) In this Act references to grossing up by reference to a rate of tax are to calculating the amount (“the grossed up amount”) which after deduction of income tax at that rate would equal the amount to be grossed up (“the net amount”).
- (2) The grossed up amount is the sum of the net amount and the tax deducted.
- (3) The grossed up amount may also be expressed as—

$$GA = NA + R100 - RNA \times$$

where—

GA is the grossed up amount,

NA is the net amount, and

R is the percentage rate of tax by reference to which the net amount is to be grossed up.

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### 1319 Other definitions **U.K.**

In this Act, except where the context otherwise requires—

“basic rate” means the rate of income tax determined in pursuance of section 6(2) of ITA 2007,

“charity” means a body of persons or trust established for charitable purposes only,

“credit union” means a society registered as a credit union under the Industrial and Provident Societies Act 1965 (c. 12) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),

“dividend ordinary rate” means the rate of income tax specified in section 8(1) of ITA 2007,

“houseboat” means a boat or similar structure designed or adapted for use as a place of human habitation,

“the Mergers Directive” means Council Directive (EEC) No. 90/434 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States,

“national insurance contributions” means any contributions under—

- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
- (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7),

“non-UK resident” means not resident in the United Kingdom (and references to a non-UK resident company are to a company which is not resident there),

“normal self-assessment filing date”, in relation to a tax year, means the 31 January following the tax year,

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Statistics Board, or
- (b) if that index is not published for a relevant month, any substituted index or index figures published by that Board,

“SCE” means a European Cooperative Society within the meaning of Council Regulation (EC) No. 1435/2003 on the Statute for a European Cooperative Society,

“SE” means a European public limited-liability company (or Societas Europaea) within the meaning of Council Regulation (EC) No. 2157/2001 on the Statute for a European company,

“tax year” means a year for which income tax is charged (see section 4 of ITA 2007),

“the tax year 2009-10” means the tax year beginning on 6 April 2009 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way), and

“UK resident” means resident in the United Kingdom (and references to a UK resident company are to a company which is resident there).

### 1320 Interpretation: Scotland **U.K.**

(1) In the application of this Act to Scotland—

“assignment” means an assignation,

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“mortgage” means—

- (a) a standard security, or
- (b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924 (c. 27), but including a security constituted by ex facie absolute disposition or assignation, and

“surrender” includes renunciation.

- (2) In the application of section 1284 (housing grants) and Part 1 of Schedule 2 (transitionals and savings: general provisions) to Scotland, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

### **1321 Interpretation: Northern Ireland** U.K.

In the application of section 1284 (housing grants) and Part 1 of Schedule 2 (transitionals and savings: general provisions) to Northern Ireland, “enactment” includes an enactment comprised in, or in an instrument made under, Northern Ireland legislation.

#### *Final provisions*

### **1322 Minor and consequential amendments** U.K.

Schedule 1 (minor and consequential amendments) has effect.

### **1323 Power to make consequential provision** U.K.

- (1) The Treasury may by order make provision in consequence of this Act.
- (2) The power conferred by subsection (1) may not be exercised after 31 March 2012.
- (3) An order under this section may amend, repeal or revoke any provision made by or under an Act.
- (4) An order under this section may contain provision having retrospective effect.
- (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (6) In subsection (3) “Act” includes an Act of the Scottish Parliament and Northern Ireland legislation.

### **1324 Power to undo changes** U.K.

- (1) The Treasury may by order make provision, in relation to a case in which the Treasury consider that a provision of this Act changes the effect of the law, for the purpose of returning the effect of the law to what it would have been if this Act had not been passed.
- (2) The power conferred by subsection (1) may not be exercised after 31 March 2012.
- (3) An order under this section may amend, repeal or revoke any provision made by or under—

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- (a) this Act, or
  - (b) any other Act.
- (4) An order under this section may contain provision having retrospective effect.
  - (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
  - (6) In subsection (3)(b) “Act” includes an Act of the Scottish Parliament and Northern Ireland legislation.

### 1325 Transitional provisions and savings **U.K.**

- (1) Schedule 2 (transitionals and savings) has effect.
- (2) The Treasury may by order make transitional or saving provision in connection with the coming into force of this Act, except paragraphs 71 and 99 of Schedule 2, and subsection (1) so far as relating to those paragraphs.
- (3) An order under subsection (2) may contain provision having retrospective effect.

#### Commencement Information

- II** [S. 1325](#) partly in force; [s. 1325\(1\)](#) in force at 1.4.2009 for specified purposes and [s. 1325\(2\)\(3\)](#) in force at Royal assent, see [s. 1329](#)

### 1326 Repeals and revocations **U.K.**

Schedule 3 (repeals and revocations, including of spent enactments) has effect.

#### Commencement Information

- II** [S. 1326](#) partly in force; [s. 1326](#) in force at 1.4.2009 for specified purposes, see [s. 1329\(1\)\(3\)](#)

### 1327 Index of defined expressions **U.K.**

- (1) Schedule 4 (index of defined expressions that apply for the purposes of this Act) has effect.
- (2) That Schedule lists the places where some of the expressions used in this Act are defined or otherwise explained.
- (3) If an expression listed in that Schedule is also used in this Act in an abbreviated form, the abbreviation is mentioned at the end of the entry for the expression in the first column of the Schedule.

### 1328 Extent **U.K.**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).
- (2) An amendment, repeal or revocation contained in Schedule 1 or 3 has the same extent as the provision amended, repealed or revoked.

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### **1329 Commencement** **U.K.**

- (1) This Act comes into force on 1 April 2009 and has effect—
  - (a) for corporation tax purposes, for accounting periods ending on or after that day, and
  - (b) for income tax and capital gains tax purposes, for the tax year 2009-10 and subsequent tax years.
- (2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—
  - (a) section 1310,
  - (b) section 1323,
  - (c) section 1324,
  - (d) section 1325(2) and (3),
  - (e) section 1328,
  - (f) this section, and
  - (g) section 1330.
- (3) Subsection (1) does not apply to the following provisions which come into force on a day to be appointed by the Treasury by order—
  - (a) paragraphs 71 and 99 of Schedule 2, and section 1325(1) so far as relating to those paragraphs, and
  - (b) Part 2 of Schedule 3, and section 1326 so far as relating to that Part of that Schedule.
- (4) An order under subsection (3) may contain transitional or saving provision.

### **1330 Short title** **U.K.**

This Act may be cited as the Corporation Tax Act 2009.



**Status:**

Point in time view as at 22/04/2009.

**Changes to legislation:**

Corporation Tax Act 2009 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.