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SCHEDULES

NINTH SCHEDULE

MISCELLANEOUS RULES APPLICABLE TO CASE VII OF SCHEDULE D

Gifts, settled property, and bargains not at arm's length

- 3 (1) Where a person resident and ordinarily resident in the United Kingdom either—
- (a) disposes by way of gift of an asset previously acquired by him, but does so without there being (within the meaning of Case VII) an acquisition and disposal by him ; or
 - (b) disposes by way of gift of an asset acquired by him only as legatee ;
- then, so far as relates to the interest taken by the donee, the donee shall be treated as if the donor's acquisition of the asset had been his acquisition of it.
- (2) Subject to sub-paragraph (4) below, where in a case not falling within paragraph (a) or (b) of sub-paragraph (1) above a person resident and ordinarily resident in the United Kingdom disposes by way of gift of an asset acquired or to be acquired by him, and the donee is also resident and ordinarily resident in the United Kingdom, then on an election being made in that behalf—
- (a) the donor shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to that disposal ; and
 - (b) the donee shall be treated as if the donor's acquisition of the asset had been his acquisition of it, but so that the amount of the consideration for which he is treated as acquiring the asset shall not by virtue of this sub-paragraph be increased.
- (3) An election under sub-paragraph (2) above shall be made by the donor and the donee jointly, except that it may be made by the donee alone if the donor would not apart from that sub-paragraph be chargeable to tax under Case VII in respect of the gain (if any) treated as accruing to him from his acquisition and disposal of the asset.
- (4) Sub-paragraph (2) above shall not apply in relation to a gift of shares where the donor is, but the donee is not, in relation to his acquisition and disposal of the shares, within section fourteen of this Act (" shares " having for this purpose the same meaning as in that section).
- (5) A person shall not be chargeable under Case VII in respect of any acquisition and disposal by reference to a disposal made to any charity or Association within subsection (1) of section fifteen of this Act if the disposal is by way of gift for the purposes of the charity or Association.
- 4 (1) Subsection (3) of section twelve of this Act and paragraph 3 above shall apply in relation to a gift in settlement as a gift to the trustees of the settlement, and shall so apply notwithstanding that the settlor is one of the trustees or the sole trustee of the settlement; but if the settlor or the settlor's wife or husband has, or can by any means (whether or not requiring any consent or concurrence) obtain for the settlor or for the settlor's wife or husband, any beneficial interest in the settled property or the income

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from it, no loss treated as accruing to the settlor by reason of the gift in settlement shall be allowable under Case VII.

- (2) Subject to sub-paragraph (3) below, where under a settlement a person becomes absolutely entitled as against the trustee to settled property (whether alone or jointly with another), he shall be chargeable by reference to any subsequent disposal of the property by him as if its acquisition by the trustees had been his acquisition of it.
 - (3) Where for a consideration in money or money's worth a person becomes absolutely entitled as against the trustee to settled property, or two or more persons jointly become so entitled, either by the exercise of a power of appointment under the settlement or by acquiring the interests of persons who were together so entitled and acted in concert in disposing of their interests to him or them, then notwithstanding anything in subsection (8) of section twelve of this Act—
 - (a) the person or persons becoming so entitled shall, on disposing of the property, be chargeable under Case VII by reference to that acquisition of it, if there is an acquisition and disposal by him or them ; and
 - (b) the person exercising the power or persons disposing of their interests under the settlement shall be chargeable under Case VII by reference to that disposal of the property, as if its acquisition by the trustees had been his or their acquisition of it.
- 5 (1) Subject to sub-paragraph (4) below, where a person resident and ordinarily resident in the United Kingdom disposes otherwise than by way of bargain at arm's length (but not by way of gift) of an asset acquired or to be acquired by him so that there is an acquisition and disposal of the asset by him, and the person acquiring the asset on that disposal is also resident and ordinarily resident in the United Kingdom, then on an election being made in that behalf the person disposing of the asset and the person acquiring it on that disposal shall be treated as doing so for a consideration equal to whichever is the higher of—
- (a) the actual consideration ; and
 - (b) such amount as will secure that neither a gain nor a loss accrues to the person disposing of the asset from his acquisition and disposal of it:

Provided that this sub-paragraph shall not apply so as to increase the amount of the consideration for which those persons are respectively treated as disposing of and acquiring the asset.

- (2) An election under this paragraph shall be made jointly by the person disposing of the asset and the person acquiring it, except that an election may be made by the person disposing of the asset alone if the person acquiring it would not, on disposing of it, be chargeable to tax under Case VII in respect of the gain (if any) accruing to him from his acquisition and disposal of it.
- (3) In a case falling within paragraph (b) of subsection (3) of section twelve of this Act, the amount referred to in paragraph (b) of sub-paragraph (1) above shall be taken to be higher than the actual consideration referred to in paragraph (a).
- (4) This paragraph shall not apply to a disposal of assets by a company by way of distribution in respect of shares in the company, nor shall it apply where the person disposing of the asset is, but the person acquiring it is not, in relation to his acquisition and disposal of the asset, within section fourteen of this Act.

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- 6 (1) Where, in the case of a man and his wife living with him, the man disposes of an asset acquired or to be acquired by him to the wife, or the wife disposes of an asset acquired or to be acquired by her to the man, then—
- (a) the one making the disposal shall not be chargeable under Case VII in respect of an acquisition and disposal by reference to that disposal; and
 - (b) the one to whom the disposal is made shall be treated as if the other's acquisition of the asset had been his or her acquisition of it.
- (2) Where a company resident and ordinarily resident in the United Kingdom disposes of an asset acquired or to be acquired by it to another such company at a time when either is the subsidiary of the other, or both are subsidiaries of a third company ("subsidiary" having for this purpose the meaning assigned to it for certain purposes of the profits tax by section forty-two of the Finance Act, 1938), then—
- (a) the first-mentioned company shall not be chargeable under Case VII in respect of an acquisition and disposal by reference to that disposal; and
 - (b) the other company shall be treated as if the first-mentioned company's acquisition of the asset had been its acquisition of it.
- (3) Where a person disposes of an asset to a company of which that person has control, or a company disposes of an asset to a person having control of the company, no loss accruing to the one making the disposal from the acquisition and disposal of the asset shall be allowable under Case VII otherwise than by deduction from any gain accruing on the disposal of assets to the other while the person in question has control of the company; and for the purposes of this sub-paragraph an individual shall be treated as having control of a company if the individual's wife or husband has control of it, or if they together have control of it.