
STATUTORY INSTRUMENTS

1992 No. 58

The Ports Act 1991 (Levy on Disposals of Land, etc.) Order 1992

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Ports Act 1991 (Levy on Disposals of Land, etc.) Order 1992 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the 1970 Act” means the Income and Corporation Taxes Act 1970(1);

“the 1988 Act” means the Income and Corporation Taxes Act 1988(2);

“the 1991 Act” means the Ports Act 1991;

“annual reporting date”, in relation to a disposal period, means—

(a) the day falling 180 days after the last day of that period; or

(b) if the last disposal period ends with a date other than the last day of a financial year, then, in relation to that disposal period, the day falling 180 days after the last day of the financial year in which that disposal period ends;

or, if that day is not a business day, the next succeeding business day;

“base rate” shall be construed in accordance with paragraph (3) of article 15;

“business day” means any day other than a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(3) ;

“chargeable disposal” has the meaning given to it by article 6;

“company” means any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association;

“disposal date”, in relation to a disposal, means, subject to the provisions of this Order, the date on which the disposal is made for the purposes of the 1979 Act(4);

“disposal period”, in relation to a chargeable company, means a financial year, provided that—

(a) the first disposal period shall begin with the first day of the levy period and end with the final day of the financial year in which that day falls; and

(b) the last disposal period shall end with the last day of the levy period, whether or not that day is the end of a financial year;

“disposal statement” means a statement required to be furnished under article 36;

(1) 1970 c. 10.

(2) 1988 c. 1.

(3) 1882 c. 61; section 92 was amended by sections 3(1) and (3) and 4(4) of the Banking and Finance Dealings Act 1971 (c. 80).

(4) Capital Gains Tax Act 1979 (c. 14).

“disregarded disposal” means a disposal on which, by virtue of paragraph (6) of article 8, no gain is regarded as having accrued;

“financial year”, in relation to a chargeable company, means the financial year of that company within the meaning given by section 223 of the Companies Act 1985⁽⁵⁾;

“group”, in relation to a chargeable company, means (except in the expression “wholly-owned group”) the group formed by—

- (a) that chargeable company;
- (b) any company or other person of which that chargeable company is an effective subsidiary;
- (c) any company which is an effective subsidiary of that chargeable company; and
- (d) any company which is an effective subsidiary of any company or other person of which the chargeable company is an effective subsidiary;

and for this purpose a company (“A”) is an effective subsidiary of another company or other person (“B”) if—

- (i) A would be an effective 51 per cent subsidiary of B for the purposes referred to in subsection (1) of section 272 of the 1970 Act by virtue of subsections (1E) and (1F) of that section⁽⁶⁾ if paragraph (a) of subsection (1) of that section and the words in parenthesis in subsection (2) of that section were omitted and the word “and” between paragraphs (a) and (b) of subsection (1E) were replaced by the word “or”; or
- (ii) B, or B together with any person connected with B, has control of A (and for this purpose any question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the 1988 Act, but as if the exception in subsection (4) were omitted; and “control” has the meaning given by section 840 of that Act);

“lease” has the same meaning as it has for the purposes of paragraph 10(1)(a) of Schedule 3 to the 1979 Act (and accordingly includes, amongst other things, a sub-lease);

“market value”, subject to article 18, has the meaning given by section 150 of the 1979 Act;

“quarter date” shall be construed in accordance with paragraphs (2) to (5) of article 13;

“referee” means a person appointed under article 38;

“retail prices index” means the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer, and, if that index is not published for any month, any substituted index or index figures published by that Office for that month;

“section 278 disposal” means a disposal which is treated as taking place by virtue of section 278(3) or (3C) of the 1970 Act⁽⁷⁾ or section 17(6) of the 1991 Act;

“small disposal” means a disposal on which, by virtue of article 8(2), no gain is regarded as having accrued;

“wholly-owned group”, in relation to a chargeable company, means the group formed by—

- (a) the chargeable company; and
- (b) every company which would be a member of the same group as the chargeable company for the purposes of section 272 of the 1970 Act if—

(5) 1985 c. 6; section 223 was inserted by section 3 of the Companies Act 1989 (c. 40).

(6) Subsection (1) was amended by the Finance Act 1989 (c. 26), section 138(1), and by the Finance Act 1990 (c. 29), section 70(2) and (9) and section 132 and Schedule 19, Part IV; subsections (1E) and (1F) were inserted by the Finance Act 1989, section 138(2).

(7) Subsection (3C) was inserted by the Finance Act 1989, section 138(5).

- (i) subsections (1B) to (1D) of that section were omitted (and subsections (1)(b), (1A) and (1F) were construed accordingly)⁽⁸⁾; and
- (ii) the references to “75 per cent”, “51 per cent” and “more than 50 per cent” in that section and in subsection (1)(b) of section 838 and Schedule 18 to the 1988 Act were each references to 100 per cent.

(2) In this Order a reference to the 1979 Act or to any provision of that Act or to any other statutory provision relating to corporation tax on chargeable gains is, except in so far as it applies in determining whether there is a disposal of land or an interest in land for the purposes of section 17 of the 1991 Act, a reference to that Act or that provision as it applies immediately before the coming into force of this Order; and references to the purposes of the 1979 Act or of the statutory provisions relating to corporation tax on chargeable gains include references to the purposes of the 1979 Act as it applies by virtue of subsection (6) of section 17 of the 1991 Act.

GENERAL

Relevant interest in land — Specified description

3. For the purposes of subsection (1) of section 17 of the 1991 Act and this Order, an interest in land is a relevant interest if, not being such an interest by virtue of sub-paragraph (i) or (ii) of paragraph (b) of subsection (2) of that section, it is an interest of any kind in land which is relevant land or in land in which a relevant interest within either of those sub-paragraphs subsists at the time of the transfer referred to in those subsections.

Time of disposal

4. Subject to the provisions of this Order, the time at which a disposal of relevant land or a relevant interest in land is to be regarded for the purposes of section 17 of the 1991 Act and this Order as being made is the time at which it is made, or is to be regarded as being made, for the purposes of the 1979 Act.

Person making disposal

5. Subject to the provisions of this Order, a disposal is to be regarded as being made by a person if it would be regarded as being made by that person for the purposes of the statutory provisions relating to corporation tax on chargeable gains.

Chargeable disposals

6. Subject to the provisions of this Order, every description of disposal of relevant land or a relevant interest in land made by a member of a chargeable company’s group is to be a chargeable disposal for the purposes of section 17 of the 1991 Act and this Order.

Accrual of gains

7. Where, for the purposes of section 17 of the 1991 Act and this Order, on a disposal of relevant land or a relevant interest in land again accrues or is regarded as accruing to a member of a chargeable company’s group, the gain shall for those purposes be regarded as accruing to the chargeable company, even if the disposal is not made by that company or no actual benefit accrues to that company on the disposal.

(8) Subsections (1A) to (1D) and (1F) were inserted by the Finance Act 1989, section 138(2).

Computation of gains

8.—(1) Subject to the provisions of this Order, the amount of the gain which accrues, or is to be regarded for the purposes of section 17 of the 1991 Act and this Order as accruing, to a member of a chargeable company's group on a disposal of relevant land or a relevant interest in land shall be the amount of the gain accruing or regarded as accruing on the disposal computed in accordance with the statutory provisions relating to the computation of corporation tax on chargeable gains and taking account of any claim or election which is made for the purposes of the 1979 Act.

(2) At any time when the consideration for a disposal of relevant land or a relevant interest in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company's group, together with the consideration for any associated disposal or the aggregate consideration for two or more associated disposals made within the levy period, does not exceed the minimum limit the disposal shall, subject to paragraph (3) below, be deemed for those purposes to be one on which no gain accrued.

(3) If—

- (a) by virtue of paragraph (2) above, a disposal has at some time been regarded as one on which no gain accrued; and
- (b) the consideration for that disposal, together with the consideration for any associated disposal, or the aggregate consideration for two or more associated disposals made within the levy period, subsequently exceeds the minimum limit;

then, subject to paragraph (4) below, the disposal shall not be regarded as one on which by virtue of paragraph (2) above no gain accrued; and any gain on the disposal shall be computed in accordance with paragraph (1) above.

(4) At any time when the aggregate consideration for all disposals (including small disposals; but excluding disregarded disposals and, for as long as a disposal is disregarded by virtue of article 25(1), a disposal which is so disregarded) of relevant land and relevant interests in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by members of a chargeable company's group within the levy period, does not exceed the materiality threshold, those disposals shall, subject to paragraph (5) below, be deemed for those purposes to be disposals on which no gain accrued.

(5) If—

- (a) a disposal has at some time been regarded by virtue of paragraph (4) above to be one on which no gain accrued; and
- (b) the aggregate consideration referred to in that paragraph subsequently exceeds the materiality threshold,

the disposal shall not be regarded as one on which by virtue of paragraph (4) above no gain accrued; and any gain on the disposal shall be computed in accordance with paragraph (1) above: Provided that a small disposal shall not by reason of anything in this paragraph be regarded as a disposal on which a gain accrued unless it is to be so regarded by virtue of paragraph (3) above.

(6) At any time when the consideration for a disposal of relevant land or a relevant interest in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company's group, together with the consideration for any associated disposal or the aggregate consideration for two or more associated disposals made within the same disposal period as the first-mentioned disposal, does not exceed the disregarded limit, the first-mentioned disposal shall, subject to paragraph (7) below, be deemed for those purposes to be one on which no gain accrued, and it shall be disregarded for all other purposes of this Order:

Provided that, where in any one disposal period a member of the chargeable company's group or two or more members of the group together have already made twenty disposals each of which does not exceed the disregarded limit, this paragraph shall not apply to any further such disposal within that disposal period.

(7) If—

- (a) by virtue of paragraph (6) above, a disposal has at some time been regarded as one on which no gain accrued; and
- (b) the consideration for that disposal, together with the consideration for any associated disposal, or the aggregate consideration for two or more associated disposals made within the same disposal period as the first-mentioned disposal, subsequently exceeds the disregarded limit,

the disposal shall no longer be disregarded for the purposes mentioned in the said paragraph (6).

(8) Nothing in paragraph (2), (4) or (6) above shall affect the date on which any disposal to which it refers is to be regarded for the purposes of section 17 of the 1991 Act and this Order as being made.

(9) For the purposes of this article and this Order—

- (a) the consideration for a disposal is the consideration which is, or but for paragraph (2), (4) or (6) above would be, taken into account in computing under paragraph (1) above the amount of any gain accruing on that disposal;
- (b) “associated disposal” has the meaning given to it by Schedule 1 to this Order;
- (c) the “minimum limit”, in relation to a disposal made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company's group, means whichever is the lesser of—
 - (i) £200,000; and
 - (ii) two per cent of the consideration given for all securities and rights in respect of the chargeable company disposed of by the relevant port authority in pursuance of section 4 of the 1991 Act;

in each case as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the disposal is made or is to be regarded for those purposes as being made;

- (d) “the materiality threshold”, in relation to a chargeable company, means whichever is the lesser of—
 - (i) £500,000; and
 - (ii) ten per cent of the consideration given for all securities and rights in respect of the chargeable company disposed of by the relevant port authority in pursuance of section 4 of the 1991 Act;

in each case as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the calculation falls to be made; and

- (e) the “disregarded limit”, in relation to a disposal made, or regarded for the purposes of section 17 of the 1991 Act or this Order as being made, by a member of a chargeable company's group means £4,000 as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the disposal is made or regarded for those purposes as being made.

Miscellaneous modifications of tax provisions as applied

9. Schedule 2 to this Order (which provides for miscellaneous exclusions from and modifications of the statutory provisions relating to corporation tax on chargeable gains as they apply for the purposes of section 17 of the 1991 Act and this Order) shall have effect.

Market Values — Disputes

10. Where the market value of any land or any interest in land is required to be determined for the purpose of computing the amount of any gain accruing on a disposal made, or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made, by a chargeable company or another member of the chargeable company's group, article 38 shall apply for the purpose of resolving any dispute between the chargeable company and the appropriate Minister regarding that value.

Appropriation to trading stock

11.—(1) If relevant land or a relevant interest in land is within the levy period appropriated by a member of a chargeable company's group as trading stock in such circumstances that subsection (1) of section 122 of the 1979 Act applies to the appropriation, the disposal constituted by the appropriation by virtue of that subsection shall for the purposes of section 17 of the 1991 Act and this Order be regarded as taking place at such time as the land or interest ceases to be beneficially owned—

- (a) if that member was not a member of the chargeable company's wholly-owned group, by that member; or
- (b) if that member was a member of the chargeable company's wholly-owned group, by any member of the wholly-owned group;

and that time shall accordingly be the disposal date in relation to that disposal.

(2) The gain (if any) accruing on a disposal within paragraph (1) above shall—

- (a) in a case falling within sub-paragraph (a) of that paragraph or in a case which falls within sub-paragraph (b) of that paragraph by reason of the member's disposing of the land or interest, be equal to the gain which, if the land or interest had not been so appropriated, would have accrued or been regarded as accruing on the disposal as a result of which the land or interest ceased to be so beneficially owned; or
- (b) in any other case falling within sub-paragraph (b) of that paragraph, be computed as if the land or interest had been disposed of at that time at its then market value.

(3) Section 274(2) of the 1970 Act and section 122(3) of the 1979 Act shall not apply for the purposes of section 17 of the 1991 Act and this Order.

Claims and elections — Special cases

12. Where in relation to a disposal a claim or election which might otherwise have been made for the purposes of the 1979 Act cannot for some reason be made for those purposes but the provision of that Act providing for such a claim or election has not for the purposes of section 17 of the 1991 Act and this Order been disapplied by this Order, the chargeable company may make the claim or election for the purposes of the said section 17 and this Order if any gain which accrued on the disposal would thereby be eliminated or the amount of the gain would thereby be reduced or if it would result in the disposal being treated as not being a disposal.

PAYMENT — GENERAL

Payment of levy — General

13.—(1) Subject to the provisions of this Order, levy chargeable on a disposal shall be payable within the period beginning with the disposal date and ending with the quarter date next following the disposal date.

(2) Subject to paragraphs (3) and (4) below, the last day of every third month after the accounting reference date of a chargeable company is, for the purposes of this Order, a quarter date of the company.

(3) Subject to paragraph (4) below, if a quarter date falls less than 14 days after a disposal date in relation to a disposal in relation to which an amount of levy or interest is payable by the company, the quarter date in relation to the payability of that amount shall be the fourteenth day after the disposal date.

(4) If a day ascertained in accordance with paragraph (2) or (3) above is not a business day, the quarter date shall be the next succeeding business day.

(5) In paragraph (2) of this article “accounting reference date” means an accounting reference date within the meaning given by section 224 of the Companies Act 1985⁽⁹⁾.

Payment of levy — Article 8(3) and 8(5) cases

14.—(1) Subject to paragraph (2) below—

(a) in the case of a disposal for which article 8(3) provides—

(i) if the materiality threshold has been exceeded, levy on any gain accruing on the disposal shall be payable within the period beginning with the disposal date relating to the associated disposal which causes the minimum limit to be exceeded and ending with the quarter date next following that date;

(ii) if the materiality threshold has not been but is subsequently exceeded, levy on any such gain shall be payable within the period specified in sub-paragraph (b) below;

(b) in the case of a disposal for which article 8(5) provides, levy shall be payable within the period beginning with the disposal date relating to the disposal which causes the materiality threshold to be exceeded and ending with the quarter date next following that date.

(2) Where—

(a) by virtue of any provision of this Order, the consideration for a disposal is deemed to be increased by reason of a subsequent event, or by reason of a subsequent event a disposal ceases by virtue of paragraph (2) of article 25 to be disregarded; and

(b) the minimum limit or the materiality threshold is in consequence exceeded;

sub-paragraph (a) or (b) of paragraph (1) above shall apply as if the reference to the disposal date relating to the disposal which causes the minimum limit or, as the case may be, the materiality threshold, to be exceeded were a reference to the date on which the subsequent event occurs.

Interest

15.—(1) Subject to the provisions of this Order, a chargeable company which fails to pay an amount of levy within the period within which it is payable in accordance with this Order shall also

(9) 1985 c. 6; section 224 was inserted by section 3 of the Companies Act 1989 (c. 40).

pay to the appropriate Minister interest on that amount at the rate applicable under paragraph (2) below from the first day after the end of that period until that amount is paid.

(2) The rate applicable under this paragraph is—

- (a) in respect of the period beginning with the first day referred to in paragraph (1) above and ending with the annual reporting date relating to the disposal period in which that first day falls, a rate equal to—
 - (i) base rate plus one per cent; multiplied by—
 - (ii) A, where A is the difference between 100 per cent and the current rate of corporation tax; and
- (b) in respect of the period beginning with the first day after that annual reporting date and ending with the day on which the amount of levy is paid, a rate equal to—
 - (i) base rate plus three per cent; multiplied by—
 - (ii) A, where A is the difference between 100 per cent and the current rate of corporation tax;

in each case compounded every three months.

- (a) (3) (a) In this Order, a reference to base rate, in relation to a period in respect of which interest is payable, shall be construed in accordance with the following provisions of this paragraph.
- (b) If there is in respect of that period one, and only one, published annual base rate of the Bank of England, a reference to base rate is a reference to that rate.
- (c) If there is in respect of one part of that period a published annual base rate of the Bank of England which is different from such rate in respect of each of the one or more other parts of that period, a reference to base rate is a reference to the time-weighted average of such rates over that period.
- (d) If there is in respect of that period no published annual base rate of the Bank of England, a reference to base rate means the average of the time-weighted averages of the base lending rates over that period of—
 - (i) Bank of Scotland,
 - (ii) Barclays Bank plc,
 - (iii) Lloyds Bank plc,
 - (iv) Midland Bank plc,
 - (v) National Westminster Bank plc, and
 - (vi) The Royal Bank of Scotland plc.
- (e) If there is a published annual base rate of the Bank of England in respect of each of one or more parts of that period but not in respect of every part of that period, a reference to base rate is a reference to the time-weighted average of—
 - (i) the published annual base rate of the Bank of England or the time-weighted average of such published annual base rates for the part or parts in respect of which there is such a published annual base rate; and
 - (ii) the time-weighted averages of the bank lending rates over the remainder of the said period of the banks specified in sub-paragraph (d) above.

Payment notice

16.—(1) Subject to paragraph (2) below, when a chargeable company pays levy or interest on unpaid levy, it shall at the same time give to the appropriate Minister a notice in writing in such form

as he may require stating the sum paid, the liability in respect of which it is paid, and the manner in which it has been computed.

(2) This article does not apply in respect of a payment which is made on an annual reporting date and accompanies a disposal statement.

Repayment — Error, mistake or recomputation

17.—(1) If a chargeable company which has paid levy or interest on unpaid levy alleges that the payment was excessive—

- (a) by reason of some error or mistake; or
- (b) because any amount which, on the basis of the facts as they were or appeared to be at the date of payment, was or appeared to be payable is shown by subsequent events (including the operation of section 40(2) or section 41(2) of the 1979 Act, as they apply for the purposes of section 17 of the 1991 Act and this Order) not to have been payable,

the company may by notice in writing at any time make a claim to the appropriate Minister for repayment.

(2) On receiving the notice, the appropriate Minister shall inquire into the matter and if an excessive payment has been made for a reason mentioned in paragraph (1) above he shall repay the amount (whether levy or interest on unpaid levy or both) which should not have been paid, within 20 business days of the date of receipt of the notice, together with interest on that amount at base rate calculated from the date of payment to the Minister until the date of repayment by him.

(3) If the chargeable company disputes the decision of the appropriate Minister on the company's claim for repayment, article 38 shall apply for the purpose of resolving the dispute; and if a referee determines that any amount paid to the appropriate Minister (whether levy or interest on unpaid levy or both) should not have been paid, the appropriate Minister shall repay such amount, within 20 business days of the date of such determination, together with interest on that amount at base rate from the date of payment to the Minister until the date of repayment by him.

(4) If the appropriate Minister is by virtue of article 22, 32 or 35 required to make a repayment of any amount (whether of levy or interest on unpaid levy or both), the repayment—

- (a) if required by virtue of article 22 or (in the case of a recomputation under article 29) by virtue of article 32, shall carry interest from the first day after the quarter date next following the event which gives rise to the requirement for repayment;
- (b) if required by virtue of article 32 (in the case of a recomputation under article 30) or by virtue of article 35, shall carry interest from the date on which the chargeable company paid to the Minister the amount to be repaid;

until the repayment is made, at base rate.

LEASES

Leases at rents — Grant

18.—(1) For the purposes of section 17 of the 1991 Act and this Order—

- (a) on the grant of a lease to which this sub-paragraph applies, the consideration for the disposal constituted by the grant shall in the computation of any gain accruing on the disposal be deemed to be equal to what would be the market value to the lessee of the lease at the time of the grant; and
- (b) on the grant of a lease to which this sub-paragraph applies (referred to in this sub-paragraph as a “sub-lease”)—

- (i) the provisions of sub-paragraph (a) above and of paragraph (3) of article 26 shall be taken to have applied on the grant of the lease out of which the sub-lease is granted; and
- (ii) the consideration for the disposal constituted by the grant of the sub-lease shall in the computation of any gain accruing on the disposal be deemed to be equal to what would be the market value to the sub-lessee of the sub-lease at the time of the grant; and paragraph 4(2) (b) of Schedule 3 to the 1979 Act shall not apply in respect of the disposal.

(2) For the purposes of computing the amount of gain which accrues or is regarded as accruing on a disposal to which sub-paragraph (a) or (b) of paragraph (1) above applies, there shall be deducted from the amount which would apart from this paragraph be the amount of the gain accruing or regarded as accruing an amount in respect of corporation tax calculated in accordance with paragraph (3) below.

(3) The amount in respect of corporation tax referred to in paragraph (2) above shall be equal to the product of A and B where—

A is a percentage equal to the highest rate of corporation tax on income for the financial year in which the disposal takes place; and

B is the amount which would, but for paragraph (2) above be the amount of the gain accruing or treated as accruing on the disposal less the amount of any premium actually paid on or in connection with the disposal.

(4) Except in a case mentioned in paragraph (a) or (b) of subsection (1) of section 29A of the 1979 Act (in which case that section shall apply for the purposes of section 17 of the 1991 Act and this Order), the market value of a lease to the lessee or of a sub-lease to the sub-lessee shall for the purposes of sub-paragraph (a) or (b) of paragraph (1) above be the amount of the premium that could reasonably be expected to be required under or in connection with the lease or sub-lease if no rent were payable the reunder:

Provided that, in determining the amount of the premium that could reasonably be expected to be so required, regard shall be had to the rent actually payable and to the amount of any premium actually required under or in connection with the lease or sub-lease.

(5) Sub-paragraph (a) of paragraph (1) above applies to a lease under which a rent is payable of land which is relevant land or is land in which a relevant interest subsists, granted by a chargeable company or another member of that company's group (that company or other member not itself being a tenant of the land), and sub-paragraph (b) of that paragraph applies to a lease under which a rent is payable of land which is relevant land or is land in which a relevant interest subsists, granted by a chargeable company or another member of that company's group (that company or other member being itself a tenant of the land).

Leases at rents — Subsequent disposals of reversions

19. Where, following the grant during the levy period of a lease to which sub-paragraph (a) or (b) of paragraph (1) of article 18 applies, there is a subsequent disposal of the land or an interest in the land subject to that lease, the consideration for that disposal shall, in the computation for the purposes of section 17 of the 1991 Act and this Order of any gain accruing or regarded as accruing on the disposal, be deemed to be equal to what would be the market value of the interest in land disposed of at the disposal date if no rent were payable under the lease.

Leases at rents — Early termination, renewal or extension

20.—(1) Where a lease under which a rent is payable has been granted on terms which confer on the lessor a right to terminate it at a specified date or in specified circumstances, it shall be assumed,

in determining the market value of the lease pursuant to article 18, that that right will not be exercised by the lessor:

Provided that, if the lease is terminated pursuant to that right, the market value shall be redetermined, as at the date on which the right is exercised by the lessor by reference to the actual term of the lease.

(2) Where a lease under which a rent is payable has been granted on terms which confer on the lessee a right to renew or extend it at a specified date or in specified circumstances, it shall be assumed, in determining the market value of the lease pursuant to article 18, that that right will be exercised by the lessee:

Provided that, if the lease is not renewed or extended pursuant to that right, the market value shall be redetermined, as at the date on which such right lapses or becomes incapable of being exercised, by reference to the actual term of the lease.

Leases at rents — Holding over and tacit relocation

21.—(1) Subject to paragraph (2) below, where—

- (a) the market value of a lease to which sub-paragraph (a) or (b) of article 18(1) above applies has, in the computation for the purposes of section 17 of the 1991 Act and this Order of any gain accruing or regarded as accruing on the disposal constituted by the grant of the lease, been determined in accordance with article 18, or if the case so required, that article and article 20; and
- (b) following the expiry of the lease the lessee or, if the lessee is a company, another member of the lessee's group, remains in occupation of the land, or, if the lessee is a company, another member of that group enters into such occupation, or in Scotland the lease continues after the stated term by the operation of tacit relocation;

the market value shall, in relation to each disposal period in all or part of which the lessee or, if the lessee is a company, another member of the lessee's group remains in such occupation or, in Scotland, in relation to each disposal period during the continued operation of the lease, be redetermined, by reference to the stated term of the lease as extended by the actual period of occupation since its expiry or, in Scotland, by reference to the stated term of the lease as extended by tacit relocation.

(2) Where—

- (a) before the beginning of the levy period a lease under which a rent is payable has been granted out of relevant land or a relevant interest in land; and
- (b) following the expiry during the levy period of the stated term of the lease—
 - (i) the lessee or another member of the lessee's group remains in occupation or enters into occupation of the land the subject of the lease; or
 - (ii) in Scotland, the lease continues by the operation of tacit relocation;

the disposal constituted by the grant of the lease shall be regarded as taking place on the date following the expiry of the stated term, in consideration of a sum equal to what would have been the market value of the lease if it had commenced on the date following the expiry of the stated term; and such market value shall be determined in accordance with article 18, by reference to the actual period of occupation beginning with that date (and shall be redetermined, if necessary, in relation to each disposal period during which the actual period of occupation continues).

(3) In this article "group", in relation to a lessee, means a group of companies formed by—

- (a) the lessee;
- (b) any company or other person of which the lessee is an effective subsidiary;
- (c) any company which is an effective subsidiary of the lessee;

- (d) any company which is an effective subsidiary of any company or other person of which the lessee is an effective subsidiary;

and the explanation of “effective subsidiary” in the definition of “group” in article 2(1) shall apply for the purposes of the definition in this paragraph as it applies for the purposes of that definition.

Leases — Adjustment of levy

22.—(1) Where the market value of a lease is required to be redetermined pursuant to paragraph (1) or (2) of article 20 or paragraph (1) or (2) of article 21 or a gain is required to be recomputed under paragraph (2) of article 24, details of the redetermination or recomputation shall be furnished by the chargeable company to the appropriate Minister together with the disposal statement for the disposal period in which the event giving rise to the redetermination or recomputation took place.

(2) Where, in consequence of a redetermination pursuant to article 20 or 21, the market value of a lease is reduced or increased, the amount of the levy chargeable on the disposal constituted by the grant of the lease shall be recomputed and reduced or increased accordingly, and a sum equal to the amount of the reduction or increase shall—

- (a) in the case of a reduction, be repaid to the chargeable company by the appropriate Minister (if the levy has already been paid) or deducted from the amount of levy otherwise payable by the company (if the levy is still payable);

(b) in the case of an increase, be paid by the chargeable company to the appropriate Minister, in each case in accordance with paragraph (3) below.

- (a) (3) (a) Any sum to be repaid by the appropriate Minister undersub-paragraph (a) of paragraph (2) above shall be payable by him within 20 business days following receipt by him of the disposal statement for the disposal period in which the event which gives rise to the redetermination took place.

- (b) 3 Any sum to be paid to the appropriate Minister undersub-paragraph (b) of paragraph (2) above shall be payable within the period beginning with the date of the event which gives rise to the redetermination and ending with the next following quarter date.

Leases at rents — Levy payable by instalments

23.—(1) Subject to article 24, the levy payable on the grant of a lease under which a rent is payable may, in so far as it exceeds the amount of levy which would but for article 18 have been payable on the grant, be paid by the chargeable company by up to ten equal instalments on each of the company’s annual reporting dates or of the anniversaries of those dates, beginning with the annual reporting date relating to the disposal period in which the lease is granted and ending with the earlier of—

- (a) the ninth anniversary of that date; or
- (b) the annual reporting date or anniversary next following the end of the financial year in which the term of the lease expires or (in a case provided for by paragraph (2) of article 20) of the financial year in which it has for the purposes of that paragraph been assumed that the term of the lease will expire:

Provided that if an instalment would, apart from this proviso, exceed the applicable percentage of the aggregate amount payable under the lease by way of rent in the disposal period immediately preceding the annual reporting date on which the instalment is payable—

- (a) the amount of the instalment shall be reduced to an amount equal to the applicable percentage of that aggregate amount; and

(b) the amount by which the instalment is so reduced shall be payable on the date on which the final instalment (whether or not so reduced) is payable.

(2) For the purposes of paragraph (1) above, the “applicable percentage”, in relation to an instalment, is the percentage figure equal to 100 minus R, where “R” is the rate of corporation tax during the disposal period immediately preceding the annual reporting date on which the instalment is payable or, if there was more than one such rate during that period, the time-weighted average of such rates during that period.

(3) Where an instalment is payable in accordance with paragraph (1) above on a date falling after the annual reporting date relating to the last disposal period of a chargeable company, the company shall furnish to the appropriate Minister on that date a statement which gives in respect of that instalment the information which is required by paragraph 14 of Schedule 3 to this Order to be given in relation to an instalment which is payable on an annual reporting date.

Leases — Early termination

24.—(1) This article applies to a lease in respect of which, and to the extent to which, levy is payable by instalments under article 23, not being a lease granted to a member of the chargeable company’s group.

(2) Subject to paragraph (4) below where, before the end of the levy period, a lease to which this article applies is terminated before the expiry of its stated term—

- (a) no further instalments shall become payable under article 23 (but no instalment already paid shall be repayable and no instalment which has become payable but has not been paid shall cease to be payable);
- (b) the gain accruing or regarded as accruing to the chargeable company on the disposal constituted by the grant of the lease shall be recomputed, if it would as a result be less, as if the amount deemed under article 18 to have been the consideration for the disposal had, insofar as it exceeds any premium actually required under or in connection with the lease, been an amount equal to the total of the sums payable under the lease as rent to the time at which the lease was terminated;
- (c) the amount (if any) by which the levy which would have been payable had the gain been as recomputed under sub-paragraph (b) above exceeds the aggregate amount of the instalments already paid or payable under article 23, shall be payable within the period beginning with the date of the termination which gives rise to the recomputation and ending with the next following quarter date.

(3) Where—

- (a) following a disposal constituted by a grant of a lease, there is a further disposal constituted by the grant of an interest in the land the subject of the lease; and
- (b) there is pursuant to paragraph (2) above a recomputation of the gain accruing or regarded as accruing on the first of those disposals;

there shall be a corresponding reapportionment under section 35 of the 1979 Act, as it applies for the purposes of section 17 of the 1991 Act and this Order, of the sums which, under paragraphs (a) and (b) of subsection (1) of section 32 of the 1979 Act, as it applies for those purposes, are attributable to the relevant land or interest in land out of which the lease was granted.

(4) Paragraph (2) above shall not apply where, following the termination of the lease and after the end of the levy period, a member of the chargeable company’s group grants another lease in respect of substantially the same land—

- (a) to the former lessee; or
- (b) where the former lessee is a member of a group, to another member of the former lessee’s group;

on terms substantially similar to those of the first-mentioned lease (but disregarding for this purpose the term for which the lease is granted).

(5) In this article “group”, in relation to a lessee, has the meaning given by article 21(3).

Operational leases

25.—(1) Subject to paragraph (2) below, where a disposal of relevant land or a relevant interest in land is constituted by the granting of a lease—

- (a) out of relevant land all or part of which is operational land of a member of the chargeable company’s group; or
- (b) out of a relevant interest in land and all or part of the land in which the interest subsists is operational land of a member of the chargeable company’s group;

then—

- (i) if the relevant land or the land in which the relevant interest subsists consists wholly of operational land, the disposal shall, subject to sub-paragraph (i) of paragraph (2) below, be disregarded for all purposes of this Order except those of paragraph 11 of Schedule 3;
- (ii) if the relevant land or the land in which the relevant interest subsists consists only in part of operational land, then, subject to sub-paragraph (ii) of paragraph (2) below the disposal shall, to the extent that the land in question consists of operational land, be disregarded for all purposes of this Order except those of paragraph 11 of Schedule 3.

(2) If at any time which is both—

- (a) within the levy period; and
- (b) during the term of a lease referred to in paragraph (1) above;

the operational land is used for a purpose other than an operational purpose, the n—

- (i) if the relevant land or the land in which the relevant interest subsists consists wholly of operational land, the disposal shall no longer be disregarded pursuant to sub-paragraph (i) of the said paragraph (1), the disposal shall be regarded as taking place at that time for a term equal to the portion then unexpired of the actual term of the lease, and the amount of any gain accruing on the disposal shall be computed accordingly; and
- (ii) if the relevant land or the land in which the relevant interest subsists consists only in part of operational land, the disposal shall no longer, to the extent mentioned in sub-paragraph (ii) of the said paragraph (1), be disregarded pursuant to that sub-paragraph, the disposal shall to the extent that it relates to the operational land which has been used for a purpose other than an operational purpose be regarded as taking place at that time for a term equal to the portion then unexpired of the actual term of the lease, and the amount of any gain shall be recomputed accordingly.

(3) If by virtue of paragraph (2) above a gain accruing on a disposal falls to be computed or (as the case may be) recomputed, the following amount, that is to say—

- (a) in a case to which sub-paragraph (i) of the said paragraph (2) refers, the levy chargeable on the gain; or
- (b) in a case to which sub-paragraph (ii) of the said paragraph (2) refers, the amount by which the levy chargeable on the gain as recomputed exceeds the amount of any levy already payable or paid on the disposal,

shall be payable within the period beginning with the date on which the operational land is first used for a purpose other than an operational purpose and ending with the next following quarter date.

(4) In this article “operational land” means land which during the period of six months immediately preceding the beginning of the levy period was used wholly (or substantially) and exclusively (or predominantly) for an operational purpose.

(5) Subject to paragraph (6) below land is for the purposes of this Order used for an operational purpose if it is used—

- (a) for the purposes of shipping; or
 - (b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by any railway forming part of the dock, harbour or pier undertaking which a member of the chargeable company’s group is authorised by enactment to carry on or which, as regards the six months immediately preceding the beginning of the levy period, the relevant port authority whose property, rights, liabilities and functions are under section 2 of the 1991 Act transferred to that company were so authorised to carry on.
- (6) Land shall not be regarded as used for an operational purpose if it is used—
- (a) for the construction or erection of a hotel or of a bridge or other building not required in connection with the handling of traffic; or
 - (b) for the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—
 - (i) an educational building; or
 - (ii) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation;

and in paragraph (ii) above “transport legislation” means any statutory provision empowering a member of the chargeable company’s group or, as regards the six months mentioned in paragraph (5) (b) above, the relevant port authority to provide, in places where persons using the services and facilities provided by that member or authority may require the m, amenities or facilities for those and other persons.

Leases — Supplementary

26.—(1) References to rent in articles 18, 19, 20, 21, 23, and 24 and in paragraph (3) below do not include anything which, though reserved as or held out to be rent, consists of—

- (a) the reimbursement of insurance premiums;
- (b) service charges which are paid to, or reimburse the recipient for expenses paid or payable to, persons other than members of the chargeable company’s group;
- (c) sums representing value added tax on sums payable under or on the grant of the lease; or
- (d) sums referable to matters for which the following are levied, that is to say—
 - (i) ship, passenger or goods dues (within the meaning given by section 57(1) of the Harbours Act 1964⁽¹⁰⁾); or
 - (ii) charges in respect of services rendered for passengers embarking or disembarking at the chargeable company’s harbour or in respect of work performed or services rendered in respect of goods brought into, taken out of or carried through the harbour by ship.

(2) Without prejudice to the generality of other provisions of this Order applying for the purposes of this Order statutory provisions relating to corporation tax on chargeable gains, the provisions of Schedule 3 to the 1979 Act shall, subject to the provisions of this Order, apply for the purposes of

(10) 1964 c. 40.

section 17 of the 1991 Act and this Order as respects a lease the granting of which constitutes a disposal of relevant land or a relevant interest in land.

(3) Sub-paragraph (2) of paragraph 2 of Schedule 3 to the 1979 Act shall apply for the purposes of section 17 of the 1991 Act and this Order as if, where the property there referred to is property out of which is a lease under which a rent is payable is granted, it did not include a right to any rent payable under the lease.

(4) Any amount of levy which becomes chargeable on a gain accruing by reason of the provisions of sub-paragraph (3) of paragraph 3 of Schedule 3 to the 1979 Act as it applies for the purposes of section 17 of the 1991 Act and this Order shall be payable within the period beginning with the date on which the sum referred to in that sub-paragraph becomes payable and ending with the next following quarter date.

(5) Paragraphs 5 and 7 of that Schedule shall not apply for the purposes of section 17 of the 1991 Act and this Order.

OPTIONS

Options—Computation of gains

27.—(1) This article applies to a disposal of relevant land or a relevant interest in land constituted by the grant by a member of the chargeable company's group of an option to acquire that land or interest in land.

(2) The amount of any gain accruing or regarded as accruing for the purposes of section 17 of the 1991 Act and this order on a disposal to which this article applies shall be equal to the amount of the gain which would accrue on the exercise of the option if the option were exercised on the date on which it is granted or, if the option is not exercisable on that date, on the earliest date thereafter on which it could be exercised.

(3) Where the consideration payable on the exercise of the option (or any part of the consideration) is unascertainable at the time the amount of any gain falls to be computed under paragraph (2) above, then, in the computation of that amount under that paragraph, the consideration shall (so far as unascertainable at that time) be taken to be the highest amount which could reasonably be expected to be paid; and if the right to receive any part of the consideration depends on a contingency, it shall be assumed that the contingency will occur.

Options—Payment of levy

28. The levy chargeable on a disposal to which article 27 applies shall be payable—

- (a) as regards the amount which would have been payable but for paragraph (2) of article 27, within the period beginning with the date of grant of the option and ending on the quarter date next following that date;
- (b) as regards the remainder, within the period beginning with the date of grant of the option and ending with the annual reporting date relating to the last disposal period of the chargeable company.

Options—Subsequent exercise

29. If a chargeable company becomes liable to pay levy in respect of the grant of an option and that option is exercised within the levy period, then the disposal constituted by the grant of the option shall be treated as if article 27 had not applied to it, and any gain accruing or regarded as accruing on the disposal shall be recomputed accordingly.

Option lapsing–Recomputation

30. If an option the grant of which constitutes a disposal to which article 27 applies lapses (without being exercised) or becomes incapable of being exercised, the gain accruing on that disposal shall be recomputed as if paragraph (2) of article 27 had not applied.

Option lapsing–Supplementary

31.—(1) If a gain falls to be recomputed in accordance with article 30, and—

- (a) if the time at which the gain falls to be recomputed is within the levy period, details of the recomputation shall be provided to the appropriate Minister together with the disposal statement for the disposal period in which the event giving rise to the recomputation took place; or
- (b) if the time at which the gain falls to be recomputed is outside the levy period, the chargeable company shall as soon as may be practicable provide details of the recomputation to the appropriate Minister.

(2) Upon receipt of details of the recomputation the appropriate Minister shall inquire into the matter and, if an excessive payment has been made by the chargeable company, the amount thereof (whether levy or interest on unpaid levy or both) shall be repaid as provided in article 32.

Option lapsing etc.–Repayment

32. If—

- (a) the amount of the gain accruing on a disposal constituted by the grant of an option to which article 27 applies has been recomputed under article 29 or 30; and
- (b) the chargeable company has paid levy on the amount of the gain as computed in accordance with article 27;

the appropriate Minister shall repay to the chargeable company—

- (i) in the case of a recomputation under article 29, the amount of levy and interest thereon which has been paid;
- (ii) in the case of a recomputation under article 30, an amount equal to the difference between—
 - (A) the amount of levy and interest thereon which has been paid; and
 - (B) the levy which would have been payable on the gain as recomputed in accordance with article 30, and interest thereon at the same rate or rates and over the same period as any interest paid on the amount of levy paid;

and the time within which the Minister shall do so shall be—

- (I) in the case of a recomputation under article 29, within 20 business days of receipt by him of the disposal statement in respect of the period in which the option was exercised;
- (II) in the case of a recomputation under article 30—
 - (IIA) if the option lapsed or became incapable of being exercised within the levy period, within 20 business days of receipt by him of the disposal statement referred to in sub-paragraph (a) of paragraph (1) of article 31;
 - (IIB) in any other case, within 20 business days of the receipt by him of details of the recomputation or, if he reasonably requests the chargeable company to supply further information for the purpose of his inquiry into the matter

pursuant to article 31(2), within 20 such days of receiving such further information.

CHARGEABLE COMPANY'S GROUP

Disposals within wholly-owned group

33. Sections 273 and 273A of the 1970 Act(**11**) shall apply for the purposes of section 17 of the 1991 Act and this Order as if the reference in subsection (1) of each of those sections to corporation tax on chargeable gains were a reference to levy under the said section 17 and as if the references in those sections to a group were to a wholly-owned group.

Company ceasing to be member of group

34. Where the sale and reacquisition of an asset which are to be treated by virtue of subsection (3) or (3C) of section 278 of the 1970 Act(**12**) (including either of those subsections as it has effect by virtue of section 17(6) of the 1991 Act) as having taken place are a sale and reacquisition of relevant land or a relevant interest in land—

- (a) the sale and reacquisition shall for the purposes of section 17 of the 1991 Act and this Order be treated as having taken place immediately before the company mentioned in the said subsection (3) or (3C) ceased to be a member of the group mentioned in the said section 278, at market value at that time (and not immediately after the acquisition of the asset, at market value at that time) and that time shall accordingly be the disposal date in relation to the disposal constituted by the sale; and
- (b) in the event that the consideration for which that company acquired the land or interest has before the section 278 disposal fallen to be recomputed under article 35, the sum attributable to the land or interest under paragraph (a) of section 32(1) of the 1979 Act, as applied for the purposes of section 17 of the 1991 Act and this Order, shall be that consideration as last previously recomputed.

Decrease in equity holding

35.—(1) Where—

- (a) there has been a disposal within the levy period of relevant land or a relevant interest in land by one member of the chargeable company's group to another member of the group ("the acquiring company");
- (b) at a time when the acquiring company is a member of the group there is a decrease in the percentage of the equity of the acquiring company held, whether directly or indirectly by the principal member of the group (not being a decrease therein such as to give rise to a section 278 disposal); and
- (c) the market value—
 - (i) of that land or interest, or
 - (ii) if before the time of the decrease the acquiring company has made a part disposal of the land or interest, of such part thereof as remains undisposed of;

is at that time greater than—

- (A) in a case where the whole of the land or interest still belongs to the acquiring company, the amount or value of the consideration given by the acquiring company

(11) 1970 c. 10; section 273 was amended by the Finance Act 1990 (c. 29), section 65(2) and (4); section 273A was inserted by the Finance Act 1990, section 70(1) and (9).

(12) Subsection (3C) was inserted by the Finance Act 1989 (c. 26), section 138(5).

for the acquisition of the land or interest (or, if the consideration has on one or more previous occasions been redetermined by virtue of the provisions of this paragraph, the amount or value of the consideration as last so redetermined); or

(B) in a case where the acquiring company has made a part disposal of the land or interest, such part of the consideration (as so redetermined, if so redetermined) as is attributable to the part of the land or interest remaining undisposed of;

as increased (in either case) by the percentage of any increase in the retail prices index between that for the month in which the disposal mentioned in sub-paragraph (a) above took place and that for the month immediately preceding the month in which the decrease referred to in sub-paragraph (b) above took place;

the gain accruing or treated as accruing on the said disposal shall be recomputed as if the consideration for it had been—

(I) increased by an amount equal to the excess of—

(IA) if the whole of the land or interest still belongs to the acquiring company, the market value of the land or interest at the time of the said decrease over the consideration for the said disposal (as previously redetermined, if so redetermined, by virtue of the provisions of this paragraph; and as increased in accordance with sub-paragraph (c) above by reference to any increase in the retail prices index); or

(IB) if only part of the land or interest still belongs to the acquiring company, the market value of such part thereof as belongs to that company at the time of the said decrease over such part of such consideration (as so redetermined, if so redetermined; and as so increased) as is attributable to the part of the land or interest remaining undisposed of; and

(II) decreased by an amount calculated in accordance with paragraph (7) below;

and, subject to paragraph (3) below, the amount by which the consideration is increased in accordance with paragraph (I) above is in this article referred to as the “marginal increment”.

(a) (2) (a) In paragraph (1) above the references to such part of the consideration as is attributable to the part of the land or interest remaining undisposed of are references to the same proportion of the consideration as the proportion of the section 32(1) sums which, by virtue of section 35 (part disposals) of the 1979 Act as it applies for the purposes of section 17 of the 1991 Act and this Order, is to be attributed to the part of the land or interest remaining undisposed of.

(b) In this paragraph, the “section 32(1) sums” means the sums which, under paragraph (a) or (b) of section 32(1) of the 1979 Act as it applies for the said purposes, are attributable to the land or interest.

(3) Where—

(a) before a decrease such as is referred to in sub-paragraph (b) of paragraph (1) above there have been one or more other such decreases; and

(b) the decrease preceding the first-mentioned decrease or, if there have been two or more preceding decreases, the last of those decreases gave rise to a section 278 disposal;

the marginal increment shall be the amount (if any) by which—

(i) the market value mentioned in sub-paragraph (c) of the said paragraph (1);

exceeds—

(ii) the market value at the time of the section 278 disposal of the land or interest or (as the case may be) of the part the reofremaining undisposed of.

(4) For the purposes of this article, where such a disposal as is referred to in paragraph (1) (a) above occurs before the beginning of the levy period, it shall for the purposes of this article be deemed to have occurred on the first day of the levy period for a consideration of such amount as would secure that no gain accrues to the person making the disposal (and that day shall accordingly be the disposal date in relation to that disposal).

(5) For the purposes of paragraph (1) above, the percentage of the equity of the acquiring company which is at any time held (directly or indirectly) by the principal company of the group of which chargeable company is a member shall be the percentage which at that time is the lowest of the following—

- (a) the percentage of the ordinary share capital of the acquiring company which is beneficially owned directly or indirectly by the principal company;
- (b) the percentage to which the principal company is beneficially entitled of any profits available for distribution to equity holders of the acquiring company;
- (c) the percentage to which the principal company would be beneficially entitled of any assets of the acquiring company available for distribution to its equity holders on a winding-up;

and—

- (i) in this paragraph “ordinary share capital” has the meaning given to it by subsection (1) of section 832 of the 1988 Act⁽¹³⁾;
- (ii) Schedule 18 to that Act⁽¹⁴⁾ shall apply for the purpose of supplementing this paragraph as it applies for the purpose of supplementing section 413 of that Act.

(6) Where, in consequence of a recomputation pursuant to paragraph (1) above, the gain accruing on a disposal is increased, the amount of the levy chargeable on the disposal shall be increased accordingly and a sum equal to the increase over the amount previously paid (as increased, where applicable, in consequence of any earlier recomputation pursuant to paragraph (1)) shall be payable to the appropriate Minister on the quarter date next following the date on which the decrease to which the calculation relates occurred.

(7) The amount referred to in sub-paragraph (II) of paragraph (1) above is equal to the product of P and Q where:

P is the marginal increment; and

Q is a number to be determined in accordance with the following rules—

- (a) where the disposal occurs within the first five years of the levy period and the decrease occurs within the sixth or seventh year of that period, the number shall be 1/5;
- (b) where the disposal occurs within the first five years of the levy period and the decrease occurs within the last three years of that period, the number shall be 3/5;
- (c) where the disposal occurs within the sixth or seventh year of the levy period and the decrease occurs within the last three years of that period, the number shall be ; and
- (d) in any other case, the number shall be 1.

(8) If—

- (a) an option to acquire securities of the acquiring company is at any time within the levy period granted by another member of the chargeable company’s group; and
- (b) the exercise of the option would result in a decrease such as is mentioned in sub-paragraph (b) of paragraph (1) above;

⁽¹³⁾ 1988 c. 1.

⁽¹⁴⁾ Schedule 18 was amended by the Finance Act 1989, section 101; and by the Capital Allowances Act 1990 (c. 1), section 164 and Schedule 1, paragraph 8(1) and (40).

then the option shall for the purposes of that sub-paragraph be regarded as if it had been exercised at that time, and a decrease such as is mentioned in that sub-paragraph shall accordingly for those purposes be regarded as taking place at that time.

(9) If at any time an option to which paragraph (8) above applies has lapsed (without being exercised) or has become incapable of being exercised, then the amount of the gain regarded as accruing on the disposal referred to in paragraph (1) above shall be recomputed as if the said paragraph (8) had not applied to it, and—

- (a) if that time is within the levy period, details of the recomputation shall be provided to the appropriate Minister together with the disposal statement for the disposal period in which the option lapsed or became incapable of being exercised; or
- (b) if that time is not within the levy period, the chargeable company shall as soon as may be practicable provide details of the recomputation to the appropriate Minister.

(10) Upon receipt of details of the recomputation, the appropriate Minister shall inquire into the matter and, if an excessive payment has been made by the chargeable company, the amount thereof (whether levy or interest on unpaid levy or both) shall be repaid by him; and the time within which he shall do so shall be—

- (a) if the option lapsed or became incapable of being exercised within the levy period, within 20 business days of receipt by him of the disposal statement referred to in sub-paragraph (a) of paragraph (9) above;
- (b) in any other case, within 20 business days of the receipt by him of details of the recomputation or, if he reasonably requests the chargeable company to supply further information for the purpose of his inquiry into the matter pursuant to this paragraph, within 20 such days of receiving such further information.

(11) Where—

- (a) the acquiring company makes a part disposal of the land or interest the subject of the disposal to it referred to in paragraph (1) (a) above; and
- (b) the consideration for the disposal to the acquiring company has been redetermined by virtue of the provisions of paragraph (1) of this article;

the sum which for the purposes of the part disposal is to be attributable to the land or interest under paragraph (a) of section 32(1) of the 1979 Act, as it applies for the purposes of section 17 of the 1991 Act and this Order, shall be the amount or value of the consideration as so redetermined or, as the case may be, as last so redetermined.

(12) In this article—

- (a) “principal member”, in relation to a chargeable company’s group, means—
 - (i) that member of which or of an effective subsidiary of which every other member is an effective subsidiary; or
 - (ii) if there is not one such member, those two or more members of which together or of an effective subsidiary of which together every other member is an effective subsidiary;
- (b) a reference to a consideration as redetermined by virtue of the provisions of paragraph (1) above is a reference to that consideration as increased in accordance with sub-paragraph (I) and as decreased in accordance with sub-paragraph (II) of that paragraph.

ADMINISTRATION ETC.

Disposal statements

36.—(1) On or before each annual reporting date a chargeable company shall furnish to the appropriate Minister a statement (in this article referred to as a “disposal statement”), in such form as the appropriate Minister may require, in respect of the disposal period to which that annual reporting date relates.

(2) A disposal statement shall give the information specified in Schedule 3 to this Order in sufficient detail to give a true and fair view of the matters there mentioned and, in particular, shall—

- (a) as to matters of fact, be accurate and complete in all material respects; and
- (b) as to matters of opinion, be based on reasonable assumptions.

(3) A disposal statement shall be approved by the board of directors of the chargeable company and signed by two directors on behalf of the board.

(4) A disposal statement shall be accompanied by a report by the company’s auditors from time to time stating—

- (a) whether in the auditors' opinion the disposal statement has been properly prepared in accordance with this Order; and
- (b) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purpose of making their report.

(5) In a case to which paragraph 4(1) of Schedule 2 applies, the chargeable company shall send to the appropriate Minister with each disposal statement a valuation of the base value for each disposal in the disposal period to which the disposal statement relates (not being a disposal of land or of an interest in land acquired during the levy period); and for this purpose “base value” means the sum which, under subsection (1) (a) of section 32 of the 1979 Act as applied for the purposes of section 17 of the 1991 Act and this Order, is attributable to the land or interest in land which is the subject of the disposal: Provided that, where such a valuation has previously been sent to the Minister in connection with a part disposal of the same land or interest, the chargeable company is not required to send a further valuation.

(6) A valuation sent in pursuance of paragraph (5) above (referred to in this article as a “valuation”) shall have been made by a Fellow or an Associate of the Royal Institution of Chartered Surveyors experienced in valuing land of the same or a similar kind to that disposed of, not being a director or employee of or adviser to any member of the chargeable company’s group.

(7) A valuation shall be made in accordance with the Statements of Asset Valuation Practice and Guidance Notes (3rd edition, August 1990, as amended in April 1991 and September 1991) published by the Royal Institution of Chartered Surveyors.

(8) For the purpose of enabling the person making a valuation to make it, the chargeable company shall provide him with any earlier relevant valuation, documents or records in its possession such as are mentioned in article 39; and a valuation shall include a statement reconciling the base value attributed by it with the value ascribed to the land or interest (or to any land or interest in land of which that land or interest in land forms or formed part) in any earlier valuation such as is there mentioned.

Assessment

37.—(1) If in relation to any disposal period it appears to the appropriate Minister—

- (a) that there are gains accruing to a chargeable company in respect of which levy is chargeable and which have not been stated in a disposal statement;

- (b) that any amount of levy or interest on unpaid levy which ought to have been stated in a disposal statement has not been so stated;
- (c) that a disposal statement has not been furnished as required by paragraph (1) of article 36; or
- (d) that a disposal statement does not in a material respect comply with the requirements of paragraph (2) of article 36, or that a requirement of paragraph (3), (4) or (5) of that article has not been complied with in relation to the disposal statement;

the Minister may make an assessment to the best of his judgment of the amount or further amount of levy or interest on unpaid levy which ought in his opinion to be paid by the chargeable company on or in respect of any disposal which took place or is to be regarded for the purposes of section 17 of the 1991 Act and this Order as having taken place in the disposal period or on or in respect of any disposal which took place or is for those purposes to be regarded as having taken place in an earlier disposal period and in respect of which an amount or further amount of levy has by reason of an event in the disposal period to which the disposal statement relates become payable.

(2) In making an assessment by virtue of paragraph (1) above, the Minister shall have regard to all information available to him which appears to him to be relevant for the purpose.

(3) Notice of any assessment under paragraph (1) above shall be given in writing to the chargeable company and shall state separately the amount of any levy assessed, the rate or rates at which interest has run and will continue to run on unpaid levy, and the amount of any interest payable on unpaid levy, calculated to the date of the notice.

(4) Forthwith after receiving notice of an assessment under paragraph (1) above, the company shall pay to the appropriate Minister—

- (a) the amount of the levy assessed and interest on unpaid levy to the date of payment;
- less—
- (b) any amount already paid to the Minister in respect of levy on gains accruing on chargeable disposals made or to be regarded as being made in the disposal period, and any interest thereon already paid to him.

(5) If a chargeable company disputes an assessment under paragraph (1) above, article 38 shall apply for the purpose of resolving the dispute; but pending resolution of the dispute the company shall remain liable to make any payment to the appropriate Minister as if the dispute had not been so referred.

Referee

38.—(1) Where there is a dispute between a chargeable company and the appropriate Minister and this article applies for the purpose of its resolution, then if—

- (a) either party gives written notice to the other for the purposes of this sub-paragraph; and
- (b) within 30 days of the date of that notice the parties have not resolved the dispute;

either party, by written notice to the other, may require that the dispute be referred to a person to be appointed as provided in paragraph (2) below.

(2) A referee shall be an independent person with substantial recent relevant experience of the type of matter in dispute, appointed—

- (a) by agreement between the parties; or
- (b) if the parties have not agreed upon such a person within 15 days of the giving of notice under paragraph (1) above or within such extended period as the parties may agree—
 - (i) in the case of a dispute as to the valuation of land or of an interest in land or as to the apportionment of any sum attributable by way of valuation to any land

or interest in land, by the President for the time being of the Royal Institution of Chartered Surveyors, or if such land or interest in land is situate in Scotland to the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors, on the application of either party; or

- (ii) in the case of a dispute on any other matter, by the President of the Law Society or, if the chargeable company is registered in Scotland, by the President of the Law Society of Scotland, on the application of either party;

(3) If there is a dispute as to the classification of a dispute for the purpose of sub-paragraph (b) of paragraph (2) above, that dispute as to the classification may be referred, on the application of either party, to the President of the Law Society or, if the chargeable company is registered in Scotland, to the President of the Law Society of Scotland and shall be determined by a person appointed by him, whose determination shall be binding on the parties.

(4) Where a referee is appointed pursuant to this article, he shall act as an expert, not as an arbitrator or arbiter.

(5) Within such periods as the referee may decide—

- (a) each party may make representations to him on the matters in dispute and shall give to the other party a copy of any representations so made;
- (b) may make to the referee representations on any representations made by the other party and shall give to the other party a copy of such representations.

(6) The referee may and, if so requested by either of the parties, shall hold a hearing as to the dispute; and in any such case—

- (a) the referee shall give notice to the parties of the day for the hearing (which may be adjourned from time to time, as the referee may decide);
- (b) the referee shall permit any barrister or solicitor to appear before him on behalf of either party to the dispute;
- (c) either party shall be entitled to adduce any lawful evidence,

but subject to the foregoing provisions of this paragraph the procedure at a hearing shall be determined by the referee.

(7) The referee shall notify his determination by notice in writing to both parties.

(8) The reasonable remuneration and expenses of the referee shall be payable by such one of the parties to the dispute, or by each of them in such proportions, as he may determine.

Supplementary requirements

39.—(1) In this article, “the duty period” means, in relation to a chargeable company, the levy period and any period after the levy period in which any levy or interest on unpaid levy payable by the company has not been paid.

(2) If a chargeable company is listed on, or if permission has been granted for any of its shares to be dealt in on the Unlisted Securities Market of, the London Stock Exchange, the n, forthwith on the publication of every half-yearly report on the activities of the company and its subsidiaries which is required by the rules of the London Stock Exchange to be prepared by the company within the duty period, the company shall deliver a copy of that report to the appropriate Minister.

(3) A chargeable company shall deliver to the appropriate Minister—

- (a) forthwith on copies being sent as provided by subsection (1) of section 238 of the Companies Act 1985(15), copies of—

(15) 1985 c. 6; section 238 was inserted by the Companies Act 1989 (c. 40), section 10.

- (i) the audited individual accounts of the company for each financial year of the company which is wholly or partly within the duty period; and (ii) if at the end of any such financial year the company is a parent company for the purposes of Part VII of that Act, the audited group accounts of the company for that year or, if the company is itself an effective subsidiary of another company, then the audited group accounts of that other company for that year (or, if that other company's financial year is not the same as the chargeable company's financial year, for the most recent financial year of that company); and
 - (b) at the time of publication or issue, copies of all other documents which during the duty period are sent by or on behalf of the company to ordinary shareholders of the company in their capacity as such.
- (4) If at any time it appears to the appropriate Minister that—
- (a) a member of the chargeable company's group; or
 - (b) an undertaking which (not being a member of that company's group) is, within the meaning given by section 258 of the Companies Act 1985⁽¹⁶⁾, a subsidiary undertaking of such a member;
- has information or any document—
- (i) which relates to any transaction during the levy period affecting relevant land or a relevant interest in land or to any liability or possible liability of the chargeable company to pay levy under section 17 of the 1991 Act; and
 - (ii) which has not previously been furnished or delivered to him;
- the Minister may by notice in writing require that person to furnish that information or, as the case may be, deliver that document to him; and that person shall promptly comply with the requirement.
- (5) A member of the chargeable company's group to which any relevant land or a relevant interest in land belongs shall keep records which are sufficient to show and explain its transactions relating to relevant land or any relevant interest in land and are such as—
- (a) to disclose with reasonable accuracy, at any time, the position of that member as respects such transactions; and
 - (b) to enable that company to ensure that every disposal statement furnished by it complies with the requirements of this Order.
- (6) Records which a member of the chargeable company's group is required by paragraph (5) above to keep shall be preserved until the end of the duty period.
- (7) For the purpose of enabling the appropriate Minister—
- (a) to cause to be carried out a valuation of relevant land or a relevant interest in land or an inspection of relevant land or of land in which such an interest subsists; or
 - (b) to cause to be carried out an inspection of the books or records of a member of the chargeable company's group relating to any relevant land or any relevant interest in land (including any chargeable disposal thereof, the computation of any gain accruing on such a disposal, or the assessment of levy on any such gain);
- a member of the chargeable company's group shall, if so requested by the appropriate Minister at any time in the duty period, give to any person authorised in writing by the Minister for that purpose reasonable access at any reasonable time—
- (i) to any relevant land of that person or to any land of that person in which a relevant interest subsists; or (as the case may require)

⁽¹⁶⁾ Section 258 was inserted by the Companies Act 1989, section 21(1).

(ii) to any books or records of that person relating to any relevant land or any relevant interest in land owned or formerly owned by that person (including as aforesaid).

(8) A member of the chargeable company's group shall allow any person so authorised to make copies of any entries in any such books or records so far as so relating.

(9) Where property of a relevant port authority transferred under section 2 of the 1991 Act to a chargeable company includes any document containing a valuation as at or before the transfer of any land or interest in land which is relevant land or a relevant interest in land or of any land in which a relevant interest subsists, or where a member of the chargeable company's group has any other document which relates in a material way to such a valuation, the n—

- (a) the chargeable company or the other member of its group shall retain until the end of the duty period that document, and the chargeable company and every transferred 51 per cent subsidiary of the chargeable company shall so retain all other documents and records transferred by the transfer or, in the case of such a subsidiary, belonging to it at the time of the transfer which relate in a material way to the valuation; and
- (b) if the valuation or the document containing it was prepared by a person other than the chargeable company itself, the company shall take reasonable steps to obtain from the person who prepared it copies of such documents relating in a material way to the valuation as the company does not itself have and shall retain any copies so obtained until the end of the duty period.

Service of Documents

40.—(1) Any notice or other document required or authorised by this Order to be given or furnished to any other person may be given or furnished—

- (a) by delivering it to that person;
- (b) by leaving it at his proper address;
- (c) by post by means of the recorded delivery service;
- (d) by fax;
- (e) by tested telex.

(2) Any such notice or other document required or authorised to be given or furnished to a member of the chargeable company's group being a body corporate shall be duly given or furnished if it is given or furnished to the secretary or clerk of that member.

(3) For the purposes of this article and of section 7 of the Interpretation Act 1978(17) in its application to this article, the proper address of any person to whom any such notice or other document is to be given or furnished shall, in the case of the secretary or clerk of a body corporate, be that of the registered or principal office of that body and, in any other case, be the last-known address of the person to whom the document is to be given or furnished: Provided that, where the person to whom the document is to be given or furnished has, in accordance with the arrangements agreed to in that behalf, provided an address for the giving or furnishing of the document, his proper address for the purposes of this paragraph shall be the address so provided.

Penalties

41.—(1) Where a chargeable company—

- (a) fails to furnish a disposal statement in accordance with paragraph (1) of article 36;

(17) 1978 c. 30.

- (b) furnishes a disposal statement which does not give the information required by paragraph (2) of article 36 and Schedule 3 to be given by it or fails to comply with a requirement of paragraph (3), (4) or (5) of that article in relation to a disposal statement;
- (c) fails to furnish any information or deliver any document which is required by article 39 to be furnished or delivered; or
- (d) fails to comply with any other requirement of article 39,

the company shall be liable—

- (i) to a penalty not exceeding £300; and (ii)

if the failure continues after a penalty is imposed under sub-paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under sub-paragraph (i) was imposed (but excluding any day for which a penalty under this sub-paragraph has already been imposed).

(2) Where a chargeable company fraudulently or negligently furnishes any incorrect information in response to a requirement under article 36 or 39, it shall be liable to a penalty not exceeding £3,000.

(3) Proceedings for a penalty under the article shall be instituted by the appropriate Minister before the High Court or, in Scotland, before the Court of Session as the Court of Exchequer in Scotland, and any penalty imposed by the court shall be paid to the appropriate Minister.

(4) Proceedings within paragraph (3) above may not be instituted later than six years after the date on which the penalty was incurred or began to be incurred.

(5) Any proceedings within paragraph (3) above instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947(18).

Signed by authority of the Secretary of State for Transport

15th January 1992

Patrick McLoughlin
Parliamentary Under Secretary of State,
Department of Transport