

SCHEDULES

SCHEDULE 4

Section 32.

RENTAL PAYMENTS

Advertising receipts

- 1
- (1) In the principal sections and this Schedule " advertising receipts" means, in relation to a programme contractor, and in relation to any period, the payments received or to be received by the programme contractor in consideration of the insertion of advertisements in programmes provided by the programme contractor and broadcast in the United Kingdom by the Authority in the period.
 - (2) If, in connection with the insertion of advertisements which are paid for by payments constituting advertising receipts, any payments are made to the programme contractor to meet any additional payments, those payments shall be regarded as made in consideration of the insertion of the advertisements in question.
 - (3) In the case of an advertisement inserted in a programme under arrangements made between a programme contractor and a person acting as advertising agent, the amount of any receipt by the programme contractor which represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall be the amount of the payment by the advertiser after the deduction of the commission, so, however, that if the amount so deducted exceeds 15 per cent, of the payment by the advertiser, the amount of the receipt shall be the amount of that payment less 15 per cent.
 - (4) Any contract shall provide that where for any insertion of an advertisement a programme contractor receives or is entitled to an entire consideration not solely referable to that insertion, the advertising receipts shall be calculated by reference to so much only of the consideration as is referable to that insertion according to an apportionment made in such manner as the contract may provide.
 - (5) In the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), the reference in sub-paragraph (1) to the insertion of advertisements in programmes provided by the programme contractor and broadcast in the United Kingdom by the Authority in the period in question includes (except in the case of a teletext contractor who is not a TV programme contractor) a reference to the insertion of programmes consisting of advertisements provided by the programme contractor for broadcasting on the Fourth Channel and so broadcast in that period.

Profits

- 2
- (1) The profits of a programme contractor for an accounting period shall be computed in accordance with this paragraph.
 - (2) The profits shall consist of the excess of relevant income over relevant expenditure.
 - (3) " Relevant income " means—

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- (a) income which accrues to the contractor in connection (directly or indirectly) with the provision of programmes by him, and
 - (b) where income accrues to a subsidiary of the contractor in connection (directly or indirectly) with the provision of programmes by the contractor such part of that income as, in the opinion of the Authority, should be attributed to the contractor as reflecting the contractor's financial interest in the subsidiary.
- (4) Without prejudice to the generality of sub-paragraph (3) "relevant income" includes all the contractor's advertising receipts for the accounting period in question.
- (5) "Relevant expenditure" means-
- (a) expenditure properly chargeable to revenue account which is incurred by the contractor in connection (directly or indirectly) with the provision of programmes by him, and
 - (b) where a subsidiary of the contractor incurs expenditure properly chargeable to revenue account in connection (directly or indirectly) with the provision of programmes by the contractor, such part of that expenditure as, in the opinion of the Authority, should be attributed to the contractor as reflecting the contractor's financial interest in the subsidiary.
- (6) In ascertaining relevant income or relevant expenditure no account shall be taken of—
- (a) interest on a loan, or
 - (b) so much of any receipt or expenditure as in the opinion of the Authority is attributable to the provision of programmes outside the United Kingdom.
- (7) Where relevant income consists of advertising receipts, the income shall be attributed to accounting periods in accordance with the provisions of paragraph 1 and the same principle should be followed in relating other items of income, and items of expenditure, to accounting periods.
- (8) In this paragraph "programmes" means—
- (a) in the application of this Schedule in relation to the additional payments mentioned in section 32(1)(6), television programmes, including (except in the case of a teletext contractor who is not a TV programme contractor and of sub-paragraph (6)(b)) advertisements or other programmes for broadcasting on the Fourth Channel;
 - (b) in the application of this Schedule in relation to the additional payments mentioned in section 32(2)(b), local sound broadcasts.

Computation of profits of programme contractors

- 3 (1) It shall be the duty of the Authority—
- (a) to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining relevant income and relevant expenditure for the purpose of computing under paragraph 2 the profits of a programme contractor for an accounting period; and
 - (b) in computing under that paragraph the profits of a programme contractor for any accounting period beginning on or after 13th November 1980, to take account of that statement (including any revision thereof which has taken effect before the end of that period).

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- (2) A statement under this paragraph may set out different principles for TV programme contractors, programme contractors for the provision of local sound broadcasting and teletext contractors respectively.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
 - (a) publish the statement drawn up under this paragraph and every revision of that statement; and
 - (b) transmit a copy of the statement, and of every revision of it, to the Secretary of State ;and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

Disputes

- 4 (1) For the purposes of the principal sections and this Schedule—
 - (a) the amount of any advertising receipts, or
 - (b) the amount of any profits, or
 - (c) the amount of any additional payments, or of an instalment of additional payments,shall, in the event of a disagreement between the Authority and the programme contractor, be the amount determined by the Authority.
- (2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration ; but nothing in this sub-paragraph shall prevent—
 - (a) the bringing of proceedings in the High Court, or the High Court in Northern Ireland, for an order of certiorari; or
 - (b) the exercise of the jurisdiction of the Court of Session to entertain an application for the reduction or suspension of the determination, or otherwise to consider the validity of the determination.

Accounting periods

- 5 (1) Subject to the provisions of this Schedule, each period for which a body corporate which is a programme contractor makes up a profit and loss account which is laid before the body corporate in general meeting shall be an accounting period, whether that period is a year or not.
- (2) If part of the said period for which a profit and loss account is made up falls before, and part after—
 - (a) the commencement of a relevant order under section 32, or
 - (b) the time when the programme contractor begins or ceases to provide programmes for broadcasting by the Authority,the two parts shall be treated as separate accounting periods.

In paragraph (a) " relevant order" means, in the application of this Schedule in relation to the additional payments mentioned in subsection (1)(b) or (as the case may be) subsection (2)(b) of section 32, an order having effect in relation to those payments.

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- (3) If sub-paragraph (2) would produce an accounting period of three months or less, that period shall be added on to the accounting period (if any) which precedes or succeeds it (and which does not fall to be divided from it under sub-paragraph (2)).
 - (4) A contract which varies another contract may modify the preceding provisions of this paragraph.
 - (5) Nothing in this paragraph shall create an accounting period which is a period during which the programme contractor is not providing programmes for broadcasting by the Authority.
 - (6) In the application of this Schedule in relation to the additional payments mentioned in section 32(2)(b)—
 - (a) sub-paragraph (2) of this paragraph shall have effect as if there were inserted after sub-paragraph (2) (a)—
 - “(aa) the commencement of section 26 of the Broadcasting Act 1980, or”; and
 - (b) nothing in this paragraph shall create an accounting period falling before the commencement of the said section 26.
- 6 If the programme contractor is not a body corporate the contractor's accounting periods shall be such as the Authority may direct, or as may be provided in the contract.

Information

- 7 (1) Every contract shall impose on the contractor such requirements with respect to the furnishing of information to the Authority as appear to the Authority, after consultation with the Secretary of State, to be requisite—
 - (a) for enabling the Authority to perform their functions under the provisions of the principal sections and this Schedule, and
 - (b) for enabling the Authority to furnish to the Secretary of State such information as he may require for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.
 - (2) It shall be the duty of the Authority to furnish to the Secretary of State such information (whether obtained from contractors or otherwise) as is in their possession and is required by the Secretary of State for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.
- 8 It shall be the duty of the Authority in framing any contract to include terms ensuring that the Authority will have the right to inspect all accounts and records—
- (a) of the programme contractor, and
 - (b) of any subsidiary of the programme contractor,
- for the purpose of discharging their functions under the principal sections and this Schedule.

Interpretation

- 9 (1) In this Schedule, and in the principal sections, except where the context otherwise requires—

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"accounting period" shall be construed in accordance with paragraph 5 ;
" additional payments " and " contract "—

- (a) in the application of this Schedule and the principal sections in relation to the additional payments mentioned in section 32(1)(b), mean respectively additional payments payable by virtue of that paragraph and a contract between the Authority and a programme contractor under which television programmes are to be provided by the programme contractor, and
- (b) in their application in relation to the additional payments mentioned in section 32(2)(6), mean respectively additional payments payable by virtue of that paragraph and a contract between the Authority and a programme contractor under which local sound broadcasts are to be provided by the programme contractor;

"subsidiary", in relation to any person, means a company in which that person holds, directly or indirectly, 10 per cent, or more of the equity share capital.

- (2) In this Schedule " payment" includes any valuable consideration, and references to receipts and expenditure shall be construed accordingly.