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## SCHEDULES

### SCHEDULE 16

#### APPORTIONMENT OF INCOME ETC. OF CLOSE COMPANIES

##### PART II

##### PROVISIONS FOR DETERMINING RELEVANT INCOME AND DISTRIBUTIONS, ETC

###### *Determination of "relevant income "*

- 8 (1) Subject to the provisions of this paragraph and of paragraphs 9 and 13 below, the relevant income of a company for an accounting period is—
- (a) in the case of a company which is a trading company or a member of a trading group, so much of its distributable income for that period as can be distributed without prejudice to the requirements of the company's business;
  - (b) in the case of a company not within paragraph (a) above whose distributable income for that period consists of or includes estate or trading income—
    - (i) so much of the estate or trading income as can be distributed without prejudice to the requirements of the company's business so far as concerned with the activities or assets giving rise to estate or trading income; and
    - (ii) its distributable income, if any, other than estate or trading income;
  - (c) in the case of any other company, its distributable income for that period.
- (2) In arriving at the relevant income for any accounting period—
- (a) where under sub-paragraph (1) above regard is to be had to the requirements of a company's business, regard shall be had not only to the current requirements of the business but also to such other requirements as may be necessary or advisable for the maintenance and development of that business but, for this purpose, the provisions of paragraph 12 below shall apply ;
  - (b) the amount of the estate or trading income shall be taken as the amount included in respect of it in the distributable income.

###### *Maximum amount to be taken as "relevant income "*

- 9 (1) Subject to paragraph 13 below, the relevant income of a company shall in no case be taken to exceed the company's distributable investment income for the accounting period plus 50 per cent. of the estate or trading income for the period.
- (2) In the application of sub-paragraph (1) above to a trading company, the estate or trading income for an accounting period, if it is less than the relevant maximum amount shall be treated as reduced by one half of the amount required to make it up to that relevant maximum amount or, if it is less than the relevant minimum amount, shall be disregarded.

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- (3) The relevant maximum and minimum amounts referred to above shall be determined as follows—
- (a) where the company has no associated company in the accounting period, those amounts are £15,000 and £5,000 respectively ;
  - (b) where the company has one or more associated companies in the accounting period, the relevant maximum amount is £15,000 divided by one plus the number of those associated companies and the relevant minimum amount is £5,000 divided by one plus the number of those associated companies.
- (4) In applying sub-paragraphs (2) and (3) above to any accounting period of a trading company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded; and for the purposes of this paragraph a company is to be treated as an " associated company " of another at a given time if at that time one Of the two has control of the other or both are under the control of the same person or persons.
- (5) In determining how many associated companies a trading company has in an accounting period or whether a trading company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.
- (6) For an accounting period of less than twelve months the relevant maximum and minimum amounts determined in accordance with the foregoing provisions of this paragraph shall be proportionately reduced.

*Distributions to be taken into account, and meaning of " distributable income ", etc.*

- 10 (1) For the purposes of this Schedule the distributions of a company for an accounting period shall be taken to consist of—
- (a) any dividends which are declared in respect of the period and are paid during the period or within a reasonable time thereafter, and
  - (b) all distributions made in the period except dividends which, in relation to any previous period, would fall under paragraph (a) above or section 291(1) (a) of the Taxes Act:

Provided that, where a period of account is not an accounting period, dividends which, if it were an accounting period, would be treated under paragraph (a) above as distributions for that accounting period shall be apportioned to any accounting period or part of an accounting period falling within the period of account in proportion to the distributable income of each such period or part.

- (2) For the purposes of this Schedule, the " distributable income " of a company for an accounting period shall be the amount of its distributable profits for the period exclusive of the part attributable to chargeable gains, and, for the purposes of this sub-paragraph—
- (a) the " distributable profits " of a company for an accounting period shall be the aggregate of the following amounts, that is to say—
    - (i) the amount of any profits on which corporation tax falls finally to be borne, less the amount of that tax,

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- (ii) an amount equal to the qualifying distributions comprised in any franked investment income, other than franked investment income against which relief is given under section 254 or 255 of the Taxes Act, and
    - (iii) an amount equal to any group income,
  - (b) the part of a company's distributable profits attributable to chargeable gains shall be taken to be the amount of the chargeable gains on which corporation tax is finally borne less the amount of that tax, and
  - (c) the amount on which corporation tax falls finally to be borne (but not the amount of that tax) shall be computed as if section 254 of the Taxes Act did not include subsection (5) or subsection (6) of that section (and as if section 255 of that Act did not apply the said subsection (5)).
- (3) For the purposes of this Schedule the " distributable investment income " of a company for an accounting period shall be the amount of the distributable income, exclusive of the part attributable to estate or trading income, and less whichever is the smaller of—
- (a) 10 per cent. of the estate or trading income, and
  - (b) £500 or, if the accounting period is of less than twelve months, a proportionately reduced amount.
- (4) Subject to sub-paragraph (5) below, for the purposes of this Schedule, the " estate or trading income " of a company means—
- (a) income which is not investment income for the purposes of paragraph 11(1) below, and
  - (b) income which is chargeable to tax under Schedule A or Schedule B, and income (other than yearly or other interest) which is chargeable to tax under Schedule D, and which arises from the ownership or occupation of land (including any interest in or right over land) or from the letting furnished of any building or part of a building.
- (5) Where the following conditions are satisfied with respect to a close company, that is to say—
- (a) that its activities consist wholly or mainly of the carrying on of a trade ; and
  - (b) that that trade consists wholly or mainly of one or more of the following, that is to say, life assurance business (within the meaning of section 323(2) of the Taxes Act), insurance business of any other class, banking, money lending, financing of hire-purchase or similar transactions, or dealing in securities,
- its income incidental to that trade shall (so far as not otherwise falling within the definition of estate or trading income in sub-paragraph (4) above) be treated as estate or trading income in arriving, under paragraph 8 above, at the relevant income for the purposes of paragraph 1 above.
- (6) For the purposes of sub-paragraph (5) above income of a company is incidental to its trade if, and only if—
- (a) it is derived from investments (other than investments in a 51 per cent. subsidiary) or is interest on a debt; and
  - (b) any profit on the sale of the investments would be a trading receipt, and the debt, if proved to be a bad debt, would be allowed as a deduction, in computing the company's trading income for the purposes of corporation tax.

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- (7) The amount for part of an accounting period of any description of income referred to in sub-paragraphs (2) to (5) above shall be a proportionate part of the amount for the whole period.
- (8) In determining the amount for any period of any description of income referred to in sub-paragraphs (2) to (5) above, any deduction from the company's profits for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description shall be treated as made—
- (a) first from the company's income charged to corporation tax other than estate or trading income ;
  - (b) secondly, so far as it cannot be made under (a) above, from the company's estate or trading income so charged; and
  - (c) thirdly, so far as it cannot be made under (a) or (b) above, from the amount included in the company's profits in respect of chargeable gains.

*Meaning of " trading company " and " member of a trading group "*

- 11 (1) For the purposes of this Schedule, a "trading company" is any company which exists wholly or mainly for the purpose of carrying on a trade, and any other company whose income does not consist wholly or mainly of investment income, that is to say, income, which, if the company were an individual, would not be earned income ; but for this purpose any amount which is apportioned to a company under paragraph 1 above shall be deemed to be income of the company and to be investment income.
- (2) For the purposes of this Schedule, a company is to be treated as a " member of a trading group " if, but only if—
- (a) it exists wholly or mainly for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade, or
  - (b) it is under the control of another company resident in the United Kingdom and not itself under the control of a third company, and it exists wholly or mainly for the purpose of a trade or trades carried on by that other company or by a group which, consisting of that other company and a company or companies also under its control and resident in the United Kingdom, exists wholly or mainly for the purpose of carrying on the said trade or trades:

Provided that a company shall not be treated as a member of a trading group by reason of any company having the control of another if that control is exercised through a company which is not resident in the United Kingdom or through a company whose control depends on a holding a profit on the sale of which would be treated as a trading receipt of the company.

*Requirements of the company's business*

- 12 (1) For the purposes of paragraph 8(2) above there shall be regarded as income available for distribution and not as having been applied, or as being applicable, to the current requirements of a company's business, or to such other requirements as may be necessary or advisable for the maintenance and development of that business—
- (a) any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before 4th August 1914—

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- (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company, or
    - (ii) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor, or
    - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property, or
    - (iv) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred otherwise than for adequate consideration, and
  - (b) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction, and
  - (c) in the case of a company which is neither a trading company nor a member of a trading group, any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.
- (2) For the purposes of sub-paragraph (1)(a)(iv) above, share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—
- (a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon), or
  - (b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in paragraph (a) of this sub-paragraph or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration.
- (3) References in the foregoing provisions of this paragraph to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

#### *Cessations and liquidations*

- 13 (1) Where a close company ceases to carry on the trade, or the business of holding investments, in which its activities wholly or mainly consisted, the relevant income of the company for any accounting period in which that event occurs, or which ends in or within the twelve months ending with that event, shall be calculated as if—
- (a) paragraph 8(1)(a) and (b)(i) above referred respectively to the whole of the company's distributable income and to the whole of the estate or trading income and not to so much thereof as can be distributed without prejudice to the requirements there mentioned, and paragraphs 8(2)(a) and 12 above were omitted ;
  - (b) in paragraph 9(1) above the words " 50 per cent. of " were omitted.

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(2) Where sub-paragraph (1) above applies for an accounting period and the company could not make distributions without prejudice to the claims of creditors (excluding those mentioned in sub-paragraph (3) below), the excess mentioned in paragraph 1(2) above shall be disregarded to the extent to which the company could not make distributions up to the amount of its relevant income without prejudice to those claims.

(3) The creditors to be excluded for the purposes of sub-paragraph (2) above are all participators and associates of participators, and all creditors in respect of debts originally created in favour of or due to a person who was then a participator or associate of a participator:

Provided that a creditor is not to be excluded in respect of any debt which either—

- (a) arose in the ordinary course of the company's trade or the company's business of holding investments and also in the ordinary course of a trade or profession of the creditor or, as the case may be, of the participator or associate who was the original creditor, or
- (b) is a debt for remuneration chargeable to income tax under Schedule E, or
- (c) is a debt for any rent or other payment due for the use of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), and not representing more than a reasonable commercial consideration for that use.

(4) Where sub-paragraph (1) above applies for any accounting period, there shall be disregarded for the purposes of any apportionment made by virtue of paragraph 2 above so much of the relevant income of the company for that period as is equal to the amount which would be disregarded under sub-paragraph (2) above.

(5) Where a resolution is passed, or an order is made, for the winding up of a close company, or where any other act is done for a like purpose in the case of a winding up otherwise than under the Companies Act 1948, sub-paragraphs (1) to (4) above shall apply for any accounting period ending in or with the twelve months ending with the passing of the resolution or other event, or for any later accounting period, as they apply, in a case falling within sub-paragraph (1) above, for an accounting period in which a close company ceases to carry on a trade.

*Legal restrictions on distributions*

14 (1) Where a company is subject to any restriction imposed by law as regards the making of distributions, the excess mentioned in paragraph 1(2) above shall be disregarded to the extent to which the company could not make distributions up to the amount of its relevant income without contravening that restriction.

(2) Except where paragraph 13(1) above applies, there shall be disregarded for the purposes of any apportionment made by virtue of paragraph 2 above so much of the relevant income of the company as is equal to any amount which would be disregarded under sub-paragraph (1) above.