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## SCHEDULES

### SCHEDULE 23

#### TAXATION OF COMPANIES AND COMPANY DISTRIBUTIONS: TRANSITIONAL PROVISIONS

##### PART I

###### ADVANCE CORPORATION TAX AVAILABLE FOR SET-OFF IN TRANSITIONAL PERIOD

###### *Determination of advance corporation tax for straddling accounting periods*

- 1 (1) Subject to paragraph 7 below, this paragraph applies where a company has an accounting period (in this Schedule referred to as " a straddling period ") which begins before 6th April 1973 and ends after 5th April 1973.
- (2) Section 85 of this Act shall have effect in relation to the straddling period as if the company, instead of having paid the advance corporation tax, if any, actually paid by it in respect of distributions made in the part of that period following 5th April 1973, had paid the advance corporation tax that would have been payable (apart from section 89 of this Act) in respect of a distribution made at the end of that part of an amount which, together with the advance corporation tax so payable in respect of it, is equal to such portion of the distributions made in the whole straddling period as would be attributed to that part on an apportionment of those distributions between that part of the straddling period and the remainder.
- (3) For the purposes of sub-paragraph (2) above the distributions made in a straddling period shall be taken to consist of—
- (a) the excess of the distributions made in that period before 6th April 1973 over the franked investment income received in that period before that date (or, if smaller than that excess, the excess of the distributions made in the year 1972-73 over the franked investment income received in that year); and
  - (b) the excess of the franked payments made in that period after 5th April 1973 over the franked investment income received in that period after that date.

###### *Restriction on advance corporation tax available for set-off in transitional period*

- 2 (1) Subject to paragraph 6(1) below, this paragraph applies to any company which does not satisfy the following conditions, that is to say—
- (a) that it was resident in the United Kingdom and carried on a trade or business throughout the year 1971-72 and is so resident and carries on a trade or business throughout the year 1972-73 ;
  - (b) that the excess of the distributions made by the company in the year 1972-73 over the franked investment income received in that year is not less than the corresponding excess for the year 1971-72 ; and
  - (c) that it was not at any time in its base period after 5th April 1972 a 51 per cent. subsidiary of a company resident in the United Kingdom.

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- (2) Subject to sub-paragraph (8) below and to the subsequent provisions of this Schedule, section 85 of this Act shall have effect in relation to the relevant accounting period in a distribution period, or, if more than one, all the relevant accounting periods in a distribution period as if the company, instead of having paid the advance corporation tax, if any, actually paid by it in respect of distributions made in that relevant accounting period or those relevant accounting periods, had paid advance corporation tax in respect of distributions made in that relevant accounting period or those relevant accounting periods of an amount which, in the aggregate, is equal to whichever of the following is the less, that is to say—
- (a) the advance corporation tax, if any, which the company is treated under paragraph 1 above or 7 below as having paid for any accounting period to which that paragraph applies which, or part of which, is a relevant accounting period included in the distribution period, plus the advance corporation tax, if any, actually paid by the company (and not repaid) in respect of distributions made in any other relevant accounting period in the distribution period ; or
  - (b) the advance corporation tax that would have been payable (apart from section 89 of this Act) in respect of a distribution made at the end of the distribution period which, together with the advance corporation tax so payable in respect of it, is equal to—
    - (i) the profit standard for that distribution period; or
    - (ii) the distribution standard for that distribution period, whichever is the greater.
- (3) In this Schedule "the profit standard", in relation to any distribution period, means an amount equal to 50 per cent. of the income, if any, of the company charged to corporation tax for that period (as defined in section 85(6) of this Act).
- (4) In this Schedule " the distribution standard " means an amount equal to the distributions, if any, made by the company in the time beginning with its base date and ending with the last day of the distribution period reduced by multiplying by the fraction
- $$\frac{A}{B}$$
- where A is the number of months or parts of months in the distribution period and B is the number of months or parts of months in the base period up to the end of the distribution period.
- (5) For the purposes of sub-paragraph (4) above the distributions made by the company in the time mentioned in that sub-paragraph shall be taken to consist of the aggregate of—
- (a) the excess of the distributions made in that time before 6th April 1973 over the franked investment income received in that time before that date (or, if smaller than that excess, the aggregate of the excess of the distributions made in the year 1971-72 over the franked investment income received in that year and of the corresponding excess for the year 1972-73) ; and
  - (b) the excess of the franked payments made in each relevant accounting period falling within that time over the franked investment income received in that period.
- (6) Subject to sub-paragraph (7) and paragraphs 3 and 4 below, in this Schedule—
- " distribution period " means any of the following, that is to say, the period beginning with 6th April 1973 and ending with the first relevant accounting

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period in the base period, the period beginning with the said 6th April and ending with the second relevant accounting period in the base period and similarly for each period beginning with the said 6th April and ending with a later relevant accounting period in the base period;

" relevant accounting period " means any accounting period or part of an accounting period beginning after 5th April 1973 and ending on or before the expiration of the base period;

" base period " means the period beginning with the company's base date and ending on the last day of the latest accounting period beginning within four years from the base date ;

" base date " means the day following the end of the company's accounting period or latest accounting period ending in the year 1971-72.

(7) If, in the case of any company, accounts for no period ending in the year 1971-72 have been adopted before 21st March 1972, then—

- (a) if a terminal date or dates for an accounting period or accounting periods ending in that year has or have been decided, or fixed by a decision, before the said 21st March and there is sufficient evidence of the decision in some document in existence before the said 21st March, the base date of the company shall be the day following that terminal date or the last of those terminal dates, as the case may be;
- (b) where paragraph (a) above does not apply, the base date of the company shall be the day following the anniversary in the year 1971-72 of the end of the company's latest accounting period or, if there is no such accounting period, of the date on which the company commenced business or came within the charge to corporation tax.

(8) Sub-paragraph (2) above does not apply to a company if in the case of that company the relevant amount for any distribution period does not exceed—

- (a) £1,000 multiplied by the number of years or parts of years in the distribution period ; or
- (b) the income charged to corporation tax (as defined in section 85(6) of this Act) for that period, whichever is the less ;

and for the purposes of this sub-paragraph the relevant amount in relation to a company is—

- (i) in the case of a distribution period that includes all or any part of an accounting period to which paragraph 1 above or 7 below applies, an amount equal to the distribution on which the advance corporation tax mentioned in sub-paragraph (2)(a) above would be calculated (if that sub-paragraph were applied to the company) plus that advance corporation tax ;
- (ii) in the case of any other distribution period, the excess of the franked payments made in that period over the franked investment income received in that period.

#### *New businesses*

- 3 (1) Where the first accounting period of a company began in the year 1971-72 the base date of the company shall be the first day of that accounting period.
- (2) Where the first accounting period of a company begins in the year 1972-73—
  - (a) the base date of the company shall be the first day of that accounting period ;

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- (b) the base period of the company shall be the period beginning with that day and ending on the last day of the latest accounting period beginning within three years from the base date; and
  - (c) the distribution standard shall not apply to the company.
- (3) Where the first accounting period of a company begins after 5th April 1973—
- (a) the base date of the company shall be the first day of that accounting period;
  - (b) the base period of the company shall be the period beginning with the base date and ending on—
    - (i) the last day of the latest accounting period beginning within two years from the base date; or
    - (ii) the last day of the latest accounting period beginning before 5th April 1976,
 whichever is the earlier ;
  - (c) any distribution period of the company shall begin with the base date; and
  - (d) the distribution standard shall not apply to the company.
- (4) Where a company which has ceased to be a chargeable company (that is to say, a company within the charge to corporation tax or resident in the United Kingdom) at any time before 6th April 1973 again becomes such a company before that date, its first accounting period for the purposes of this paragraph shall be taken to be the accounting period beginning on the occasion (or last occasion) on which it became such a company before that date; and where a company which has ceased to be a chargeable company at any time does not again become such a company until after 5th April 1973 its first accounting period for the purposes of this paragraph shall be taken to be the accounting period beginning on the occasion (or the first occasion) on which it becomes such a company after that date.

#### *Cessation of business*

- 4 (1) Where after 5th April 1973 a company ceases to be, and does not again before the expiration of the period mentioned in sub-paragraph (2) below come, within the charge to corporation tax, its base period shall end on the day on which it ceases to be within the charge to corporation tax.
- (2) The period mentioned above is—
- (a) in the case of a company with a base date in the year 1971-72, four years from the base date ;
  - (b) in the case of a company with a base date in the year 1972-73, three years from the base date ;
  - (c) in the case of a company with a base date in the year 1973-74, the period ending 5th April 1976.

#### *Close companies*

- 5 (1) Where a company is a close company for all the accounting periods in its base period, then, if the effect would be to increase the amount of advance corporation tax which the company is treated as having paid in respect of any distribution period, paragraph 2(2) above shall apply to the company as if for paragraph (b) there were substituted—
- “(b) the advance corporation tax that would have been payable if the company had made in each accounting period or part of an accounting period in the distribution period a distribution equal

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to the amount to be taken in accordance with paragraph 9 of Schedule 16 to this Act as the company's relevant income for that accounting period or part of an accounting period”.

- (2) For the purposes of the paragraph (b) mentioned above, the amount to be taken as a company's relevant income for a part of an accounting period shall be arrived at by apportioning the relevant income for the whole of that accounting period between that part and the remainder.
- (3) If a company makes a claim in that behalf and shows that the distributions made by it in an accounting period or part of an accounting period in the distribution period were made for the purpose—
  - (a) of avoiding an apportionment under the said Schedule 16 in respect of relevant income (as defined in paragraph 8 of that Schedule) of an earlier accounting period to which that Schedule applies ; or
  - (b) of avoiding a shortfall (as defined in section 290 of the Taxes Act) for an accounting period to which that section applies,

the paragraph (b) mentioned in sub-paragraph (1) above shall have effect in relation to the accounting period or part in which the distributions were made as if instead of referring to the amount to be taken as the company's relevant income it referred to the amount of those distributions.

*Authorised unit trusts and investment trusts*

- 6 (1) Paragraph 2 above shall not apply to any authorised unit trust.
- (2) Where a company is an investment trust for all the accounting periods in its base period, then, if the effect would be to increase the amount of advance corporation tax which the company is treated as having paid in respect of any distribution period and the company makes a claim in that behalf, paragraph 2(2) above shall apply to the company as if for paragraph (b) there were substituted—
  - “(b) the advance corporation tax that would have been payable (having regard to section 89 of this Act) if the distributions made by the company in the relevant accounting period or, if more than one, each relevant accounting period in the distribution period had not exceeded the distributions that it was necessary for the company to make in that period in order to comply with subsection (1)(e) of section 359 of the Taxes Act (limit on income that may be retained by investment trust as condition for approval under that section)”.
- (3) In relation to a relevant accounting period which is a fraction of a straddling period, the advance corporation tax to be taken into account for the purposes of the paragraph (b) mentioned above shall be a corresponding fraction of the advance corporation tax that would have been payable (having regard to section 89 of this Act) if the distributions made by the company in the straddling period had all been made at the end of that period and had not exceeded the distributions that it was necessary for the company to make in the straddling period in order to comply with the said subsection (1)(e).
- (4) In this paragraph " authorised unit trust" has the meaning given in section 358 of the Taxes Act and, subject to section 93(6) of this Act, " investment trust" has the meaning given in section 359 of that Act.

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*Modification of paragraph 1(2) and (3) in case of change of accounting date*

- 7 (1) This paragraph applies instead of paragraph 1(2) and (3) above where a company has a straddling period—
- (a) which does not begin on the anniversary of the company's base date (as defined in the foregoing provisions of this Schedule); or
  - (b) which does not run for twelve months from that anniversary or, in the case of a company within paragraph 3(2) above, from its base date.
- (2) In this paragraph—
- " notional straddling period " means the period beginning on the anniversary in the year 1972-73 of the company's base date, or in the case of a company within paragraph 3(2) above on its base date, and ending after twelve months or at the end of the base period (as defined in the foregoing provisions of this Schedule) whichever is the earlier;
- " the second part of the notional straddling period " means the part of it beginning with 6th April 1973 ;
- " the distributions made in the notional straddling period " shall, subject to sub-paragraph (5) below, be determined in accordance with paragraph 1(3) above as for an actual straddling period.
- (3) Section 85 of this Act shall have effect in relation to any accounting period of the company which includes the whole of the second part of the notional straddling period as if the company, instead of having paid the advance corporation tax, if any, actually paid by it in respect of distributions made in that accounting period, had paid—
- (a) the advance corporation tax that would have been payable (apart from section 89 of this Act) in respect of a distribution made at the end of the second part of the notional straddling period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to such portion of the distributions made in the whole notional straddling period as would be attributed to the second part of that period on an apportionment of those distributions between that part and the remainder; and
  - (b) the advance corporation tax, if any, paid by the company (and not repaid) in respect of the excess of franked payments made over the franked investment income received in the accounting period less the advance corporation tax, if any, paid by the company (and not repaid) in respect of any such excess as is by virtue of paragraph 1(3) above included in the distributions made in the notional straddling period.
- (4) Sub-paragraph (3) above shall have effect in relation to any accounting period of the company which includes a fraction of the second part of the notional straddling period as it applies in relation to an accounting period which includes the whole of that part but as if the reference in paragraph (a) to a portion of the distributions made in the whole of the notional period were a reference to a corresponding fraction of that portion.
- (5) The distributions to be included by virtue of paragraph 1(3)(b) above in the distributions made in a notional straddling period shall not exceed—
- (a) in relation to an accounting period which includes the whole of the second part of the notional straddling period, the excess of the franked payments made in that accounting period after 5th April 1973 over the franked investment income received in that period after that date;

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- (b) in relation to an accounting period which includes a fraction of the second part of the notional straddling period, the excess of the franked payments made in that accounting period after that date over the franked investment income received in that period after that date plus the excess of the franked payments made after that date in each other accounting period which includes a fraction of the second part of the notional straddling period over the franked investment income received after that date in that other accounting period.

#### *Change of ownership of company*

- 8 (1) Sub-paragraphs (2) and (3) below apply if—
- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or
  - (b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.
- (2) Where the change of ownership occurs in a straddling period or in a notional straddling period as defined in paragraph 7 above, the advance corporation tax which the company is treated under paragraph 1(2) or 7(3)(a) above as having paid shall not exceed the advance corporation tax actually paid by the company (and not repaid) in respect of distributions made in the straddling period or notional straddling period.
- (3) Where the change of ownership occurs after 5th April 1972—
- (a) paragraph 2 above shall apply to the company even though it satisfies the conditions mentioned in sub-paragraph (1) of that paragraph; and
  - (b) the distribution standard shall not apply to the company.
- (4) Where after 5th April 1972 there is a change in the ownership of, or a major change in the nature or conduct of a trade or business carried on by, a company, paragraph 2 above shall apply to the company even though it satisfies the conditions mentioned in sub-paragraph (1) of that paragraph.
- (5) Subsections (4), (5) and (7) of section 101 of this Act shall, so far as applicable, have effect in relation to this paragraph as they have effect in relation to that section.

#### *Groups of companies*

- 9 Regard shall be had to the provisions of this Schedule in determining whether a company has surplus advance corporation tax of which it can surrender the benefit under section 92 of this Act and the amount of any such surplus advance corporation tax, but those provisions shall not affect any advance corporation tax which a company is treated by virtue of that section as having paid in consequence of the surrender to it of any such surplus by another company.

#### *Bonus issues*

- 10 (1) For the purposes of this Schedule there shall be disregarded any distribution if, by virtue of the following provisions of this paragraph, section 85 of this Act does not

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apply to the advance corporation tax payable in respect of it; and, subject to sub-paragraph (3) below, references in this Schedule to advance corporation tax paid by a company do not include references to advance corporation tax to which by virtue of those provisions the said section 85 does not apply.

- (2) Subject to sub-paragraph (4) below, section 85 of this Act shall not apply to advance corporation tax payable by a company in respect of any amount treated as a distribution—
- (a) by virtue of section 234 of the Taxes Act (bonus issues following repayment of share capital) where the repayment of share capital mentioned in subsection (1)(a) of that section has taken place before the passing of this Act or takes place thereafter but before 6th April 1973 ;
  - (b) by virtue of subsection (1) of section 235 of that Act (matters not to be treated as repayments of share capital) where the issue mentioned in paragraph (a) of that subsection has taken place before the passing of this Act or takes place thereafter but before 6th April 1973 ;
  - (c) by virtue of paragraph 3(3) of Schedule 22 to this Act where the security there mentioned was issued before the passing of this Act or is issued thereafter but before 6th April 1973.
- (3) Subject to sub-paragraph (4) below, the said section 85 shall not apply to advance corporation tax payable by a company in respect of any amount treated as a distribution—
- (a) by virtue of the said section 234 where the repayment of share capital mentioned in subsection (1)(a) of that section takes place in a distribution period ;
  - (b) by virtue of subsection (1) of the said section 235 where the issue mentioned in paragraph (a) of that subsection takes place in a distribution period ;
  - (c) by virtue of paragraph 3(3) of the said Schedule 22 where the security there mentioned was issued in a distribution period,
- except to the extent, if any, to which the said section 85 would have applied to that advance corporation tax if it had been included for that distribution period in the advance corporation tax mentioned in paragraph 2(2)(a) above.
- (4) Sub-paragraphs (2) and (3) above do not apply where the distribution on which the advance corporation tax is payable is made more than ten years after the repayment of share capital mentioned in the said section 234(1)(a), the issue mentioned in the said section 235(1)(a) or the issue mentioned in the said paragraph 3(3), as the case may be.
- (5) This paragraph shall be construed as if it were included in Part X of the Taxes Act.

#### *Supplementary*

- 11 (1) For the purposes of this Schedule there shall be disregarded any distribution consisting of a dividend paid without deduction of income tax by virtue of an election under section 256 of the Taxes Act as originally enacted or a dividend to which section 84 of this Act does not apply by virtue of an election under the said section 256 as amended by this Act.
- (2) Where a company has made a claim or claims under section 254 or 255 of the Taxes Act for an accounting period ending in the year 1972-73, or for an accounting period ending after 6th April 1973 but in a distribution period, the franked investment



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income to be taken into account under this Schedule shall be calculated as if that claim or those claims had not been made, and the advance corporation tax referred to in paragraph 2(2)(a) and 7(3)(b) above as having been paid by a company (and not repaid) shall be calculated accordingly.

- (3) Where in consequence of the application of this Schedule to any distribution period a company has been denied the benefit of any advance corporation tax and in consequence of the subsequent application of this Schedule to another distribution period it appears that the company ought not have been denied the benefit of that tax, relief shall be given by discharge or repayment of tax.
- (4) In this Schedule references to franked investment income received in any year or period include references to franked investment income treated as received in that year or period; and for the purposes of paragraph 1(3)(b) above in its application to a notional straddling period as defined in paragraph 7 above, franked investment income which is treated by virtue of section 89(3) of this Act as having been received in any accounting period shall be treated as received on the first day of that period.
- (5) In this Schedule references to franked investment income do not include references to franked investment income which by virtue of section 89(5) of this Act cannot be used to frank distributions of a company.