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## SCHEDULES

### SCHEDULE 12

Sections 99 and 119.

#### TRANSFERS WITHIN THREE YEARS BEFORE DEATH

##### *Interpretation*

- 1 In this Schedule—
- " close company " has the same meaning as in section 39 of the Finance Act 1975 ;
  - " interest in land " does not include any estate, interest or right by way of mortgage or other security ;
  - " shares " includes securities ;
  - " the principal section " means section 99 of this Act;
- and expressions used in the principal section have the same meanings as in that section.

##### *Shares—capital receipts*

- 2 (1) If the transferred property consists of shares and at any time before the relevant date the transferee or his spouse becomes entitled to a capital payment in respect of them, then for the purposes of the principal section the market value of the transferred property on the relevant date shall (except where apart from this paragraph it reflects a right to the payment) be taken to be increased by an amount equal to the payment.
- (2) If at any time before the relevant date the transferee or his spouse receives or becomes entitled to receive in respect of the transferred property a provisional allotment of shares and disposes of the rights, the amount of the consideration for the disposal shall be treated for the purposes of this paragraph as a capital payment in respect of the transferred property.
- (3) In this paragraph "capital payment" means any money or money's worth which does not constitute income for the purposes of income tax.

##### *Payments of calls*

- 3 If the transferred property consists of shares and at any time before the relevant date the transferee or his spouse becomes liable to make a payment in pursuance of a call in respect of them, then for the purposes of the principal section the market value of the transferred property on the relevant date shall (except where apart from this paragraph it reflects the liability) be taken to be reduced by an amount equal to the payment.

##### *Reorganisation of share capital etc.*

- 4 (1) This paragraph has effect where the transferred property consists of shares in relation to which there occurs before the relevant date a transaction to which paragraph 4 of

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Schedule 7 to the Finance Act 1965 applies or would apply but for section 53 of this Act, that is to say—

- (a) a reorganisation, within the meaning of that paragraph, or reduction of the share capital of a company; or
- (b) the conversion of securities within the meaning of paragraph 5 of that Schedule ; or
- (c) the issue by a company of shares in exchange for shares in another company in such circumstances that paragraph 6 of that Schedule applies ; or
- (d) the issue by a company of shares under such an arrangement as is referred to in paragraph 7 of that Schedule ;

or any transaction relating to a unit trust scheme which corresponds to any of the transactions referred to in paragraphs (a) to (d) above and to which paragraph 4 of that Schedule applies by virtue of section 45(8) of the Finance Act 1965.

- (2) In the following provisions of this paragraph "the original shares " and " the new holding " shall be construed in accordance with the said paragraph 4.
- (3) Where this paragraph has effect the original shares and the new holding shall be treated as the same property for the purposes of the principal section and this Schedule.
- (4) Where this paragraph has effect and, as part of or in connection with the transaction concerned, the transferee or his spouse becomes liable to give any consideration for the new holding or any part of it, then for the purposes of the principal section the market value of the transferred property on the relevant date shall (except where apart from this paragraph it reflects the liability) be taken to be reduced by an amount equal to that consideration.
- (5) For the purposes of sub-paragraph (4) above, there shall not be treated as consideration given for the new holding or any part of it—
  - (a) any surrender, cancellation or other alteration of any of the original shares or of the rights attached thereto, or
  - (b) any consideration consisting of any application, in paying up the new holding or any part of it, of assets of the company concerned or of any dividend or other distribution declared out of those assets but not made.

*Transfers of value etc. by close companies*

- 5 (1) This paragraph applies where the transferred property consists of shares in a close company and at any time after the chargeable transfer and before the relevant date there is a relevant transaction in relation to the shares ; and for this purpose " relevant transaction " means a transaction which is—
  - (a) the making of a transfer of value by the company, or
  - (b) an alteration in so much of the company's share or loan capital as does not consist of shares quoted on a recognised stock exchange or an alteration in any rights attaching to shares in or debentures of the company which are not so quoted,

but which does not give rise to an adjustment, under any of the preceding paragraphs of this Schedule, in the market value of the transferred property on the relevant date.
- (2) Subject to sub-paragraphs (3) and (4) below, where this paragraph applies the market value of the transferred property on the relevant date shall for the purposes of the

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principal section be taken to be increased by an amount equal to the difference between—

- (a) the market value of the transferred property at the time of the chargeable transfer, and
  - (b) what that value would have been if the relevant transaction had occurred before rather than after that time.
- (3) Where the relevant transaction is the making by the company of a transfer of value by which the value of the estate of the person who made the chargeable transfer or, if his spouse is domiciled in the United Kingdom, his spouse is increased by any amount, the increase provided for by sub-paragraph (2) above shall be reduced by that amount.
- (4) Where the market value of the transferred property at the time of the chargeable transfer is less than it would have been as mentioned in sub-paragraph (2) above, that sub-paragraph shall apply as if, instead of providing for an increase, it provided for the market value on the relevant date to be reduced to what it would have been if the relevant transaction had not occurred.

#### *Interests in land*

- 6 (1) Where the transferred property is an interest in land in relation to which the conditions mentioned in sub-paragraph (2) below are not satisfied, then, subject to sub-paragraphs (3) and (4) below, the market value of the transferred property on the relevant date shall for the purposes of the principal section be taken to be increased by an amount equal to the difference between—
- (a) the market value of the interest at the time of the chargeable transfer, and
  - (b) what that market value would have been if the circumstances prevailing on the relevant date and by reason of which the conditions are not satisfied had prevailed at the time of the chargeable transfer.
- (2) The conditions referred to in sub-paragraph (1) above are—
- (a) that the interest was the same in all respects and with the same incidents at the time of the chargeable transfer and on the relevant date, and
  - (b) that the land in which the interest subsists was in the same state and with the same incidents at the time of the chargeable transfer and on the relevant date.
- (3) If after the date of the chargeable transfer but before the relevant date compensation becomes payable under any enactment to the transferee or his spouse—
- (a) because of the imposition of a restriction on the use or development of the land in which the interest subsists, or
  - (b) because the value of the interest is reduced for any other reason,
- the imposition of the restriction or the other cause of the reduction in value shall be ignored for the purposes of sub-paragraphs (1) and (2) above, but the market value of the interest on the relevant date shall be taken to be increased by an amount equal to the amount of the compensation.
- (4) Where the market value of the interest at the time of the chargeable transfer is less than it would have been as mentioned in sub-paragraph (1) above, that sub-paragraph shall apply as if, instead of providing for an increase, it provided for the market value on the relevant date to be reduced to what it would have been if the change in circumstances by reason of which the conditions mentioned in sub-paragraph (2) above are not satisfied had not occurred.

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### *Leases*

7 (1) Where the transferred property is the interest of a lessee under a lease the duration of which at the time of the chargeable transfer does not exceed fifty years, then for the purposes of the principal section the market value of the interest on the relevant date shall be taken to be increased by an amount equal to the appropriate fraction of the market value of the interest at the time of the chargeable transfer.

(2) In sub-paragraph (1) above, " the appropriate fraction" means the fraction—

$$\frac{P(1) - P(2)}{P(1)}$$

where

P(1) is the percentage that would be derived from the Table in paragraph 1 of Schedule 8 to the Finance Act 1965 (capital gains: leases) for the duration of the lease at the time of the chargeable transfer, and

P(2) is the percentage that would be so derived for the duration of the lease on the relevant date.

### *Other property*

8 (1) Where the transferred property is neither shares nor an interest in land and the condition mentioned in sub-paragraph (2) below is not satisfied in relation to it, then, subject to sub-paragraph (3) and paragraph 9 below, the market value of the property on the relevant date shall for the purposes of the principal section be taken to be increased by an amount equal to the difference between—

- (a) the market value of the property at the time of the chargeable transfer, and
- (b) what that value would have been if the circumstances prevailing at the relevant date and by reason of which the condition is not satisfied had prevailed at the time of the chargeable transfer.

(2) The condition referred to in sub-paragraph (1) above is that the transferred property was the same in all respects at the time of the chargeable transfer and on the relevant date.

(3) Where the market value of the transferred property at the time of the chargeable transfer is less than it would have been as mentioned in sub-paragraph (1) above, that sub-paragraph shall apply as if, instead of providing for an increase, it provided for the market value on the relevant date to be reduced to what it would have been if the property had remained the same in all respects as it was at the time of the chargeable transfer.

9 Where the transferred property is neither shares nor an interest in land and during the period between the time of the chargeable transfer and the relevant date benefits in money or money's worth are derived from it which exceed a reasonable return on its market value at the time of the chargeable transfer, then—

- (a) any effect of the benefits on the transferred property shall be ignored for the purposes of paragraph 8 above ; but
- (b) the market value of the transferred property on the relevant date shall be taken for the purposes of the principal section to be increased by an amount equal to the said excess.