



# Finance Act 1978

## 1978 CHAPTER 42

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

#### 13 Charge of income tax for 1978-79

Income tax for the year 1978-79 shall be charged at the basic rate of 33 per cent.; and—

- (a) in respect of so much of an individual's total income as does not exceed £750 at the rate of 25 per cent.;
- (b) in respect of so much of an individual's total income as exceeds £8,000 at such higher rates as are specified in the Table below; and
- (c) in respect of so much of the investment income included in an individual's total income as exceeds £1,700 at the additional rates of 10 per cent. for the first £550 of the excess and 15 per cent. for the remainder;

except that in the case of an individual who shows that, at any time within that year, his age or that of his wife living with him was sixty-five years or more, paragraph (c) above shall have effect with the substitution for the references to £1,700 and £550 of references to £2,500 and £500 respectively.

TABLE

<i>Part of excess over £8,000</i>	<i>Higher rate</i>
The first £1,000	40 per cent.
The next £1,000	45 per cent.
The next £1,000	50 per cent.

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<i>Part of excess over £8,000</i>	<i>Higher rate</i>
The next £1,500	55 per cent.
The next £1,500	60 per cent.
The next £2,000	65 per cent.
The next £2,500	70 per cent.
The next £5,500	75 per cent.
The remainder	83 per cent.

#### **14 Lower rate income tax**

- (1) In paragraph (a) of subsection (1) of section 32 of the Finance Act 1971 (income tax charged at basic and other rates) for the words " income not falling within paragraph (b) below " there shall be substituted the words " income not falling within paragraph (aa) or (b) below and after that paragraph there shall be inserted—

“(aa) in respect of so much of an individual's total income as does not exceed such amount as Parliament may determine, at such lower rate or rates as Parliament may determine ; and”.

- (2) After subsection (1) of that section there shall be inserted—

“(1A) In the case of a husband whose total income includes relevant earned income of his wife—

- (a) the income chargeable in accordance with paragraph (aa) of subsection (1) of this section shall be—

(i) so much of his total income, other than relevant earned income of his wife, as does not exceed the amount referred to in that paragraph; and

(ii) so much of the relevant earned income of his wife as does not exceed that amount; and

- (b) if there are two or more such rates as are referred to in that paragraph, those rates shall be applied separately to the income mentioned in sub-paragraph (i) and the income mentioned in sub-paragraph (ii) above, and any provision charging income tax in accordance with that paragraph shall have effect accordingly.

(1B) For the purposes of subsection (1A) of this section earned income of the wife has the same meaning as for the purposes of subsection (2) of section 8 of the Taxes Act and relevant earned income of the wife means so much of her earned income as exceeds the relief available in respect of it under that subsection.

(1C) Where income tax at the basic rate has been borne on income chargeable at a lower rate any necessary repayment of tax shall be made on the making of a claim.

(1D) Except where the context otherwise requires, references in the Income Tax Acts to a rate or rates lower or higher than the basic rate are references to any such rate or rates as are mentioned in paragraph (aa) or (b) of subsection (1) of this section respectively.”

- (3) The enactments mentioned in Schedule 2 to this Act shall have effect with the amendments there specified, being amendments consequential on the provisions of this section.

#### **15 Charge of corporation tax for financial year 1977**

Corporation tax shall be charged for the financial year 1977 at the rate of 52 per cent.

#### **16 Rate of advance corporation tax for financial year 1978**

The rate of advance corporation tax for the financial year 1978 shall be thirty-three sixty-sevenths.

#### **17 Corporation tax: other rates and fractions**

- (1) The fraction by which, under section 93(2) of the Finance Act 1972, chargeable gains are to be reduced before they are for the purposes of corporation tax included in the profits of an authorised unit trust or investment trust shall, as from 1st April 1977, be twenty-one twenty-sixths instead of the fraction specified in section 27(1) of the Finance Act 1976.
- (2) The small companies rate for the financial year 1977 shall be 42 per cent., and for that year the fraction mentioned in subsection (2) of section 95 of the said Act of 1972 (marginal relief for small companies) shall be one-seventh.
- (3) For the financial year 1977 and subsequent financial years subsection (3) of the said section 95 shall have effect with the substitution for any reference to £40,000 of a reference to £50,000 and with the substitution for any reference to £65,000 of a reference to £85,000.
- (4) Where by virtue of subsection (3) above the said section 95 has effect with different relevant amounts in relation to different parts of the same accounting period, those parts shall be treated for the purposes of that section as if they were separate accounting periods, and the profits and income of the company for that period (as defined in that section) shall be apportioned between those parts.

#### **18 Relief for interest: limit for 1978-79**

In paragraph 5(1) of Schedule 1 to the Finance Act 1974 (limit on relief for interest on certain loans for the purchase or improvement of land) the references to £25,000 shall have effect for the year 1978-79 as well as for previous years of assessment.

#### **19 Alteration of personal reliefs**

- (1) In section 8 of the Taxes Act (personal reliefs)—
- (a) in subsection (1)(a) (married) for "£1,455" there shall be substituted " £1,535 ";
  - (b) in subsection (1)(b) (single) and (2) (wife's earned income relief) for " £945 " there shall be substituted " £985 ";
  - (c) in subsection (1A) (age allowance) for " £1,975 " and "£1,250" there shall be substituted " £2,075 " and "£1,300 " respectively;

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- (d) in subsection (1B) (income limit for age allowance) for " £3,500 " there shall be substituted " £4,000 ".
- (2) In section 12 of that Act (allowance for female housekeeper)—
  - (a) the word " female", wherever it occurs, shall be omitted;
  - (b) in subsection (1)(ii) after the word " above " there shall be inserted the words " or the relative is a man who has claimed and been allowed that higher relief ".
- (3) In section 13(a) of that Act (allowance where claimant's mother or other female relative takes charge of his brother or sister)—
  - (a) for the words " either his mother, being a widow or a person living apart from her husband, or some other female relative " there shall be substituted the words " a relative ";
  - (b) the words " mother or other " shall be omitted.
- (4) In section 14(2) and (3) of that Act (additional relief for widows and others in respect of children) for "£510" there shall be substituted " £550 ".
- (5) In section 17 of that Act (allowance for services of daughter) for the word " daughter " there shall be substituted the words " son or daughter " and the like amendment shall be made in sections 18(5) and 39(1)(d) of that Act (which contain references to the allowance under section 17).
- (6) In section 18 of that Act (relief for blind persons)—
  - (a) in subsection (1)(a) and (b) for the words "throughout the year a registered blind person " there shall be substituted the words " a registered blind person for the whole or part of the year ";
  - (b) in subsection (2)(b) for the words " throughout the year both he and his wife were registered blind persons " there shall be substituted the words " he was a registered blind person for the whole or part of the year and his wife was also a registered blind person for the whole or part of the year ";
  - (c) subsections (3) and (4) shall be omitted.

## **20 Child tax allowances and benefits in respect of children**

- (1) Except in the case of a child to whom section 25 or 26 of the Finance Act 1977 applies, the appropriate amount to be deducted from the claimant's total income under subsection (1) of section 10 of the Taxes Act (children) for the year 1978-79 shall, instead of being determined in accordance with subsection (3) of that section, be determined in accordance with subsection (2) below.
- (2) The appropriate amount for the child shall vary according to the age of the child at the commencement of the year of assessment, and, subject to subsection (5) of the said section 10—
  - (a) for a child shown by the claimant to have been then over the age of sixteen, shall be £165;
  - (b) for a child not so shown, but shown by the claimant to have been then over the age of eleven, shall be £135;
  - (c) in any other case, shall be £100.
- (3) For the year 1978-79 and subsequent years of assessment subsection (5) of the said section 10 shall have effect with the substitution for " £350 " (in both places) and " £235 " of " £500 " and " £385 " respectively.

- (4) Section 23(3) of the said Act of 1977 (£52 of certain benefits in respect of children to be exempt from income tax for the year 1977-78) shall have effect also in relation to the year 1978-79 but with the substitution for " £52 " of " £80 ".
- (5) Section 25 of the said Act of 1977 (tax allowances in the year 1977-78 for children living abroad) shall have effect also in relation to years of assessment after that year.

## **21 Maintenance payments**

In section 15(1) of the Finance Act 1974 (the first £1,500 of any amounts paid as maintenance payments not to be investment income) the words " the first £1,500 of " shall be omitted.

## **22 Tax repayments to wives**

- (1) Where in any year of assessment tax has been deducted under section 204 of the Taxes Act (pay as you earn) from the earned income of a wife and, apart from this section, a repayment of tax for that year would fall to be made to her husband in consequence of an assessment under Schedule E, so much of the repayment as is attributable to the tax so deducted shall be made to her and not to him.
- (2) The amount of a repayment attributable to tax deducted as mentioned in subsection (1) above is the excess (if any) of the total net tax so deducted in the year of assessment over the tax chargeable on the wife's relevant earned income included in her husband's total income for that year after allowing—
  - (a) any relief for that year under section 19 of the Taxes Act in respect of any payment made by her of the kind mentioned in paragraph 14A of Schedule 4 to the Finance Act 1976 (retirement benefits schemes); and
  - (b) any relief for that year to which her husband is entitled under any other provision of the Income Tax Acts to the extent to which it cannot be allowed because his income, exclusive of her earned income, is insufficient;but that amount shall not exceed the aggregate of the amounts repayable for that year in respect of the total net tax deducted in that year under the said section 204 from the income of the wife and the income of her husband.
- (3) Where in consequence of an assessment under Schedule E any amount is repayable under this section to the wife of the person on whom the assessment is made the inspector shall notify both of them of his determination of that amount and, subject to subsection (4) below, an appeal shall lie against the determination as if it were a decision on a claim.
- (4) Any appeal under subsection (3) above shall be to the General Commissioners for the division in which the spouses reside or, if they reside in different divisions, for the division in which one of them resides, as the Board may direct, or if neither resides in Great Britain to the Special Commissioners; and on any such appeal by one of the spouses the other shall have the same rights as an appellant, including any right to require the statement of a case for the opinion of the court.
- (5) Where in a case to which this section applies the amount repaid to a wife or her husband exceeds the amount properly due to that person the excess shall be recoverable from that person as if it were unpaid tax.
- (6) The Board may make regulations—

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- (a) modifying subsection (2) above in relation to such cases as may be specified in the regulations ;
  - (b) modifying section 47 of the Finance (No. 2) Act 1975 (repayment supplement) in relation to cases in which a repayment falls to be made under this section;
- and any such regulations shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (7) This section does not apply to any repayment for a year of assessment—
- (a) for which the husband is chargeable to income tax at a rate or rates higher than the basic rate ; or
  - (b) for which any earned income of the wife has been assessed otherwise than under Schedule E.
- (8) For the purposes of this section earned income of a wife has the same meaning as for the purposes of subsection (2) of section 8 of the Taxes Act and relevant earned income of a wife means so much of her earned income as exceeds the relief available in respect of it under that subsection.
- (9) References in this section to the total net tax deducted in any year under section 204 of the Taxes Act are references to the total income tax deducted during that year by virtue of regulations made under that section less any income tax repaid by virtue of any such regulations.
- (10) This section applies to any repayment made after the passing of this Act.

### **23 Benefits in kind: threshold from 1979-80**

- (1) In section 69(1)(b) and (3)(a) of the Finance Act 1976 (definition of director's or higher-paid employment for purposes of tax on benefits in kind) for " £7,500 " there shall be substituted " £8,500 ".
- (2) This section applies for the year 1979-80 and subsequent years of assessment.

### **24 Payments for loss of employment etc.**

- (1) In section 188(3) of the Taxes Act and paragraph 3 of Schedule 8 to that Act (tax on excess over £5,000 of payments for loss of employment etc.) for " £5,000 ", wherever it occurs, there shall be substituted " £10,000 ".
- (2) In paragraph 4 of the said Schedule 8 (lump sum received or receivable under superannuation scheme or fund to be deducted in calculating relief) the existing provisions shall become sub-paragraph (1) and at the end there shall be inserted—
  - “(2) In sub-paragraph (1)(c) above the reference to a lump sum receivable by the holder includes a reference to a lump sum that would be receivable by him if he had exercised or refrained from exercising (with any necessary consent) any option or other right conferred on him by the rules of the scheme or fund.”
- (3) Subsection (1) above has effect in relation to any payment which by virtue of section 187(4) of the Taxes Act is treated as income received on or after 6th April 1978 ; and where under the proviso to section 188(3) of that Act the sum there mentioned falls to be deducted from one or more payments treated as income received

before, and one or more payments treated as income received on or after, that date only £5,000 of that sum shall be deducted from the first-mentioned payment or payments.

- (4) Subsection (2) above has effect in relation to any payment which by virtue of the said section 187(4) is treated as income received on or after 17th May 1978.

## **25 Life policies etc.**

The enactments mentioned in Schedule 3 to this Act (which relate to relief in respect of premiums payable under life policies etc.) shall have effect subject to the amendments made by that Schedule.

## **26 Retirement annuities**

- (1) The Board may, if they think fit, and subject to any conditions they think proper to impose, approve an annuity contract under section 226 of the Taxes Act (approval of retirement annuity contracts) notwithstanding that the contract provides that the individual by whom it is made may require a sum representing the value of his accrued rights thereunder to be paid by the person with whom it is made to such other person as he may specify, that sum to be applied as the premium or other consideration under an annuity contract made between the individual and that other person and approved by the Board under that section.
- (2) References in subsection (1) above to the individual by whom the contract is made include references to any widow, widower or dependant having accrued rights under the contract.
- (3) Where in pursuance of any such provision as is mentioned in subsection (1) above of an annuity contract approved under section 226 of the Taxes Act, or of a corresponding provision of a contract approved under section 226A(1)(a) of that Act (contracts for dependants), a sum representing the value of accrued rights under one contract ("the original contract") is paid by way of premium or other consideration under another contract ("the substituted contract"), any annuity payable under the substituted contract shall be treated as earned income of the annuitant to the same extent that an annuity payable under the original contract would have been so treated.
- (4) In section 230(7) of the Taxes Act (purchased life annuities, other than retirement annuities), there shall be added at the end of paragraph (b) the words " to any annuity payable under a substituted contract within the meaning of section 26(3) of the Finance Act 1978, or ".
- (5) In section 323(4) of the Taxes Act (pension business), for the words from " , being a contract" onwards in paragraph (a) there shall be substituted the words " (being a contract approved by the Board under that section), or any substituted contract within the meaning of section 26(3) of the Finance Act 1978 ".

## **27 Relief for individuals carrying on trade etc. partly abroad**

- (1) The provisions of this section and Part I of Schedule 4 to this Act shall have effect for affording relief from tax for the year 1978-79 and subsequent years of assessment to an individual who in a year of assessment—
- (a) is resident in the United Kingdom; and
  - (b) is carrying on a trade, profession or vocation in respect of which he is within the charge to income tax under Case I or Case II of Schedule D; and

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- (c) is absent from the United Kingdom on at least thirty qualifying days; and in that Schedule and the following provisions of this section any reference to a trade includes a reference to a profession or vocation and any reference to Case I of Schedule D includes a reference to Case II of that Schedule.
- (2) For the purposes of subsection (1) above and Part I of Schedule 4 to this Act, a qualifying day, in relation to an individual carrying on a trade, is a day of absence from the United Kingdom—
- (a) which he devotes substantially to the activities of the trade; or
  - (b) which is one of at least seven consecutive days on which he is absent from the United Kingdom for the purposes of the trade and which (taken as a whole) he devotes substantially to the activities of the trade; or
  - (c) on which he is travelling wholly and exclusively for the purposes of the trade.
- (3) If an individual carries on more than one trade and a day of absence from the United Kingdom would be a qualifying day in relation to his carrying on two or more of those trades taken together, but not in relation to his carrying on any particular trade, it shall be treated as a qualifying day for the purposes specified in subsection (2) above.
- (4) In relation to an individual who carries on a trade as a member of a partnership to which section 153 of the Taxes Act applies (partnerships controlled abroad), a day shall not be treated as a qualifying day in relation to any trade or trades carried on by the partnership unless it would be so treated if references in paragraphs (a) to (c) of subsection (2) above to the trade carried on by the individual were restricted to the trading operations of the partnership within the United Kingdom.
- (5) An individual shall not be entitled to relief under this section in respect of absence on qualifying days in a year of assessment unless a claim for the relief is made before the expiry of the period of two years beginning at the end of that year of assessment.
- (6) For the purposes of this section an individual shall not be regarded as absent from the United Kingdom on any day unless he is absent at the end of it; nor shall an individual be regarded as absent from the United Kingdom at any time when he is on board a vessel or aircraft engaged on—
- (a) a voyage or journey beginning and ending in the United Kingdom (but exclusive of any part of it which begins or ends outside the United Kingdom); or
  - (b) any part beginning and ending in the United Kingdom of a voyage or journey which begins or ends outside the United Kingdom.
- (7) For the purposes of this section, any area designated under section 1(7) of the Continental Shelf Act 1964 shall be treated as part of the United Kingdom.
- (8) In consequence of the provisions of this section and of Part I of Schedule 4 to this Act, the amendments in Part II of that Schedule shall have effect.

## **28 Farming and market gardening: relief for fluctuating profits**

- (1) Subject to the provisions of this section, a person who is or has been carrying on a trade of farming or market gardening in the United Kingdom may claim that subsection (2) or (3) below shall have effect in relation to his profits from that trade for any two consecutive years of assessment if his profits for either year do not exceed such part of his profits for the other year as is there specified.



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- (2) If the claimant's profits for either year do not exceed seven-tenths of his profits for the other year or are nil, his profits for each year shall be adjusted so as to be equal to one-half of his profits for the two years taken together or, as the case may be, for the year for which there are profits.
- (3) If the claimant's profits for either year exceed seven-tenths but are less than three-quarters of his profits for the other year, his profits for each year shall be adjusted by adding to the profits that are lower and deducting from those that are higher an amount equal to three times the difference between them less three-quarters of those that are higher.
- (4) No claim shall be made under this section—
  - (a) in respect of any year of assessment before a year in respect of which a claim has already been made under this section; or
  - (b) in respect of a year of assessment in which the trade is (or by virtue of section 154(1) of the Taxes Act is treated as) set up and commenced or permanently discontinued.
- (5) Any adjustment under this section shall have effect for all the purposes of the Income Tax Acts (including any further application of this section where the second of any two years of assessment is the first of a subsequent pair) except that—
  - (a) subsection (2) above shall not prevent a person obtaining relief under those Acts for a loss sustained by him in any year of assessment;
  - (b) any adjustment under this section shall be disregarded for the purposes of section 118(1)(b) of the Taxes Act (adjustment of assessments on discontinuance of trade) and of computing relevant income for the purposes of Schedule 5 to the Finance Act 1976 (stock relief); and
  - (c) where, after a claim has been made under this section in respect of the profits for any two years of assessment the profits for both or either of those years are adjusted for any other reason, this section shall have effect as if the claim had not been made but without prejudice to the making of a further claim in respect of those profits as so adjusted.
- (6) This section applies to the profits of a trade carried on by a person in partnership as it applies to the profits of a sole trader except that—
  - (a) the profits to which the claim relates shall be those chargeable in accordance with section 152 of the Taxes Act; and
  - (b) any claim in respect of those profits shall be made jointly by all the partners who are individuals;

and where during the years of assessment to which the claim relates there is a change in the persons engaged in carrying on the trade but a notice is given under section 154(2) of the Taxes Act the claim shall be made jointly by all the persons who are individuals and have been engaged in carrying on the trade at any time during those years.

Where a person who is required by this subsection to join in making a claim has died, this subsection shall have effect as if it required his personal representatives to join in making the claim.

- (7) In this section references to profits from a trade for a year of assessment are references to the profits or gains from that trade which are chargeable to income tax for that year before—
  - (a) any deduction for losses sustained in any year of assessment;

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- (b) any deduction or addition for capital allowances or charges (not being allowances or charges given or made by deduction or addition in the computation of profits or gains);
  - (c) any deduction or addition for any relief or charge under Schedule 5 to the Finance Act 1976.
- (8) Any claim under this section shall be made by notice in writing given to the inspector not later than two years after the end of the second of the years of assessment to which the claim relates but any such further claim as is mentioned in subsection (5)(c) above shall not be out of time if made before the end of the year of assessment following that in which the adjustment is made.
- (9) Where a person makes a claim under this section in respect of any year of assessment, any claim by him for relief for that year under any other provision of the Income Tax Acts—
- (a) shall not be out of time if made before the end of the period in which the claim under this section is required to be made ; and
  - (b) if already made, may be revoked or amended before the end of that period;
- but no claim shall by virtue of this subsection be made, revoked or amended after the determination of the claim under this section.
- (10) There shall be made all such alterations of assessments or repayments of tax (whether in respect of such profits as are mentioned in subsection (1) above or of other income of the person concerned) as may be required in consequence of any adjustment under this section.
- (11) Nothing in this section shall be construed as applying to profits chargeable to corporation tax.
- (12) This section applies where the first of the two years mentioned in subsection (1) above is the year 1977-78 or a subsequent year of assessment.

## **29 Divers and diving supervisors**

- (1) Where the duties of an employment which are performed by a person in the United Kingdom or a designated area consist wholly or mainly—
- (a) of taking part, as a diver, in diving operations concerned with the exploration or exploitation of the seabed, its subsoil and their natural resources; or
  - (b) of acting, in relation to any such operations, as a diving supervisor,
- the Income Tax Acts shall have effect as if the performance by that person of those duties constituted the carrying on by him of a trade within Case I of Schedule D; and accordingly Schedule E shall not apply to the emoluments from the employment so far as attributable to his performance of those duties.
- (2) In this section " designated area " means any area designated under section 1(7) of the Continental Shelf Act 1964.
- (3) Finance Act 1973 (information about emoluments paid or payable in respect of duties performed in connection with exploration or exploitation activities) for the words " emoluments paid or payable in respect of duties " there shall be substituted the words " emoluments or other payments paid or payable in respect of duties or services ".
- (4) This section applies for the year 1978-79 and subsequent years of assessment; and where the duties of a person's employment fall within subsection (1) above at the

beginning of that year this section shall apply as if the trade mentioned in that subsection had been set up and commenced by him at the beginning of that year.

### **30 Further relief for losses in early years of trade**

- (1) Where an individual carrying on a trade sustains a loss in the trade in—
  - (a) the year of assessment in which it is first carried on by him; or
  - (b) any of the next three years of assessment,he may, by notice in writing given within two years after the year of assessment in which the loss is sustained, make a claim for relief under this section.
- (2) Subject to the provisions of this section, relief shall be given from income tax on an amount of the claimant's income equal to the amount of the loss, being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.
- (3) Relief shall not be given for the same loss or the same portion of a loss both under this section and under any other provision of the Income Tax Acts.
- (4) Relief shall not be given under this section in respect of a loss sustained in any period unless it is shown that the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.
- (5) Relief shall not be given under this section in respect of a loss sustained by an individual in a trade if—
  - (a) at the time when it is first carried on by him he is married to and living with another individual who has previously carried on the trade ; and
  - (b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.
- (6) For the purposes of this section an individual carries on a trade whether he does so solely or in partnership; and (except as respects the computation of profits or gains and losses) an individual continues to carry on the same trade notwithstanding a change in the persons engaged in carrying it on if he is engaged in carrying it on immediately before and immediately after the change.
- (7) Subject to subsections (8) and (9) below, the following enactments (which contain ancillary provisions relating to relief under section 168 of the Taxes Act) shall have effect as if references to that section included references to this section—
  - (a) sections 168(3), (4), (5) and (7), 169 (other than subsection (10)) and 474(1) of the Taxes Act;
  - (b) section 23(2) of the Finance Act 1974 ;
  - (c) paragraph 3(1) of Schedule 2 to the Social Security Act 1975;
  - (d) section 13(2) of the Oil Taxation Act 1975 ;
  - (e) sections 36(9) and 41 of, and paragraph 6 of Schedule 5 to, the Finance Act 1976.
- (8) In its application by virtue of subsection (7) above, section 169 of the Taxes Act shall have effect with the following modifications—

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- (a) in subsection (3) for the words from " are those for the year of assessment" onwards there shall be substituted the words " are those for the year of loss, relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in that year ";
  - (b) in subsection (6) for the words " in the case of allowances for the following year, in taxing the trade for that following year" there shall be substituted the words " in the case of allowances for any later year, in taxing the trade for that later year ";
  - (c) in subsection (8) for the words " the year for which the claim is made" there shall be substituted the words " the year of loss ".
- (9) In its application by virtue of subsection (7) above paragraph 6 of Schedule 5 to the Finance Act 1976 shall have effect with the following modifications—
- (a) in sub-paragraph (4) for the words from " is that for the year of assessment" onwards there shall be substituted the words " is that for the year of loss, effect shall not be given to that relief in respect of an amount greater than the amount unused in that year ";
  - (b) in sub-paragraph (7) for the words " the year for which the claim is made "there shall be substituted the words " the year of loss ".
- (10) This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.
- (11) This section applies where the year in which the loss is sustained is the year 1978-79 or a later year of assessment.

### **31 Dealings in commodity futures: withdrawal of loss relief**

- (1) Relief shall not be given to any person under section 168 or 177(2) of the Taxes Act or section 30 above (set-off of trading losses against general income) in respect of a loss sustained in a trade of dealing in commodity futures if—
- (a) the loss was sustained in a trade carried on in partnership and that person or one or more of the other partners was a company; and
  - (b) a scheme has been effected or arrangements have been made (whether by the partnership agreement or otherwise) such that the sole or main benefit that might be expected to accrue to that person from his interest in the partnership was the obtaining of a reduction in tax liability by means of such relief as aforesaid.
- (2) Where relief has been given in a case to which this section applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- (3) This section applies whether the loss was sustained before or after the passing of this Act but not where the scheme was effected or the arrangements were made wholly before 6th April 1976.

### **32 Sale of land with right to repurchase: restriction of relief**

- (1) Sections 83 and 134 of the Taxes Act (which give a person relief from tax where he has paid a premium or certain other sums in respect of land) shall have effect with the following amendments, being amendments excluding from the relief cases falling within section 82 of that Act (under which the sum paid is the purchase price of land bought on terms providing for its reconveyance).

- (2) In section 83—
- (a) in subsection (1)(a) for "81 or 82" there shall be substituted " or 81 ";
  - (b) in subsections (1), (2) and (3) the words "estate or interest" (wherever they occur) shall be omitted;
  - (c) subsections (4)(b)(iii) and (6) shall be omitted.
- (3) In section 134—
- (a) in subsection (1)(a) for "81 or 82" there shall be substituted " or 81 ";
  - (b) subsection (1)(iii), together with the word " and" immediately preceding it, shall be omitted;
  - (c) in subsection (2) the words " estate or interest" shall be omitted;
  - (d) subsection (7) shall be omitted and in subsections (1) and (2) for " (7) " there shall be substituted " (6) ".
- (4) Subsection (2) above applies where the amount chargeable on the superior interest has become or would have become chargeable to tax under section 82 after 2nd December 1976; and subsection (3) above applies where the amount chargeable has become or would have become chargeable to tax under that section after that date.

### **33 Deduction rate for sub-contractors in the construction industry**

Section 69(4) of the Finance (No. 2) Act 1975 (which requires deductions to be made from payments to certain subcontractors in the construction industry) shall have effect in relation to payments made on or after 6th November 1978 with the substitution for the words " 34 per cent. " of the words " 33 per cent. ".

### **34 Exemption for community land transactions**

- (1) In computing the profits or losses for corporation tax purposes of—
- (a) an authority within the meaning of section 1 of the Community Land Act 1975 other than a local authority;
  - (b) a joint board established under section 2 of that Act; or
  - (c) a body corporate established under section 50 of that Act,
- the items included and the transactions recorded in any accounts or records kept by the authority, joint board or body corporate under section 43 of that Act shall be disregarded.
- (2) This section shall be deemed to have come into force on 6th April 1976.

### **35 Close companies: relevant income**

- (1) In paragraph 9(3) of Schedule 16 to the Finance Act 1972 (apportionment of income of close companies: relevant maximum and minimum amounts for calculating relevant income of trading company) for " £15,000" and " £5,000 ", in both places, there shall be substituted respectively " £75,000 " and " £25,000 ".
- (2) In paragraph 9(4) of that Schedule (associated company to be disregarded for purposes of paragraph 9(3)) for the words " which has not carried on any trade or business at any time in that accounting period " there shall be substituted the words " which was not a trading company, or has not carried on any trade, at any time in that accounting period ".

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(3) In paragraph 10(3)(b) of that Schedule (calculation of distributable investment income) for " £500 " there shall be substituted " £1,000 ".

(4) This section has effect for any accounting period ending after 26th October 1977.

### **36 Close companies: acquisition of trades**

(1) Part II of Schedule 16 to the Finance Act 1972 (provisions for determining relevant income etc. of close companies) shall have effect subject to the amendments in Schedule 5 to this Act, being amendments to allow account to be taken, in certain cases, of (the requirements of a company for the acquisition of a trade or of an interest in a trading company or in a company which is a member of a trading group.

(2) The amendments in Schedule 5 to this Act have effect with respect to accounting periods ending on or after 11th April 1978, irrespective of whether the acquisition takes place before or after that date.

### **37 Capital allowances: long leases**

(1) Subject to the provisions of this section, where expenditure has been incurred on the construction of a building or structure and a long lease of that building or structure is granted out of an interest therein which is, within the meaning of Chapter I of Part I of the Capital Allowances Act 1968, the relevant interest in relation to that expenditure, that Chapter shall, if the lessor and lessee so elect, have effect as if—

- (a) the grant of the lease were a sale of the relevant interest by the lessor to the lessee at the time when the lease takes effect;
- (b) any capital sum paid by the lessee in consideration for the grant of the lease were the purchase price on the sale; and
- (c) the interest out of which the lease is granted had at that time ceased to be, and the interest granted by the lease had at that time become, the relevant interest in relation to that expenditure.

(2) Any election under this section shall have effect in relation to all the expenditure in relation to which the interest out of which the lease is granted is the relevant interest and which relates to the building or structure or (if more than one) the buildings or structures which are the subject of the lease.

(3) Any election under this section shall be by notice in writing to the inspector given within two years after the date on which the lease takes effect; and all such adjustments shall be made, whether by discharge or repayment of tax or by further assessments, as may be required for giving effect to the election.

(4) In this section " long lease " means a lease the duration of which (ascertained according to section 84(1), (2) and (3) of the Taxes Act) exceeds fifty years; and any question whether a lease is a long lease shall be determined without regard to section 13(3) of the said Act of 1968 (options for renewal).

(5) Section 11(3) of the said Act of 1968 (under which the creation of a lease does not affect the continuance of a relevant interest) shall have effect subject to subsection (1) (c) above.

(6) This section does not apply where—

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- (a) the lessor and lessee are connected with each other within the terms of section 533 of the Taxes Act; or
- (b) it appears that the sole or main benefit which may be expected to accrue to the lessor from the grant of the lease and the making of an election is the obtaining of a balancing allowance under section 3 of the said Act of 1968;

but paragraph (a) above shall not prevent the application of this section where the lessor is a body discharging statutory functions and the lessee a company of which it has control.

- (7) The Tax Acts shall have effect as if this section were contained in Chapter I of Part I of the said Act of 1968.
- (8) This section applies where the time when the lease takes effect is on or after 15th February 1978.

### **38 Capital allowances: hotels**

- (1) Chapter I of Part I of the Capital Allowances Act 1968 shall apply in relation to a qualifying hotel as if it were an industrial building or structure; but the provisions of that Chapter shall have effect in relation to any such hotel with the modifications specified in Schedule 6 to this Act.
- (2) A qualifying hotel is a hotel the accommodation in which is in a building or buildings of a permanent nature and which complies with the following requirements—
  - (a) that it is open for at least four months in the season; and
  - (b) that during the time when it is open in the season—
    - (i) it has at least ten letting bedrooms;
    - (ii) the sleeping accommodation offered at the hotel consists wholly or mainly of letting bedrooms; and
    - (iii) the services provided for guests normally include the provision of breakfast and an evening meal, the making of beds and the cleaning of rooms.
- (3) In subsection (2) above " the season " means April, May, June, July, August, September and October; and for the purposes of that subsection a letting bedroom is a private bedroom available for letting to the public generally and not normally in the same occupation for more than one month.
- (4) Subject to subsection (5) below, any question whether a hotel complies with the requirements in subsection (2)(a) and (b) above at any time in a person's chargeable period or its basis period shall be determined—
  - (a) if the hotel has been in use for the purposes of the trade carried on by that person or by such a lessee as is mentioned in section 1(3) of the said Act of 1968 throughout the twelve months ending with the last day of that chargeable period or its basis period, by reference to those twelve months;
  - (b) if the hotel was first used as aforesaid on a date after the beginning of those twelve months, by reference to the twelve months beginning with that date;but a hotel shall not by virtue of this subsection be treated as complying with those requirements at any time in a chargeable period or its basis period after it has ceased altogether to be used.
- (5) Where, during the twelve months mentioned in paragraph (a) of subsection (4) above, a hotel had fewer than ten letting-bedrooms until a date which was too late for it to

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qualify by reference to those twelve months, it may instead qualify under paragraph (b) of that subsection by reference to the twelve months beginning with that date as if it had then first been used.

- (6) For the purposes of this section—
- (a) there shall be treated as included in a qualifying hotel any building (whether or not on the same site as any other part of the hotel) which is provided by the person carrying on the hotel for the welfare of workers employed in the hotel and is in use for that purpose; and
  - (b) where a qualifying hotel is carried on by an individual, whether alone or in partnership, there shall be treated as excluded from the hotel any accommodation which, during the time when the hotel is open in the season, is normally used as a dwelling by that person or by any member of his family or household.
- (7) The Tax Acts shall have effect as if this section and Schedule 6 to this Act were contained in Chapter I of Part I of the said Act of 1968.
- (8) This section applies in relation to expenditure incurred after 11th April 1978; and expenditure shall not be treated for the purposes of this subsection as having been incurred after the date on which it was in fact incurred by reason only of section 1(6) or 5(1) of the said Act of 1968.

### **39 Capital allowances: agricultural and forestry buildings and works**

- (1) In subsection (1) of section 68 of the Capital Allowances Act 1968 (writing-down allowances for agricultural and forestry buildings and works) for the words from "writing-down allowances shall be made to him" onwards there shall be substituted the words "there shall be made to him—
- (a) for the chargeable period related to the incurring of that expenditure, an initial allowance of an amount equal to one-fifth of that expenditure; and
  - (b) during a writing-down period of eight years beginning with that period, writing-down allowances of an aggregate amount equal to four-fifths of that expenditure."
- (2) After subsection (3) of that section there shall be inserted—
- “(3A) A person in making a claim by virtue of this section as it applies for income tax purposes in respect of the chargeable period mentioned in paragraph (a) of subsection (1) above may require the initial allowance to be reduced to a specified amount, and a company may by notice in writing given to the inspector not later than two years after the end of that period disclaim the initial allowance or require it to be so reduced; and
- (a) where the initial allowance is not claimed or, in the case of a company, is disclaimed, the period and amount mentioned in paragraph (b) of that subsection shall be ten years and the whole amount of the expenditure; and
  - (b) where the initial allowance is reduced, that period and amount shall be a fraction of the period of ten years and of the whole amount of the expenditure equal to the fraction of the whole amount of the expenditure that remains after deducting the part covered by the initial allowance.”



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- (3) In subsection (4) of that section for the words " an allowance " there shall be substituted the words " a writing-down allowance ".
- (4) In section 74 of the said Act of 1968 after subsection (5) there shall be inserted—
  - “(6) All such assessments and adjustments of assessments shall be made as are necessary to give effect to any notice given by a company under section 68(3A) of this Act.”
- (5) This section applies in relation to expenditure incurred after 11th April 1978.

#### **40 Capital allowances: sports grounds**

- (1) If a person carrying on a trade has since the passing of the Safety of Sports Grounds Act 1975 incurred expenditure in respect of a sports stadium used for the purposes of the trade, then, if—
  - (a) at the time when the expenditure was incurred the stadium was of the description specified in subsection (1) of section 1 of that Act but no designation order under that section had come into operation in respect of the stadium ; and
  - (b) the expenditure was incurred in taking steps which the local authority for the area in which the stadium is situated certify would have fallen within subsection (1)(a) or (b) of section 49 of the Finance (No. 2) Act 1975 (relief for safety expenditure at a designated sports stadium) if such an order had then been in operation and a safety certificate had then been issued or applied for, subsection (1) of the said section 49 shall have effect in relation to the expenditure as it has effect in relation to the expenditure mentioned in that subsection.
- (2) All such adjustments shall be made by discharge or repayment of tax as may be required for giving effect to the relief available under this section for expenditure incurred before the passing of this Act.
- (3) Any disclaimer or claim under section 41(3) of the Finance Act 1971 in respect of the relief available under this section for expenditure incurred before the passing of this Act, and any claim for relief (or additional relief) under any other provision of the Tax Acts which is made in consequence of the relief available under this section for such expenditure, shall not be out of time if made within twelve months after the passing of this Act.
- (4) Any provision of regulations made under section 6(1)(b) of the Safety of Sports Grounds Act 1975 (power of local authorities to charge fees) shall, with the necessary modifications, apply to the issue of a certificate for the purposes of this section as it applies to the issue of a safety certificate.
- (5) In this section " sports stadium ", " safety certificate " and " local authority " have the same meaning as in the said Act of 1975.
- (6) The Tax Acts shall have effect as if this section were contained in Chapter I of Part III of the Finance Act 1971.

#### **41 Date for payment of tax for 1977-78**

- (1) Where income tax under Schedule A, Schedule D or Schedule E was charged for the year 1977-78 by an assessment in the case of which the amount of tax charged was

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adjusted, after the issue of the notice of assessment and before the passing of this Act, so as to give effect to any of the provisions of the Finance (Income Tax Reliefs) Act 1977, any tax charged by the assessment which became due and payable—

- (a) in the case of tax under Schedule A or Schedule D, before the expiration of a period of thirty days beginning with the date of notification of the adjustment; or
- (b) in the case of tax under Schedule E, before the expiration of a period of fourteen days beginning with the date of the collector's application for payment next following notification of the adjustment,

shall be treated as having become due and payable at the expiration of that period.

- (2) This section does not apply where the adjustment was made on the determination of an appeal, whether by the Commissioners or by agreement under section 54(1) of the Taxes Management Act 1970.

#### **42 Deduction of tax from payments of interest in 1978-79**

Section 522 of the Taxes Act (effect of reduction in basic rate on deduction of tax from payments of interest) shall apply as if a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 and providing for the charging of income tax as specified in section 13 above had been passed immediately before the passing of this Act; and the proviso to paragraph (b) of the said section 522 shall apply to any over-deduction to be made good in consequence of this section as if the reference to the passing of the Act imposing the tax were a reference to a date one month after the passing of this Act.

#### **43 Repayment of tax paid under Police Regulations**

- (1) The Board shall repay to police authorities any tax paid by those authorities by reason of the regulations mentioned in subsection (2) below (which required police authorities to discharge any tax liability of members of police forces arising in consequence of the provision of free accommodation); and no person other than a police authority shall be entitled to any repayment or credit in respect of tax paid as aforesaid unless he has made an application in that behalf to the Board or an inspector before the coming into force of this section.
- (2) The regulations referred to above are—
  - (a) Regulation 30A of the Police Regulations 1952 ;
  - (b) Regulation 40A of the Police (Scotland) Regulations 1956;
  - (c) any regulation subsequently in force and corresponding to either of those mentioned above.
- (3) Subsection (1) above shall also apply to tax paid by the Ministry of Home Affairs for Northern Ireland or the Police Authority for Northern Ireland by reason of Article 8A of the Royal Ulster Constabulary Allowances (Rent and Compensatory Grant) Order 1963 or of any corresponding provision subsequently in force, but any tax so paid by the Ministry shall be repaid to the Authority.
- (4) This section shall be deemed to have come into force on 7th July 1978.

## CHAPTER II

### CAPITAL GAINS

#### 44 Relief for gains less than $\frac{1}{2}$ £9,500

- (1) An individual shall not be chargeable to capital gains tax for a year of assessment if his taxable amount for that year does not exceed £1,000.
- (2) If an individual's taxable amount for a year of assessment exceeds £1,000 but does not exceed £5,000, the amount of capital gains tax to which he is chargeable for that year shall be 15 per cent. of the excess over £1,000.
- (3) If an individual's taxable amount for a year of assessment exceeds £5,000, the amount of capital gains tax to which he is chargeable for that year shall not exceed £600 plus one-half of the excess over £5,000.
- (4) For the purposes of this section an individual's taxable amount for a year of assessment is the amount on which he is chargeable under section 20(4) of the Finance Act 1965 for that year but—
  - (a) where the amount of chargeable gains less allowable losses accruing to an individual in any year of assessment does not exceed £1,000, no deduction from that amount shall be made for that year in respect of allowable losses carried forward from a previous year or carried back from a subsequent year in which the individual dies; and
  - (b) where the amount of chargeable gains less allowable losses accruing to an individual in any year of assessment exceeds £1,000, the deduction from that amount for that year in respect of allowable losses carried forward from a previous year or carried back from a subsequent year in which the individual dies shall not be greater than the excess.
- (5) Where in a year of assessment—
  - (a) the amount of chargeable gains accruing to an individual does not exceed £1,000; and
  - (b) the aggregate amount or value of the consideration for all the disposals of assets made by him (other than disposals gains accruing on which are not chargeable gains) does not exceed £5,000,a statement to the effect of paragraphs (a) and (b) above shall, unless the inspector otherwise requires, be sufficient compliance with any notice under section 8 of the Taxes Management Act 1970 requiring the individual to make a return of the chargeable gains accruing to him in that year.
- (6) Schedule 7 to this Act shall have effect as respects the application of this section to husbands and wives, personal representatives and trustees.
- (7) The following provisions, namely—
  - (a) section 21 of the said Act of 1965 (alternative charge to tax); and
  - (b) section 57 of the Finance Act 1971 (exemption for small disposals),shall cease to have effect.
- (8) For the percentages specified in—
  - (a) section 112(3)(b) and (c) of the Finance Act 1972 (unit trusts: reduction of tax liability); and

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(b) section 113 of that Act (unit trusts; reduced rate of tax),  
there shall be substituted " 10 per cent. ".

- (9) Subsections (1) to (6), (7)(b) and (8)(b) above apply for the year 1977-78 and subsequent years of assessment, subsection (7)(a) above applies for the year 1978-79 and subsequent years of assessment and subsection (8)(a) above applies to gains accruing on disposals after 5th April 1979.

#### **45 Chattel exemption**

- (1) In subsections (1), (3) and (5)(b) and (c) of section 30 of the Finance Act 1965 (chattels sold for £1,000 or less) for the words " one thousand pounds" there shall be substituted " £2,000 ".

- (2) For subsection (2) of that section there shall be substituted—

“(2) Where the amount or value of the consideration for the disposal of an asset which is tangible movable property exceeds £2,000, there shall be excluded from any chargeable gain accruing on the disposal so much of it as exceeds five-thirds of the difference between—

- (a) the amount or value of the consideration; and
- (b) £2,000.”

- (3) In subsection (4) of that section for the word " tax " there shall be substituted the words " chargeable gains ".

- (4) In subsection (5)(b) of that section for the words " the limitation on the amount of tax in subsection (2) of this section shall be to half the difference " there shall be substituted the words " the part of any chargeable gain that is excluded from it under subsection (2) of this section shall be so much of the gain as exceeds five-thirds of the difference ".

- (5) In sections 12(2)(b) and 25(7) of the Taxes Management Act 1970 (information about chargeable gains) for " £1,000 " there shall be substituted " £2,000 ".

- (6) This section applies for the year 1978-79 and subsequent years of assessment; and subsections (2) to (4) above apply also for the year 1977-78 but as if for any reference in the substituted subsection (2) to £2,000 there were substituted a reference to £1,000.

#### **46 Relief for gifts of business assets**

- (1) If, after 11th April 1978, an individual (in this section referred to as "the transferor") makes a disposal, otherwise than under a bargain at arm's length, to a person resident or ordinarily resident in the United Kingdom (in this section referred to as " the transferee ") of—

- (a) an asset which is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by the transferor or by a company which is his family company, or
- (b) shares or securities of a trading company which is the transferor's family company,

then, subject to subsection (2) below, the provisions of subsection (3) below shall apply in relation to the disposal if a claim for relief under this section is made by the transferor and the transferee.

- (2) Subsection (3) below does not apply in relation to a disposal if,—

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- (a) in the case of a disposal of an asset, any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under section 34 of the Finance Act 1965 (transfer of business on retirement); or
  - (b) in the case of a disposal of shares or securities, the proportion determined under subsection (3)(b) of that section of any gain accruing to the transferor on the disposal is (apart from this section) wholly relieved under that section.
- (3) Where a claim for relief is made under this section in respect of a disposal—
- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
  - (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,
- shall each be reduced by an amount equal to the held-over gain on the disposal.
- (4) Part I of Schedule 8 to this Act shall have effect for extending the relief provided for by virtue of subsections (1) to (3) above in the case of agricultural property and for applying it in relation to settled property, and, in consequence of the provisions of this section and of that Part, section 55 of the Finance (No. 2) Act 1975 (relief from tax on chargeable gains in respect of agricultural property, etc.) shall not apply in relation to a disposal of an asset after 11th April 1978.
- (5) Subject to Part II of Schedule 8 to this Act (which provides for reductions in the held-over gain in certain cases) and subsection (6) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (3) above and (in appropriate cases) section 34 of the Finance Act 1965, and in subsection (6) below that chargeable gain is referred to as the unrelieved gain on the disposal.
- (6) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 22(4) of the Finance Act 1965) for a disposal in respect of which a claim for relief is made under this section, and
  - (b) that actual consideration exceeds the sums allowable as a deduction under paragraph 4 of Schedule 6 to that Act,
- the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.
- (7) Subject to subsection (8) below, in this section and Schedule 8 to this Act—
- (a) " family company " and " trading company " have the same meaning as in section 34 of the Finance Act 1965 ; and
  - (b) " trade ", " profession " and " vocation " have the same meaning as in the Income Tax Acts.
- (8) In this section and Schedule 8 to this Act and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression " trade " shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.

#### **47 Replacement of business assets**

- (1) For subsection (9) of section 33 of the Finance Act 1965 (replacement of business assets: relief where person carries on two trades) there shall be substituted the following subsection—

“(9) This section shall apply in relation to a person who, either successively or at the same time, carries on two or more trades as if both or all of them were a single trade.”

- (2) After the said subsection (9) there shall be inserted the following subsection—

“(9A) In relation to a case where—

- (a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and
- (b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his family company, within the meaning of section 34 below,

any reference in the preceding provisions of this section to the person carrying on the trade (or the two or more trades) includes a reference to that individual.”

- (3) This section applies where the acquisition of, or of the interest in, the new assets takes place after 11th April 1978.

#### **48 Transfer of business on retirement**

- (1) For subsection (1) of section 34 of the Finance Act 1965 (relief for capital gains tax purposes on gains accruing on the transfer of a business on retirement) there shall be substituted the following subsections—

“(1) If an individual who has attained the age of 60 years—

- (a) disposes by way of sale or gift of the whole or part of a business, or
  - (b) disposes by way of sale or gift of shares or securities of a company,
- and throughout a period of at least one year ending with the disposal the relevant conditions have been fulfilled, relief shall be given under this section in respect of gains accruing to him on the disposal.

- (1A) For the purposes of subsection (1) above the relevant conditions are fulfilled at any time if at that time,—

- (a) in the case of a disposal falling within paragraph (a) of that subsection, the business in question is owned either by the individual or by a company with respect to which the following conditions are at that time fulfilled, namely,—
  - (i) it is a trading company ;
  - (ii) it is the individual's family company ; and
  - (iii) he is a full-time working director of it; and
- (b) in the case of a disposal falling within paragraph (b) of that subsection, either the conditions in sub-paragraphs (i) to (iii) of paragraph (a) above are fulfilled with respect to the company in question or the individual owns the business which, at the time of the disposal, is owned by the company;

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and in relation to a particular disposal the period, up to a maximum of 10 years, which ends with the disposal and throughout which the relevant conditions are fulfilled is in this section referred to as ' the qualifying period'.

(1B) The amount available for relief under this section shall be—

- (a) in the case of an individual who has attained the age of 65 years, the relevant percentage of £50,000; and
- (b) in the case of an individual who has not attained that age, the relevant percentage of the aggregate of £10,000 for every year by which his age exceeds 60 and a corresponding part of £10,000 for any odd part of a year ;

and for the purpose of this subsection ' the relevant percentage ' means a percentage determined according to the length of the qualifying period on a scale rising arithmetically from 10 per cent. where that period is precisely one year to 100 per cent. where it is ten years.”

(2) Subsection (3) of that section (which relates to relief in the case of a transfer of shares or securities in a family trading company) shall be amended as follows:—

- (a) in paragraph (b) (which, on a disposal of shares or securities, specifies the proportion of the gains by reference to which relief is allowed) for the words " the value of the company's assets (including cash)" there shall be substituted the words " the value of the company's chargeable assets "; and
- (b) at the end of the subsection there shall be added the words " and for the purposes of paragraph (b) above every asset is a chargeable asset except one, on the disposal of which by the company at the time of the disposal of the shares or securities, no chargeable gain would accrue ".

(3) In subsection (4) of that section (application of relief) for the words " subsection (1) above " there shall be substituted the words " this section " and the words " within that subsection " shall be omitted.

(4) In subsection (6) of that section, in paragraph (b) of the definition of " family company " for the words " seventy-five per cent. " there shall be substituted the words " fifty-one per cent. " and for the words " ten per cent." there shall be substituted the words " five per cent. ".

(5) This section applies with respect to any disposal which takes place after 11th April 1978.

#### **49 Relief in respect of loans to traders**

(1) In this section " a qualifying loan " means a loan in the case of which—

- (a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money; and
- (b) the borrower is resident in the United Kingdom; and
- (c) the borrower's debt is not a debt on a security as defined in paragraph 5 of Schedule 7 to the Finance Act 1965;

and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.

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(2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.

(3) If, on a claim by a person who has made a qualifying loan, the inspector is satisfied that—

- (a) any outstanding amount of the principal of the loan has become irrecoverable; and
- (b) the claimant has not assigned his right to recover that amount; and
- (c) the claimant and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time,

Part III of the said Act of 1965 shall have effect as if an allowable loss equal to that amount had accrued to the claimant when the claim was made.

(4) If, on a claim by a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan, the inspector is satisfied that—

- (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower; and
- (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount; and
- (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment; and
- (d) the lender and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses, and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

the said Part III shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

(5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, the said Part III shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(6) For the purposes of subsection (5) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money's worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm's length he shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.

(7) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.



- (8) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—
- (a) no chargeable gain shall accrue to him otherwise than under subsection (5) above; and
  - (b) no allowable loss shall accrue to him under the said Part III, on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.
- (9) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.
- (10) In this section " spouses " means spouses who are living together (construed in accordance with section 45(3) of the said Act of 1965), "trading company" has the meaning given by paragraph 11 of Schedule 16 to the Finance Act 1972 and " group " shall be construed in accordance with section 272 of the Taxes Act.
- (11) Subsection (3) above applies where the loan is made after 11th April 1978 and subsection (4) above applies where the guarantee is given after that date.

## **50 Relief for private residences**

- (1) In section 29 of the Finance Act 1965 (relief for private residences) after subsection (4) there shall be inserted—
- “(4A) If at any time during an individual's period of ownership of a dwelling-house or part of a dwelling-house he—
- (a) resides in living accommodation which is for him job-related within the meaning of paragraph 4A of Schedule 1 to the Finance Act 1974 ; and
  - (b) intends in due course to occupy the dwelling house or part of a dwelling-house as his only or main residence,
- this section shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.”
- (2) The new subsection (4A) set out above applies where the time referred to in that subsection is after the passing of this Act.

## **51 Part disposals of land**

- (1) In paragraph 10(3)(a) and (b) of Schedule 19 to the Finance Act 1969 (roll-over relief for gain or part disposal of land where consideration does not exceed £2,500) for " £2,500 " there shall be substituted " £10,000 ".
- (2) This section applies with respect to any disposal after 5th April 1978.

## **52 Alteration of dispositions taking effect on death**

- (1) For section 24(11) of the Finance Act 1965 (deeds of family arrangement, etc.) there shall be substituted—

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- “(11) Subject to subsections (12) and (13) of this section, where within the period of two years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—
- (a) the variation or disclaimer shall not constitute a disposal for the purposes of this Part of this Act; and
  - (b) this section shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.
- (12) Subsection (11) of this section does not apply to a variation unless the person or persons making the instrument so elect by written notice given to the Board within six months after the date of the instrument or such longer time as the Board may allow.
- (13) Subsection (11) of this section does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.
- (14) Subsection (11) of this section applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.”
- (2) This section applies in relation to any variation or disclaimer made after the passing of this Act.

### CHAPTER III

#### PROFIT SHARING SCHEMES

#### **53 Approved profit sharing schemes: appropriated shares**

- (1) The provisions of this section apply where, after 5th April 1979, the trustees of a profit sharing scheme which has been approved in accordance with Part I of Schedule 9 to this Act appropriate shares—
- (a) which have previously been acquired by the trustees, and
  - (b) as to which the conditions in Part II of that Schedule are fulfilled,
- to an individual who participates in the scheme.
- (2) In this Chapter references to an approved scheme are references to a scheme approved as mentioned in subsection (1) above, and in relation to such a scheme—
- (a) any reference to a participant is a reference to an individual to whom the trustees of the scheme have appropriated shares; and
  - (b) subject to section 57 below, any reference to a participant's shares is a reference to the shares which have been appropriated to him by the trustees of an approved scheme.

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- (3) Notwithstanding that, by virtue of such an appropriation of shares as is mentioned in subsection (1) above, the beneficial interest in the shares passes to the participant to whom they are appropriated—
- (a) the value of the shares at the time of the appropriation shall be treated as not being income of his chargeable to tax under Schedule E; and
  - (b) he shall not be chargeable to income tax under that Schedule by virtue of section 79(4) of the Finance Act 1972 (share incentive schemes) in respect of an increase in the market value of the shares or by virtue of section 67 of the Finance Act 1976 (employee shareholdings) in any case where the shares are appropriated to him at an under value within the meaning of that section.
- (4) Any reference in this Chapter to the initial market value of any of a participant's shares is a reference to the market value of those shares determined,—
- (a) except where paragraph (b) below applies, on the date on which the shares were appropriated to him; and
  - (b) if the Board and the trustees of the scheme agree in writing, on or by reference to such earlier date or dates as may be provided for in the agreement.
- (5) Notwithstanding anything in the approved scheme concerned or in the trust instrument or in section 54 below, for the purposes of capital gains tax a participant shall be treated as absolutely entitled to his shares as against the trustees.
- (6) Where the trustees of an approved scheme acquire any shares as to which the conditions in Part II of Schedule 9 to this Act are fulfilled and, within the period of eighteen months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme—
- (a) section 16 of the Finance Act 1973 (additional rate tax on certain income accumulated under a trust) shall not apply to income consisting of dividends on those shares received by the trustees ; and
  - (b) any gain accruing to the trustees on the appropriation of those shares shall not be a chargeable gain;
- and, for the purpose of determining whether any shares are appropriated within that period of eighteen months, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.
- (7) The Board may by notice in writing require any person to furnish to them, within such time as the Board may direct (but not being less than thirty days), such information as the Board think necessary for the purposes of their functions under this Chapter, including, in particular, information to enable the Board—
- (a) to determine whether to approve a scheme or withdraw an approval already given; and
  - (b) to determine the liability to tax, including capital gains tax, of any participant in an approved scheme.
- (8) In the Table in section 98 of the Taxes Management Act 1970 (failure to make returns, furnish information etc.) the following shall be added in the first column—

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“Section 53(7) of the Finance Act 1978.”

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#### **54 The period of retention, the release date and the appropriate percentage**

- (1) No scheme shall be approved as mentioned in subsection (1) of section 53 above unless the Board are satisfied that, whether under the terms of the scheme or otherwise, every participant in the scheme is bound in contract with the company concerned—
- (a) to permit his shares to remain in the hands of the trustees throughout the period of retention; and
  - (b) not to assign, charge or otherwise dispose of his beneficial interest in his shares during that period; and
  - (c) if he directs the trustees to transfer the ownership of his shares to him at any time before the release date, to pay to the trustees before the transfer takes place a sum equal to income tax at the basic rate on the appropriate percentage of the locked-in value of the shares at the time of the direction ; and
  - (d) not to direct the trustees to dispose of his shares at any time before the release date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of the sale.
- (2) Any obligation imposed on a participant by virtue of subsection (1) above shall not prevent the participant from—
- (a) directing the trustees to accept an offer for any of his shares (in this paragraph referred to as " the original shares "), if the acceptance or agreement will result in a new holding, as defined in paragraph 4 of Schedule 7 to the Finance Act 1965 (roll-over relief for capital gains tax purposes in cases of reconstructions, amalgamations, etc.), being equated with the original shares for the purposes of capital gains tax; or
  - (b) directing the trustees to agree to a transaction affecting his shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—
    - (i) all the ordinary share capital of the company in question or, as the case may be, all the shares of the class in question ; or
    - (ii) all the shares, or shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved scheme; or
  - (c) directing the trustees to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 302 of the Taxes Act; or
  - (d) agreeing, after the expiry of the period of retention, to sell the beneficial interest in his shares to the trustees for the same consideration as, in accordance with subsection (1)(d) above, would be required to be obtained for the shares themselves.
- (3) If, in breach of his obligation under paragraph (b) of subsection (1) above, a participant assigns, charges or otherwise disposes of the beneficial interest in any of his shares, then, as respects those shares, he shall be treated for the purposes of this Chapter as if, at the time they were appropriated to him, he was ineligible to participate in the scheme; and section 58 below shall apply accordingly.

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- (4) In this Chapter " the period of retention ", in relation to any of a participant's shares, means the period beginning on the date on which they are appropriated to him and ending on the fifth anniversary of that date or, if it is earlier,—
- (a) the date on which the participant ceases to be an employee or director of a relevant company by reason of injury or disability or on account of his being dismissed by reason of redundancy, within the meaning of the Redundancy Payments Act 1965 or the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 ; or
  - (b) the date on which the participant reaches pensionable age, as defined in Schedule 20 to the Social Security Act 1975; or
  - (c) the date of the participant's death.
- (5) In subsection (4)(a) above, " relevant company " means the company concerned or, if the scheme in question is a group scheme, a participating company; and in the application of subsection (4)(a) above to a participant in a group scheme, the participant shall not be treated as ceasing to be an employee or director of a relevant company until such time as he is no longer an employee or director of any of the participating companies.
- (6) In this Chapter " the release date ", in relation to any of a participant's shares, means the tenth anniversary of the date on which the shares were appropriated to him.
- (7) Subject to section 58(4) below, for the purposes of provisions of this Chapter charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of his shares, any reference to " the appropriate percentage " in relation to those shares shall be determined according to the time of that event, as follows:—
- (a) if the event occurs during the period of retention of the shares, the appropriate percentage is 100 per cent.;
  - (b) if the event occurs after the expiry of the period of retention and before the seventh anniversary of the date on which the shares were appropriated to the participant, the appropriate percentage is 50 per cent.; and
  - (c) if the event occurs on or after the seventh anniversary of that date and before the tenth anniversary of it, the appropriate percentage is 25 per cent.

## **55 Disposal of scheme shares**

- (1) If the trustees dispose of any of a participant's shares at any time before the release date or, if it is earlier, the date of the participant's death, then, subject to subsections (3) and (4) below, the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on the appropriate percentage of the locked-in value of the shares at the time of the disposal.
- (2) Subject to sections 57 and 58(6) below, any reference in this Chapter to the locked-in value of any of a participant's shares at any time shall be construed as follows:—
- (a) if prior to that time the participant has become chargeable to income tax by virtue of section 56 below on a percentage of the amount or value of any capital receipt (within the meaning of that section) which is referable to those shares, the locked-in value of the shares is the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has been more than one such receipt, the aggregate of them; and
  - (b) in any other case, the locked-in value of the shares is their initial market value.

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- (3) Subject to subsection (4) below if, on a disposal of shares falling within subsection (1) above, the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, subsection (1) above shall have effect as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.
- (4) If, at any time prior to the disposal of any of a participant's shares, a payment was made to the trustees to enable them to exercise rights arising under a rights issue, then, subject to subsection (5) below, subsections (1) and (3) above shall have effect as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.
- (5) For the purposes of subsection (4) above—
- (a) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue; and
  - (b) in relation to a particular disposal the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals ;
- and any reference in subsection (4) or paragraph (a) above to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being rights to be allotted, on payment, other shares in the same company.
- (6) Where the disposal referred to in subsection (1) above is made from a holding of shares which were appropriated to the participant at different times, then, in determining for the purposes of this Chapter—
- (a) the initial market value and the locked-in value of each of those shares, and
  - (b) the percentage which is the appropriate percentage in relation to each of those shares,
- the disposal shall be treated as being of shares which were appropriated earlier before those which were appropriated later.
- (7) If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of this Chapter as having been disposed of at that time by the trustees for (subject to subsection (8) below) the like consideration as was obtained for the disposal of the beneficial interest; and for the purpose of this subsection there is no disposal of the participant's beneficial interest if and at the time when—
- (a) in England and Wales or Northern Ireland that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
  - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee on the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.
- (8) If—
- (a) a disposal of shares falling within subsection (1) above is a transfer to which section 54(1)(c) above applies, or
  - (b) the Board is of opinion that any other disposal falling within that subsection is not at arm's length and accordingly direct that this subsection shall apply, or

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- (c) a disposal of shares falling within that subsection is one which is treated as taking place by virtue of subsection (7) above and takes place within the period of retention,

then for the purposes of this Chapter the proceeds of the disposal shall be taken to be equal to the market value of the shares at the time of the disposal.

- (9) In subsection (5) above " shares ", in the context of shares allotted or to be allotted on a rights issue, includes securities and rights of any description.

## **56 Capital receipts in respect of scheme shares**

- (1) Subject to the provisions of this section if, in respect of or by reference to any of a participant's shares, the trustees become entitled, before the release date, to receive any money or money's worth (in this section referred to as a " capital receipt"), the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on the appropriate percentage (determined as at the time when the trustees become so entitled) of the amount or value of the receipt.
- (2) Money or money's worth is not a capital receipt for the purposes of this section if or, as the case may be, to the extent that—
  - (a) income in the hands of the recipient for the purposes of income tax; or
  - (b) it consists of the proceeds of a disposal falling within section 55 above ; or
  - (c) it consists of new shares within the meaning of section 57 below.
- (3) If, pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, the trustees—
  - (a) dispose of some of the rights arising under a rights issue, as defined in section 55(5) above, and
  - (b) use the proceeds of that disposal to exercise other such rights,the money or money's worth which constitutes the proceeds of that disposal is not a capital receipt for the purposes of this section.
- (4) If, apart from this subsection, the amount or value of a capital receipt would exceed the sum which, immediately before the entitlement to the receipt arose, was the locked-in value of the shares to which the receipt is referable, subsection (1) above shall have effect as if the amount or value of the receipt were equal to that locked-in value.
- (5) Subsection (1) above does not apply in relation to a receipt if the entitlement to it arises after the death of the participant to whose shares it is referable.

## **57 Company reconstructions, amalgamations etc.**

- (1) This section applies where there occurs in relation to any of a participant's shares (in this section referred to as " the original holding ") a transaction (in this section referred to as a " company reconstruction") which results in a new holding, as defined in paragraph 4 of Schedule 7 to the Finance Act 1965 (roll-over relief for capital gains tax purposes in cases of reconstructions, amalgamations, etc.), being equated with the original holding for the purposes of capital gains tax.
- (2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares

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shall be treated for the purposes of this section as not forming part of the new holding, that is to say,—

- (a) redeemable shares or securities issued as mentioned in section 233(2)(c) of the Taxes Act (issues not wholly for new consideration);
- (b) share capital issued in circumstances such that section 234(1) of the Taxes Act applies (bonus issue following repayment of share capital); and
- (c) share capital to which section 34 of the Finance (No. 2) Act 1975 applies (stock dividends).

(3) In this section—

- (a) " new shares" means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding; and
- (b) " the corresponding shares ", in relation to any new shares, means those shares in respect of which the new shares are issued or which the new shares otherwise represent.

(4) Subject to the following provisions of this section, references in this Chapter to a participant's shares shall be construed, after the time of the company reconstruction, as being or, as the case may be, as including references to any new shares, and for the purposes of this Chapter—

- (a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding;
- (b) the date on which any new shares are to be treated as having been appropriated to the participant shall be that on which the corresponding shares were appropriated; and
- (c) the conditions in Part II of Schedule 9 to this Act shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares.

(5) In relation to shares comprised in the new holding, subsection (2) of section 55 above shall apply as if the references in that subsection to the initial market value of the shares were references to their locked-in value immediately after the company reconstruction, which shall be determined as follows:—

- (a) ascertain the aggregate amount of the locked-in value immediately before the reconstruction of those shares comprised in the original holding which had at that time the same locked-in value; and
- (b) distribute that amount *pro rata* among—
  - (i) such of those shares as remain in the new holding, and
  - (ii) any new shares in relation to which those shares are the corresponding shares, according to their market value immediately after the reconstruction;

and paragraph (a) of that subsection shall apply only to capital receipts after the date of the reconstruction.

(6) For the purposes of this Chapter if, as part of a company reconstruction, trustees become entitled to a capital receipt, within the meaning of section 56 above, their entitlement to the capital receipt shall be taken to arise before the new holding comes into being and, for the purposes of subsection (5) above, before the date on which the locked-in value of any shares comprised in the original holding falls to be ascertained.



- (7) In the context of a new holding, any reference in this section to shares includes securities and rights of any description which form part of the new holding for the purposes of Part III of the Finance Act 1965.

## **58 Excess or unauthorised shares**

- (1) If the total of the initial market values of all the shares which are appropriated to an individual in any one year of assessment (whether under a single approved scheme or under two or more such schemes) exceeds £500, subsections (4) to (7) below shall apply to the excess shares, that is to say, any share which caused that limit to be exceeded and any share appropriated after that limit was exceeded.
- (2) For the purposes of subsection (1) above, if a number of shares is appropriated to an individual at the same time under two or more approved schemes, the same proportion of the shares appropriated at that time under each scheme shall be regarded as being appropriated before the limit of £500 is exceeded.
- (3) If the trustees of an approved scheme appropriate shares to an individual at a time when he is ineligible to participate in the scheme by virtue of Part III of Schedule 9 to this Act, the following provisions of this section shall apply in relation to those shares, and in those provisions those shares are referred to as " unauthorised shares ".
- (4) For the purposes of any provision of this Chapter charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of his shares—
- (a) the appropriate percentage in relation to excess or unauthorised shares shall in every case be 100 per cent; and
  - (b) without prejudice to section 55(6) above, the event shall be treated as relating to shares which are not excess or unauthorised shares before shares which are.
- (5) Excess or unauthorised shares which have not been disposed of before the release date or, if it is earlier, the date of the death of the participant whose shares they are shall be treated for the purposes of this Chapter as having been disposed of by the trustees immediately before the release date or, as the case may require, the date of the participant's death, for a consideration equal to their market value at that time.
- (6) The locked-in value at any time of any excess or unauthorised shares shall be their market value at that time.
- (7) Where there has been a company reconstruction to which section 57 above applies, a new share (within the meaning of that section) shall be treated as an excess or unauthorised share if the corresponding share (within the meaning of that section) or, if there was more than one corresponding share, each of them was an excess or unauthorised share.

## **59 P.A.Y.E. deduction of tax**

- (1) Subject to subsections (3) and (4) below, where the trustees of an approved scheme receive a sum of money which constitutes (or forms part of)—
- (a) the proceeds of a disposal of shares falling within section 55(1) above, or
  - (b) a capital receipt, within the meaning of section 56 above,
- the trustees shall pay out of that sum of money to the company specified in subsection (2) below an amount equal to that on which income tax is payable in

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accordance with the section in question; and the company shall then pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction.

(2) The company to which the payment mentioned in subsection (1) above is to be made is the company—

- (a) of which the participant is an employee or director at the time the trustees receive the sum of money referred to in that subsection, and
- (b) whose employees are at that time eligible (subject to the terms of the scheme and to Schedule 9 to this Act) to be participants in the approved scheme concerned,

and if there is more than one company which falls within paragraphs (a) and (b) above, such one of those companies as the Board may direct.

(3) Where the trustees of an approved scheme receive a sum of money to which subsection (1) above applies but—

- (a) there is no company which falls within paragraphs (a) and (b) of subsection (2) above, or
- (b) the Board is of opinion that it is impracticable for the company which falls within those paragraphs (or, as the case may be, any of them) to make a P.A.Y.E. deduction and accordingly direct that this subsection shall apply,

then, in paying over to the participant the proceeds of the disposal or the capital receipt, the trustees shall make a P.A.Y.E. deduction in respect of an amount equal to that on which income tax is payable as mentioned in subsection (1) above as if the participant were a former employee of the trustees.

(4) Where the trustees of an approved scheme receive a sum of money to which subsection (1) above applies and the Board direct that this subsection shall apply—

- (a) the trustees shall make the payment mentioned in that subsection to the company specified in the Board's direction; and
- (b) that company shall pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction, and for that purpose if the participant is not an employee of that company he shall be treated as a former employee;

but no such direction shall be given except with the consent of the trustees, the company or companies (if any) specified in subsection (2) above and the company specified in the direction.

(5) Where in accordance with this section any person is required to make a P.A.Y.E. deduction in respect of any amount, that amount shall be treated for the purposes of section 204 of the Taxes Act (pay as you earn) and any regulations made under that section as an amount of income payable to the recipient and assessable to income tax under Schedule E, and accordingly such deduction shall be made as is required by those regulations.

(6) Where, in connection with a transfer of a participant's shares to which paragraph (c) of subsection (1) of section 54 above applies, the trustees receive such a sum as is referred to in that paragraph, that sum shall be treated for the purposes of the Income Tax Acts—

- (a) as a sum deducted by the trustees pursuant to a requirement to make a P.A.Y.E. deduction under subsection (3) above; and
- (b) as referable to the income tax to which, as a result of the transfer, the participant is chargeable by virtue of section 55 above.

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- (7) Unless the Board otherwise direct, in the application of this section to a sum of money which constitutes (or forms part of) the proceeds of a disposal of, or a capital receipt referable to, excess or unauthorised shares, within the meaning of section 58 above, the trustees shall determine the amount of the payment mentioned in subsection (1) above or, as the case may be, the amount of the P.A.Y.E. deduction to be made under subsection (3) above as if the shares were not excess shares.

## **60 Schedule D deduction of payments to trustees**

- (1) Any sum expended by the company concerned or, in the case of a group scheme, by a participating company in making a payment to the trustees of an approved scheme shall be included—
- (a) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by that company, or
  - (b) if that company is an investment company within the meaning of section 304 of the Taxes Act or a company in the case of which that section applies by virtue of section 305 of that Act, in the sums to be deducted as expenses of management in computing the profits of the company for the purposes of corporation tax,
- if, and only if, one of the conditions in subsection (2) below is fulfilled.
- (2) The conditions referred to in subsection (1) above are—
- (a) that before the expiry of the relevant period the sum in question is applied by the trustees in the acquisition of shares for appropriation to individuals who are eligible to participate in the scheme by virtue of their being or having been employees or directors of the company making the payment; and
  - (b) that the sum is necessary to meet the reasonable expenses of the trustees in administering the scheme.
- (3) For the purposes of subsection (2)(a) above, " the relevant period " means the period of nine months beginning on the day following the end of the period of account in which the sum in question is charged as an expense of the company incurring the expenditure or such longer period as the Board may allow by notice in writing given to that company.
- (4) For the purposes of this section, the trustees of an approved scheme shall be taken to apply sums paid to them in the order in which the sums are received by them.

## **61 Interpretation and construction**

- (1) In this Chapter—
- " the appropriate percentage ", in relation to any shares, shall be construed in accordance with section 54(7) above;
  - " approved scheme " shall be construed in accordance with section 53(2) above ;
  - " the company concerned " has the meaning assigned to it by paragraph 1(1) of Schedule 9 to this Act;
  - " group scheme " and, in relation to such a scheme, " participating company " have the meaning assigned by paragraph 1(2) of that Schedule;
  - " initial market value ", in relation to any shares, shall be construed in accordance with section 53(4) above;

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*Status: This is the original version (as it was originally enacted).*

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" locked-in value ", in relation to any shares, shall be construed in accordance with section 55(2) above;

" market value ", in relation to any shares, means their market value as determined in accordance with Part III of the Finance Act 1965 (capital gains tax);

" participant " shall be construed in accordance with section 53(2)(a) above ;

" the period of retention " has the meaning assigned to it by section 54(4) above ;

" the release date " has the meaning assigned to it by section 54(6) above;

" shares " includes stock;

" the trust instrument ", in relation to an approved scheme, means the instrument referred to in paragraph 1(3)(c) of Schedule 9 to this Act; and

" the trustees", in relation to an approved scheme or a participant's shares, means the body of persons for the establishment of which the scheme must provide as mentioned in paragraph 1(3) of Schedule 9 to this Act.

(2) Any provision of this Chapter with respect to—

- (a) the order in which any of a participant's shares are to be treated as disposed of for the purposes of this Chapter, or
- (b) the shares in relation to which an event is to be treated as occurring for any such purpose,

shall have effect notwithstanding any direction given to the trustees with respect to shares of a particular description or to shares appropriated to the participant at a particular time.

(3) For the purposes of capital gains tax—

- (a) no deduction shall be made from the consideration for the disposal of any shares by reason only that an amount determined under this Chapter is chargeable to income tax;
- (b) any charge to income tax by virtue of section 56 above shall be disregarded in determining whether a distribution is a capital distribution within the meaning of paragraph 3 of Schedule 7 to the Finance Act 1965; and
- (c) nothing in any such provision as is referred to in subsection (2) above shall affect the rules applicable to the computation of a gain accruing on a part disposal of a holding of shares or other securities which were acquired at different times.