



# Finance (No.2) Act 1987

## 1987 CHAPTER 51

### PART I

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

### CHAPTER I

#### PROFIT-RELATED PAY

#### *Preliminary*

#### **1 Interpretation.**

(1) In this Chapter—

“employment” means an office or employment whose emoluments fall to be assessed under Schedule E, and related expressions have corresponding meanings;

“employment unit” means an undertaking, or that part of an undertaking, to which a profit-related pay scheme relates;

“pay” (except in the expression “profit-related pay”) means emoluments paid under deduction of tax pursuant to section 204 of the Taxes Act (pay as you earn), reduced by any amounts included in them by virtue of Chapter II of Part III of the Finance Act 1976;

“profit period” means an accounting period by reference to which any profit-related pay is calculated;

“profit-related pay” means emoluments from an employment which are paid in accordance with a profit-related pay scheme;

“profit-related pay scheme” means a scheme providing for the payment of emoluments calculated by reference to profits;

“profits” or “losses”, in relation to a profit period, means the amount shown in the account prepared for that period in accordance with the relevant profit-

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related pay scheme as the profit, or as the case may be the loss, on ordinary activities after taxation;

“registered scheme” means a profit-related pay scheme registered under this Chapter;

“scheme employer” means the person on whose application a profit-related pay scheme is or may be registered under this Chapter.

- (2) References in this Chapter to the employees to whom a profit-related pay scheme relates are references to the employees who will receive any payments of profit-related pay under the scheme.

## **2 Taxation of profit-related pay.**

Any charge to income tax on profit-related pay paid in accordance with a registered scheme shall be made for the year of assessment in which it is paid (rather than the period for which it is paid).

### *The relief*

## **3 Relief from tax.**

- (1) One half of any profit-related pay to which this section applies shall be exempt from income tax.
- (2) This section applies to any profit-related pay paid to an employee by reference to a profit period and in accordance with a registered scheme, but only so far as it does not exceed the lower of the two limits specified in the following provisions of this section.
- (3) The first of the limits referred to in subsection (2) above is one fifth of the aggregate of—
- (a) the pay (but not any profit-related pay) paid to the employee in the profit period in respect of his employment in the employment unit concerned (or, if the employee is eligible to receive profit-related pay by reference to part only of the period, so much of his pay, but not any profit-related pay, as is paid in that part), and
  - (b) the profit-related pay paid to him by reference to that period in respect of that employment.
- (4) The second of the limits referred to in subsection (2) above is £3000 (or, if the profit period is less than twelve months or the employee is eligible to receive profit-related pay by reference to part only of the profit period, a proportionately reduced amount).

## **4 Exceptions from relief.**

- (1) Profit-related pay shall not be exempt from income tax by virtue of section 3 above if—
- (a) it is paid to an employee in respect of his employment in an employment unit during a time when he also has another employment, and
  - (b) he receives in respect of his other employment during that time profit-related pay which is exempt from income tax by virtue of that section.

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- (2) Subject to subsection (3) below, profit-related pay in respect of which no secondary Class 1 contributions under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975 are payable shall not be exempt from income tax by virtue of section 3 above.
- (3) Subsection (2) above shall not apply to profit-related pay in respect of which no Class 1 contributions are payable only because the employee's earnings are below the lower earnings limit for such contributions.

### *Registration*

## **5 Persons who may apply for registration.**

- (1) Where the emoluments of all the employees to whom a profit-related pay scheme relates are paid by the same person, an application to register the scheme under this Chapter may be made to the Board by that person.
- (2) Where subsection (1) above does not apply to a profit-related pay scheme, no application to register it may be made unless all the persons who pay emoluments to employees to whom the scheme relates are bodies corporate which are members of the same group; and in that case an application may be made by the parent company of the group.
- (3) In subsection (2) above “group” means a body corporate and its 51 per cent. subsidiaries, and “parent company” means that body corporate; and in applying for the purposes of this section the definition of “51 per cent. subsidiary” in section 532 of the Taxes Act, any share capital of a registered industrial and provident society (within the meaning of section 340 of the Taxes Act) shall be treated as ordinary share capital.

## **6 Excluded employments.**

- (1) No application may be made to register a scheme under this Chapter if any employment to which the scheme relates is—
  - (a) employment in an office under the Crown or otherwise in the service of the Crown, or
  - (b) employment by an excluded employer.
- (2) For the purposes of this section “excluded employer” means—
  - (a) a person in an employment within subsection (1) above;
  - (b) a body under the control of the Crown, or of one or more persons acting on behalf of the Crown;
  - (c) a local authority;
  - (d) a body under the control of one or more local authorities, or of the Crown (or one or more persons acting on behalf of the Crown) and one or more local authorities.
- (3) For the purposes of this section a person has control of a body only if one or more of the following conditions is satisfied—
  - (a) in the case of a body whose affairs are managed by its members, he has the power to appoint more than half of the members;
  - (b) in the case of a body having a share capital, he holds more than half of its issued share capital;

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- (c) in the case of a body whose members vote in general meeting, he has the power to exercise more than half of the votes exercisable in general meeting;
  - (d) the articles of association or other rules regulating the body give him the power to secure that the affairs of the body are conducted in accordance with his wishes.
- (4) For the purposes of this section a person shall be taken to possess any rights and powers possessed by—
- (a) a person appointed by him to an office by virtue of which the rights or powers are exercisable, or
  - (b) a body which he controls,
- including rights and powers which such an officer or body is taken to possess by virtue of this subsection.
- (5) Subsections (3) and (4) above apply with the necessary modifications for the purpose of determining whether persons together have control of a body.

## 7 Applications for registration.

- (1) An application for the registration of a profit-related pay scheme under this Chapter—
- (a) shall be in such form as the Board may prescribe;
  - (b) shall contain a declaration by the applicant that the scheme complies with the requirements of Schedule 1 to this Act;
  - (c) shall contain an undertaking by the applicant that the emoluments paid to any employee to whom the scheme relates and to whom minimum wage legislation applies will satisfy that legislation without taking account of profit-related pay;
  - (d) shall specify the profit period or periods to which the scheme relates;
  - (e) shall be supported by such information as the Board may require.
- (2) An application for the registration of a profit-related pay scheme under this Chapter shall be accompanied by a report by an independent accountant, in a form prescribed by the Board, to the effect that in his opinion—
- (a) the scheme complies with the requirements of Schedule 1 to this Act;
  - (b) the books and records maintained and proposed to be maintained by the applicant are adequate for the purpose of enabling the documents required by section 12(1) below to be produced.
- (3) An application for the registration of a profit-related pay scheme under this Chapter shall be made within the period of six months ending immediately before the beginning of the profit period, or the first of the profit periods, to which the scheme relates.
- (4) In subsection (1) above, “minimum wage legislation” means the provisions relating to remuneration in Part II of the Wages Act 1986, the Wages Councils (Northern Ireland) Order 1982, the Agricultural Wages Act 1948, the Agricultural Wages (Scotland) Act 1949 and the Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

## 8 Registration.

- (1) If an application for the registration of a profit-related pay scheme under this Chapter is made more than three months (but not more than six months) before the beginning of the profit period, or the first of the profit periods, to which the scheme relates,

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then, subject to subsection (2) below, the Board shall register the scheme before the beginning of that period.

- (2) If the Board are not satisfied that an application made as mentioned in subsection (1) above complies with the requirements of this Chapter, they may within thirty days after the day on which they receive the application—
  - (a) refuse the application, or
  - (b) by written notice to the applicant either require him to amend the application or require him to give them such further information as may be specified in the notice, and in either case to do so within such time, not exceeding thirty days after the day on which the notice is given, as may be so specified.
- (3) If a notice under subsection (2) above is complied with and the Board are satisfied that the application complies with the requirements of this Chapter, the Board shall register the scheme before the beginning of the profit period.
- (4) If a notice under subsection (2) above is complied with but the Board remain not satisfied that the application complies with the requirements of this Chapter, the Board shall refuse the application.
- (5) If a notice under subsection (2) above is not complied with but the Board are before the beginning of the profit period satisfied that the application complies with the requirements of this Chapter, the Board may register the scheme before the beginning of the period; but if they do not do so, the application shall be regarded as having been refused.
- (6) If an application for the registration of a profit-related pay scheme under this Chapter is made within the period of three months before the beginning of the profit period, or the first of the profit periods, to which the scheme relates, then—
  - (a) if before the beginning of the profit period the Board are satisfied that the application complies with the requirements of this Chapter, they shall register the scheme before the beginning of the period; but
  - (b) in any other case, the application shall be regarded as having been refused.
- (7) After registering a scheme under this Chapter, the Board shall by written notice inform the applicant that they have done so.
- (8) The Board shall give written notice to the applicant if they refuse his application under subsection (2) or (4) above.
- (9) For the purposes of this section an application does not comply with the requirements of this Chapter if the scheme to which it relates does not comply with the requirements of Schedule 1 to this Act.

## **9 Change of scheme employer.**

- (1) Where—
  - (a) a scheme employer ceases to fulfil the conditions which section 5 above requires to be fulfilled by an applicant for registration of the scheme, and
  - (b) he is succeeded by a person who would be eligible to apply for registration of the scheme, and
  - (c) there is otherwise no other material change in the employment unit or in the circumstances relating to the scheme,

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the scheme employer and his successor may make a joint written application to the Board under this section for the amendment of the registration of the scheme.

- (2) If on receiving an application under this section the Board are satisfied—
- (a) that the conditions in subsection (1)(a), (b) and (c) above are fulfilled, and
  - (b) that, apart from the change of scheme employer, there would be no grounds for cancelling the registration of the scheme,
- the Board shall amend the registration of the scheme by substituting the successor for the previous scheme employer.
- (3) An application under this section shall be made before the end of the period of one month beginning with the date of the succession.
- (4) Where the Board amend the registration of a scheme under this section, this Chapter shall (subject to any necessary modifications) have effect as if the successor had been the scheme employer throughout.
- (5) The Board shall give written notice to the applicants if they refuse an application under this section.

## **10 Cancellation of registration.**

- (1) If after a scheme has been registered under this Chapter it appears to the Board—
- (a) that the scheme has not been or will not be administered in accordance with its terms or in accordance with this Chapter in relation to a profit period, or
  - (b) that the circumstances relating to the scheme have during a profit period become such that (if it were not registered) an application to register it under this Chapter would be excluded by section 6 above, or
  - (c) in the case of a scheme which employs (as the method of determining the distributable pool for a profit period) the method described as method B in paragraph 14 of Schedule 1 to this Act, that losses were incurred in a profit period or in the preceding period of twelve months, or
  - (d) that the undertaking given in compliance with section 7(1)(c) above has not been complied with in relation to employment at any time during a profit period,

the Board may cancel the registration and, subject to subsection (5) below, the cancellation shall have effect from the beginning of that profit period.

- (2) If after a scheme has been registered under this Chapter it appears to the Board—
- (a) that at the time of registration the scheme did not comply with the requirements of Schedule 1 to this Act or that the application did not comply with the requirements of this Chapter, or
  - (b) in the case of a scheme which employs (as the method of determining the distributable pool for a profit period) the method described as method A in paragraph 13 of Schedule 1, that losses were incurred in the base year specified in the scheme,

the Board may cancel the registration with effect from the beginning of the profit period (or first profit period) to which the scheme related.

- (3) If after a scheme has been registered under this Chapter the scheme employer fails to comply with the requirements of section 12 below in relation to a profit period, the Board may cancel the registration with effect from the beginning of that profit period.

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- (4) If the scheme employer, by written notice, requests the Board to cancel the registration of the scheme with effect from the beginning of a profit period specified in the notice, the Board shall comply with the request.
- (5) Where—
- (a) the scheme employer has given to the Board in accordance with section 13(3) below notice of a change in the employment unit, or in the circumstances relating to the scheme, which is a ground for cancellation of the registration of the scheme by virtue of subsection (1)(a) or (b) above, and
  - (b) the Board are satisfied that the change is not brought about with a view to the registration of a new scheme, and
  - (c) in the notice the scheme employer requests the Board to cancel the registration of the scheme with effect from the date of the change,
- then, if the notice is given before the end of the period of one month beginning with that date, the Board shall comply with the request.
- (6) The Board shall give written notice to the scheme employer of the cancellation of a scheme's registration.

#### *Administration*

### **11 Recovery of tax from scheme employer.**

- (1) This section applies where—
- (a) payments of profit-related pay are made to an employee in accordance with a registered scheme, and
  - (b) in consequence of the relief given by this Chapter in respect of registered schemes, less income tax is deducted from the payments in accordance with section 204 of the Taxes Act (pay as you earn) than would have been deducted if the scheme had not been registered, and
  - (c) the registration of the scheme is subsequently cancelled with effect from a time before that relevant for the purposes of the relief.
- (2) Where this section applies, an amount equal to the shortfall in the deductions made in accordance with section 204 shall be payable by the scheme employer to the Board; and regulations under that section may include provision as to the collection and recovery of any such amount.

### **12 Annual returns etc.**

- (1) After every profit period of a registered scheme, the scheme employer shall, within the period allowed by subsection (2) below, send to the Board—
- (a) a return in such form and containing such information as the Board may prescribe, and
  - (b) a report by an independent accountant in such form and containing such information as the Board may prescribe, and stating that in his opinion the terms of the scheme have been complied with in respect of the profit period.
- (2) Subject to subsection (3) below, the period allowed for complying with subsection (1) above is—

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- (a) seven months from the end of the profit period if the employment unit to which the scheme relates is an undertaking or part of an undertaking of a public company, and
  - (b) ten months from the end of the profit period in any other case.
- (3) If before the end of the period allowed by subsection (2) above the scheme employer gives the Board written notice that an extension of three months has been allowed under section 242(3) of the Companies Act 1985, or under Article 250(3) of the Companies (Northern Ireland) Order 1986, in relation to a financial year of the employer which corresponds with the profit period in question, then the period allowed by subsection (2) above shall be correspondingly extended.
- (4) In subsection (2)(a) above, “public company” has the meaning given by section 1(3) of the Companies Act 1985 or Article 12(3) of the Companies (Northern Ireland) Order 1986.

### **13 Other information.**

- (1) The Board may by written notice require any person to give them, within a period of thirty days or such longer period as may be specified in the notice, any information which is so specified and which—
- (a) that person has or can reasonably be required to obtain, and
  - (b) the Board consider they need to have in order to perform their functions under this Chapter.
- (2) Without prejudice to the generality of subsection (1)(b) above, the Board may in particular require a person under subsection (1) to give them—
- (a) information to enable them to determine whether the registration of a scheme should be cancelled;
  - (b) information to enable them to determine the liability to tax of any person who is or has been an employee to whom a registered scheme relates or who pays or has paid emoluments to such an employee;
  - (c) information about the administration of a profit-related pay scheme which is or has been a registered scheme;
  - (d) information about any change of person paying emoluments to employees to whom a registered scheme relates.
- (3) The scheme employer of a registered scheme shall by written notice inform the Board without delay if he becomes aware of anything that is or may be a ground for cancellation of the registration of the scheme.

### **14 Information: penalties.**

- (1) At the end of the first column in the Table in section 98 of the Taxes Management Act 1970 (penalties for failure to furnish information etc.) there shall be added—

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“Section 13(1) of the Finance (No. 2) Act 1987”.

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- (2) At the end of the second column of that Table there shall be added—

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“Section 12(1) of the Finance (No. 2) Act 1987”.

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## **15 Appeals.**

- (1) An appeal to the Special Commissioners may be made by a scheme employer—
  - (a) against a refusal by the Board under section 8(2) or (4) above of an application for registration of the scheme;
  - (b) against a refusal by the Board of an application under section 9 above;
  - (c) against the cancellation by the Board of the registration of the scheme.
- (2) An appeal under this section shall be made by written notice given to the Board within thirty days of the day on which the scheme employer was notified of the refusal or, as the case may be, the cancellation.

### *Supplementary*

## **16 Partnerships.**

—For the purposes of this Chapter the members of a partnership which is a scheme employer shall be treated as a single continuing body of persons notwithstanding any change in their identity.

## **17 Independent accountants.**

- (1) For the purposes of this Chapter, “independent accountant”, in relation to a profit-related pay scheme, means a person who—
  - (a) is within section 389(1)(a) or (b) of the Companies Act 1985 or Article 397(1) (a) or (b) of the Companies (Northern Ireland) Order 1986 (qualification for appointment as auditor), and
  - (b) is not excluded by subsections (2) to (5) below.
- (2) A person is not an independent accountant in relation to a profit-related pay scheme if—
  - (a) he is the employer of employees to whom the scheme relates, or
  - (b) he is a partner or an employee of, or a partner of an employee of, a person within subsection (3) below, or
  - (c) he is an employee of a person within paragraph (b) above.
- (3) The persons within this subsection are—
  - (a) any person having employees to whom the scheme relates;
  - (b) any body corporate which is the subsidiary or holding company of a body corporate within paragraph (a) above or a subsidiary of such a body’s holding company.
- (4) For the purposes of this section—
  - (a) an auditor of a company is not to be regarded as an employee of it, and
  - (b) “holding company” and “subsidiary” are to be construed in accordance with section 736 of the Companies Act 1985 or Article 4 of the Companies (Northern Ireland) Order 1986.
- (5) A body corporate cannot be an independent accountant in relation to a scheme.

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- (6) For the purposes of this Chapter, “independent accountant”, in relation to a scheme, includes a Scottish firm all the partners of which are independent accountants in relation to the scheme.

## CHAPTER II

### PERSONAL PENSION SCHEMES

#### *Preliminary*

#### **18 Interpretation.**

In this Chapter—

“approved”—

- (a) in relation to a scheme, means approved by the Board under this Chapter, and
- (b) in relation to arrangements, means made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme,

but does not refer to cases in which approval has been withdrawn;

“authorised insurance company” means either—

- (a) a person authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on long term business and acting through a branch or office in the United Kingdom, or
- (b) a society registered as a friendly society under the Friendly Societies Act 1974 or the Friendly Societies Act (Northern Ireland) 1970;

“member”, in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

“personal pension arrangements” means arrangements made by an individual in accordance with a personal pension scheme;

“personal pension scheme” means a scheme whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme;

“scheme administrator” means the person referred to in section 27 below.

#### **19 Approval of schemes.**

- (1) An application to the Board for their approval of a personal pension scheme shall be in such form, shall contain such information, and shall be accompanied by such documents (in such form) as the Board may prescribe.
- (2) The Board may at their discretion grant or refuse an application for approval of a personal pension scheme, but their discretion shall be subject to the restrictions set out in sections 20 to 30 below.
- (3) The Board shall give written notice to the applicant of the grant or refusal of an application; and in the case of a refusal the notice shall state the grounds for the refusal.

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- (4) If an amendment is made to an approved scheme without being approved by the Board, their approval of the scheme shall cease to have effect.

*Restrictions on approval: establishment and benefits*

**20 Establishment of schemes.**

- (1) The Board shall not approve a personal pension scheme established by any person other than—
- (a) a person who is authorised under Chapter III of Part I of the Financial Services Act 1986 to carry on investment business, and who carries on business of a kind mentioned in subsection (2) below;
  - (b) a building society within the meaning of the Building Societies Act 1986;
  - (c) an institution authorised under the Banking Act 1987;
  - (d) a recognised bank or licensed institution within the meaning of the Banking Act 1979.
- (2) The kinds of business referred to in subsection (1)(a) above are—
- (a) issuing insurance policies or annuity contracts;
  - (b) managing unit trust schemes authorised under section 78(1) of the Financial Services Act 1986.
- (3) Subsection (1) above shall not apply in relation to a scheme approved by the Board by virtue of section 226(5) of the Taxes Act if it is established before 4th January 1988.
- (4) The Treasury may by order amend this section as it has effect for the time being.
- (5) An order under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

**21 Scope of benefits.**

- (1) The Board shall not approve a personal pension scheme which makes provision for any benefit other than—
- (a) the payment of an annuity satisfying the conditions in section 22 below;
  - (b) the payment to a member of a lump sum satisfying the conditions in section 23 below;
  - (c) the payment after the death of a member of an annuity satisfying the conditions in section 24 below;
  - (d) the payment on the death of a member of a lump sum satisfying the conditions in section 25 below;
  - (e) the payment on the death of a member of a lump sum satisfying the conditions in section 26 below.
- (2) Subsection (1) above shall not prevent the approval of a scheme which makes provision for insurance against a risk relating to the non-payment of contributions.

**22 Annuity to member.**

- (1) The annuity must be payable by an authorised insurance company which may be chosen by the member.

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- (2) Subject to subsection (3) below, the annuity must not commence before the member attains the age of 50 or after he attains the age of 75.
- (3) The annuity may commence before the member attains the age of 50 if—
  - (a) it is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted, or
  - (b) the Board are satisfied that his occupation is one in which persons customarily retire before that age.
- (4) Subject to subsection (5) below, the annuity must be payable to the member for his life.
- (5) The annuity may continue for a term certain not exceeding ten years, notwithstanding the member's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the member and before the expiry of that term, on the happening of any of the following—
  - (a) the marriage of the annuitant;
  - (b) his attaining the age of eighteen;
  - (c) the later of his attaining that age and ceasing to be in full-time education.
- (6) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

### **23 Lump sum to member.**

- (1) The lump sum must be payable only if the member so elects on or before the date on which an annuity satisfying the conditions in section 22 above is first payable to him under the arrangements made in accordance with the scheme.
- (2) The lump sum must be payable when that annuity is first payable.
- (3) The lump sum must not exceed one quarter of the total value, at the time when the lump sum is paid, of the benefits for the member provided for by the arrangements made by him in accordance with the scheme.
- (4) The lump sum must not exceed £150,000 or such other sum as may for the time being be specified in an order made by the Treasury; and an order under this subsection shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) The right to payment of the lump sum must not be capable of assignment or surrender.

### **24 Annuity after death of member.**

- (1) The annuity must be payable by an authorised insurance company which may be chosen by the member or by the annuitant.
- (2) The annuity must be payable to the surviving spouse of the member, or to a person who was at the member's death a dependant of his.

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- (3) The aggregate annual amount (or, if that amount varies, the aggregate of the initial annual amounts) of all annuities to which this section applies and which are payable under the same personal pension arrangements shall not exceed—
  - (a) where before his death the member was in receipt of an annuity under the arrangements, the annual amount (or if it varied, the highest annual amount) of that annuity, or
  - (b) where paragraph (a) above does not apply, the highest annual amount of the annuity that would have been payable under the arrangements to the member (ignoring any entitlement of his to commute part of it for a lump sum) if it had vested on the day before his death.
- (4) Subject to subsections (5) to (9) below, the annuity must be payable for the life of the annuitant.
- (5) Where the annuity is payable to the surviving spouse of the member and at the time of the member's death the surviving spouse is under the age of 60, the annuity may be deferred to a time not later than—
  - (a) the time when the surviving spouse attains that age, or
  - (b) where the member's annuity is payable to the surviving spouse for a term certain as mentioned in section 22(5) above and the surviving spouse attains the age of 60 before the time when the member's annuity terminates, that time.
- (6) The annuity may cease to be payable on the marriage of the annuitant.
- (7) Where the annuity is payable to the surviving spouse of the member, it may cease before the death of the surviving spouse if—
  - (a) the member was survived by one or more dependants under the age of 18 and at the time of the member's death the surviving spouse was under the age of 45, and
  - (b) at some time before the surviving spouse attains that age no such dependant remains under the age of 18.
- (8) Where the annuity is payable to a person who is under the age of 18 when it is first payable, it must cease to be payable either—
  - (a) on his attaining that age, or
  - (b) on the later of his attaining that age and ceasing to be in full-time education, unless he was a dependant of the member otherwise than by reason only that he was under the age of 18.
- (9) The annuity may continue for a term certain not exceeding ten years, notwithstanding the original annuitant's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the original annuitant and before the expiry of that term, on the happening of any of the following—
  - (a) the marriage of the annuitant to whom it is payable;
  - (b) his attaining the age of eighteen;
  - (c) the later of his attaining that age and ceasing to be in full-time education.
- (10) The annuity must not be capable of assignment or surrender, except that an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to

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the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

**25 Lump sum on death of member.**

- (1) The lump sum must be payable by an authorised insurance company.
- (2) The lump sum must be payable on the death of the member before he attains the age of 75.

**26 Return of contributions on death of member.**

- (1) The lump sum must be payable only if no annuity satisfying the conditions in either section 22 or section 24 above has become payable.
- (2) Subject to subsection (3) below, the lump sum must represent no more than the return of contributions, together with reasonable interest on contributions or bonuses out of profits.
- (3) To the extent that contributions are invested in units under a unit trust scheme, the lump sum may represent the sale or redemption price of the units.

*Other restrictions on approval*

**27 Scheme administrator.**

The Board shall not approve a personal pension scheme unless they are satisfied that there is a person resident in the United Kingdom who will be responsible for the management of the scheme.

**28 Transfer payments.**

- (1) The Board shall not approve a personal pension scheme unless it makes such provision for the making, acceptance and application of transfer payments as satisfies any requirements imposed by or under regulations made by the Board.
- (2) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

**29 Excess contributions.**

- (1) The Board shall not approve a personal pension scheme unless it makes provision, in relation to arrangements made in accordance with the scheme, for ensuring that—
  - (a) the aggregate amount of the contributions that may be made in a year of assessment by the member and an employer of his under the arrangements, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by the member, does not exceed the permitted maximum for that year, and
  - (b) any excess is repaid to the member to the extent of his contributions and otherwise to his employer.
- (2) In subsection (1) above “the permitted maximum” for a year of assessment means an amount equal to the aggregate of—

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- (a) the relevant percentage of the member’s net relevant earnings for the year, and
- (b) so much of any relief given under section 31 below for that year as is given by virtue of section 34;

and references in subsection (1) to contributions by the member do not include references to contributions treated by virtue of section 42(3) below as paid by him.

- (3) In subsection (2) above “the relevant percentage” means 175 per cent. or, in a case where section 32(2) below applies, the relevant percentage there specified.

### **30 Restriction on contributors.**

- (1) The Board shall not approve a personal pension scheme which permits the acceptance of contributions other than—
  - (a) contributions by members;
  - (b) contributions by employers of members;
  - (c) minimum contributions paid by the Secretary of State under Part I of the Social Security Act 1986 or by the Department of Health and Social Services for Northern Ireland under Part II of the Social Security (Northern Ireland) Order 1986.
- (2) The Board shall not approve a personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (1)(c) above in respect of an individual’s service—
  - (a) as director of a company, if his emoluments as such are within section 35(5) below; or
  - (b) in an office or employment to which section 36 below applies.

*Tax consequences of approval: member’s contributions*

### **31 Deduction from relevant earnings.**

A contribution paid by an individual under approved personal pension arrangements made by him shall, subject to the provisions of this Chapter, be deducted from or set off against any relevant earnings of his for the year of assessment in which the payment is made.

### **32 Limit on deductions.**

- (1) The maximum amount that may be deducted or set off in any year of assessment by virtue of section 31 above shall be 175 per cent. of the individual’s net relevant earnings for that year.
- (2) In the case of an individual whose age at the beginning of the year of assessment is within a range specified in the first column of the following table, subsection (1) above shall have effect with the substitution for 175 per cent. of the relevant percentage specified in the second column.

51 to 55	20 per cent.
56 to 60	225 per cent.
61 or more	275 per cent.

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- (3) Without prejudice to subsection (1) above, the maximum amount that may be deducted or set off in any year of assessment in respect of contributions paid by an individual to secure benefits satisfying the conditions in section 25 above shall be 5 per cent. of the individual's net relevant earnings for that year.
- (4) Where personal pension arrangements are made by an employee whose employer makes contributions under the arrangements, the maximum amount that may be deducted or set off in any year of assessment shall be reduced by the amount of the employer's contributions in the year.
- (5) Any minimum contributions treated by virtue of section 42(3) below as paid by the individual in respect of whom they are paid shall be disregarded for the purposes of this section.

### **33 Carry-back of contributions.**

- (1) An individual who pays a contribution under approved personal pension arrangements in a year of assessment (whether or not a year for which he has relevant earnings) may elect that the contribution, or part of it, shall be treated as paid—
  - (a) in the year of assessment preceding that year, or
  - (b) if he had no net relevant earnings in that preceding year of assessment, in the year of assessment before that.
- (2) Where for any year of assessment an individual—
  - (a) has relevant earnings as an underwriting member of Lloyd's or by way of commission calculated by reference to the profits of Lloyd's underwriting business, and
  - (b) there is an amount of unused relief attributable to those earnings,
 the individual may elect that there shall be treated as paid in that year so much of any contributions paid by him under approved personal pension arrangements in the next year of assessment but two as does not exceed the amount of the unused relief.
- (3) In subsection (2) above, references to an amount of unused relief attributable to the earnings mentioned in subsection (2)(a) are to an amount which could have been deducted from or set off against those earnings under section 31 above if—
  - (a) the individual had paid contributions under approved personal pension arrangements in the year of assessment for which he has the earnings, or
  - (b) any such contributions paid by him in that year had been greater.
- (4) An election under this section must be made not later than three months after the end of the year of assessment in which the contributions treated as paid in another year are actually paid.
- (5) Where an election is made under this section in respect of a contribution or part of a contribution, the other provisions of this Chapter shall have effect as if the contribution or part had been paid in the year specified in the election and not in the year in which it was actually paid.

### **34 Carry-forward of relief.**

- (1) Where—



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- (a) for any year of assessment an individual has relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, and
  - (b) there is an amount of unused relief for that year,
- relief may be given under section 31 above, up to the amount of the unused relief, in respect of so much of any contributions paid by him under approved personal pension arrangements in any of the next six years of assessment as exceeds the maximum applying for that year under section 32 above.
- (2) In this section, references to an amount of unused relief for any year are to an amount which could have been deducted from or set off against the individual's relevant earnings for that year under section 31 above if—
    - (a) the individual had paid contributions under approved personal pension arrangements in that year, or
    - (b) any such contributions paid by him in that year had been greater.
  - (3) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.
  - (4) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than six years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment—
    - (a) that amount shall not be available for giving relief by virtue of this section for any of the six years following that year; but
    - (b) the individual may, within the period of six months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be given under section 31 above, up to that amount, in respect of so much of any contributions paid by him under approved personal pension arrangements within that period as exceeds the maximum applying under section 32 above for the year of assessment in which they are paid;and to the extent to which relief in respect of any contributions is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.
  - (5) In this section “a relevant assessment to tax” means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings.

### **35 Meaning of “relevant earnings”.**

- (1) In this Chapter, “relevant earnings”, in relation to an individual, means any income of his which is chargeable to tax for the year of assessment in question and is within subsection (2) below.
- (2) Subject to subsections (3) to (5) below, income is within this subsection if it is—
  - (a) emoluments chargeable under Schedule E from an office or employment held by the individual;
  - (b) income from any property which is attached to or forms part of the emoluments of an office or employment held by him;
  - (c) income which is chargeable under Schedule D and is immediately derived by him from the carrying on or exercise by him of his trade, profession

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- or vocation (either as an individual or as a partner acting personally in a partnership);
- (d) income treated as earned income by virtue of section 383 of the Taxes Act (patent rights).
- (3) Where section 36 below applies to an office or employment held by the individual, neither emoluments from the office or employment nor income from any property which is attached to it or forms part of its emoluments are within subsection (2) above.
- (4) The following are not income within subsection (2) above—
- (a) anything in respect of which tax is chargeable under Schedule E and which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares;
- (b) anything in respect of which tax is chargeable by virtue of section 187 of the Taxes Act (payments on termination of employment, etc.).
- (5) Emoluments of an individual as director of a company are not income within subsection (2) above if—
- (a) the income of the company consists wholly or mainly of investment income, and
- (b) the individual, either alone or together with any other persons who are or have been at any time directors of the company, controls the company.
- (6) For the purposes of subsection (5) above—
- “director” includes any person occupying the position of director by whatever name called;
- “investment income” shall be construed in accordance with paragraph 11 of Schedule 16 to the Finance Act 1972;
- “controls” shall be construed in accordance with section 534 of the Taxes Act.
- (7) For the purposes of this Chapter, a married woman’s relevant earnings shall not be treated as her husband’s relevant earnings, notwithstanding that her income chargeable to tax is treated as his income.

### **36 Earnings from pensionable employment.**

- (1) This section applies to an office or employment held by an individual if—
- (a) service in it is service to which a relevant superannuation scheme relates,
- (b) the individual is a participant in the scheme, and
- (c) neither subsection (4) nor subsection (5) below applies to his participation in the scheme.
- (2) This section applies whether or not the duties of the office or employment are performed wholly or partly in the United Kingdom or the individual is chargeable to tax in respect of it.
- (3) In subsection (1) above “a relevant superannuation scheme” means a scheme or arrangement—
- (a) the object or one of the objects of which is the provision, in respect of persons serving in particular offices or employments, of relevant benefits within the meaning of section 26(1) of the Finance Act 1970, and
- (b) which is established by a person other than the individual.

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- (4) This subsection applies to an individual's participation in a scheme if the scheme provides no benefits in relation to him other than—
  - (a) an annuity payable to his surviving spouse or a dependant of his;
  - (b) a lump sum payable on his death in service.
- (5) This subsection applies to an individual's participation in a scheme if any sums paid pursuant to the scheme with a view to the provision of relevant benefits for him are treated as his income for the purposes of the Income Tax Acts.

### **37 Meaning of “net relevant earnings”.**

- (1) Subject to subsections (3) to (7) below, in this Chapter “net relevant earnings”, in relation to an individual, means the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions within subsection (2) below which fall to be made from the relevant earnings in computing for the purposes of income tax his total income for that year.
- (2) Deductions are within this subsection if they are—
  - (a) deductions which but for section 130(1), (n) or (o) of the Taxes Act (annuities, royalties, rents etc.) could be made in computing the profits or gains of the individual;
  - (b) deductions made by virtue of section 189, section 192 or section 194(3) of the Taxes Act (necessary expenses etc.);
  - (c) deductions in respect of relief under Schedule 9 or 10 to the Finance Act 1981 (stock relief);
  - (d) deductions in respect of losses or capital allowances, being losses or capital allowances arising from activities profits or gains of which would be included in computing relevant earnings of the individual or the individual's wife or husband.
- (3) For the purposes of this section, an individual's relevant earnings shall be taken to be those earnings before giving effect to any capital allowances, other than deductions allowable in computing profits or gains, but after taking into account the amounts on which charges fall to be made under the Capital Allowances Act 1968 (including the enactments which under the Taxes Act are to be treated as contained in Part I of the Capital Allowances Act 1968); and in subsections (4) and (5) below references to income (other than references to total income) shall be construed similarly.
- (4) In the case of an individual's partnership profits, the amount to be included in arriving at his net relevant earnings shall be his share of the partnership income (estimated in accordance with the Income Tax Acts) after making from it any such deductions in respect of—
  - (a) payments made by the partnership,
  - (b) relief given to the partnership under Schedule 9 or 10 to the Finance Act 1981, and
  - (c) capital allowances falling to be made to the partnership,as would be made in computing the tax payable in respect of that income.
- (5) Where, in a year of assessment for which an amount is deducted or set off under section 31 above against the net relevant earnings of an individual,—

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- (a) a deduction in respect of such a loss or allowance of the individual as is mentioned in subsection (2)(d) above falls to be made in computing the total income of the individual or the individual's wife or husband, and
- (b) the deduction or part of it falls to be so made from income other than relevant earnings,

the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment in accordance with subsection (6) below.

- (6) The deduction shall be made so far as possible from the individual's net relevant earnings for the first of the subsequent years of assessment (whether or not he is entitled to relief under section 31 above for that year), and then, so far as it cannot be so made, from those of the next year, and so on.
- (7) An individual's net relevant earnings for any year of assessment shall be computed without regard to any deduction or set-off under section 31 above which falls to be made for that year in respect of the individual or the individual's wife or husband.

*Other tax consequences of approval*

**38 Employer's contributions.**

Where contributions are paid by an employer under approved personal pension arrangements made by his employee, those contributions shall not be regarded as emoluments of the employment chargeable to tax under Schedule E.

**39 Exemption for scheme investments.**

- (1) Income derived by a person from investments or deposits held by him for the purposes of an approved personal pension scheme shall be exempt from income tax.
- (2) A gain accruing to a person on his disposal of investments held by him for the purposes of an approved personal pension scheme shall not be a chargeable gain for the purposes of capital gains tax.
- (3) In section 323(4) of the Taxes Act (which lists the premiums referable to an insurance company's pension business) after paragraph (aa) there shall be inserted—
  - “(ab) any contract made under approved personal pension arrangements within the meaning of Chapter II of Part I of the Finance (No. 2) Act 1987”;

and nothing in the preceding provisions of this section shall be construed as affording relief in respect of any sums to be brought into account under section 314 of the Taxes Act.

- (4) In section 6 of the Finance Act 1975 (investment by pension funds in building societies) at the end of subsection (3) there shall be added “and section 39 of the Finance (No. 2) Act 1987”.

**40 Unit trusts.**

- (1) Subsection (2) of section 354 and subsection (3) of section 354A of the Taxes Act (which treat unit holders under unit trust schemes as receiving certain payments) shall

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not apply to any authorised unit trust which is also an approved personal pension scheme.

- (2) A gain accruing to a unit holder on his disposal of units in an authorised unit trust which is also an approved personal pension scheme shall not be a chargeable gain for the purposes of capital gains tax.

#### **41 Treatment of annuities.**

- (1) An annuity payable under approved personal pension arrangements shall be treated as earned income of the annuitant.
- (2) Subsection (1) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.
- (3) In section 230 of the Taxes Act (which gives special treatment to purchased life annuities) at the end of subsection (7) (exclusions) there shall be added—

“, or

- (e) to any annuity payable under approved personal pension arrangements within the meaning of Chapter II of Part I of the Finance (No. 2) Act 1987.”.

#### *Miscellaneous*

#### **42 Minimum contributions under Social Security Act 1986.**

- (1) Where under Part I of the Social Security Act 1986 the Secretary of State pays minimum contributions for the purposes of approved personal pension arrangements, the amount of the employee’s share of those contributions shall, instead of being the amount provided for in that Part, be the grossed-up equivalent of the amount so provided for.
- (2) For the purposes of this section—  
“the employee’s share” of minimum contributions is so much of the contributions as is attributable to the percentage mentioned in paragraph (a) of the definition of “rebate percentage” in section 3(3) of the Social Security Act 1986;  
“the grossed-up equivalent” of an amount is such sum as, after deduction of income tax at the basic rate in force for the year of assessment for which the contributions are paid, is equal to that amount.
- (3) The employee’s share of minimum contributions paid for a year of assessment by the Secretary of State for the purposes of approved personal pension arrangements shall be treated for the purposes of income tax—  
(a) as income for that year of the individual in respect of whom it is paid, and  
(b) as contributions paid in that year by that individual under those arrangements.
- (4) The Board may make regulations—  
(a) providing for the recovery by the Secretary of State from the Board, in such circumstances as may be prescribed by the regulations, of any increase attributable to this section in the sums paid by the Secretary of State out of the National Insurance Fund;

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- (b) requiring the Secretary of State to give the Board such information as may be so prescribed about minimum contributions paid by the Secretary of State;
  - (c) prescribing circumstances in which this section or any provision of it shall not apply;
  - (d) making such provision as appears to the Board to be necessary or expedient for the purposes of supplementing the provisions of this section.
- (5) Any payment received by the Secretary of State by virtue of this section shall be paid into the National Insurance Fund.
- (6) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In relation to Northern Ireland, this section shall have effect as if—
- (a) references to the Secretary of State were references to the Department of Health and Social Services for Northern Ireland;
  - (b) references to Part I and section 3(3) of the Social Security Act 1986 were references to Part II and Article 5(3) of the Social Security (Northern Ireland) Order 1986; and
  - (c) references to the National Insurance Fund were references to the Northern Ireland National Insurance Fund.

#### **43 Withdrawal of approval.**

- (1) If in the opinion of the Board the facts concerning an approved personal pension scheme or its administration or arrangements made in accordance with it do not warrant the continuance of their approval of the scheme, they may at any time by written notice given to the scheme administrator withdraw their approval of the scheme.
- (2) If in the opinion of the Board the facts concerning any approved personal pension arrangements do not warrant the continuance of their approval in relation to the arrangements, they may at any time by written notice given to the individual who made them and to the scheme administrator withdraw their approval in relation to the arrangements.
- (3) Without prejudice to the generality of subsection (2) above, the Board may withdraw their approval in relation to any personal pension arrangements if they are of the opinion that securing the provision of benefits under the arrangements was not the sole purpose of the individual in making them.
- (4) A notice under subsection (1) or subsection (2) above shall state the grounds on which, and the date from which, approval is withdrawn.
- (5) The Board may not withdraw their approval from a date earlier than the date when the facts were first such that they did not warrant the continuance of their approval (so, however, that in a case within subsection (3) above their approval may be withdrawn from the day the arrangements in question were made).

#### **44 Tax on unauthorised payments etc.**

- (1) This section applies to any payment within subsection (2) below which is made—
- (a) out of funds which are or have been held for the purposes of a personal pension scheme which is or has at any time been approved, and

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- (b) to or for the benefit of an individual who has made personal pension arrangements in accordance with the scheme.
- (2) A payment is within this subsection if—
  - (a) it is not expressly authorised by the rules of the scheme, or
  - (b) it is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorised by the rules of the scheme or by the arrangements when the scheme or, as the case may be, the arrangements were last so approved.
- (3) The individual referred to in subsection (1)(b) above, whether or not he is the recipient of the payment, shall be chargeable to tax under Schedule E on the amount of the payment for the year of assessment in which the payment is made.
- (4) This section applies to a transfer of assets or other transfer of money's worth as it applies to a payment, and in relation to such a transfer the reference in subsection (3) above to the amount of the payment shall be read as a reference to the value of the transfer.

#### **45 Relief by deduction from contributions.**

- (1) In such cases and subject to such conditions as the Board may prescribe in regulations, relief under section 31 above shall be given in accordance with subsections (2) and (3) below.
- (2) An individual who is entitled to such relief in respect of a contribution may deduct from the contribution when he pays it, and may retain, an amount equal to income tax at the basic rate on the contribution.
- (3) The scheme administrator—
  - (a) shall accept the amount paid after the deduction in discharge of the individual's liability to the same extent as if the deduction had not been made, and
  - (b) may recover an amount equal to the deduction from the Board.
- (4) Regulations under this section may make provision for carrying subsections (2) and (3) above into effect and, without prejudice to the generality of that, may—
  - (a) provide for the manner in which claims for the recovery of a sum under subsection (3)(b) may be made;
  - (b) provide for the giving of such information, in such form, as may be prescribed by or under the regulations;
  - (c) provide for the inspection by persons authorised by the Board of books, documents and other records.
- (5) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### **46 Claims for relief.**

Except where section 45 above applies, relief under section 31 above in respect of a contribution shall be given only on a claim made for the purpose.

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#### **47 Appeals.**

- (1) Where the Board—
  - (a) refuse an application by notice under section 19 above, or
  - (b) withdraw an approval by notice under section 43 above,the person to whom the notice is given may appeal to the Special Commissioners against the refusal or, as the case may be, the withdrawal.
- (2) An appeal under this section shall be made by written notice stating the grounds for the appeal and given to the Board before the end of the period of thirty days beginning with the day on which the notice of refusal or withdrawal was given to the appellant.
- (3) On an appeal under this section against the withdrawal of an approval, the Special Commissioners may, instead of allowing or dismissing the appeal, order that the withdrawal shall have effect from a date other than that determined by the Board.
- (4) The bringing of an appeal under this section shall not affect the validity of the decision appealed against pending the determination of the proceedings.

#### **48 Adjustment of relief.**

Where relief under section 31 above for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under section 31 for that or any subsequent year as are appropriate.

#### **49 Exclusion of double relief.**

- (1) Where relief under section 31 above is claimed and allowed for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of the Income Tax Acts for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.
- (2) References in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under section 31 above.

#### **50 Information about payments.**

- (1) An inspector may give a notice to a scheme administrator requiring him to provide the inspector with—
  - (a) such particulars as the notice may require relating to contributions paid under approved personal pension arrangements made in accordance with the scheme;
  - (b) such particulars as the notice may require relating to payments by way of return of contributions;
  - (c) copies of such accounts as the notice may require.
- (2) A person to whom a notice is given under this section shall comply with the notice within the period of thirty days beginning with the day on which it is given.



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## **51 Information: penalties.**

- (1) A person who knowingly makes a false statement or false representation on making an application under section 19 above or for the purpose of obtaining for himself or any other person any relief from or repayment of tax under this Chapter shall be liable to a penalty not exceeding £500.
- (2) At the end of the first column in the Table in section 98 of the Taxes Management Act 1970 (penalties for failure to furnish information etc.) there shall be added—

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“Regulations under section 45 of the Finance (No. 2) Act 1987  
Section 50 of that Act”.

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- (3) At the end of the second column of that Table there shall be added—

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“Regulations under section 45 of the Finance (No. 2) Act 1987”.

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## **52 Remuneration of Ministers and other officers.**

- (1) This section applies to any salary—
  - (a) payable to the holder of a qualifying office who is also a Member of the House of Commons, and
  - (b) payable for a period in respect of which the holder is not a participant in relation to that office in arrangements contained in the Parliamentary pension scheme but is a participant in relation to his membership of the House of Commons in any such arrangements, or for any part of such a period.
- (2) So much of any salary to which this section applies as is equal to the difference between a Member’s pensionable salary and the salary which (in accordance with any such resolution as is mentioned in subsection (4)(a) below) is payable to him as a Member holding that qualifying office, shall be treated for the purposes of this Chapter as remuneration from the office of Member and not from the qualifying office.

- (3) In this section—

“Member’s pensionable salary” means a Member’s ordinary salary under any resolution of the House of Commons which, being framed otherwise than as an expression of opinion, is for the time being in force relating to the remuneration of Members or, if the resolution provides for a Member’s ordinary salary thereunder to be treated for pension purposes as being at a higher rate, a notional yearly salary at that higher rate;

“qualifying office” means an office mentioned in paragraph (b), (c) or (d) of subsection (2) of section 2 of the Parliamentary and other Pensions Act 1987;

“the Parliamentary pension scheme” has the same meaning as in that Act; and, without prejudice to the power conferred by virtue of paragraph 13 of Schedule 1 to that Act, regulations under section 2 of that Act may make provision specifying the circumstances in which a person is to be regarded for the purposes of this section as being or not being a participant in relation to his membership of the House of Commons, or in relation to any office, in arrangements contained in the Parliamentary pension scheme.

- (4) In subsection (3) above “a Member’s ordinary salary”, in relation to any resolution of the House of Commons, means—

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- (a) if the resolution provides for salary to be paid to Members at different rates according to whether or not they are holders of particular offices, or are in receipt of salaries or pensions as the holders or former holders of particular offices, a Member's yearly salary at the higher or highest rate; and
- (b) in any other case, a Member's yearly salary at the rate specified in or determined under the resolution.

### **53 Contributions under unapproved arrangements.**

Where contributions are paid by an employer under personal pension arrangements made by his employee then, if those arrangements are not approved arrangements and the contributions are not otherwise chargeable to income tax as income of the employee, the contributions shall be regarded for all the purposes of the Income Tax Acts as emoluments of the employment chargeable to tax under Schedule E.

### **54 Retirement annuities.**

- (1) Nothing in Chapter III of Part IX of the Taxes Act shall apply in relation to—
  - (a) a contract made or trust scheme established on or after 4th January 1988, or
  - (b) a person by whom contributions are first paid on or after that date under a trust scheme established before that date.
- (2) For the year 1987–88 and subsequent years of assessment the Taxes Act shall have effect with the substitution of the following section for section 228—

#### **“228 Amount of relief for persons over fifty.**

In the case of an individual whose age at the beginning of a year of assessment is within a range specified in the first column of the following table, section 227(1A) above shall have effect for that year with the substitution for 175 per cent. of the relevant percentage specified in the second column.

51 to 55	20 per cent.
56 to 60	225 per cent.
61 or more	275 per cent.”.

- (3) Subject to subsection (5) below, the terms of a contract made, or the rules of a trust scheme established, on or after 17th March 1987 and before 4th January 1988 and approved by the Board under section 226 of the Taxes Act shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to the individual by whom the contract is made, or an individual paying contributions under the scheme, of a lump sum exceeding £150,000 or such other sum as may for the time being be specified in an order under section 23(4) above.
- (4) Subject to subsection (6) below, the rules of a trust scheme established before 17th March 1987 and approved by the Board under section 226 of the Taxes Act shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to any person first paying contributions under the scheme on or after 17th March 1987 of a lump sum such as is mentioned in subsection (3) above.
- (5) Subsection (3) above shall not apply—

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- (a) to a contract if, before the end of January 1988, the persons by and to whom premiums are payable under it jointly give written notice to the Board that subsection (3) is not to apply, or
- (b) to a scheme if, before the end of January 1988, the trustees or other persons having the management of the scheme give written notice to the Board that subsection (3) is not to apply;

and where notice is given to the Board under this subsection, the contract or scheme shall, with effect from the date with effect from which it was approved, cease to be approved.

- (6) Subsection (4) above shall not apply in the case of any person paying contributions under a scheme if, before the end of January 1988, he and the trustees or other persons having the management of the scheme jointly give written notice to the Board that subsection (4) is not to apply; and where notice is given to the Board under this subsection, the scheme shall cease to be approved in relation to the contributor with effect from the date on which he first paid a contribution under it or (if later) the date with effect from which it was approved.

## **55 Transitional provisions: general.**

- (1) Where approved personal pension arrangements are made by an individual who pays qualifying premiums within the meaning of section 226(1)(b) of the Taxes Act—
  - (a) the amount that may be deducted or set off by virtue of section 31 above in any year of assessment shall be reduced by the amount of any qualifying premiums which are paid in the year by the individual and in respect of which relief is given for the year under section 227 of the Taxes Act; and
  - (b) the relief which, by virtue of section 227A of the Taxes Act, may be given under section 227 by reference to the individual's unused relief for any year shall be reduced by the amount of any contributions paid by him in that year under the approved personal pension arrangements.
- (2) Where an individual elects under section 33 above that a contribution or part of a contribution shall be treated as paid in the year of assessment 1984–85, 1985–86 or 1986–87, the payment shall be treated as the payment of a qualifying premium for the purposes of Chapter III of Part IX of the Taxes Act; and in such a case references in section 33 to an amount of unused relief shall be construed in accordance with section 227A of that Act.
- (3) The references in section 34 above to unused relief for any year are, for years of assessment before 1987–88, references to unused relief within the meaning of section 227A of the Taxes Act.

## **56 Transitional provisions: approvals.**

- (1) The Board may grant or refuse an application for approval of a personal pension scheme under section 19 above at any time on or after 1st August 1987, but they shall not grant an application so as to approve a scheme with effect from a date earlier than 4th January 1988.
- (2) The Board may by regulations make provision for applications for approval of personal pension schemes to be granted provisionally in cases where the applications are made before 1st August 1989, notwithstanding that the Board have not satisfied

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themselves that the schemes comply with the requirements of sections 20 to 30 above; and such regulations may, in particular, provide—

- (a) for the contents and form of certificates or other documents which the Board may require the applicant to give them before they grant an application provisionally;
- (b) for the making of such amendments of the rules of the scheme after the provisional grant of an application as are necessary to enable the scheme to comply with the requirements of sections 20 to 30 above, and for those amendments to have effect as from the date of approval of the scheme;
- (c) for the withdrawal of approval of the scheme as from that date if it does not comply with the requirements of sections 20 to 30 above and such amendments as are mentioned in paragraph (b) above are not made;

and may make such supplementary provision as appears to the Board to be necessary or expedient.

- (3) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

**57 Minor and consequential amendments.**

Schedule 2 to this Act (which makes minor and consequential amendments to certain enactments relating to retirement annuities etc.) shall have effect.

## CHAPTER III

### GENERAL

#### *Pension and share schemes*

**58 Occupational pension schemes.**

Schedule 3 to this Act (which makes amendments to enactments relating to occupational pension schemes and amends certain existing schemes) shall have effect.

**59 Employee share schemes.**

- (1) In subsection (2A) of section 47 of the Finance Act 1980 (savings-related share option schemes) and in subsection (6A) of section 38 of the Finance Act 1984 (approved share option schemes), both of which subsections are set out in Part III of Schedule 4 to the Finance Act 1987,—

- (a) for the words “exchanged for” there shall be substituted “released in consideration of the grant of”; and
- (b) for the word “exchange” there shall be substituted “transaction”.

- (2) In Schedule 10 to the Finance Act 1980, paragraph 10A (which was inserted by paragraph 1(1) of Schedule 4 to the Finance Act 1987) shall be amended as follows—

- (a) in sub-paragraph (1), in the words following paragraph (c), for the words “transfer to the acquiring company” there shall be substituted “release”;
- (b) in sub-paragraph (3)(b) for the word “exchange” there shall be substituted “release of the old rights”; and

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- (c) in sub-paragraph (3)(c) for the word “exchange”, in the first place where it occurs, there shall be substituted “release” and for the word “exchange”, in the second place where it occurs, there shall be substituted “grant”;
- and the amendment of paragraph 11 of the said Schedule 10 made by paragraph 1(2) of Schedule 4 to the Finance Act 1987 shall be deemed not to have been made.
- (3) In Schedule 10 to the Finance Act 1984, paragraph 4A (which was inserted by paragraph 2(1) of Schedule 4 to the Finance Act 1987) shall be amended as follows—
- (a) in sub-paragraph (1), in the words following paragraph (c), for the words “transfer to the acquiring company” there shall be substituted “release”;
- (b) in sub-paragraph (3)(b) for the word “exchange” there shall be substituted “release of the old rights”; and
- (c) in sub-paragraph (3)(c) for the word “exchange”, in the first place where it occurs, there shall be substituted “release” and for the word “exchange”, in the second place where it occurs, there shall be substituted “grant”;
- and the amendment of paragraph 12 of the said Schedule 10 made by paragraph 2(2) of Schedule 4 to the Finance Act 1987 shall be deemed not to have been made.

### *Companies*

#### **60 Payments of interest etc. between related companies.**

- (1) This section applies where—
- (a) the relationship between two companies is as mentioned in subsection (2) below;
- (b) one of the companies makes to the other a payment which, for the purposes of corporation tax, is a charge on income of the company making it; and
- (c) in the hands of the company receiving it, the payment is chargeable to tax under Case III of Schedule D.
- (2) The relationship between two companies which is referred to in subsection (1)(a) above is—
- (a) that one company controls the other; or
- (b) that another person controls both companies; or
- (c) that one company is a 51 per cent. subsidiary of the other; or
- (d) that both companies are 51 per cent. subsidiaries of another company;
- and section 534 of the Taxes Act (meaning of “control”) applies for the purposes of this section.
- (3) In a case where this section applies, the payment referred to in subsection (1)(b) above shall be treated for the purposes of corporation tax as received by the company to which it is paid on the same day as that on which it is for those purposes treated as paid by the company paying it.
- (4) Subject to subsection (5) below, where the payment referred to in subsection (1)(b) above is a “relevant payment” for the purposes of Schedule 20 to the Finance Act 1972 (collection of income tax on company payments which are not distributions), it shall be treated for the purposes of that Schedule as received on the same day as that on which, by virtue of subsection (3) above, it is treated as received for the purposes of corporation tax; and the reference in paragraph 5(1) of that Schedule to the accounting period in which the payment is received shall be construed accordingly.

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- (5) Subsection (4) above does not apply if the day on which the payment would be treated as received apart from that subsection falls within the same accounting period (of the receiving company) as the day on which it would be treated as received under that subsection.
- (6) This section applies to payments made on or after 17th March 1987.

## **61 Apportionment of income etc. of close companies.**

- (1) The provisions of this section have effect for the purpose of, and in connection with, converting into obligations certain powers conferred on inspectors by Schedule 16 to the Finance Act 1972 (apportionment of income etc. of close companies).
- (2) In the heading to Part I of Schedule 16, the words “Powers of” shall be omitted.
- (3) In sub-paragraphs (1) to (4) of paragraph 1 of Schedule 16 (apportionment of excess of company’s relevant income over its distributions) for the word “may” there shall be substituted “shall”, and, accordingly, in the heading to that paragraph for the words “Power to apportion” there shall be substituted “Apportionment of”.
- (4) In paragraphs 3(1) and 3A(1) of Schedule 16 (apportionment of amounts deducted in respect of annual payments and of interest) for the word “may” there shall be substituted “shall” and, accordingly, for the heading preceding paragraph 3 there shall be substituted “Apportionment of amounts deducted in respect of annual payments and of interest”.
- (5) In paragraph 17 of Schedule 16 (revision of apportionment) in sub-paragraphs (1) and (2) for the words “may serve on the company” there shall be substituted “shall serve on the company”.
- (6) In sub-paragraph (1) of paragraph 20 (power of Board to exercise powers of the inspector) and in the heading to that paragraph for the word “powers” there shall be substituted “functions”.
- (7) This section has effect with respect to accounting periods beginning on or after 17th March 1987.

### *Provisions having an overseas element*

## **62 United Kingdom members of partnerships controlled abroad.**

- (1) At the end of section 153 of the Taxes Act (partnerships controlled abroad) there shall be added the following subsections—
  - “(4) In any case where—
    - (a) a person resident in the United Kingdom (in this subsection and subsection (5) below referred to as “the resident partner”) is a member of a partnership which resides or is deemed to reside outside the United Kingdom, and
    - (b) by virtue of any arrangements falling within section 497 of this Act (double taxation relief) any of the income or capital gains of the partnership is relieved from tax in the United Kingdom,

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the arrangements referred to in paragraph (b) above shall not affect any liability to tax in respect of the resident partner's share of any income or capital gains of the partnership.

(5) If, in a case where subsection (4) above applies, the resident partner's share of the income of the partnership consists of or includes a share in a qualifying distribution, within the meaning of Part V of the Finance Act 1972, made by a company resident in the United Kingdom, then, notwithstanding anything in the arrangements, the resident partner (and not the partnership as a whole) shall be regarded as entitled to that share of the tax credit in respect of the distribution which corresponds to his share of the distribution."

(2) Nothing in subsection (1) above affects—

- (a) the determination of any Commissioners or the judgment of any court made or given before 17th March 1987, or
- (b) the law to be applied in proceedings on appeal to the Court of Appeal or the House of Lords where the judgment of the High Court or the Court of Session which is in issue was given before that date,

but, subject to that, the amendment made by subsection (1) above shall be deemed always to have been made.

### **63 Limitation of group relief in relation to certain dual resident companies.**

(1) Notwithstanding anything in the enactments relating to group relief, no loss or other amount shall be available for set off by way of group relief in accordance with section 259 of the Taxes Act if, in the material accounting period of the company which would otherwise be the surrendering company, that company is for the purposes of this section a dual resident investing company.

(2) In this section "the material accounting period" means, according to the kind of group relief which would be appropriate, the accounting period—

- (a) in which the loss is incurred; or
- (b) for which the capital allowances fall to be made; or
- (c) for which the expenses of management are disbursed; or
- (d) for which the amount is paid by way of charges on income;

but subsection (1) above does not have effect unless the material accounting period is an accounting period which begins on or after 1st April 1987.

(3) In Schedule 4 to this Act,—

- (a) Part I has effect where an accounting period of a company in which it is a dual resident investing company begins before and ends on or after 1st April 1987 and references in subsections (1) and (2) above to the material accounting period shall be construed accordingly; and
- (b) Part II has effect with respect to the time at which certain interest and other payments are to be treated as paid.

(4) A company is for the purposes of this section a dual resident company in any accounting period in which—

- (a) it is resident in the United Kingdom; and
- (b) it is also within a charge to tax under the laws of a territory outside the United Kingdom,—
  - (i) because it derives its status as a company from those laws; or

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- (ii) because its place of management is in that territory; or
  - (iii) because, under those laws, it is for any other reason regarded as resident in that territory for the purposes of that charge.
- (5) In any accounting period throughout which it is not a trading company, a dual resident company is for the purposes of this section an investing company.
- (6) In any accounting period of a dual resident company in which it is a trading company, the company is nevertheless for the purposes of this section an investing company if—
- (a) in that period it carries on a trade of such a description that its main function or one of its main functions consists of all or any of the following, namely,—
    - (i) acquiring and holding, directly or indirectly, shares, securities or investments of any other description, including interests in companies (resident outside, as well as in, the United Kingdom) with which the dual resident company is connected, within the terms of section 533 of the Taxes Act;
    - (ii) making payments which, by virtue of any enactment, are charges on income for the purposes of corporation tax;
    - (iii) making payments (of interest or other sums) which are similar to those referred to in sub-paragraph (ii) above but which are deductible in computing the profits of the company for the purposes of corporation tax;
    - (iv) obtaining funds (by borrowing or in any other manner whatsoever) for the purpose of, or otherwise in connection with, any of the activities referred to in sub-paragraphs (i) to (iii) above; or
  - (b) it does not fall within paragraph (a) above, but in that accounting period it carries on all or any of the activities referred to in sub-paragraphs (i) to (iv) of that paragraph and does so—
    - (i) to an extent which does not appear to be justified by any trade which it does carry on; or
    - (ii) for a purpose which does not appear to be appropriate to any such trade; or
  - (c) in that period—
    - (i) the amount paid by the company by way of charges on income exceeds its profits of the period, determined as mentioned in section 259(7) of the Taxes Act (group relief); and
    - (ii) those charges include an amount which falls to be treated as a charge on income by virtue of section 42(2) of the Finance Act 1984 (discounts on bills of exchange) or paragraph 3(2) of Schedule 9 to that Act (deep discount securities); and
    - (iii) the paying of those charges by the company is its main activity or one of its main activities.
- (7) In this section and Schedule 4 to this Act “the enactments relating to group relief” means sections 258 onwards of Chapter I of Part XI of the Taxes Act; and, except where the context otherwise requires, any expression to which a meaning is assigned for the purposes of those enactments has the same meaning in this section and that Schedule.



#### **64 Limitation of other reliefs in dealings involving dual resident investing companies.**

- (1) In Schedule 7 to the Capital Allowances Act 1968 (special rules for sales of property between connected persons etc.) at the end of sub-paragraph (3) of paragraph 4 (which in certain cases excludes the right to elect to substitute a sale price or other sum for market value for the purposes of Parts I and II of that Act) there shall be added the words “nor may such an election be made if the buyer is a dual resident investing company, within the meaning of section 63 of the Finance (No. 2) Act 1987”.
- (2) In section 252 of the Taxes Act (company reconstructions without change of ownership) at the beginning of subsection (2) (which, in relation to capital allowances, provides for continuity as between the successor and the predecessor) there shall be inserted the words “Subject to subsection (2A) below” and at the end of that subsection there shall be inserted the following subsection—
  - “(2A) Subsection (2) above does not apply if the successor is a dual resident investing company, within the meaning of section 63 of the Finance (No. 2) Act 1987.”
- (3) In section 273 of the Taxes Act (disposals of assets within a group of companies to be on a no-gain/no-loss basis) in subsection (2) (exclusions) at the end of paragraph (c) there shall be inserted the words “or
  - (d) a disposal to a dual resident investing company, within the meaning of section 63 of the Finance (No. 2) Act 1987”.
- (4) In section 276 of the Taxes Act (replacement of business assets by members of a group) at the beginning of subsection (1) there shall be inserted the words “Subject to subsection (1A) below” and at the end of that subsection there shall be inserted the following subsection—
  - “(1A) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company; and in this subsection—
    - (a) “the old assets” and “the new assets” have the same meaning as in section 115 of the Capital Gains Tax Act 1979; and
    - (b) “dual resident investing company” has the same meaning as in section 63 of the Finance (No. 2) Act 1987.”
- (5) In subsection (6) of section 44 of the Finance Act 1971 (disposal value of machinery or plant in relation to capital allowances) in paragraph (b) (if sale is at an undervalue, disposal value is equal to market value except where, among other matters, the buyer’s expenditure qualifies for capital allowances) in sub-paragraph (i) after the words “(scientific research allowances)” there shall be inserted “and the buyer is not a dual resident investing company, within the meaning of section 63 of the Finance (No. 2) Act 1987, which is connected with the seller within the terms of section 533 of the Taxes Act”.
- (6) In paragraph 13 of Schedule 8 to the Finance Act 1971 (right of connected persons to elect, in relation to capital allowances, for continuity as between the successor and the predecessor) after the words “Taxes Act” there shall be inserted “and the successor is not a dual resident investing company, within the meaning of section 63 of the Finance (No. 2) Act 1987”.

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(7) In this section—

- (a) subsections (1) and (5) above apply in relation to sales on or after 1st April 1987;
- (b) subsections (2) and (6) above apply where the successor in question begins to carry on the trade on or after that date;
- (c) subsection (3) above applies in relation to disposals on or after that date; and
- (d) subsection (4) above applies where the new assets (within the meaning of section 115 of the Capital Gains Tax Act 1979) are acquired on or after that date.

## **65 Controlled foreign companies: acceptable distribution policy.**

- (1) In Schedule 17 to the Finance Act 1984 (controlled foreign companies: cases excluded from direction-making powers) Part I (acceptable distribution policy) shall be amended in accordance with this section.
- (2) In sub-paragraph (1) of paragraph 2 (payment of dividend for accounting period of controlled foreign company) after paragraph (b) there shall be inserted the following paragraph—
  - “(bb) the dividend is paid at a time when the company is not resident in the United Kingdom (whether or not it is at that time a controlled foreign company); and”.
- (3) In sub-paragraph (1) of paragraph 4 (payment of dividend by a third company) after paragraph (b) there shall be inserted the following paragraph—
  - “(bb) the subsequent dividend is paid at a time when the company paying it is not resident in the United Kingdom, and”.
- (4) This section applies in any case where the dividend concerned is paid on or after 17th March 1987.

## **66 Offshore funds.**

- (1) In paragraph 1 of Schedule 19 to the Finance Act 1984 (the distribution test for offshore funds) in sub-paragraph (1)(c) (distribution for an account period to be made during that period or not more than six months after its expiry) after the words “six months” there shall be inserted “or such longer period as the Board may in any particular case allow”.
- (2) At the end of Part II of the said Schedule 19 (modifications of conditions for certification in certain cases) there shall be inserted the following paragraph—

*“Power of Board to disregard certain breaches of conditions.*

12B If, in the case of any account period of an offshore fund, it appears to the Board that there has been a failure to comply with any of the conditions in paragraphs (a) to (c) of subsection (3) of section 95 of this Act (as modified, where appropriate, by the preceding provisions of this Part of this Schedule) but the Board are satisfied—

- (a) that the failure occurred inadvertently, and
- (b) that the failure was remedied without unreasonable delay,

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the Board may disregard the failure in determining whether to certify the fund as a distributing fund in respect of that account period.”

- (3) This section has effect with respect to periods which—
- (a) for the purposes of Chapter VII of Part II of the Finance Act 1984 are account periods of offshore funds; and
  - (b) end after the passing of this Act.

**67 Double taxation relief: interest on certain overseas loans.**

- (1) Section 65 of the Finance Act 1982 (restriction of double taxation relief in relation to interest on certain overseas loans) shall be amended in accordance with this section.

- (2) In subsection (1), in paragraph (a) the words “in a territory” shall be omitted and at the end of that subsection there shall be added “and for the purpose only of determining whether the condition in paragraph (b) above is fulfilled in a case where the lender has in fact incurred no expenditure related to the earning of the foreign loan interest, it shall be assumed that he has incurred such expenditure”.

- (3) After subsection (1) there shall be inserted the following subsection—

“(1A) In subsection (1) above “interest”, in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan; and any reference in this section to foreign loan interest shall be construed accordingly.”

- (4) In subsection (4) for paragraph (b) there shall be substituted—

- “(b) the amount of tax exceeds—
- (i) the amount of credit which, by virtue of Chapter II of Part XVIII of the Taxes Act (but disregarding subsection (5) below), is allowed for that foreign tax against income tax or corporation tax, or
  - (ii) if it is less, 15 per cent. of the foreign loan interest, computed without regard to any increase or reduction under this section”.

- (5) For subsection (5) there shall be substituted the following subsections—

“(5) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with Chapter II of Part XVIII of the Taxes Act, is to be allowed against income tax or corporation tax—

- (a) shall be limited by treating the amount of the foreign loan interest (as increased or reduced under subsection (2) or subsection (4) above) as reduced (or further reduced) for the purposes of that Chapter by an amount equal to so much of the lender’s financial expenditure in relation to the loan concerned as is properly attributable to the period for which the interest is paid; and
- (b) shall not exceed 15 per cent. of the foreign loan interest, computed without regard to paragraph (a) above or to any increase under subsection (2) or any reduction under subsection (4) above.

- (5A) For the purposes of this section the lender’s financial expenditure in relation to a loan is the aggregate of—

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- (a) the financial expenses (consisting of interest or similar sums) incurred by the lender in or in connection with the provision of the loan, so far as those expenses consist of payments which either are charges on income for the purposes of corporation tax or are deductible in computing profits of the lender which are brought into charge to income tax or corporation tax; and
  - (b) where the loan is financed by the issue of securities at a discount by the lender, so much of the amount of the discount as either constitutes such a charge as is mentioned in paragraph (a) above or is deductible as mentioned in that paragraph; and
  - (c) so much as it is just and reasonable to attribute to the loan of any interest or other return forgone by a person connected or associated with the lender in connection with the provision of funds to the lender, either interest free or in other circumstances more favourable to the lender than if the parties were at arm's length; and
  - (d) any other sum, whether paid by way of refund of tax or interest or by way of commission, which—
    - (i) is paid by the lender or a person connected or associated with him;
    - (ii) is paid directly or indirectly to the borrower or a person connected or associated with him;
    - (iii) is deductible as mentioned in paragraph (a) above;
    - (iv) would not, apart from this paragraph, be taken into account in determining the amount of the foreign loan interest; and
    - (v) it is reasonable to regard as referable to the loan or the foreign loan interest (or both).
- (5B) In a case where the amount of the lender's financial expenditure in relation to a loan is not readily ascertainable, that amount shall be taken, subject to subsection (5C) below, to be such sum as it is just and reasonable to attribute to the financing of the loan, having regard, in particular, to any market rates of interest by reference to which the rate of interest on the loan is determined.
- (5C) The Board may by regulations supplement subsection (5B) above—
- (a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in that subsection; and
  - (b) by making provision with respect to the determination of market rates of interest for the purposes of that subsection;
- and any such regulations may make different provision for different cases.
- (5D) Regulations under subsection (5C) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5E) For the purposes of this section—
- (a) section 533 of the Taxes Act (connected persons) applies; and
  - (b) subsection (10) of section 494 of that Act (associated persons) applies as it applies for the purposes of that section."
- (6) Where the loan on which the foreign loan interest is payable was made pursuant to an agreement entered into before 1st April 1987, this section does not apply in relation to interest payable before 1st April 1989 but, subject thereto, this section (including

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the power to make regulations conferred by subsection (5) above) applies in relation to interest payable on or after 1st April 1987.

**68 Double taxation relief: underlying tax reflecting interest on loans.**

(1) Section 66 of the Finance Act 1982 (restriction of double taxation relief in respect of underlying tax on certain dividends) shall be amended in accordance with this section.

(2) After subsection (1) there shall be inserted the following subsections—

“(1A) In a case where this section applies, the amount of the credit for that part of the foreign tax which consists of the tax referred to in subsection (1)(c) above shall not exceed an amount determined under subsection (1B) below.

(1B) The amount referred to in subsection (1A) above is a sum equal to corporation tax, at the rate in force at the time the foreign tax referred to in paragraph (c) of subsection (1) above was chargeable, on so much of the interest on the loan as exceeds the amount of the lender’s relevant expenditure which is properly attributable to the period for which that interest is paid.

(1C) In subsection (1B) above—

(a) “interest”, subject to subsection (1D) below, has the meaning assigned to it by section 65(1A) above; and

(b) “the lender’s relevant expenditure” means the amount which, if the company referred to in subsection (1)(d) above were resident in the United Kingdom (and liable to tax accordingly) would be its financial expenditure in relation to the loan, as determined in accordance with subsections (5) to (5E) of section 65 above.

(1D) If, in accordance with subsection (2) or subsection (4) below, the amount of the dividend would be treated for the purposes of corporation tax as increased or reduced by any amount, then the amount which, apart from this subsection, would be the amount of the interest referred to in subsection (1B) above shall be taken to be increased or reduced by the same amount as the dividend is so treated as increased or reduced.”

(3) Where the loan referred to in paragraph (c) of subsection (1) of section 66 of the Finance Act 1982 was made pursuant to an agreement entered into before 1st April 1987, this section does not apply in relation to tax payable as mentioned in that paragraph by reference to interest payable before 1st April 1989 but, subject thereto, this section applies in relation to tax so payable by reference to interest payable on or after 1st April 1987.

*Miscellaneous*

**69 Disclosure of employment information obtained from Inland Revenue.**

(1) Section 58 of the Finance Act 1969 (disclosure of information for statistical purposes by Board of Inland Revenue) shall be amended in accordance with this section.

(2) At the end of subsection (4) (cases in which information obtained under the section may be disclosed by officers of the Department of Employment or Manpower Services Commission to other persons) there shall be added “or

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- (c) to an authorised officer of any body specified in the first column of the following Table for the purposes of functions of that body under any enactment specified in relation to it in the second column of the Table.

TABLE

<i>Body</i>	<i>Enactment</i>
A local education authority in England and Wales.	Section 8 of the Employment and Training Act 1973.
An education authority in Scotland.	Section 126 of the Education (Scotland) Act 1980.
The Northern Ireland Training Authority.	The Industrial Training (Northern Ireland) Order 1984.
A local planning authority within the meaning of the Town and Country Planning Act 1971 and any board which exercises for any area the functions of such an authority.	Part II of the Town and Country Planning Act 1971.
A planning authority as defined in section 172(3) of the Local Government (Scotland) Act 1973.	Town and Country Planning (Scotland) Act 1972.
The Welsh Development Agency.	The Welsh Development Agency Act 1975.
The Scottish Development Agency.	The Scottish Development Agency Act 1975.
The Development Board for Rural Wales.	The Development of Rural Wales Act 1976.
The Highlands and Islands Development Board.	The Highlands and Islands Development (Scotland) Acts 1965 and 1968.
A development corporation within the meaning of the New Towns Act 1981.	Section 4 of the New Towns Act 1981.
A development corporation within the meaning of the New Towns (Scotland) Act 1968.	Section 3 of the New Towns (Scotland) Act 1968.
A new town commission within the meaning of the New Towns Act (Northern Ireland) 1965.	Section 7 of the New Towns Act (Northern Ireland) 1965.”

- (3) In subsection (6) for the words “or paragraph (b) of subsection (4)” there shall be substituted “paragraph (b) or paragraph (c) of subsection (4) above”.

## **70 Lloyd’s underwriters.**

- (1) This section applies where, in accordance with the rules or practice of Lloyd’s and in consideration of the payment of a premium, one underwriter agrees with another to meet liabilities arising from the latter’s business for an underwriting year so that the accounts of the business for that year may be closed.
- (2) In computing for the purposes of income tax the profits or gains of his business, the amount of the premium shall be deductible as an expense of the underwriter by whom it is payable only to the extent that it is shown not to exceed a fair and reasonable assessment of the value of the liabilities in respect of which it is payable.
- (3) Any part of a premium which, by virtue of subsection (2) above, is not deductible as an expense of the underwriter by whom it is payable shall be disregarded in computing for the purposes of income tax the profits or gains of the business of the underwriter to whom it is payable.
- (4) The assessment referred to in subsection (2) above shall be taken to be fair and reasonable only if it is arrived at with a view to producing the result that a profit does not accrue to the underwriter to whom the premium is payable but he does not suffer a loss.
- (5) In this section “underwriter” means an underwriting member of Lloyd’s, and expressions used in Schedule 10 to the Taxes Act have the same meanings as in that Schedule.
- (6) This section has effect in relation to premiums payable in connection with the closing of the accounts of an underwriter’s business for an underwriting year ending in the year of assessment 1985-86 or any later year of assessment.

## **71 Relief for losses on unquoted shares in trading companies.1980 c. 48.**

Section 37 of the Finance Act 1980 (relief for losses on unquoted shares in trading companies) shall have effect, and be deemed always to have had effect, with the addition, at the end of the definition of “excluded company” in subsection (12), of the words “or

- (c) which is a building society, within the meaning of the Building Societies Act 1986, or a registered industrial and provident society, as defined in section 340 of the Taxes Act”.

## **72 Allowances for dwelling-houses let on assured tenancies.**

- (1) In section 76 of the Finance Act 1982 (capital allowances for dwelling-houses let on assured tenancies) in subsection (2) (provisions to have effect only where expenditure is incurred before 1st April 1987) for “1987” there shall be substituted “1992”.
- (2) In any case where—
  - (a) by reason only of the enactment (by the Housing and Planning Act 1986) of section 56B of the Housing Act 1980 (extension of assured tenancies scheme to cases where works have been carried out) an approved body is entitled to an initial allowance in respect of any expenditure under Schedule 12 to the Finance Act 1982 (capital allowances for dwelling-houses let on assured tenancies); and

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- (b) effect has not been and, apart from this subsection, no longer can be given to the initial allowance referred to in paragraph (a) above, then, if a claim is made in that behalf before 1st April 1988, all such adjustments shall be made as may be necessary to give effect to that initial allowance.
- (3) Expressions used in subsection (2) above have the same meaning as in Schedule 12 to the Finance Act 1982.

### **73 Recognised investment exchanges.**

- (1) The Board may by regulations make provision securing that enactments relating to income tax, corporation tax or capital gains tax and referring to The Stock Exchange have effect, for such purposes and subject to such modifications as may be prescribed by the regulations, in relation to all other recognised investment exchanges (within the meaning of the Financial Services Act 1986), or in relation to such of those exchanges as may be so prescribed.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **CHAPTER IV**

### **CAPITAL GAINS**

#### *Companies' chargeable gains*

### **74 General rules.**

- (1) This section has effect with respect to the liability of a company to corporation tax where a chargeable gain accrues to the company on or after 17th March 1987; and in the following provisions of this section—
- (a) “the 1987 date” means 17th March 1987; and
- (b) a “new accounting period” means an accounting period beginning on or after the 1987 date.
- (2) With respect to any new accounting period, section 85 of the Finance Act 1972 (set off of advance corporation tax against liability to corporation tax on income) shall have effect as follows—
- (a) in subsections (1) to (3), for the word “income”, in each place where it occurs, there shall be substituted “profits”; and
- (b) in subsection (6) for the word “income”, in the first place where it occurs, there shall be substituted “profits” and the words from “exclusive” onwards shall be omitted.
- (3) Section 93 of the Finance Act 1972 (reduction of corporation tax liability in respect of chargeable gains) shall not apply with respect to any new accounting period.
- (4) With respect to any new accounting period, section 95 of the Finance Act 1972 (mitigation of corporation tax liability of small companies) shall have effect as follows—



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- (a) in subsections (1) and (2) for the word “income”, in each place where it occurs, there shall be substituted “basic profits”;
  - (b) in subsection (7), after the word “profits”, in the first place where it occurs, there shall be inserted “(but not the basic profits)”; and
  - (c) in subsection (8), for the word “income”, in the first place where it occurs, there shall be substituted “basic profits” and for the words from “is its income”, onwards there shall be substituted “shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne”.
- (5) With respect to any new accounting period, in sections 101(2) and 103(4) of the Finance Act 1972 (each of which refer to income as defined in section 85(6) of that Act) for the word “income” there shall be substituted “profits”.
- (6) In Schedule 5 to this Act—
- (a) Part I has effect with respect to the operation of the provisions of the Finance Act 1972 referred to in subsections (2) to (5) above in relation to any accounting period of a company which begins before and ends on or after the 1987 date; and
  - (b) Part II has effect with respect to the operation of the enactments referred to in sections 75 and 76 below in relation to any such period.

## **75 Life assurance business.**

- (1) In Schedule 18 to the Finance Act 1972 (taxation of insurance companies) in paragraph 2(4) (modifications of section 85 of that Act)—
- (a) for the word “income”, in the first place where it occurs, there shall be substituted “profits”; and
  - (b) for the words from “an amount” onwards there shall be substituted “deducting therefrom such fraction thereof as is equal to the fraction of the profits of the company in respect of its life assurance business which, under section 309 of the Taxes Act, is excluded from the computation of those profits or would be so excluded if the profits were computed in accordance with the provisions applicable to Case I of Schedule D”.
- (2) In subsection (2) of section 26 of the Finance Act 1974 (corporation tax on balance of policy holders' share of life assurance gains)—
- (a) for the words from the beginning to “that share” there shall be substituted “Corporation tax charged on so much of the policy holders' share of the life assurance gains”; and
  - (b) for the words from “as if” onwards there shall be substituted “on the basis of a rate of corporation tax of 30 per cent”.
- (3) In subsection (3) of the said section 26—
- (a) in paragraph (a) the words “so much of” and the words from “as remains” to “1972” shall be omitted; and
  - (b) in paragraph (b) the words “as so reduced” shall be omitted.
- (4) Subsections (1) to (3) above have effect with respect to accounting periods beginning on or after 17th March 1987.

## 76 **Gains from oil extraction activities etc.**

- (1) The provisions of this section have effect with respect to accounting periods beginning on or after 17th March 1987.
- (2) Section 16 of the Oil Taxation Act 1975 (restriction on setting advance corporation tax against income from oil extraction activities etc.) shall be amended as follows—
  - (a) in subsection (1) the words “on its income” shall be omitted; and
  - (b) in subsection (3) for the words “the company’s income”, in each place where they occur, there shall be substituted “the company’s profits”.
- (3) In section 79 of the Finance Act 1984 (gains on certain disposals related to oil fields) subsection (5) shall be amended as follows—
  - (a) the words from “(reduced” to “Finance Act 1972)” shall be omitted; and
  - (b) for the words from “section 15” to “income)” there shall be substituted “sections 15 and 16 of the Oil Taxation Act 1975”.
- (4) Section 44 of the Finance Act 1987 (limited right to carry back surrendered advance corporation tax) shall be amended as follows—
  - (a) in subsection (1), in paragraph (e) for the words from “income”, in the first place where it occurs, to the end of the paragraph there shall be substituted “profits which consist of or include ring fence profits”;
  - (b) in subsection (7) for the word “income” there shall be substituted “profits”;
  - (c) at the end there shall be added the following subsection—
 

“(9) In this section “ring fence profits” has the meaning given by section 79(5) of the Finance Act 1984.”
- (5) In section 45 of the Finance Act 1987 (surrender of advance corporation tax where oil extraction company etc. owned by a consortium) in subsection (4)—
  - (a) for the word “income”, in the first two places where it occurs, there shall be substituted “profits”; and
  - (b) for the words from “that income” onwards there shall be substituted “those profits as consists of ring fence profits, as defined in section 79(5) of the Finance Act 1984”.

## 77 **Double taxation relief.**

- (1) Section 100 of the Finance Act 1972 (double taxation relief) shall be amended in accordance with this section.
- (2) With respect to accounting periods of a company beginning on or after 17th March 1987—
  - (a) in subsection (6) for the word “income”, in the first place where it occurs, there shall be substituted “profits (within the meaning of that section)”;
  - (b) in paragraphs (a) and (b) of subsection (6) for the word “income”, in each place where it occurs, there shall be substituted “income or gain”;
  - (c) in subsection (6) in the final words, for the words “income of the company” there shall be substituted “profits of the company” and for the words “relevant income” there shall be substituted “relevant income or gain”; and
  - (d) in subsection (6A) for the word “income”, in each place where it occurs, there shall be substituted “income or gain”.

- (3) With respect to an accounting period of a company which begins before and ends on or after 17th March 1987, subsection (6) shall have effect as follows—
- (a) any reference to the company’s income for the accounting period shall be construed as a reference to its income as determined for the purposes of section 85 of the Finance Act 1972, in accordance with paragraph 3 of Schedule 5 to this Act; and
  - (b) if a relevant gain accrues to the company on or after 17th March 1987, the subsection shall apply in relation to that relevant gain as it applies in relation to relevant income;
- and in paragraph (b) above “relevant income” and “relevant gain” have the meaning assigned by subsection (3) of section 100.
- (4) Where the accounting period referred to in subsection (3) above began before 3rd June 1986, any reference in that subsection to subsection (6) of section 100 is a reference to that subsection as it had effect before the amendment made by section 49(2) of the Finance Act 1986.
- (5) Where the accounting period referred to in subsection (3) above began on or after 3rd June 1986 then (without prejudice to the modifications of subsection (6) of section 100 set out in subsection (3) above), subsection (6A) of section 100 ( as set out in section 49(3) of the Finance Act 1986)—
- (a) shall apply in relation to the amount of a relevant gain (as defined in subsection (3) of section 100) accruing on or after 17th March as it applies in relation to an amount of income; and
  - (b) shall have effect as if the reference in paragraph (a) to income for the relevant accounting period were a reference to that income as determined for the purposes of section 85 of the Finance Act 1972, in accordance with paragraph 3 of Schedule 5 to this Act.

#### *Miscellaneous*

#### **78 Collective investment schemes.**

Where arrangements within section 75 of the Financial Services Act 1986 provide for pooling of the kind mentioned in subsection (3)(a) of that section in relation to different parts of the property concerned, any question whether the arrangements constitute a single collective investment scheme shall be determined for the purposes of capital gains tax without regard to any entitlement of the participants to exchange rights in one part of the property for rights in another.

#### **79 Building societies: groups of companies.**

In section 272 of the Taxes Act (groups of companies: definitions) at the end of subsection (2) (references to a company) there shall be added “and

- (e) a building society within the meaning of the Building Societies Act 1986.”.

#### **80 Roll-over relief not available for gains on oil licences.**

- (1) A licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964 is not and, subject to subsection (2) below, shall be

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assumed never to have been an asset falling within any of the classes in section 118 of the Capital Gains Tax Act 1979 (classes of assets for the purposes of roll-over relief under section 115 of that Act)9.

- (2) Nothing in subsection (1) above affects the determination of any Commissioners or the judgment of any court made or given before 14th May 1987.
- (3) A reference in subsection (1) above to a provision of the Capital Gains Tax Act 1979 includes a reference to the corresponding enactment in Part III of the Finance Act 1965 which is re-enacted in that provision.

## **81 Commodity and financial futures and options.**

- (1) In section 72 of the Finance Act 1985 (commodity and financial futures and traded options) in subsection (1) for the words “traded options” and “traded option” there shall be substituted respectively “qualifying options” and “qualifying option”.
- (2) In subsection (2) of that section, for paragraph (b) (definition of “traded option”) there shall be substituted—
  - “(b) “qualifying option” means a traded option or financial option as defined in section 137(9) of that Act.”

- (3) After that subsection there shall be inserted the following subsections—

“(2A) Notwithstanding the provisions of subsection (2)(a) above, where, otherwise than in the course of dealing on a recognised futures exchange, within the meaning of the principal Act,—

- (a) an authorised person or listed institution enters into a commodity or financial futures contract with another person, or
- (b) the outstanding obligations under a commodity or financial futures contract to which an authorised person or listed institution is a party are brought to an end by a further contract between the parties to the futures contract,

then, except in so far as any gain or loss arising to any person from that transaction arises in the course of a trade, that gain or loss shall be regarded for the purposes of subsection (1) above as arising to him in the course of dealing in commodity or financial futures.

- (2B) In subsection (2A) above—

“authorised person” has the same meaning as in the Financial Services Act 1986, and

“listed institution” has the same meaning as in section 43 of that Act.”

- (4) In subsection (4) of section 137 of the Capital Gains Tax Act 1979 (options and forfeited deposits) for paragraph (aa) there shall be substituted the following paragraph—
  - “(aa) a traded option or financial option, or”.
- (5) For subsection (9) of section 137 of the Capital Gains Tax Act 1979 (definitions) there shall be substituted the following subsections—

“(9) In subsection (4) above and sections 138 and 139 below—

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- (a) “quoted option” means an option which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange;
  - (b) “traded option” means an option which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange or a recognised futures exchange; and
  - (c) “financial option” means an option which is not a traded option, as defined in paragraph (b) above, but which, subject to subsection (10) below,—
    - (i) relates to currency, shares, securities or an interest rate and is granted (otherwise than as agent) by a member of a recognised stock exchange, by an authorised person within the meaning of the Financial Services Act 1986 or by a listed institution within the meaning of section 43 of that Act; or
    - (ii) relates to shares or securities which are dealt in on a recognised stock exchange and is granted by a member of such an exchange, acting as agent; or
    - (iii) relates to currency, shares, securities or an interest rate and is granted to such an authorised person or institution as is referred to in sub-paragraph (i) above and concurrently and in association with an option falling within that sub-paragraph which is granted by that authorised person or institution to the grantor of the first-mentioned option; or
    - (iv) relates to shares or securities which are dealt in on a recognised stock exchange and is granted to a member of such an exchange, including such a member acting as agent;and in this subsection “recognised stock exchange” has the meaning given by section 535 of the Taxes Act.
- (10) If the Treasury by order so provide, an option of a description specified in the order shall be taken to be within the definition of “financial option” in subsection (9)(c) above; and the power to make an order under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.”
- (6) In subsection (1) of section 138 of the Capital Gains Tax Act 1979 (application of rules as to wasting assets) for paragraph (aa) there shall be substituted the following paragraph—
- “(aa) to a traded option or financial option, or”.
- (7) In subsection (4) of section 138 of the Capital Gains Tax Act 1979 (definitions for the purpose of that section) for paragraph (a) there shall be substituted the following paragraph—
- “(a) “financial option”, “quoted option” and “traded option” have the meaning given by section 137(9) above, and”.
- (8) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

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## CHAPTER V

### TAXES MANAGEMENT PROVISIONS

#### *Company returns*

#### **82 Return of profits.**

- (1) With respect to any notice served after the appointed day, section 11 of the Management Act (return of profits) shall be amended in accordance with this section.
- (2) In subsection (1) for the words from “within the time limited by the notice” to the end there shall be substituted “not later than the final day determined under subsection (4) below a return of the profits and losses of the company containing such information and accompanied by such accounts, statements and reports as, subject to subsection (6) below, may be required in pursuance of the notice.”
- (3) For subsection (2) there shall be substituted the following subsection—
  - “(2) A notice under this section may require a return of profits and losses arising in any period specified in the notice (in this subsection referred to as “the specified period”) but, if the specified period does not coincide with an accounting period of the company and the company is within the charge to corporation tax in the whole or some part of the specified period, then—
    - (a) if an accounting period of the company ends in or at the end of the specified period, the notice shall be taken to require a return for that accounting period or, if there is more than one, for each of them;
    - (b) if no accounting period of the company ends in or at the end of the specified period but there is a part of the specified period which does not fall within an accounting period of the company, the notice shall be taken to require a return for that part of the specified period; and
    - (c) if the specified period begins in or at the beginning of an accounting period of the company and ends before the end of that period, the notice shall be of no effect and, accordingly, the company shall not be required to make any return pursuant to it.”
- (4) For subsections (4) to (6) there shall be substituted the following subsections—
  - “(4) Subject to subsection (5) below, the final day for the delivery of any return required by a notice under this section shall be whichever is the later of—
    - (a) the first anniversary of the last day of the period to which the return relates;
    - (b) the first anniversary of the last day of that period of account of the company in which falls the last day of the accounting period (if any) to which the return relates; and
    - (c) the end of the period of three months beginning on the day following that on which the notice was served.
  - (5) In paragraph (b) of subsection (4) above “period of account” has the same meaning as in the principal Act, but for the purposes of that paragraph the last day of a period of account which is longer than eighteen months shall be treated as the day on which expires the period of eighteen months beginning on the first day of the period of account.

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- (6) In relation to a company which—
  - (a) is resident in the United Kingdom throughout the period to which the return relates (in this subsection referred to as “the return period”); and
  - (b) is required under the Companies Act 1985 to prepare accounts for a period consisting of or including the return period,the reference to accounts in subsection (1) above is a reference only to such accounts, containing such particulars and having annexed to them such documents, as are required under that Act to be so prepared.
- (7) The statements which may be required in pursuance of a notice under this section include statements showing the amount of tax (if any) chargeable.
- (8) Different information, accounts, statements and reports may be required in pursuance of a notice under this section in relation to different descriptions of company or different descriptions of profits and losses; and, in particular, information may be so required with respect to tax recoverable by virtue of section 286 of the principal Act (loans to participators) as if it were corporation tax, to advance corporation tax and to corporation tax already paid.
- (9) In the application of this section to a company registered in Northern Ireland, references to the Companies Act 1985 shall be construed as references to the Companies (Northern Ireland) Order 1986.”

### **83 Failure to make return for corporation tax.**

With respect to failures to deliver returns required by notices served under section 11 of the Management Act after the appointed day, for section 94 of that Act (failure to make return for corporation tax) there shall be substituted the following section—

#### **“94 Failure to make return for corporation tax.**

- (1) If a company has been required by a notice served under section 11 of this Act (or under that section as extended by section 12 of this Act) to deliver a return for any period (in this section referred to as “the return period”) and the company fails to make proper delivery of the return, then, subject to subsections (3) and (5) below, the company shall be liable to a penalty which,—
  - (a) if the return is delivered before the expiry of the period of three months beginning on the day following the final day for the delivery of the return, shall be £100; and
  - (b) in any other case, shall be £200.
- (2) In relation to a return required by such a notice as is referred to in subsection (1) above,—
  - (a) any reference in this section (however expressed) to the delivery of the return is a reference to its delivery together with the accompanying accounts, statements and reports referred to in section 11(1) of this Act; and
  - (b) any reference in this section to making proper delivery of the return is a reference to the delivery of the return on or before the day which (in accordance with section 11(4) of this Act) is the final day for the delivery of the return.

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- (3) In a case where—
- (a) a company is required to deliver a return for a return period, and
  - (b) the return period is a period for which, under the Companies Act 1985, the company is required to deliver accounts to the Registrar of Companies,
- the company shall not be liable to a penalty under subsection (1) above by reason of a failure to make proper delivery of the return if the return is delivered on or before the day which is the last day for the delivery to the Registrar of the accounts referred to in paragraph (b) above.
- (4) In the application of this section to a company registered in Northern Ireland, the reference in subsection (3) above to the Companies Act 1985 shall be construed as a reference to the Companies (Northern Ireland) Order 1986 and references to the Registrar of Companies shall be construed accordingly.
- (5) In any case where—
- (a) a company is within the charge to corporation tax for three consecutive accounting periods, each of which is a return period, and
  - (b) at no time between the beginning of the first of those periods and the end of the last is the company outside the charge to corporation tax, and
  - (c) the company fails to make proper delivery of the return for the third of those periods, and
  - (d) the company was liable to a penalty under this section in respect of each of the first two of those periods,
- subsection (1) above shall have effect in relation to the failure referred to in paragraph (c) above as if for “£100” there were substituted “£500” and for “£200” there were substituted “£1,000”.
- (6) If a company which has been required as mentioned in subsection (1) above to deliver a return fails to deliver the return before the expiry of the period of eighteen months beginning on the day following the last day of the return period, then (without prejudice to any penalty under the preceding provisions of this section) the company shall be liable to a penalty which,—
- (a) if the return is delivered before the expiry of the period of two years beginning on the day following that last day, shall be 10 per cent. of the tax unpaid at the end of the eighteen months referred to above; and
  - (b) in any other case, shall be 20 per cent. of the tax unpaid at the end of those eighteen months.
- (7) In subsection (6) above “the tax unpaid” at any time means the amount by which the corporation tax chargeable on the profits of the company for the return period which then remains unpaid exceeds any income tax borne by deduction from payments included in those profits.
- (8) In determining for the purposes of subsection (7) above how much of the corporation tax chargeable on the profits of a company for the return period remains unpaid at any time, no account shall be taken of the discharge of any liability for that tax which, pursuant to a claim under subsection (3) of section 85 of the Finance Act 1972, is attributable to an amount of surplus advance corporation tax, as defined in that subsection, unless it is a surplus for an accounting period ending not later than two years after the end of the return period.”



#### **84 Assessment of amounts due by way of penalty.**

- (1) Where it appears to the inspector or the Board that any person is liable to a penalty under any provision of section 94 of the Management Act, the amount appearing to be due may be assessed by the inspector or the Board as if it were tax; and, subject to the provisions of this section, the provisions of the Management Act and section 247 of the Taxes Act relating to the assessment and collection of tax shall have effect accordingly.
- (2) An amount assessed under this section by way of penalty shall be due at the end of the period of thirty days beginning with the date of the issue of the notice of assessment.
- (3) In any case where—
  - (a) an assessment under this section relates to a penalty the amount of which falls to be determined under subsections (6) to (8) of section 94 of the Management Act, and
  - (b) after the assessment has been made, it appears to the inspector or the Board that the amount which was taken into account in the making of the assessment as the tax unpaid (as defined in subsection (7) of that section) was incorrect, all such adjustments shall be made, whether by way of amending the assessment, making a further assessment, repayment or otherwise as may be necessary to take account of the correct amount.
- (4) At the end of section 70 of the Management Act (evidential certificates) there shall be inserted the following subsection—
  - “(5) Where an amount has been assessed by way of penalty under section 94 of this Act and either no appeal has been brought against that assessment or the amount assessed has been confirmed or varied on appeal,—
    - (a) a certificate of an inspector or other officer of the Board that an amount is due by way of penalty under that section, and
    - (b) a certificate of a collector that payment of that amount has not been made to him or, to the best of his knowledge and belief, to any other collector, or to a person acting on his behalf or on behalf of another collector,shall be sufficient evidence that the amount mentioned in the certificates is unpaid and is due to the Crown; and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate unless the contrary is proved.”
- (5) Where there is a failure to make proper delivery of a return, within the meaning of section 94 of the Management Act, an assessment of an amount due by way of penalty under any provision of that section may be made at any time within six years beginning on the day on which the failure began or, in the case of a penalty under subsection (6) of that section, at any later time within three years beginning at the time of the final determination of the amount which is the unpaid tax for the purposes of that subsection.
- (6) On an appeal against an assessment of an amount by way of penalty under section 94 of the Management Act, subsections (6) to (8) of section 50 of that Act shall not apply but the Commissioners—
  - (a) may confirm the amount of the assessment or, if it appears to them that the amount assessed is greater or smaller than the penalty provided for under the said section 94, may reduce it or increase it to such an amount as is appropriate having regard to the provisions of that section; and

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- (b) if it appears to them that no penalty has been incurred, may set the assessment aside.
- (7) Nothing in sections 34 to 40 (time limits) of the Management Act applies to an assessment made by virtue of this section and nothing in section 55 of that Act (recovery of tax not postponed) applies to an appeal against such an assessment.
- (8) Section 100 of the Management Act (procedure for recovery of penalties) shall not apply to a penalty under section 94 of that Act.
- (9) This section has effect with respect to penalties incurred after the appointed day.

*Interest etc.*

**85 Interest on overdue corporation tax etc.**

With respect to accounting periods ending after the appointed day, after section 87 of the Management Act there shall be inserted the following section—

**“87A Interest on overdue corporation tax etc.**

- (1) Corporation tax shall carry interest at the prescribed rate from the date when the tax becomes due and payable (in accordance with section 243(4) of the principal Act) until payment.
- (2) Subsection (1) above applies even if the date when the tax becomes due and payable (as mentioned in that subsection) is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.
- (3) In relation to corporation tax assessed by virtue of section 266(2), section 267(3C), section 277(1) or section 278(5) of the Taxes Act or section 87(4) of the Capital Gains Tax Act 1979 (which enable unpaid corporation tax assessed on a company to be assessed on other persons in certain circumstances), the reference in subsection (1) above to the date when the tax becomes due and payable is a reference to the date when it became due and payable by the company.
- (4) In any case where—
  - (a) there is in any accounting period of a company (in this subsection referred to as “the later period”) an amount of surplus advance corporation tax, as defined in subsection (3) of section 85 of the Finance Act 1972, and
  - (b) pursuant to a claim under the said subsection (3), the whole or any part of that amount is treated for the purposes of the said section 85 as discharging liability for an amount of corporation tax for an earlier accounting period (in this subsection referred to as “the earlier period”), and
  - (c) disregarding the effect of the said subsection (3), an amount of corporation tax for the earlier period would carry interest in accordance with this section,

then, in determining the amount of interest payable under this section on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from the said subsection (3)

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except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (1) above).

- (5) A sum assessed on a company by such an assessment as is referred to in subsection (2) of section 102 of the Finance Act 1972 (recovery of payment of tax credit or interest on such a payment) shall carry interest at the prescribed rate from the date when the payment of tax credit or interest was made until the sum assessed is paid.”

## **86 Supplementary provisions as to interest on overdue tax.**

- (1) At the end of section 69 of the Management Act (recovery of interest on tax) there shall be added the words “or, if it is interest on tax which is not in fact assessed, as if it were tax charged and due and payable under an assessment”.
- (2) In section 86 of the Management Act (interest on overdue tax), subsection (2)(d) and paragraph 5 of the Table (which relate to assessed corporation tax) shall be omitted.
- (3) References to section 86 of the Management Act in—
- (a) sections 70(2) and 92 of that Act (evidence, and remission of interest in certain cases), and
  - (b) paragraph 4 of Schedule 15 to the Finance Act 1973 (territorial extension of tax),
- shall include a reference to section 87A of the Management Act.
- (4) In section 88 of the Management Act (interest on tax recovered to make good loss due to taxpayer’s fault)—
- (a) in subsection (2) (exclusion of certain non-assessed tax) after the words “in relation to” there shall be inserted “corporation tax or”; and
  - (b) in subsection (5), paragraph (e) (which relates to corporation tax) shall be omitted.
- (5) In section 91 of the Management Act (effect on interest of reliefs) after subsection (1) there shall be inserted the following subsections—
- “(1A) Where interest is payable under section 87A of this Act in respect of an amount of corporation tax for an accounting period, and relief from tax is given by a discharge of any of that corporation tax—
- (a) such adjustment shall be made of the amount of interest payable under that section in respect of corporation tax for that accounting period, and
  - (b) such repayment shall be made of any amounts of interest previously paid under that section in respect of that corporation tax,
- as are necessary to secure that the total sum (if any) paid or payable under that section in respect of corporation tax for that accounting period is the same as it would have been if the tax discharged had never been charged.
- (1B) Subsection (1A) above has effect subject to section 87A(4) of this Act.”
- (6) At the beginning of subsection (2) of that section there shall be inserted the words “Subject to subsection (2A) below” and at the end of that subsection there shall be added the following subsection—

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“(2A) In any case where—

- (a) relief from corporation tax is given to any person by repayment, and
- (b) that tax was paid for an accounting period ending after the day which is the appointed day for the purposes of section 90 of the Finance (No. 2) Act 1987,

that person shall be entitled to require that the amount repaid shall be treated for the purposes of this section, so far as it will go, as if it were a discharge of the corporation tax charged on him for that period.”

- (7) This section has effect with respect to accounting periods ending after the appointed day.

## **87 Interest on tax overpaid.**

(1) In any case where—

- (a) a repayment falls to be made of corporation tax paid by a company for an accounting period which ends after the appointed day, or
- (b) a repayment of income tax falls to be made in respect of a payment received by a company in such an accounting period, or
- (c) a payment falls to be made to a company of the whole or part of the tax credit comprised in any franked investment income received by the company in such an accounting period,

then, from the material date until that repayment or payment is made, the repayment or payment shall carry interest at the rate which, under section 89 of the Management Act, is for the time being the prescribed rate for the purposes of this section.

- (2) In relation to corporation tax paid by a company for an accounting period, the material date for the purposes of this section is the date on which the corporation tax was paid or, if it is later, the date on which corporation tax for that accounting period became (or, as the case may be, would have become) due and payable in accordance with section 243(4) of the Taxes Act.
- (3) In relation to a repayment of income tax falling within subsection (1)(b) above or a payment of the whole or part of a tax credit falling within subsection (1)(c) above, the material date is the date on which corporation tax became (or, as the case may be, would have become) due and payable for the accounting period in which the payment referred to in subsection (1)(b) above or, as the case may be, the franked investment income referred to in subsection (1)(c) above was received by the company.
- (4) For the purposes of this section a repayment of tax made on a claim under subsection (5) of section 286 of the Taxes Act (loans to participators etc.) shall be treated as if it were a repayment of corporation tax for the accounting period in which the repayment of, or of the part in question of, the loan or advance mentioned in that subsection was made but, in relation to such a repayment of tax, the material date for the purposes of this section is—
  - (a) the date on which the loan or advance (or part thereof) is repaid; or
  - (b) if it is later, the date on which the tax which is to be repaid was in fact paid.
- (5) Interest paid under this section shall be paid without any deduction of income tax and shall not be brought into account in computing any profits or income.

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- (6) Where a repayment of corporation tax is a repayment of tax paid by a company on different dates, the repayment shall as far as possible be treated for the purposes of this section as a repayment of tax paid on a later rather than an earlier date among those dates.
- (7) In any case where—
- (a) there is in any accounting period of a company (in this subsection referred to as “the later period”) an amount of surplus advance corporation tax, as defined in subsection (3) of section 85 of the Finance Act 1972, and
  - (b) pursuant to a claim under the said subsection (3), the whole or any part of that amount is treated for the purposes of the said section 85 as discharging liability for an amount of corporation tax for an earlier accounting period (in this subsection referred to as “the earlier period”), and
  - (c) a repayment falls to be made of corporation tax paid for the earlier period,
- then, in determining the amount of interest (if any) payable under this section on the repayment of corporation tax for the earlier period, no account shall be taken of any increase in the amount of the repayment resulting from the said subsection (3) except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (2) above).
- (8) In consequence of the preceding provisions of this section, no repayment supplement, within the meaning of section 48 of the Finance (No. 2) Act 1975, shall be paid in respect of any repayment of tax or payment of tax credit where the relevant accounting period, within the meaning of that section, ends after the appointed day.

## **88 Recovery of overpayment of tax etc.**

- (1) In section 30 of the Management Act (recovery of overpayment of tax etc.) after subsection (2) there shall be inserted the following subsection—
- “(2A) In any case where—
- (a) interest has been paid under section 87 of the Finance (No. 2) Act 1987 on a repayment of tax, and
  - (b) the whole or any part of that repayment has been paid to any person but ought not to have been paid to him, and
  - (c) interest ought not to have been paid on that repayment, either at all or to any extent,
- then the amount of the repayment assessed under subsection (1) above may include an amount equal to the interest that ought not to have been paid.”
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) If, in a case not falling within subsection (2A) above,—
- (a) interest has been paid under section 87 of the Finance (No. 2) Act 1987 on a repayment of tax, and
  - (b) that interest ought not to have been paid, either at all or to any extent,
- then an amount equal to the interest that ought not to have been paid may be assessed and recovered as if it were unpaid corporation tax.”
- (3) At the end of subsection (4) of that section there shall be added the words “and an assessment to recover—

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- (a) an amount of corporation tax repaid to a company in respect of an accounting period, or
- (b) an amount of income tax repaid to a company in respect of a payment received by the company in any accounting period, or
- (c) interest on any such repayment of tax,

shall be treated as an assessment to corporation tax for the accounting period referred to in paragraph (a) or (b) above, as the case may be, and the sum assessed shall carry interest at the prescribed rate for the purposes of section 87A of this Act from the date when the payment being recovered was made until payment.”

(4) After subsection (4) of that section there shall be inserted the following subsection—

“(4A) Where an assessment is made under this section to recover—

- (a) corporation tax repaid to a company in respect of an accounting period, or
- (b) income tax repaid to a company in respect of payments received by the company in an accounting period,

and more than one repayment of that tax has been made in respect of that period, any sum recovered in respect of income tax or corporation tax repaid shall as far as possible be treated as relating to a repayment of that tax made later rather than to a repayment made earlier.”

(5) In section 102 of the Finance Act 1972 (rectification of excessive set-off etc. of advance corporation tax or tax credit) after subsection (1) there shall be inserted the following subsections—

“(1A) In any case where—

- (a) interest has been paid under section 87 of the Finance (No. 2) Act 1987 on a payment of tax credit, and
- (b) interest ought not to have been paid on that payment, either at all or to any extent,

an assessment under this section may be made for recovering any interest that ought not to have been paid.

(1B) Where—

- (a) an assessment is made under this section to recover tax credit paid to a company in respect of franked investment income received by the company in an accounting period, and
- (b) more than one payment of tax credit has been made in respect of that period,

any sum recovered shall as far as possible be treated as relating to a payment of tax credit made later rather than to a payment made earlier.”

(6) In subsection (2) of that section after the words “tax credit” there shall be inserted “or interest on such a payment”.

(7) Subsections (1) to (4) above have effect with respect to the recovery of—

- (a) repayments of corporation tax paid for accounting periods ending after the appointed day,
- (b) repayments of income tax on payments received by a company in any such accounting period, and

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(c) interest on such repayments;  
and subsections (5) and (6) above have effect with respect to the recovery of interest on payments of tax credit (within the meaning of Part V of the Finance Act 1972) claimed in respect of accounting periods ending after the appointed day.

## **89 Prescribed rate of interest.**

(1) In section 89 of the Management Act (prescribed rate of interest) for subsection (1) there shall be substituted the following subsection—

“(1) For the purposes of any provision of this Part of this Act and of section 87 of the Finance (No. 2) Act 1987 “the prescribed rate” means such rate as may for the time being be prescribed for the purposes of the provision in question by order made by the Treasury.”

(2) In subsection (2) of that section—

- (a) for the words “The Treasury may, by order in a” there shall be substituted “The power to make an order under this section shall be exercisable by”; and
- (b) for the words from “from time to time” to “either” there shall be substituted “and any such order may be framed either so as to prescribe a single rate”.

(3) In subsection (3) of that section for the words from the beginning to “(2) above” there shall be substituted “Any rate of interest prescribed by order under this section”.

### *Miscellaneous*

## **90 Corporation tax to be payable without assessment.**

(1) With respect to accounting periods ending after the appointed day, corporation tax shall be payable without the making of an assessment and, with respect to such periods—

- (a) in subsection (3) of section 243 of the Taxes Act (which provides for assessments by reference to accounting periods) for the words from “assessments” to “a company” there shall be substituted “corporation tax shall be computed and chargeable (and any assessments shall accordingly be made)”; and
- (b) in subsection (4) of that section (which specifies the date when corporation tax assessed for an accounting period is to be paid) the word “assessed” and the words from “or if it is later” onwards shall be omitted and for the words “paid within” there shall be substituted “due and payable on the day following the expiry of”.

(2) With respect to loans or advances made (or treated as made) in an accounting period ending after the appointed day, in subsection (1) of section 286 of the Taxes Act (loans to participators etc.) for the words “assessed on and recoverable” there shall be substituted “due”.

(3) With respect to loans or advances made (or treated as made) as mentioned in subsection (2) above, for subsection (4) of the said section 286 there shall be substituted—

“(4) Tax due by virtue of this section shall be due and payable within fourteen days after the end of the accounting period in which the loan or advance was made”.

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- (4) Notwithstanding that, by virtue of the preceding provisions of this section, any corporation tax (or any amount due as if it were corporation tax) is due without the making of an assessment, no proceedings for collecting that tax (or other amount) shall be instituted—
- (a) unless it has been assessed; and
  - (b) until the expiry of the period of thirty days beginning on the date on which the notice of assessment is issued;
- and the reference in this subsection to proceedings for collecting tax or any other amount includes a reference to proceedings by way of distraint or poinding for that tax or other amount.
- (5) If, with respect to any accounting period,—
- (a) a company has paid an amount of corporation tax without the making of an assessment; and
  - (b) at any time before an assessment to corporation tax for the period becomes final, the company has grounds for believing that, by reason of a change in the circumstances of the case since the tax was paid, the amount paid exceeds the company's probable liability for corporation tax,
- the company may, by notice in writing given to the inspector on or after the date which, under section 87 above, is the material date in relation to that tax, make a claim for the repayment to the company of the amount of that excess; and a notice under this subsection shall state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above.
- (6) If, apart from this subsection, a claim would fall to be made under subsection (5) above at a time when the company concerned has appealed against such an assessment as is referred to in paragraph (b) of that subsection but that appeal has not been finally determined, that subsection shall have effect as if, for the words from “make a claim” to “excess”, there were substituted “apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending a determination of the company's liability for the accounting period in question”; and such an application shall be determined in the same way as the appeal.
- (7) Where, on an appeal against an assessment to corporation tax, a company makes an application under subsection (3) or subsection (4) of section 55 of the Management Act (postponement of tax charged but not paid etc.) that application may be combined with an application under subsections (5) and (6) above (relating to tax which was paid prior to the assessment).

## **91 Close companies: loans to participators.**

- (1) In section 109 of the Management Act (close companies: loans to participators) subsection (2) shall be omitted.
- (2) In subsection (3) of that section for “88” there shall be substituted “87A” and for the words from “charged” onwards there shall be substituted “under the said section 286 became due and payable shall be that determined in accordance with subsection (4) of that section”.
- (3) After subsection (3) of that section there shall be inserted the following subsection—



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“(3A) If there is such a repayment of the whole or any part of a loan or advance as is referred to in subsection (5) of section 286 of the principal Act, interest under section 87A of this Act on so much of the tax under the said section 286 as is referable to the amount repaid shall not be payable in respect of any period after the date on which the repayment was made.”

- (4) This section has effect with respect to loans or advances made (or treated as made) in any accounting period ending after the appointed day.

## **92 Amendments relating to PAYE.**

- (1) Section 204 of the Taxes Act (pay as you earn) shall be amended in accordance with this section.

- (2) In subsection (2) (regulations) after paragraph (c) there shall be inserted the following paragraph—

“(cc) for requiring the payment of interest on sums due to the Board—  
(i) which are not paid by the due date, and  
(ii) of which the amount is determined by the inspector (before or after the due date) in accordance with the regulations,  
and for determining the date (being not less than 14 days after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated”.

- (3) After subsection (3) there shall be inserted the following subsection—

“(3A) Any reference in the preceding provisions of this section to a payment of, or on account of, any income assessable under Schedule E includes a reference to anything which, in accordance with regulations under subsection (2) above, is to be treated as a payment of, or on account of, any such income.”

## **93 Sub-contractors in the construction industry.**

- (1) Section 70 of the Finance (No. 2) Act 1975 (certificates securing exemption from the deduction scheme applicable to sub-contractors in the construction industry) shall be amended as follows.

- (2) After subsection (4) there shall be inserted the following subsection—

“(4A) Where it appears to the Board that there has been a change in the control of a company holding or applying for a certificate, the Board may make any such direction as is referred to in subsection (4) above.”

- (3) In subsection (5) (cancellation of certificates) at the end of paragraph (c) there shall be inserted “or

(d) in the case of a certificate issued to a company, there has been a change in the control of the company and information with respect to that change has not been furnished in accordance with regulations under subsection (7) below”.

- (4) In subsection (6) (appeals against refusal of certificate)—

(a) after the words “certificate under this section” there shall be inserted “or the cancellation of such a certificate”; and

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- (b) after the word “refusal”, in the second place where it occurs, there shall be inserted “or as the case may be, cancellation”.
- (5) In subsection (7) after paragraph (c) there shall be inserted the following paragraph—
  - “(cc) requiring the furnishing of information with respect to changes in the control of a company holding or applying for such a certificate”;
 and after paragraph (f) there shall be inserted the following paragraph—
  - “(ff) with respect to the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in paragraph (f) above and with respect to rights of access to or copies of any such records which are removed; and”.
- (6) At the end of the section there shall be added the following subsection—
  - “(13) In this section “control” has the same meaning as in section 534 of the Taxes Act.”

**94 Failure to do things within a limited time.**

In section 118(2) of the Management Act (cases where persons are deemed not to have failed to do things which are required to be done within a limited time), after the word “deemed”, in the second place where it occurs, there shall be inserted “not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed”.

**95 Interpretation of Chapter V and consequential and supplementary provisions.**

- (1) In this Chapter “the Management Act” means the Taxes Management Act 1970.
- (2) Subject to subsection (3) below, any reference in this Chapter to the appointed day is a reference to such day as the Treasury may by order made by statutory instrument appoint, and different days may be so appointed for different provisions of this Chapter.
- (3) No day may be appointed by virtue of subsection (2) above which falls earlier than 31st March 1992.
- (4) The provisions of Schedule 6 to this Act shall have effect, being provisions consequential on and supplementary to the provisions of this Chapter.

## PART II

### INHERITANCE TAX ETC.

**96 Interests in possession.**

- (1) With respect to transfers of value made, and other events occurring, on or after 17th March 1987, the Inheritance Tax Act 1984 shall be amended in accordance with this section.
- (2) In section 3A (potentially exempt transfers)—

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- (a) in subsection (2)(a) the words “otherwise than as settled property” shall be omitted;
  - (b) in subsection (2)(b) the words from “otherwise” onwards shall be omitted; and
  - (c) in subsection (6) after the words “this Act” there shall be inserted “other than section 52”.
- (3) At the end of section 3A there shall be added the following subsection—
- “(7) In the application of this section to an event on the happening of which tax is chargeable under section 52 below, the reference in subsection (1)(a) above to the individual by whom the transfer of value is made is a reference to the person who, by virtue of section 3(4) above, is treated as the transferor.”
- (4) In section 49 (treatment of interests in possession) subsection (3) (which was added by paragraph 14 of Schedule 19 to the Finance Act 1986) shall be omitted.
- (5) In section 55 (reversionary interest acquired by beneficiary) in subsection (2) the words “and such a disposition is not a potentially exempt transfer” (being words added by paragraph 15 of the said Schedule 19) shall be omitted.
- (6) Schedule 7 to this Act shall have effect for the purpose of making further amendments of the Inheritance Tax Act 1984 relating to interests in possession in settled property.

#### **97 Acceptance in lieu: capital transfer tax and estate duty.**

- (1) If, under paragraph 17 of Schedule 4 to the Finance Act 1975, the Commissioners of Inland Revenue agree to accept property in satisfaction of an amount of capital transfer tax on terms that the value to be attributed to the property for the purposes of that acceptance is determined as at a date earlier than that on which the property is actually accepted, the terms may provide that the amount of capital transfer tax which is satisfied by the acceptance of that property shall not carry interest under paragraph 19 of that Schedule from that date.
- (2) If, under any of the enactments set out in paragraphs (a) to (c) of subsection (3) of section 8 of the National Heritage Act 1980, the Commissioners of Inland Revenue agree to accept property in satisfaction of an amount of estate duty on terms that the value to be attributed to the property for the purposes of that acceptance is determined as at a date earlier than that on which the property is actually accepted, the terms may provide that the amount of estate duty which is satisfied by the acceptance of that property shall not carry interest under section 18 of the Finance Act 1896 from that date.
- (3) Subsections (1) and (2) above apply in any case where the acceptance of the property in question occurs on or after 17th March 1987 and paragraph 19 of Schedule 4 to the Finance Act 1975 or, as the case may be, section 18 of the Finance Act 1896 shall have effect subject to any such terms as are referred to in subsection (1) or subsection (2) above.
- (4) In this section “estate duty” and “property” have the meaning assigned by section 272 of the Inheritance Tax Act 1984.

#### **98 Personal pension schemes.**

- (1) The Inheritance Tax Act 1984 shall be amended as follows.

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- (2) At the end of section 12(2) (dispositions by employers that are not transfers of value) there shall be added—

“or

- (c) it is a contribution under approved personal pension arrangements within the meaning of Chapter II of Part I of the Finance (No. 2) Act 1987 entered into by an employee of the person making the disposition”.

- (3) In section 12(3), for the words “both paragraph (a) and (b)” there shall be substituted the words “more than one paragraph”, and for the word “either” there shall be substituted the words “any one”.

- (4) In section 151 (treatment of pension rights etc.) after subsection (1) there shall be inserted—

“(1A) This section also applies to approved personal pension arrangements within the meaning of Chapter II of Part I of the Finance (No. 2) Act 1987; and references in the following provisions of this section to a scheme shall be construed accordingly.”

- (5) In section 152 (cash options) for the words from “under a contract” to “annuities)” there shall be substituted the words—

- “(a) under approved personal pension arrangements within the meaning of Chapter II of Part I of the Finance (No. 2) Act 1987, or  
 (b) under a contract or trust scheme approved by the Board under section 226 or 226A of the Taxes Act or (before the commencement of that Act) under section 22 of the Finance Act 1956.”.

### PART III

#### MISCELLANEOUS AND SUPPLEMENTARY

#### **99 Stamp duty: options, etc.**

- (1) In section 50 of the Finance Act 1987 (stamp duty exemption for options to acquire, and other interests in, exempt securities), in subsection (1), after the word “acquire” there shall be inserted the words “or to dispose of”.
- (2) In subsection (30) of that section, after the words “the Finance Act (Northern Ireland) 1967” (in both places) there shall be inserted the words “or section 79(2) of the Finance Act 1986”.

#### **100 Stamp duty Reserve tax.**

- (1) The Finance Act 1986 shall have effect in relation to agreements to transfer securities made on or after 8th May 1987 with the insertion of the following section after section 89—

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**“89A Sections 87: exceptions for public issues.**

- (1) Section 87 above shall not apply as regards an agreement to transfer securities other than units under a unit trust scheme to B or B’s nominee if—
    - (a) the agreement is part of an arrangement, entered into by B in the ordinary course of B’s business as an issuing house, under which B (as principal) is to offer the securities for sale to the public,
    - (b) the agreement is conditional upon the admission of the securities to the Official List of The Stock Exchange,
    - (c) the consideration under the agreement for each security is the same as the price at which B is to offer the security for sale, and
    - (b) B sells the securities in accordance with the arrangement referred to in paragraph (a) above.
  - (2) Section 87 above shall not apply as regards an agreement if the securities to which the agreement relates are newly subscribed securities other than units under a unit trust scheme and—
    - (a) the agreement is made in pursuance of an offer to the public made by A (as principal) under an arrangement entered into in the ordinary course of A’s business as an issuing house,
    - (b) a right of allotment in respect of, or to subscribe for, the securities has been acquired by A under an agreement which is part of the arrangement,
    - (c) both those agreements are conditional upon the admission of the securities to the Official List of The Stock Exchange, and
    - (d) the consideration for each security is the same under both agreements; and for the purposes of this subsection, “newly subscribed securities” are securities which, in pursuance of the arrangement referred to in paragraph (a) above, are issued wholly for new consideration.
  - (3) Section 87 above shall not apply as regards an agreement if the securities to which the agreement relates are registered securities other than units under a unit trust scheme and—
    - (a) the agreement is made in pursuance of an offer to the public made by A,
    - (b) the agreement is conditional upon the admission of the securities to the Official List of The Stock Exchange, and
    - (c) under the agreement A issues to B or his nominee a renounceable letter of acceptance, or similar instrument, in respect of the securities.
  - (4) The Treasury may by regulations amend paragraph (b) of subsection (1) above, paragraph (c) of subsection (2) above, and paragraph (b) of subsection (3) above (as they have effect for the time being); and the power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) Section 91 of the Finance Act 1986 (liability to tax) shall have effect, and shall be deemed always to have had effect, with the omission of subsection (2).

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## 101 Oil taxation.

- (1) Schedule 10 to the Finance Act 1987 (nomination scheme for disposals and appropriations of oil) shall have effect subject to the amendments in Schedule 8 to this Act.
- (2) In section 62 of the Finance Act 1987 (market value of oil to be determined on a monthly basis) subsection (6) (meaning of relevant sale of oil in relation to the additional return required by subsection (4) of that section) shall have effect subject to the following modifications—
  - (a) after the words “sale of oil”, in the second place where they occur, there shall be inserted the words “at arm’s length”; and
  - (b) in paragraph (b) after the words “sub-paragraph (3A) thereof” there shall be inserted “or otherwise”.
- (3) Section 63 of the Finance Act 1987 (blends of oil from two or more fields) shall have effect with the omission from subsection (1) of the words from “and in” onwards and with the addition, at the end of that subsection, of the following subsection—
 

“(1A) In this section—

  - (a) “oil field” includes an area which is a foreign field for the purposes of section 12 of the Oil Taxation Act 1983;
  - (b) “oil” includes any substance which would be oil if the enactments mentioned in section 1(1) of the principal Act extended to such an area as is referred to in paragraph (a) above;
  - (c) “blended oil” means oil which has been mixed as mentioned in subsection (1) above; and
  - (d) “the originating fields”, in relation to any blended oil, means the oil fields from which the blended oil is derived.”
- (4) In paragraph 5 of Schedule 2 to the Oil Taxation Act 1975 (returns by the responsible person for an oil field) after sub-paragraph (2A) there shall be inserted the following sub-paragraph—
 

“(2B) If in any chargeable period oil won from the oil field is mixed as mentioned in section 63 of the Finance Act 1987 so as to give rise to blended oil, within the meaning of that section, then, as respects that chargeable period, for paragraph (a) of sub-paragraph (2) above there shall be substituted the following paragraph—

  - “(a) state the total of the shares of the participators in the oil field of the oil won from the field during the period less so much of the oil won from the field as is not saved”.”
- (5) Subsections (2) to (4) above have effect with respect to chargeable periods ending after 1st January 1987 and, subject to subsection (6) below, Schedule 8 to this Act has effect with respect to calendar months in chargeable periods beginning with March 1987.
- (6) Paragraph 5 of Schedule 8 to this Act has effect with respect to chargeable periods ending after such date as the Treasury may by order made by statutory instrument appoint; but no order shall be made under this subsection unless a draft of it has been laid before and approved by a resolution of the House of Commons.

## **102 Government fees and charges.**

- (1) This section applies where a Minister of the Crown or any other person has power under any enactment (whenever passed) to require the payment of, or to determine by subordinate legislation the amount of, any fee or charge (however described) which is payable to the Minister or to any other person who is required to pay the fee or charge into the Consolidated Fund (whether the obligation is so expressed or is expressed as a requirement to make the payment into the Exchequer).
- (2) In the following provisions of this section, a power falling within subsection (1) above is referred to as a “power to fix a fee” and, in relation to such a power,—
  - (a) “fee” includes charge;
  - (b) “the appropriate authority” means, if the power is exercisable by a Minister of the Crown or any Commissioners, that Minister or those Commissioners and, in any other case, such Minister of the Crown as the Treasury may determine; and
  - (c) “the recipient” means the Minister or other person to whom the fee is payable.
- (3) In relation to any power to fix a fee, the appropriate authority or any Minister of the Crown with the consent of the appropriate authority may, by order made by statutory instrument, specify functions, whether of the recipient or any other person and whether arising under any enactment, by virtue of any Community obligation or otherwise, the costs of which, in addition to any other matters already required to be taken into account, are to be taken into account in determining the amount of the fee.
- (4) In relation to any functions the costs of which fall to be taken into account on the exercise of any power to fix a fee (whether by virtue of subsection (3) above or otherwise), the appropriate authority or any Minister of the Crown with the consent of the appropriate authority may, by order made by statutory instrument, specify matters which, in addition to any matters already required to be taken into account, are to be taken into account in determining those costs, and, without prejudice to the generality of the power conferred by this subsection, those matters may include deficits incurred before as well as after the exercise of that power, a requirement to secure a return on an amount of capital and depreciation of assets.
- (5) No order shall be made under subsection (3) or subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.
- (6) An order under subsection (3) or subsection (4) above has effect in relation to any exercise of the power to fix the fee concerned after the making of the order; but no earlier exercise of that power shall be regarded as having been invalid if, had the order been made before that exercise of the power, the exercise would have been validated by the order.
- (7) In this section—
  - (a) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - (b) “Commissioners” means the Commissioners of Customs and Excise or the Commissioners of Inland Revenue;
  - (c) “enactment” does not include Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978; and
  - (d) subject to paragraph (c) above, “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

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

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- (8) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this section—
- (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule (affirmative resolution of both Houses of Parliament); but
  - (b) shall be subject to annulment in pursuance of a resolution of either House.

### **103 Consumption in port of goods transhipped for use as stores, etc.**

- (1) Subject to subsection (2) below and to any directions given by the Commissioners under section 61 of the Customs and Excise Management Act 1979, goods transhipped for use as stores on a ship which is not less than 40 tons register and which is to make a voyage to a country outside the United Kingdom may be used while the ship is in port without payment of duty.
- (2) Subsection (1) above does not apply to—
  - (a) dutiable alcoholic liquor other than beer and cider; or
  - (b) tobacco products;
 and the reference in subsection (1) above to a country outside the United Kingdom does not include a reference to the Isle of Man.
- (3) In section 1(1) of the Customs and Excise Management Act 1979, at the end of the definition of “transit or transhipment” there shall be added “or transhipment of those goods for use as stores”.
- (4) In subsection (1) of section 61 of that Act, after paragraph (a) there shall be added—
  - “(aa) as to the descriptions of vessel on which goods carried as stores may be used in port without payment of duty in accordance with section 103(1) of the Finance (No. 2) Act 1987;
  - (ab) as to the quantity of any goods which may be carried as stores for use in port as mentioned in paragraph (aa) above and as to the time within which such goods or any specified quantities of them may be so used; and”;
 and in paragraph (b) of that subsection after the words “paragraph (a)” there shall be inserted “or paragraph (aa)”.
- (5) In subsection (5) of the said section 61 after the words “United Kingdom”, in the first place where they occur, there shall be inserted “or for use in port without payment of duty”.
- (6) Subsections (1) and (2) above shall be construed as one with the Customs and Excise Management Act 1979.
- (7) Notwithstanding the generality of section 24 of the Value Added Tax Act 1983 (application of customs and excise enactments in relation to value added tax), subsections (1) and (2) above are excluded from the enactments to which that section applies.

### **104 Short title, interpretation, construction and repeals.**

- (1) This Act may be cited as the Finance (No. 2) Act 1987.
- (2) In this Act “the Taxes Act” means the Income and Corporation Taxes Act 1970.



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

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- (3) Part I of this Act, so far as it relates to income tax, shall be construed as one with the Income Tax Acts, so far as it relates to corporation tax, shall be construed as one with the Corporation Tax Acts and, so far as it relates to capital gains tax, shall be construed as one with the Capital Gains Tax Act 1979.
- (4) The enactments specified in Schedule 9 to this Act (which include enactments which are spent or otherwise unnecessary) are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision at the end of any Part of that Schedule.