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Income and Corporation Taxes Act 1988

1988 CHAPTER 1

An Act to consolidate certain of the enactments relating to income tax and corporation tax, including certain enactments relating also to capital gains tax; and to repeal as obsolete section 339(1) of the Income and Corporation Taxes Act 1970 and paragraphs 3 and 4 of Schedule 11 to the Finance Act 1980. [9th February 1988]

Editorial Information

X1 EDITORIAL NOTE

The originating text of this Act is derived from the 1990 edition of The Taxes Acts edited by the Inland Revenue and published by Her Majesty's Stationery Office. The style of editing followed in older versions of the revised text may therefore differ from that applicable to most other Acts published in the online edition of the revised statutes. Any references in older footnote annotations to Vol. 1, 2 etc. are to the Volumes of that 1990 edition.

References to Acts in sidenotes and footnote annotations may be abbreviated. The main abbreviations used are listed below. Where a reference to an Act consists of the year, or the year and a series number (such as "1975", or "1975 (No. 2)", etc.), without any following letter(s) in parentheses, the reference is in most cases to the Finance Act, or Finance (No. 2) Act, etc., of that year. Exceptions to this are 1952, 1970, and 1988 (as to which see the list below).

ABBREVIATIONS USED IN SIDENOTES AND FOOTNOTES

1828 (R.S.) = Revenue Solicitors Act 1828 (c. 25, SIF 57)
1890 (I.R.R.) = Inland Revenue Regulation Act 1890 (c. 21, SIF 63:1)
1952 = Income Tax Act 1952 (c. 10, SIF 63:1)
1968 (C) = Capital Allowances Act 1968 (c. 3)
1970 (M) = Taxes Management Act 1970 (c. 9, SIF 63:1)
1970 = Income and Corporation Taxes Act 1970 (c. 10, SIF 63:1)
1970 (F) = Finance Act 1970 (c. 24, SIF 63:1,2)
1970 (No.2) = Income and Corporation Taxes (No.2) Act 1970 (c. 54)
1975 (O) = Oil Taxation Act 1975 (c. 22) (and similarly as respects subsequent years)
1976 (D) = Development Land Tax Act 1976 (c. 24)
1977 (I.T.R.) = Finance (Income Tax Reliefs) Act 1977 (c. 53)
1979 (C) = Capital Gains Tax Act 1979 (c. 14, SIF 63:2)
1984 (C) = Capital Transfer Tax Act 1984/Inheritance Tax Act 1984 (c. 51, SIF 65)
1988 = Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1)
1988 (F) = Finance Act 1988 (c. 39, SIF 63:1,2)

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1990 (C) = Capital Allowances Act 1990 (c. 1, SIF 63:1)
O.J. = Official Journal of the European Communities
SIF = Statutes in Force, the official hard-copy predecessor to the online statutes (and any following numbers refer to the relevant volume)

Modifications etc. (not altering text)

C1 General amendments, modifications, etc. to Tax Acts (or Income Tax Acts or Corporation Taxes Acts as the case may be):
Taxes Management Act 1970 (c.9, SIF 63:1), **s. 41A(7)** (as added by Finance Act 1990 (c.29, SIF 63:1), **s. 95(1)(2)**);
British Telecommunications Act 1981 (c.38, SIF 96), **s. 82(2)(7)**;
Telecommunications Act 1984 (c.12, SIF 96), **s. 72(3)**;
Finance Act 1984 (c.43, SIF 63:1), ss. 82(6), 85(2), 89(1)(7), 96(1)(7), 98(7), Sch. 9 para. 3(2)(9), Sch. 16 paras. 6, **12**;
Finance Act 1985 (c.54, SIF 63:1), ss. 72(1), 74(5), **Sch. 23 para. 15(4)**;
The Income Tax (Entertainers and Sportsmen) Regulations 1987 (S.I. 1987/530), **regs. 11(2)**, 13(1), 14;
Income and Corporation Taxes Act 1988 (c.1, SIF 63:1), ss. 4, 6, 7, 9, 32, 34, 78, 134, 135, 141, 142, 185, 191, 193, 194, 195, 200, 203, 209, 212, 213, 219, 247, 253, 272, 287, 314, 315, 317, 318, 325, 326, 327, 345, 350, 351, 368, 375, 381, 397, 414, 432, 440, 442, 446, 458, 460, 461, 463, 463(2)(3) (as added by Finance Act 1990 (c.29, SIF 63:1), **s. 50(2)**), 468, 474, 475, 486, 490, 491, 503, 511, 518, 524, 532, 544, 550, 556, 558, 569, 572, 582, 595, 601, 613, 617, 619, 621, 639, 656, 660, 663, 676, 689, 691, 694, 700, 701, 714, 716, 739, 743, 754, 763, 776, 780, 781, 782, 787, 789, 811, 828, 829, 832, 833, 834, 835, 837, 838, 839, 840, 841, 842, Sch. 2 para. 5, Sch. 4 para. 5, Sch. 13 para. 10, Sch. 16 para. 10, Sch. 21 para. 6, Sch. 26 para. 1, **Sch. 27 para. 20**;
Finance Act 1988 (c.39, SIF 63:1), ss. 66, 127(1)(6), **Sch. 12 para. 6**;
Electricity Act 1989 (c. 29, SIF 44:1), s. 90, **Sch. 11 para. 8(2)**; S.I. 1990/117, art. 3, **Sch. 1**;
Capital Allowances Act 1990 (c.1, SIF 63:1), **ss. 28(1)**, 68(8), 74, 82, 83(5), 148(5), 163(4), 164(2); S.I. 1990/627;
Finance Act 1990 (c.29, SIF 63:1), **s. 25(10)**;
Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 84(3)** (having effect with respect to gifts made on or after 19.3.1991), s. 587A(2)(3) (with application as referred to in Finance Act 1991 (c.31, SIF 63:1), s. 54, **Sch. 12 para. 5** (if the new securities are issued on or after 19.3.1991)), s. 736A, Sch. 23A paras. 2(2), 3(2), 4(4), 5(2), **7(1)**;
Ports Act 1991 (c. 52, SIF 58), **s. 35(8)**;
The Official Listing of Securities (Change of Competent Authority) Regulations 1991 (S.I. 1991/2000), **regs. 1(1)**, 4(5);
British Technology Group Act 1991 (c.66, SIF 64), **s.12(1)(3)(4)**; S.I. 1991/2721, **art.2**;
The Social Security (Contributions) Regulations 1979 (S.I. 1979/591), **Sch. 1 reg. 28** (as substituted by S.I. 1992/97, **reg. 18**);
Social Security Contributions and Benefits Act 1992 (c. 4), ss. 16, 177(4), **Sch.2** (with s. 108(5));
Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 209(3)**, 289 (with ss. 60, 101(1), 171, 201(3)) (with effect for the year 1992-93 and subsequent years of assessment);
The Lloyd's Underwriters (Tax) (1989-90) Regulations 1992 (S.I. 1992/511), **reg.3** (with effect for the year of assessment 1989-90);
Finance (No. 2) Act 1992 (c. 48), ss. 66, 77, Sch. 12 paras. 6(2), 7, **Sch. 17 para.9**;
The Lloyd's Underwriters (Tax) (1990-91) Regulations 1993 (S.I. 1993/415), **regs. 1(1)**, 3(1) (with effect for the year of assessment 1990-91);
Finance Act 1993 (c. 34), s. 78(3)-(5), 118(1), 146(2)(3), 165, 175, Sch. 20 paras. 8, **9(1)**;
Finance Act 1993 (c. 34), **ss. 172(1)**, 176(1), 179(4)(5), 180(1)(a)(2), 182(2), 184(3) (with effect for the year 1992-93 and subsequent years of assessment);
Agriculture Act 1993 (c. 37), ss. 12, 36, Sch. 2, paras. 1, 2(1), 3(2), 16(2)(a), **Sch. 4 para. 1(1)**;

The Income Tax (Manufactured Overseas Dividends) Regulations 1993 (S.I. 1993/2004), **regs. 1**, 4(1) , 5(1), 7(1), 8, 11(7);
Finance Act 1994 (c. 9), ss. 139(1)(2), 173(2)(b)(4)(a)(b), 174, Sch. 25 paras. 2, **6(1)(2)**;
Finance Act 1994 (c. 9), s. 252(1)(3), Sch. 24 paras. 1(4), 12(2), 15(1)(b), 18(1)-(4), 20(1)(a)(3), **25(1)** (with retrospective effect to 11.1.1994);
Coal Industry Act 1994 (c. 21), ss. 21, 68(4), Sch. 4 paras. 11(1), 14, 17(2)-(4), **19(1)(a)(3)**; S.I. 1994/2189, art. 2, **Sch.**;
The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **reg.3** (with effect for the year of assessment 1991-92);
Finance Act 1995 (c. 4), **ss. 152**, 157(12);
Finance Act 1995 (c. 4), **s. 154** (with retrospective effect to 29.11.1994);
Income and Corporation Taxes Act 1988 (c. 1), **Sch. 5A** (as inserted by Finance Act 1995 (c. 4), s. 85(2)(3), **Sch. 19**);
Crown Agents Act 1995 (c. 24), **s. 7(3)-(5)**;
Atomic Energy Authority Act 1995 (c. 37), s. 8, Sch. 3 paras. 1, 2, 7, **13**;
Gas Act 1995 (c. 45), s. 17(1)(2), Sch. 5 paras. 1, **10(1)-(3)**;
The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 3**;
The Lloyd's Underwriters (Tax) Regulations 1995 (S.I. 1995/351), **reg. 4** (with regs. 5-8 and S.I. 1995/352, **regs. 6-12**, 14, 15);
The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), **regs. 1**, 4 (with regs. 6-12, 14, 15 and S.I. 1995/351, **regs. 5-8**) (with effect for the years of assessment 1992-93 to 1996-97);
The Income Tax (Manufactured Dividends) (Tradepoint) Regulations 1995 (S.I. 1995/2052), **regs. 1**, 10;
Finance Act 1996 (c. 8), ss. 81(1), 151(1), 152, 154(2)(5)(9), Sch. 10 para. 4(2), **Sch. 11 para. 4(4)**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 689A(2)** (as inserted by Finance Act 1996 (c. 8), Sch. 6 paras. 16, **28**);
Broadcasting Act 1996 (c. 55), Sch. 7 paras. 1(3), 18, **27**;
Finance Act 1997 (c. 16), s. 79(3), Sch. 7 paras. 2(1)(3), 3(2)(5), **7(2)**;
Income and Corporation Taxes Act 1988 (c. 1), Sch. 23A paras. 3, **8(2A)** (as substituted and inserted respectively by Finance Act 1997 (c. 16), Sch. 10 paras. 11(1), 13(3), **16**);
Capital Allowances Act 1990 (c. 1), **ss. 28A**, 29(1)(1A) (as inserted and substituted respectively by Finance Act 1997 (c. 16), Sch. 15 paras. 3, **4**)
Finance (No. 2) Act 1997 (c. 58), s. 29(1), **Sch. 6 para. 23**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 1A(5)** (as substituted by Finance (No. 2) Act 1997 (c. 58), **s. 31(4)(6)**;
The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 3** (as amended by S.I. 2001/3629, **art. 165(2)(a)**; S.I. 2004/822, **reg. 4**)
The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 1**, 3-23 (as amended by S.I. 1997/1715);
The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **regs. 1**, 9;
Teaching and Higher Education Act 1998 (c. 30), **s. 22(5)(g)**;
Finance Act 1998 (c. 36), ss. 30(3), 31(2), 32(8), 46, 47(3)(a), 117, 161(2)(b)(7), **Sch. 18**;
Income and Corporation Taxes Act 1988 (c. 1), ss. 65A(3), 70A(3), 596C, 754(2), **Sch. 28AA para. 6(2)(b)** (as inserted or substituted (as the case may be) by Finance Act 1998 (c. 36), ss. 38, 93(3)(4), 108(5)(6), Sch. 5 paras. 24, 25, 73, Sch. 16, Sch. 17 paras. 9(4), **37**;
Regional Development Agencies Act 1998 (c. 45), **s. 38**; S.I. 1998/2952, **art. 2(2)**;
Scotland Act 1998 (c. 46), **s. 73(2)**; S.I. 1998/3178, art. 2(2), **Sch. 3**;
The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 21;
Finance Act 1999 (c. 16), **s. 68(4)**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 469A** (as inserted by Finance Act 1999 (c. 16), **s. 68(1)(3)**);

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Commonwealth Development Corporation Act 1999 (c. 20), **ss. 6(2)(c)**, 16(1)(4)(c)(5);
Finance Act 2000 (c. 17), **Sch. 14 para. 43**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 587B(2)(b)** (as inserted by Finance Act 2000 (c. 17), **s. 43(1)(3)**);
Capital Allowances Act 2001 (c. 2), ss. 253(4), 260(5), 579, Sch. 3 paras. 54, **55**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 118ZA** (as substituted by Finance Act 2001 (c. 9), **s. 75(1)(6)**);
Finance Act 2002 (c. 23), **ss. 55(2)-(4)**(7), 83(1)(a)(3), Sch. 26 para. 51;
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 56**, 566(2), 723(1) (with s. 48(2), Sch. 7));
Finance Act 2003 (c. 14), **ss. 148(1)-(5)**, 150, 195;
The Taxation of Benefits under Government Pilot Schemes (Return to Work Credit and Employment Retention and Advancement Schemes) Order 2003 (S.I. 2003/2339), **arts. 1**, 3;
Finance Act 2004 (c. 12), **ss. 51**, 188(7), 192(8)(10), 205(7), 206(7), 207(7), 208(8), 215(11), 227(5), 254(7), 255(3), 284(1) (with Sch. 36);
Finance Act 2002 (c. 23),Sch. 26 para. 36(2) (as substituted by Finance Act 2004 (c. 12), s. 52(1)(3), **Sch. 10 para. 62**);
Income and Corporation Taxes Act 1988 (c. 1), **s. 837C** (as inserted by Finance Act 2004 (c. 12), Sch. 27 paras. 1, **3**);
Income and Corporation Taxes Act 1988 (c. 1), **Sch. 19B para. 15(2)** (as inserted by Finance Act 2004 (c. 12), **Sch. 38**);
Energy Act 2004 (c. 20), ss. 27(10), 28(5), 29(6), 30(6), 38(2), 44(5), **Sch. 9 para. 37(3)**; S.I. 2004/2575, art. 2(1), **Sch. 1**;
Horserace Betting and Olympic Lottery Act 2004 (c. 25), **ss. 4(1)**, 5(3)(c)(4); S.I. 2011/462, **art. 2**;
The Taxation of Benefits under Government Pilot Schemes (Working Neighbourhoods Pilot and In Work Credit) Order 2004 (S.I. 2004/575), **art. 3**;
Finance Act 2005 (c. 7), **ss. 41(4)**, 50, 53, 54, 56, 83(1);
Railways Act 2005 (c. 14), **Sch. 10 para. 34(2)**; S.I. 2005/1444, art. 2(1), **Sch. 1**; S.I. 2005/1909, art, 2, Sch.;
Finance (No. 2) Act 2005 (c. 22), **ss. 7(2)**, 8, 9;
Finance Act 1988 (c.39), **s. 66A(2)(4)** (as inserted by Finance (No. 2) Act 2005 (c. 22), **s. 60(1)(3)**);
The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **reg. 4**;
The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 3**;
The Donations to Charity by Individuals (Appropriate Declarations) (Amendment) Regulations 2005 (S.I. 2005/2790), **regs. 6**, 7;
The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 4**;
Telecommunications Act 1984 (c. 12), **s. 72(3)** (as substituted by S.I. 2006/745, **art. 2**);
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2006 (S.I. 2006/3218), **regs. 1(1)(2)**, 2-12;
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006 (S.I. 2006/3389), **regs. 1(1)(2)**, 2-10 (as amended by S.I. 2007/2147, **regs. 1-6**);
Income Tax Act 2007 (c. 3), **ss. 414**, 466, 467, 473(5)(6), 474, 477, 513(4), 573, 576, 578, 586(2), 597(2), 711(2), 959, 963(4), 970(1), 988-1016 (Pt. 16) (with Sch. 2);
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 61G** (as inserted by Finance Act 2007 (c. 11), s. 25, **Sch. 3 para. 4**);
Consumers, Estate Agents and Redress Act 2007 (c. 17), **Sch. 4 para. 11**; S.I. 2007/3546, art. 3, **Sch.**;
The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 (S.I. 2007/1050), **regs. 1**, 3-12 (as amended by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 2 para. 131 (with Sch. 2 Pts. 1, **2**));
The Securitisation Companies (Application of Section 83(1) of the Finance Act 2005: Accounting Standards) Regulations 2007 (S.I. 2007/3338), reg. 3;
The Taxation of Insurance Securitisation Companies Regulations 2007 (S.I. 2007/3402), **regs. 1**, 6;

Income and Corporation Taxes Act 1988 (c. 1), **s. 461D(4)** (as inserted by Finance Act 2008 (c. 9), **Sch. 18 para. 3**);
Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 840A(3)** (as inserted by Finance Act 2008 (c. 9), Sch. 7 paras. 69, **81**);
Crossrail Act 2008 (c. 18), **Sch. 13 para. 3(2)(4)**;
The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **regs. 69Z15(2)**, 69Z16(2), 69Z17(2) (as inserted by S.I. 2008/705, **reg. 5**);
The Friendly Societies (Transfers of Other Business) (Modification of the Corporation Tax Acts) Regulations 2008 (S.I. 2008/1942), **regs. 1-7**;
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2008 (S.I. 2008/2646), **regs. 1**, 2;
Corporation Tax Act 2009 (c. 4), **ss. 2(4)**, 3, 294(2), 481(2), 490(2), 509(2), 515, 516(1), 521(4)(e)(5), 539(6), 540(3), 545, 550, 592(3), 593(2), 608(7), 799(1)(b), 802(2), 855(7)(8), 969, 1273, 1329 (with Sch. 2);
Income and Corporation Taxes Act 1988 (c. 1), **s. 230A** (as inserted by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 100**);
Finance Act 2009 (c. 10), **s. 25**;
Corporation Tax Act 2009 (c. 4), **s. 521B(2)** (as inserted by Finance Act 2009 (c. 10), Sch. 24 paras. 4, **12-16**);
The Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 (S.R. 2009/128), **regs. 1(1)**, 4, 26(2);
The Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470), **regs. 1**, 4-7, 31(2);
The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69Z61** (as inserted by S.I. 2009/2036, **reg. 24**);
The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971), **regs. 1(1)(2)**, 4;
The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), **regs. 1**, 16(2), 94 (with Sch. 1);
Corporation Tax Act 2010 (c. 4), **ss. 128**, 620, 624, 625, 778, 784, 786, 876, 950(5), 996(1)(2), 1070, 1071, 1166 (with Sch. 2);
Taxation (International and Other Provisions) Act 2010 (c. 8), **s. 79(2)**, 192, 220 (with ss. 213, 214, Sch. 9 paras. 1-9);
Income Tax Act 2007 (c. 3), **s. 809CZB(2)** (as inserted by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 5 para. 7 (with **Sch. 9 paras. 1-9**));
Finance Act 2011 (c. 11), s. 53(5)(7)-(10), Sch. 2 paras. 53(4), **54(6)**;
The Taxation of Equitable Life (Payments) Order 2011 (S.I. 2011/1502), **arts. 1**, 3;
Finance Act 2012 (c. 14), **ss. 69(b)**, 71(3), 72, 142(1)(b), 143(1)(b), 144(1), 148, 151, 152, 158(5), 166(5)(6), 167(4) (with Sch. 17);
Corporation Tax Act 2010 (c. 4), **ss. 793(8)**, 812(5A) (as inserted by Finance Act 2012 (c. 14), **s. 22(2)-(4)**);
Taxation (International and Other Provisions) Act 2010 (c. 8), **s. 371SO(2)** (as inserted by Finance Act 2012 (c. 14), **Sch. 20 para. 1**);
Small Charitable Donations Act 2012 (c. 23), **ss. 15**, 21(1);
The Bank Levy (Double Taxation Relief) Regulations 2012 (S.I. 2012/458), **regs. 1**, 13;
The Bank Levy (Double Taxation Arrangements) (Federal Republic of Germany) Regulations 2012 (S.I. 2012/459), **regs. 1(1)(2)**, 11;
Income Tax Act 2007 (c. 3), **Pt. 11ZA** (ss. 614ZA-614ZD) (as inserted by Finance Act 2013 (c. 29), Sch. 29 paras. 1, **51**);
Corporation Tax Act 2010 (c. 4), **Pt. 17A** (ss. 814A-814D) (as inserted by Finance Act 2013 (c. 29), Sch. 29 paras. 2, **51**);
The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), **regs. 1**, 3 (with reg. 8);
Finance Act 2014 (c. 26), **s. 223(8)(9)(a)**;
Corporation Tax Act 2009 (c. 4), **s. 490(2)** (as substituted by Finance Act 2014 (c. 26), **s. 27(3)(7)-(9)**);

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Corporation Tax Act 2010 (c. 4), **s. 329N(2)** (as inserted by Finance Act 2014 (c. 26), Sch. 14 paras. 1, **4**);
Social Security Contributions and Benefits Act 1992 (c. 4), **s. 11A(1)(3)** (as inserted by National Insurance Contributions Act 2015 (c. 5), Sch. 1 paras. 3, **35**);
Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), **s. 11A(1)(3)** (as inserted by National Insurance Contributions Act 2015 (c. 5), Sch. 1 paras. 12, **35**);
Finance Act 2015 (c. 11), **ss. 99(2)**, 116;
Taxes Management Act 1970 (c. 9), **ss. 12ZH**, 12ZI, 59AB (as inserted by Finance Act 2015 (c. 11), Sch. 7 paras. 43, 51, **60**);
The Education (Postgraduate Master?s Degree Loans) Regulations 2016 (S.I. 2016/606), **regs. 1**, 67(1);
The Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016 (S.I. 2016/1212), **regs. 1**, 16;
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 61R** (as inserted by Finance Act 2017 (c. 10), Sch. 1 paras. 9, **16**);
Finance Act 2012 (c. 14), **ss. 124A(6)**, 124B(7), 124C(7) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 4 paras. 26, **190-192**);
Corporation Tax Act 2010 (c. 4), **ss. 303B(5)**, 303C(7), 303D(6), 321(2A) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 4 paras. 48, 52(3), **190-192**);
Taxes Management Act 1970 (c. 9), **ss. 28A(8)**, 28B(9) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 15 paras. 12(6), 13(6), **44**);
Finance Act 1998 (c. 36), **Sch. 18 para. 32(4)** (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 15 paras. 28(4), **44**)
Finance Act 2019 (c. 1), **Sch. 3 paras. 7, 9,** 12, 13;
Corporation Tax Act 2009 (c. 4), **s. 420A(2)** (as inserted by Finance Act 2019 (c. 1), Sch. 20 paras. 2, 10(a), **16**);
Capital Allowances Act 2001 (c. 2), **s. 270HE** (as inserted by The Capital Allowances (Structures and Buildings Allowances) Regulations 2019 (S.I. 2019/1087), **regs. 1**, 2

C2 Act (except ss. 201 and 684) amended (1.1.1992) by S.I. 1991/2684, **arts. 2**, 4,Sch. 1

C3 Act: Coal Industry Act 1994 (c. 21), **Sch. 4 Pt. 1** to be construed as one with this Act (19.9.1994) by virtue of ss. 21, 68(4) of, and Sch. 4 para. 1(2) to, that Act); S.I. 1999/2189, art. 2, **Sch.**

C4 Act modified (17.9.2004 with effect in accordance with reg. 1 of the modifying S.I.) by The Overseas Life Insurance Companies Regulations 2004 (S.I. 2004/2200), **regs. 3**, 4

C5 Act modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 7**

C6 Act modified (1.4.2006 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 94** (as amended by S.I. 2008/3159, **regs. 1(2)(4)**, 28)

C7 Act modified (31.12.2006 with effect in accordance with reg. 1 of the modifying S.I.) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), **regs. 1**, 3-18 (as amended by: S.I. 2007/2146, **regs. 1**, 3-13; S.I. 2007/3449, **regs. 1**, 3-6; S.I. 2008/1924, **regs. 1**, 3-12)

C8 Act modified (12.12.2006 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296), **reg. 15** (as amended by S.I. 2018/143, **regs. 1**, 10(1))

C9 Act modified (with effect in accordance with Sch. 4 para. 2(2)-(4) of the modifying Act) by Finance Act 2007 (c. 11), **Sch. 4 para. 3**

C10 Act modified (14.8.2007 with effect in accordance with reg. 1(2)(3) of the modifying S.I.) by The Insurance Companies (Tax Exempt Business) Regulations 2007 (S.I. 2007/2145), **regs. 3-12**

C11 Act modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), art. 3, **Sch.**

C12 Act applied (1.4.2010 with effect in accordance with s. 1184(1) of the affecting Act) by Corporation Tax Act 2010 (c. 4), **s. 853**

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C13 Act amended by Finance Act 2010 (c. 13), **Sch. 8 para. 8(2)(4)**
C14 Act amended (2006-07) by Finance (No. 3) Act 2010 (c. 33), **Sch. 14 para. 3(5)**
C15 Act applied (with modifications) (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), regs. 1(2), 16(2)(c), **Sch. 2**
C16 Act amended by Finance Act 2012 (c. 14), **Sch. 15 para. 17(4)(5)**

PART I

THE CHARGE TO TAX

Income tax

1 The charge to income tax.

(1) [M1] Income tax shall be charged in accordance with the provisions of the Income Tax Acts in respect of all property, profits or gains respectively described or comprised in the Schedules, A,*B*[F1], C, D, E and F, set out in sections 15 to 20 or which in accordance with the Income Tax Acts are to be brought into charge to tax under any of those Schedules or otherwise.

(2) [M2] Where any Act enacts that income tax shall be charged for any year, income tax shall be charged for that year—

[[F2](aa) in respect of so much of an individual's total income as does not exceed £2,000, at such rate as Parliament may determine to be the lower rate for that year;**]**

(a) in respect of any income which does not fall within **[**[F3]paragraph (aa) above or**]** paragraph (b) below, at such rate as Parliament may determine to be the basic rate for that year;

[[F4](b) in respect of so much of an individual's total income as exceeds **[**[F5]£20,700**]** at such higher rate as Parliament may determine**]**

but this subsection has effect subject to any provision of the Income Tax Acts providing for income tax to be charged at a different rate in certain cases.

[[F6](2A) The amount up to which an individual's income is by virtue of subsection (2) above chargeable for any year at the lower rate shall be known as the lower rate limit.**]**

(3) [M3] The amount up to which an individual's income is by virtue of subsection (2) above chargeable for any year at the **[**[F7]lower rate or the**]** basic rate shall be known as the basic rate limit,*and the parts of income in excess of the basic rate limit which are specified in paragraph (b) of that subsection shall be known respectively as the first, second, third, fourth and fifth higher rate bands*[F8].

(4) [M4] If the retail prices index for the month of **[**[F9]September**]** preceding a year of assessment is higher than it was for the previous **[**[F9]September**]**, then, unless Parliament otherwise determines, subsection (2) above shall apply for that year as if for **[**[F10]each of the amounts specified**]** in that subsection as it applied for the previous year (whether by virtue of this subsection or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index and, if the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple.

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[F11](5) . . . . . .

(6) The Treasury shall before each year of assessment make an order specifying the **[**[F12]amounts**]** which by virtue of subsection (4) above will be treated as specified for that year in subsection (2) above.

[[F13](6A) Where income tax at the basic rate has been borne on income chargeable at the lower rate any necessary repayment of tax shall be made on the making of a claim.**]**

(7) Part VII contains general provisions relating to the taxation of income of individuals.

Textual Amendments

F1 Repealed by 1988(F) s. 148 and Sch. 14 Part V from 6 April 1988

F2 S. 1(2)(aa) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(2)(10)(11)**.

F3 Words in s. 1(2)(a) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(3)(10)(11)**.

F4 1988(F) s.24(2)(a)*for* 1988-89.*Previously*
"(b) in respect of so much of an individual's total income as exceeds £17,900, at such higher rates respectively as Parliament may determine in relation to the first £2,500, the next £5,000, the next £7,900, the next £7,900 and the remainder;".

F5 1990 s.17(1)(b)*for* 1990-91. (Art. 2(2)*of* S.I. 1990 No.677 (*in* Part III Vol.5)*was not operated.*)

F6 S. 1(2A) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(4)(10)(11)**.

F7 Words in s. 1(3) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(5)(10)(11)**.

F8 Repealed by 1988(F) s. 148 and Sch. 14 Part IV for 1988-89 and subsequent years

F9 Words in s. 1(4) substituted (27.7.1993 with effect for year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(2)(a)(8)**

F10 Words in s. 1(4) substituted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by virtue of Finance Act 1992 (c. 20), **s. 9(6)(10)(11)**.

F11 S. 1(5) repealed (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 107(2)(b)(8), 213, **Sch. 23**, Pt.III

F12 Word in s. 1(6) substituted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by virtue of Finance Act 1992 (c. 20), **s. 9(7)(10)(11)**.

F13 S. 1(6A) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(8)(10)(11)**.

Modifications etc. (not altering text)

C17 *See* s.686—*income of trustees chargeable at higher rate.*

C18 S. 1(2) amended (1991-92) by S.I. 1991/732, **art. 2(2)**
S. 1(2) amended (1992-93) by 1992 c. 20, **s. 10(2)(b)** (in place of S.I. 1992/622, **art. 2(2)**)
S. 1(2) amended (1993-94) by 1993 c. 34, **s. 51(2)** (in place of S.I. 1993/755, **art. 2(2)**)
S. 1(2) amended (1994-95) by 1994 c. 9, **s. 75(2)** (in place of S.I. 1993/2948, **art. 2(2)**)
S. 1(2)(b) amended (1995-96) by S.I. 1994/3012, **art. 2(2)(b)**
S. 1(2)(aa) amended (1995-96) by 1995 c. 4, **s. 35(2)** (in place of S.I. 1994/3012, **art. 2(2)(a)**)
S. 1(2) amended (1996-97) by 1996 c. 8, **s. 72(2)** (in place of S.I. 1995/3031, **art. 2(2)**)
S. 1(2)(b) amended (1997-98) by S.I. 1996/2952, **art. 2(2)(b)**
S. 1(2)(aa) amended (1997-98) by 1997 c. 16, **s. 54(2)** (in place of S.I. 1996/2952, **art. 2(2)(a)**)
S. 1(2) amended (1998-99) by S.I. 1998/755, **art. 2(2)**
S. 1(2)(b) amended (1999-00) by S.I. 1999/597, **art. 2(2)(b)** (the effect of art. 2(2)(a) being superseded by 1999 c. 16, **s. 22(1)** which substitutes s. 1(2)(aa))

S. 1(2) amended (2000-01) by S.I. 2000/806, **art. 2(2)**
S. 1(2)(b) amended (2001-02) by S.I. 2001/638, **art. 2(2)(b)**
S. 1(2)(aa) amended (2001-02) by 2001 c. 9, **s. 51(1)** (in place of S.I. 2001/638, **art. 2(2)(a)**)
S. 1(2) amended (2002-03) by S.I. 2002/707, **art. 2(2)**
S. 1(2) amended (2003-04) by S.I. 2003/840, **art. 2**
S. 1(2) amended (2004-05) by S.I. 2004/772, **art. 2**
S. 1(2) amended (2005-06) by S.I. 2005/716, **art. 2**
S. 1(2) amended (2006-07) by S.I. 2006/872, **art. 2**
S. 1(2) amended (2007-08) by S.I. 2007/943, **art. 2**

C19 *See* 1990 s.17(1)—*basic rate* 25%*and higher rate* 40%*for* 1990-91.

C20 *For earlier years see* Table C Vol.1.

C21 *See*—1988(F) s.24(2)—*indexation not to apply for* 1988-89.1990 s.17(1)—*indexation not to apply for* 1990-91.

C22 S. 1(4) excluded for the year 1991-92 by Finance Act 1991 (c. 31, SIF 63:1), **s. 21(2)**
S. 1(4) excluded for the year 1992-93 by Finance Act 1992 (c. 20), **s. 10(2)(a)(5)**.
S. 1(4) excluded for the year 1993-94 by Finance Act 1993 (c. 34), **s. 51(2)**
S. 1(4) excluded for the year 1994-95 by Finance Act 1994 (c. 9), **s. 75(2)**
S. 1(4) excluded for the year 1995-96 by Finance Act 1995 (c. 4), **s. 35(2)**
S. 1(4) excluded for the year 1996-97 by Finance Act 1996 (c. 8), **s. 72(2)**
S. 1(4) excluded for the year 1999-00 by Finance Act 1999 (c. 16), **s. 22(5)**
S. 1(4) excluded for the year 2001-02 by Finance Act 2001 (c. 9), **s. 51(2)**

C23 *See* S.I. 1989 No. 467 in Part III Vol.5.

Marginal Citations

M1 Source—1970 s.1
M2 Source—1970 s.1; 1971 s.32(1); 1980 s.24(2); 1987 s.20(1)
M3 Source#1980 s.24(3); 1984 Sch.7 3(5)
M4 Source—1980 s.24(4), (7), (9)

VALID FROM 29/04/1996

[F14 1A Application of lower rate to income from savings and distributions.

(1) Subject to sections 469(2) and 686, so much of any person's total income for any year of assessment as—
  (a) comprises income to which this section applies, and
  (b) in the case of an individual, is not income falling within section 1(2)(b),
shall, by virtue of this section, be charged for that year at the lower rate, instead of at the rate otherwise applicable to it in accordance with section 1(2)(aa) and (a).

(2) Subject to subsection (4) below, this section applies to the following income—
  (a) any income chargeable under Case III of Schedule D other than—
    (i) relevant annuities and other annual payments that are not interest; and
    (ii) amounts so chargeable by virtue of section 119 or 120;
  (b) any income chargeable under Schedule F; and
  (c) subject to subsection (4) below, any equivalent foreign income.

(3) The income which is equivalent foreign income for the purposes of this section is any income chargeable under Case IV or V of Schedule D which—

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(a) is equivalent to a description of income falling within subsection (2)(a) above but arises from securities or other possessions out of the United Kingdom; or

(b) consists in any such dividend or other distribution of a company not resident in the United Kingdom as would be chargeable under Schedule F if the company were resident in the United Kingdom.

(4) This section does not apply to—

(a) any income chargeable to tax under Case IV or V of Schedule D which is such that section 65(5)(a) or (b) provides for the tax to be computed on the full amount of sums received in the United Kingdom; or

(b) any amounts deemed by virtue of section 695(4)(b) or 696(6) to be income chargeable under Case IV of Schedule D.

(5) So much of any person's income as comprises income to which this section applies shall be treated for the purposes of subsection (1)(b) above and any other provisions of the Income Tax Acts as the highest part of his income.

(6) Subsection (5) above shall have effect subject to section 833(3) but shall otherwise have effect notwithstanding any provision requiring income of any description to be treated for the purposes of the Income Tax Acts (other than section 550) as the highest part of a person's income.

(7) In this section "relevant annuity" means any annuity other than a purchased life annuity to which section 656 applies or to which that section would apply but for section 657(2)(a).**]**

Textual Amendments

F14 S. 1A inserted (with effect in accordance with s. 73(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 73(1)**

VALID FROM 31/07/1997

[F15 1B Rates of tax applicable to Schedule F income etc.

(1) In the case of so much of an individual's income which consists of—

(a) income chargeable under Schedule F (if any), and

(b) equivalent foreign income falling within section 1A(3)(b) and chargeable under Case V of Schedule D (if any),

as is income falling within section 1(2)(b), income tax shall, by virtue of this subsection, be charged at the Schedule F upper rate, instead of at the rate otherwise applicable to it in accordance with section 1(2)(b).

(2) In relation to any year of assessment for which income tax is charged—

(a) the Schedule F ordinary rate is 10 per cent., and

(b) the Schedule F upper rate is 32.5 per cent.,

or, in either case, such other rate as Parliament may determine.**]**

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Textual Amendments

F15 S. 1B inserted (with effect in accordance with s. 31(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 31(5)**

2 Fractions of a pound, and yearly assessments.

(1) [M5] The due proportion of income tax shall be charged for every fractional part of one pound.

(2) Every assessment and charge to income tax shall be made for a year commencing on the 6th April and ending on the following 5th April.

Marginal Citations

M5 Source—1970 s.2

3 Certain income charged at basic rate.

[M6] Where a person is required to be assessed and charged with income tax in respect of any property, profits or gains out of which he makes any payment in respect of—

(a) any annuity or other annual payment (not being interest); or

(b) any royalty or other sum in respect of the user of a patent; or

(c) any rent, royalty or other payment which is declared by section 119 or 120 to be subject to deduction of tax under section 348 or 349 as if it were a royalty or other sum paid in respect of a patent;

he shall, in respect of so much of the property, profits or gains as is equal to the payment and may be deducted in computing his total income, be charged at the basic rate.

Marginal Citations

M6 Source—1970 s.3; 1971 Sch.6 2

4 Construction of references in Income Tax Acts to deduction of tax.

(1) [M7] Any provision of the Income Tax Acts requiring, permitting or assuming the deduction of income tax from any amount (otherwise than in pursuance of section 203) or treating income tax as having been deducted from or paid on any amount, shall, subject to any provision to the contrary, be construed as referring to deduction or payment of income tax at the basic rate in force for the relevant year of assessment.

(2) For the purposes of subsection (1) above, the relevant year of assessment shall be taken to be (except where otherwise provided)—

(a) if the amount is an amount payable wholly out of profits or gains brought into charge to tax, the year in which the amount becomes due;

(b) in any other case, the year in which the amount is paid.

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Marginal Citations

M7 Source—1971 s.36; 1975(No. 2) s.44(6)

5 Date for payment.

(1) [M8] Subject to the provisions of the Income Tax Acts and in particular to subsection (2) below and section 203, income tax contained in an assessment for any year shall be payable on or before the 1st January in that year, or at the expiration of a period of 30 days beginning with the date of the issue of the notice of assessment, whichever is the later.

(2) Subject to subsection (3) below, income tax under Schedule D charged for any year on any individual or firm in respect of the profits or gains of any trade, profession or vocation and contained in an assessment for that year shall, instead of being payable in accordance with subsection (1) above, be payable in two equal instalments, the first on or before the 1st January in that year or at the expiration of the period referred to in subsection (1) above, and the second on or before the following 1st July; and the provisions of the Income Tax Acts as to the recovery of income tax shall apply to each instalment of the tax in the same manner as they apply to the whole amount of the tax.

(3) Where the date of the issue of the notice of assessment is later than the 1st June following the end of the year of assessment, subsection (2) above shall not have effect, and the tax shall be due and payable as provided in subsection (1) above.

(4) Except as otherwise provided by the Income Tax Acts, any income tax charged at a rate other than the basic rate on—
   (a) income from which income tax has been deducted (otherwise than under section 203); or
   (b) income from or on which income tax is treated as having been deducted or paid; or
   (c) income chargeable under Schedule F;

   shall be due and payable on or before 1st December following the end of the year for which it is assessed, or at the expiration of a period of 30 days beginning with the date of the issue of the notice of assessment, whichever is the later.

Modifications etc. (not altering text)

C24 *See* 1970(M) Part IX—*interest on overdue tax.*

Marginal Citations

M8 Source—1970 s.4; 1971 Sch.6 3; 1972 Sch.24 15; 1975(No. 2) s.44(1); 1980 s.61(1)

Corporation tax

6 The charge to corporation tax and exclusion of income tax and capital gains tax.

(1) [M9] Corporation tax shall be charged on profits of companies, and the Corporation Tax Acts shall apply, for any financial year for which Parliament so determines, and where

an Act charges corporation tax for any financial year the Corporation Tax Acts apply, without any express provision, for that year accordingly.

(2) The provisions of the Income Tax Acts relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—
   (a) the company is resident in the United Kingdom, or
   (b) the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax by section 11(2).

(3) A company shall not be chargeable to capital gains tax in respect of gains accruing to it so that it is chargeable in respect of them to corporation tax or would be so chargeable but for an exemption from corporation tax.

(4) In this section, sections 7 to 12, 114, 115 (but subject to subsection (7)), 242, 243, 247 and 248, Part VIII, Chapter IV of Part X and Part XI, except in so far as the context otherwise requires—
   (a) "profits" means income and chargeable gains; and
   (b) "trade" includes "vocation", and also includes an office or employment or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts.

(5) Part VIII contains general provisions relating to the taxation of profits of companies.

Modifications etc. (not altering text)

C25 S. 6 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 1(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

C26 Table K Vol.1.*See*—Trustee Savings Bank Act 1985 (c.58) s.5*and* Sch.2 para.6(2).1990(C) s.92—*balancing charge on a person liable to corporation tax in respect of dwelling houses let on assured tenancies to be made under* Sch.A.

C27 *See* 1988(F) s.148*and* Sch.14 Part V*for repeals which will take place from* 6*April* 1993.

Marginal Citations

M9 Source—1970 s.238

7 Treatment of certain payments and repayment of income tax.

(1) [M10] No payment made by a company resident in the United Kingdom shall be treated for any purpose of the Income Tax Acts as paid out of profits or gains brought into charge to income tax; nor shall any right or obligation under the Income Tax Acts to deduct income tax from any payment be affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.

(2) Subject to the provisions of the Corporation Tax Acts, where a company resident in the United Kingdom receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax); and accordingly in respect of that payment the company, unless wholly exempt from corporation tax, shall not be entitled to a

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repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

(3) [M11] Subsection (2) above does not apply to a payment of relevant loan interest to which section 369 applies.

(4) [M12] References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(5) [M13] Effect shall be given to section 6(2), to that section as modified by subsection (2) above and by section 11(3) and, so far as exemptions from income tax conferred by the Corporation Tax Acts call for repayment of tax, to those exemptions by means of a claim.

[[F16](6)]

Textual Amendments

F16 *See* 1990 s.98*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

Modifications etc. (not altering text)

C28 *See*—1970(M) s.94—*set off to be disregarded in computing penalty for failure to deliver a return.*1990 ss.98*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C29 S. 7(2) applied (with modifications) (with effect in accordance with s. 105(1) of the applying Act) by Finance Act 1996 (c. 8), **s. 91(2)** (with Schs. 10, 11, 15)

Marginal Citations

M10 Source—1970 s.240(4), (5)

M11 Source—1982 s.26(7)

M12 Source—1970 s.240(7)

M13 Source—1970 s.241

8 General scheme of corporation tax.

(1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.

(2) [M14] A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.

(3) Corporation tax for any financial year shall be charged on profits arising in that year; but assessments to corporation tax shall be made on a company by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall, where necessary, be apportioned between the financial years in which the accounting period falls.

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In relation to accounting periods ending after such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this subsection, this subsection shall have effect with the substitution for "assessments to corporation tax shall be made on a company" of "corporation tax shall be computed and chargeable (and any assessments shall accordingly be made)".

[F17](4) . . . . . .

[F17](5) . . . . . .

[F17](6) . . . . . .

Textual Amendments

F17 S. 8(4)-(6) repealed (27.7.1993 with application in relation to resolutions passed after the day on which 1993 c. 34 is passed) by 1993 c. 34, ss. 205(7), 206(1), 213, **Sch. 23 Pt.VI**

Modifications etc. (not altering text)

C30 S. 8(3): the day appointed for the purposes of s. 8(3) is 30.9.1993 by S.I. 1992/3066, **art. 2(2)(b)**.

Marginal Citations

M14 Source—1970 s.243 (1)-(3), (5)-(7); 1974 s.36; 1987(No. 2) s.90(1)(a)

[[F18]8A Resolutions to reduce corporation tax.

(1) In a case where—

(a) an Act of Parliament charges corporation tax for the financial year 1993 or a subsequent financial year,

(b) the House of Commons passes a resolution that the rate at which corporation tax for the financial year concerned is charged shall be a rate which is set out in the resolution and is lower than that fixed by the Act of Parliament, and

(c) the resolution is passed in the financial year concerned,

any assessment to corporation tax made in the prescribed period may be made in accordance with the resolution.

(2) Unless an Act of Parliament—

(a) is passed within the prescribed period, and

(b) contains a provision that the rate at which corporation tax for the financial year concerned is charged shall be the rate set out in the resolution passed under subsection (1) above,

any assessment made under that subsection in accordance with the resolution shall be subject to adjustment, whether by the making of a further assessment or otherwise.

(3) Subsection (4) below applies where an Act of Parliament fixes the small companies' rate, and the fraction mentioned in section 13(2), for the financial year 1993 or a subsequent financial year.

(4) If the House of Commons passes a resolution in the financial year concerned that—

(a) the rate shall be a rate which is set out in the resolution and is lower than that fixed by the Act of Parliament,

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(b) the fraction shall be a fraction which is set out in the resolution and is different from that fixed by the Act of Parliament, or

(c) the rate shall be as mentioned in paragraph (a) above and the fraction shall be as mentioned in paragraph (b) above,

any assessment to corporation tax made in the prescribed period may be made in accordance with the resolution.

(5) Unless an Act of Parliament—

(a) is passed within the prescribed period, and

(b) contains a provision to the same effect as the resolution passed under subsection (4) above,

any assessment made under that subsection in accordance with the resolution shall be subject to adjustment, whether by the making of a further assessment or otherwise.

(6) For the purposes of this section the prescribed period is the period of six months beginning with the day after that on which the resolution concerned is passed.**]**

Textual Amendments

F18 S. 8A inserted (27.7.1993) by 1993 c. 34, **s. 206(2)**

9 Computation of income: application of income tax principles.

(1) [M15] Except as otherwise provided by the Tax Acts, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include such of the enactments of the Income Tax Acts as make special provision for individuals in relation to matters referred to in subsection (1) above.

(3) Accordingly, for purposes of corporation tax, income shall be computed, and the assessment shall be made, under the like Schedules and Cases as apply for purposes of income tax, and in accordance with the provisions applicable to those Schedules and Cases, but (subject to the provisions of the Corporation Tax Acts) the amounts so computed for the several sources of income, if more than one, together with any amount to be included in respect of chargeable gains, shall be aggregated to arrive at the total profits.

(4) Without prejudice to the generality of subsection (1) above, any provision of the Income Tax Acts which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(5) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax—

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(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose references in any such enactment to a relief from or charge to income tax, or to a specified provision of the Income Tax Acts shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding provision of the Corporation Tax Acts.

(6) The provisions of the Income Tax Acts applied by this section do not include sections 1 to 5, 60 to 69, Part VII or sections 348 to 350 of this Act; and nothing in this section shall be taken to mean that income arising in any period is to be computed by reference to any other period (except in so far as this results from apportioning to different parts of a period income of the whole period).

Marginal Citations

M15 Source—1970 s.250

10 Time for payment of tax.

(1) [M16]Except as provided by section 478—

(a) corporation tax for an accounting period ending after such day or days (not being earlier than 31st March 1992) as the Treasury may by order appoint for the purposes of this section shall be due and payable on the day following the expiry of nine months from the end of that period; and

(b) corporation tax assessed for any other accounting period shall be paid within nine months from the end of that period or, if it is later, within 30 days from the date of the issue of the notice of assessment.

[[F19](2) Where by virtue of subsection (1)(a) above corporation tax for an accounting period of a company is due without the making of an assessment, the amount for the time being shown in a return by the company under section 11 of the Management Act (corporation tax return) as the corporation tax for the period shall be treated for the purposes of Part VI of the Management Act (collection and recovery) as tax charged and due and payable under an assessment on the company.**]**

(3) 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 given to the inspector on or after the date which, under section 826, 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

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state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above.

(4) If, apart from this subsection, a claim would fall to be made under subsection (3) 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.

(5) Where on an appeal against an assessment to corporation tax a company makes an application under section 55(3) or (4) of the Management Act (postponement of tax charged but not paid etc.), that application may be combined with an application under subsections (3) and (4) above (relating to tax which was paid prior to the assessment).

Textual Amendments

F19 1990 s.106.*Previously*
"(2) Notwithstanding that, by virtue of subsection (1)(a) above or section 419(1), any corporation tax (or any amount payable 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 30 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.".

Modifications etc. (not altering text)

C31 S. 10: the day appointed for the purposes of s. 10 is 30.9.1993 by S.I. 1992/3066, **art. 2(2)(b)**.

C32 *Provisions coming into force in respect of accounting periods ending after the day to be appointed in accordance with subs.* (1):—*Insertion of* ss.41A, B, C*into* 1970(M)*by* 1990 s.95—*corporation tax determinations.*
Amendment of 1970(M) s.42*by* 1990 s.97—*payment of tax credits.*
Amendment of 1988 ss.7*and* 11*by* 1990 s.98—*repayment of income tax deducted at source.*
Amendment of 1988 ss.393*and* 396*by* 1990 s.99—*loss relief.*
Insertion of s.411A*into* 1988*by* 1990 s.101—*group relief by way of substitution for loss relief.*
Amendment of 1988 s.412*and addition of* Sch.17A*by* 1990 s.100—*group relief.*
Insertion of s.145A*and* Schedule A1*into* 1990(C)*by* 1990 s.102—*corporation tax allowances: claims.*
Implementation of amendments made in 1990(C)*by* 1990 s.103*and* Sch.17—*capital allowances: assimilation to claims by individuals.*
Repeals in 1971 Sch.6 para.82, 1972 Sch.24 para.4, 1988 Sch.29 paras.4*and* 32,*and in* 1990(C)*by* 1990 s.132*and* Sch.19 Part V.

Marginal Citations

M16 Source—1970 s.243(4); 1975(No. 2) s.44(2); 1987(No. 2) s.90(1)(b), (4)-(7)

11 Companies not resident in United Kingdom.

(1) [M17]A company not resident in the United Kingdom shall not be within the charge to corporation tax unless it carries on a trade in the United Kingdom through a

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branch or agency but, if it does so, it shall, subject to any exceptions provided for by theCorporation Tax Acts, be chargeable to corporation tax on all its chargeable profits wherever arising.

(2) For purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade there through a branch or agency shall be—

(a) any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and

[[F20](b) such chargeable gains as are, by virtue of section 10(3) of the 1992 Act, to be, or be included in, the company's chargeable profits,**]**

(3) [F21]. . . Where a company not resident in the United Kingdom receives any payment on which it bears income tax by deduction, and the payment forms part of, or is to be taken into account in computing, the company's income chargeable to corporation tax, the income tax thereon shall be set off against any corporation tax assessable on that income by an assessment made for the accounting period in which the payment falls to be taken into account for corporation tax; and accordingly in respect of that payment the company shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

(4) [M18]Subsection (3) above does not apply to a payment of relevant loan interest to which section 369 applies.

Textual Amendments

F20 S. 11(2)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(2)** (with ss. 60, 101(1), 171, 201(3)).

F21 Words in s. 11(3) repealed (27.7.1993 with effect in accordance with s. 103 of the amending Act) by 1993 c. 34, ss. 103, 213, **Sch. 23 Pt.III**

Modifications etc. (not altering text)

C33 S. 11(2)(a) excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 219(4)** (with s. 220)
S. 11(2)(a) excluded (with effect in accordance with s. 22(7) of the 1997 amending Act) by 1994 c. 9, s. 219(4A) (as inserted by Finance (No. 2) Act 1997 (c. 58), **s. 22(4)**)

C34 *See*—1970(M) s.94(2)—*set off to be disregarded in computing penalty for failure to make a return.*1990 ss.98*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C35 S. 11(3) applied (with modifications) (with effect in accordance with s. 105(1) of the applying Act) by Finance Act 1996 (c. 8), **s. 91(2)** (with Schs. 10, 11, 15)

Marginal Citations

M17 SOURCE-1970 s.246; 1979(C) Sch. 7

M18 SOURCE-1982 s. 26(7)

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VALID FROM 10/07/2003

[F22 11AA Determination of profits attributable to permanent establishment

(1) This section provides for determining for the purposes of corporation tax the amount of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom ("the non-resident company").

(2) There shall be attributed to the permanent establishment the profits it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

(3) In applying subsection (2)—

(a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company, and

(b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.

No deduction may be made in respect of costs in excess of those that would have been incurred on those assumptions.

(4) There shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.

"Allowable expenses" means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a company resident in the United Kingdom.

(5) The Board may by regulations make provision as to the application of subsection (2) in relation to insurance companies.

The regulations may, in particular, make provision in place of subsection (3)(b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom. In this subsection "insurance company" has the meaning given by section 431(2).

(6) Schedule A1 to this Act contains provisions supplementing the provisions of this section.**]**

Textual Amendments

F22 S. 11AA inserted (with effect in accordance with s. 149(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 149(2)**

12 Basis of, and periods for, assessment.

(1) [M19] Except as otherwise provided by the Corporation Tax Acts, corporation tax shall be assessed and charged for any accounting period of a company on the full amount of the profits arising in the period (whether or not received in or transmitted to the United Kingdom) without any other deduction than is authorised by those Acts.

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(2) An accounting period of a company shall begin for purposes of corporation tax whenever—
  (a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the United Kingdom or acquiring a source of income, or otherwise; or
  (b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for purposes of corporation tax on the first occurrence of any of the following—
  (a) the expiration of 12 months from the beginning of the accounting period;
  (b) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period;
  (c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;
  (d) the company beginning or ceasing to be resident in the United Kingdom;
  (e) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of this section a company resident in the United Kingdom, if not otherwise within the charge to corporation tax, shall be treated as coming within the charge to corporation tax at the time when it commences to carry on business.

(5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) above shall apply with reference to the accounting date of such one of the trades as the Board may determine.

(6) If a chargeable gain or allowable loss accrues to a company at a time not otherwise within an accounting period of the company, an accounting period of the company shall then begin for the purposes of corporation tax, and the gain or loss shall accrue in that accounting period.

(7) Notwithstanding anything in subsections (1) to (6) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up, and thereafter, subject to section 342(6), an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

For this purpose a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding up petition if no such resolution has previously been passed and a winding up order is made on the petition, or on the doing of any other act for a like purpose in the case of a winding up otherwise than under the [M20]Insolvency Act 1986.

[[F23](7A) Notwithstanding anything in subsections (1) to (7) above, where there is a transfer of the whole or part of the long term business of an insurance company to another company in accordance with a scheme sanctioned by a court under section 49 of the [M21]Insurance Companies Act 1982, an accounting period of the company from which the business is transferred shall end with the day of the transfer.**]**

(8) Where it appears to the inspector that the beginning or end of any accounting period of a company is uncertain, he may make an assessment on the company for such period,

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not exceeding 12 months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either—

(a) the inspector on further facts coming to his knowledge sees fit to revise it; or

(b) on an appeal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the true accounting periods, and there may be made such other assessments for any such periods or any of them as might have been made at the time when the assessment appealed against was made.

Textual Amendments

F23 S. 12(7A) inserted by Finance Act 1990 (c. 29), s.48, **Sch.9 para.3** (in relation to transfers of business on or after 1.11.1990)

Modifications etc. (not altering text)

C36 S. 12(7A) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 4(2)(b)**

Marginal Citations

M19 SOURCE-1970 s. 247; 1972 s. 107(1)

M20 1986 c. 45.

M21 1982 c. 50.

Small companies' rate

13 Small companies' relief.

(1) [M22]Where in any accounting period the profits of **[**[F24]a company which—

(a) is resident in the United Kingdom, and

(b) is not a close investment-holding company (as defined in section 13A) at the end of that period.**]**

do not exceed the lower relevant maximum amount, the company may claim that the corporation tax charged on its basic profits for that period shall be calculated as if the rate of corporation tax (instead of being the rate fixed for companies generally) were such lower rate (to be known as the "small companies' rate") as Parliament may from time to time determine.

(2) Where in any accounting period the profits of any such company exceed the lower relevant maximum amount but do not exceed the upper relevant maximum amount, the company may claim that the corporation tax charged on its basic profits for that period shall be reduced by a sum equal to such fraction as Parliament may from time to time determine of the following amount—

$$\left(M - P\right) \text{x} \frac{I}{P}$$

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where—

M is the upper relevant maximum amount;

P is the amount of the profits; and

I is the amount of the basic profits.

(3) The lower and upper relevant maximum amounts mentioned above shall be determined as follows—

(a) where the company has no associated company in the accounting period, those amounts are **[**[F25]£250,000**]** and **[**[F25]£1,250,000**]** respectively;

(b) where the company has one or more associated companies in the accounting period, the lower relevant maximum amount is **[**[F25]£250,000**]** divided by one plus the number of those associated companies, and the upper relevant maximum amount is **[**[F25]£1,250,000**]** divided by one plus the number of those associated companies.

(4) In applying subsection (3) above to any accounting period of a company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded and for the purposes of this section a company is to be treated as an "associated company" of another at a given time if at that time one of the two has control of the other or both are under the control of the same person or persons.

In this subsection "control" shall be construed in accordance with section 416.

(5) In determining how many associated companies a company has got in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.

(6) For an accounting period of less than 12 months the relevant maximum amounts determined in accordance with subsection (3) above shall be proportionately reduced.

(7) For the purposes of this section the profits (but not the basic profits) of a company for an accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne, with the addition of franked investment income other than franked investment income which the company (if a member of a group) receives from companies within the group; and for this purpose distributions received by the company from another are to be treated as coming from within the company's group if, but only if, dividends so received are group income or would be group income if the companies so elected.

(8) For the purposes of this section the basic profits of a company for an accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne.

(9) Any power which the inspector may exercise under **[**[F26]paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989**]** may be exercised by him for the purposes of this section.

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Textual Amendments

F24 1989 s.105(1)*in relation to accounting periods beginning after* 31*March* 1989.*Previously*
"a company resident in the United Kingdom".

F25 Words in s. 13(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 25(2)(a)(b)(3)***for financial year* 1991*and subsequent years with appropriate apportionment of profits between accounting periods.*

F26 1989 s.107*and* Sch.12 para.7.*Previously*
"paragraph 17 of Schedule 19".

Modifications etc. (not altering text)

C37 S. 13 modified (for the financial year 1991 and subsequent financial years) by Finance Act 1991 (c. 31, SIF 63:1), **s. 25(3)**
S. 13 modified (for the financial year 1994 and subsequent financial years) by Finance Act 1994 (c. 9), **s. 86(3)**

C38 *For rates and fractions see* Table K Vol.1.

C39 S. 13(2) amended (for the financial year 1990) by Finance Act 1991 (c. 31, SIF 63:1), **s. 23(2)**

C40 S. 13(2) amended (for the financial year 1991) by Finance Act 1991 (c. 31, SIF 63:1), **s. 25(1)(b)**
S. 13(2) amended (for the financial year 1992) by Finance (No. 2) Act 1992 (c. 48), **s. 22(b)**.
S. 13(2) modified (for the financial year 1993) by Finance Act 1993 (c. 34), **s. 54(b)**
S. 13(2) modified (for the financial year 1994) by Finance Act 1994 (c. 9), **s. 86(1)(b)**
S. 13(2) modified (for the financial year 1995) by Finance Act 1995 (c. 4,) {s. 38(b)}
S. 13(2) modified (for the financial year 1996) by Finance Act 1996 (c. 8), **s. 78(b)**
S. 13(2) modified (for the financial year 1997) by Finance Act 1997 (c. 16), **s. 59(b)**
S. 13(2) modified (for the financial year 1998) by Finance Act 1998 (c. 36), **s. 28(2)(b)**
S. 13(2) modified (for the financial year 1999) by Finance Act 1998 (c. 36), **s. 29(2)(b)**
S. 13(2) modified (for the financial year 2000) by Finance Act 2000 (c. 17), **s. 36(b)**
S. 13(2) modified (for the financial year 2001) by Finance Act 2001 (c. 9), **s. 55(b)**
S. 13(2) modified (for the financial year 2002) by Finance Act 2002 (c. 23), **s. 31(b)**

C41 S. 13(7) amended (27.7.1993 with application as mentioned in s. 78(11) of the Amending Act) by 1993 c. 34, **s. 78(6)(11)**

C42 *See* 1989 s.88—*calculation of profits of life assurance company.*

Marginal Citations

M22 SOURCE-1972 s. 95; 1973 Sch. 14 2, 4; 1983 (No. 2) s. 2(2); 1987 (No. 2) s. 74(4)

VALID FROM 11/05/2001

[F27 13ZA Interpretation of section 13(7)

(1) In determining for the purposes of section 13(7) whether one body corporate is a 51 per cent subsidiary of another, that other shall be treated as not being the owner of any share capital—
  (a) which it owns indirectly, and
  (b) which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

(2) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of section 13(7) unless, additionally, at that time—

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(a) the parent company would be beneficially entitled to more than 50 per cent of any profits available for distribution to equity holders of the subsidiary company, and

(b) the parent company would be beneficially entitled to more than 50 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(3) For the purposes of section 13(7) and this section—

(a) "trading or holding company" means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies that are its 90 per cent subsidiaries;

(b) "trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

(c) a company is owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by companies of which none—

(i) beneficially owns less than 5 per cent of that capital,

(ii) would be beneficially entitled to less than 5 per cent of any profits available for distribution to equity holders of the company, or

(iii) would be beneficially entitled to less than 5 per cent of any assets of the company available for distribution to its equity holders on a winding up,

and those companies are called the members of the consortium.

(4) Schedule 18 (equity holders and assets etc. available for distribution) applies for the purposes of subsections (2) and (3)(c) above as it applies for the purposes of section 413(7).**]**

Textual Amendments

F27 S. 13ZA inserted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), **s. 86(5)**

VALID FROM 27/07/1999

[F28 13AA Corporation tax starting rate.

(1) Where in any accounting period the profits of a qualifying company do not exceed the first relevant amount, the company may, instead of making a claim under section 13(1), claim that the corporation tax charged on its basic profits for that period shall be calculated as if the rate of corporation tax were such rate (to be known as the "corporation tax starting rate"), lower than the small companies' rate, as Parliament may from time to time determine.

(2) Where in any accounting period the profits of a qualifying company exceed the first relevant amount but do not exceed the second relevant amount, the company may, instead of making a claim under section 13(1), claim that the corporation tax charged on its basic profits for that period shall be—

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(a) calculated as if the rate of corporation tax were the small companies' rate; and

(b) then reduced by the sum specified in subsection (3) below.

(3) That sum is the sum equal to such fraction as Parliament may from time to time determine of the following amount—

$$\left(R2 - P\right) x \frac{I}{P}$$

where—

R2 is the second relevant amount;

P is the amount of the profits; and

I is the amount of the basic profits.

(4) The first and second relevant amounts mentioned above shall be determined as follows—

(a) where the company has no associated company in the accounting period, those amounts are £10,000 and £50,000 respectively;

(b) where the company has one or more associated companies in the accounting period—

(i) the first relevant amount is £10,000 divided by one plus the number of those associated companies, and

(ii) the second relevant amount is £50,000 divided by one plus the number of those associated companies.

(5) Subsections (4) and (5) of section 13 shall apply for the purposes of subsection (4) above as they apply for the purposes of subsection (3) of that section.

(6) For an accounting period of less than 12 months the relevant amounts determined in accordance with subsection (4) above shall be proportionately reduced.

(7) The profits and the basic profits of a company for an accounting period shall be determined for the purposes of this section as they are for the purposes of section 13.

(8) In this section "qualifying company", in relation to an accounting period, means a company which—

(a) is resident in the United Kingdom;

(b) is not a close investment-holding company (as defined in section 13A) at the end of that period; and

(c) is not an investment trust which for that period has any eligible rental income (within the meaning of section 508A).**]**

Textual Amendments

F28 S. 13AA inserted (with effect in accordance with s. 28(6)(7) of the amending Act) by Finance Act 1999 (c. 16), **s. 28(1)**

Modifications etc. (not altering text)

C43 S. 13AA modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 28(7)(a)**

C44 S. 13AA(3) modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 29(b)**
S. 13AA(3) modified (11.5.2001) by Finance Act 2001 (c. 9), **s. 56(b)**
S. 13AA(3) modified (24.7.2002) by Finance Act 2002 (c. 23), **s. 32(b)**

VALID FROM 22/07/2004

[F29 13AB The non-corporate distribution rate

(1) This section applies where in any accounting period—
- (a) a company makes (or is treated as making) one or more non-corporate distributions, and
- (b) the company's underlying rate of corporation tax is less than the non-corporate distribution rate.

(2) The rate of tax to be applied in calculating the corporation tax chargeable on the company's basic profits for the accounting period is—
- (a) in relation to so much of the company's basic profits as is matched with a non-corporate distribution, the non-corporate distribution rate, and
- (b) in relation to the remainder of the company's basic profits, the company's underlying rate of corporation tax.

(3) The "non-corporate distribution rate" is such rate as Parliament may from time to time determine.

(4) Schedule A2 to this Act makes provision supplementing this section, in particular—
- (a) defining "non-corporate distribution" and a company's "underlying rate of corporation tax",
- (b) as to the matching of a company's profits and non-corporate distributions, and
- (c) providing for non-corporate distributions to be allocated to other companies in certain circumstances.]

Textual Amendments

F29 S. 13AB inserted (with effect in accordance with s. 28(4)(5) of the amending Act) by Finance Act 2004 (c. 12), **s. 28(1)(6)**

Modifications etc. (not altering text)

C45 S. 13AB applied (with modifications) (22.7.2004) by Finance Act 2004 (c. 12), **s. 28(4)(5)**

[F30 13A Close investment-holding companies.

(1) A close company is for the purposes of section 13(1) a "close investment-holding company" unless it complies with subsection (2) below.

(2) A company ("the relevant company") complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—
- (a) the purpose of carrying on a trade or trades on a commercial basis,

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(b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—

(i) any person connected with the relevant company, or

(ii) any person who is the wife or husband of an individual connected with the relevant company, or is a relative, or the wife or husband of a relative, of such an individual or of the husband or wife of such an individual,

(c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—

(i) is under the control of the relevant company or of a company which has control of the relevant company, and

(ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,

(d) the purpose of co-ordinating the administration of two or more qualifying companies,

(e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and

(f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.

(3) For the purposes of subsection (2) above, a company is a "qualifying company", in relation to the relevant company, if it—

(a) is under the control of the relevant company or of a company which has control of the relevant company, and

(b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.

(4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.

(5) In this section—

"control" shall be construed in accordance with section 416, and

"relative" has the meaning given by section 839(8).

(6) Section 839 shall apply for the purposes of this section.**]**

Textual Amendments

F30 S. 13A inserted (in relation to accounting periods beginning after 31 March 1989) by Finance Act 1989 (c. 26), **s. 105(2)(3)**

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Advance corporation tax

14 Advance corporation tax and qualifying distributions.

(1) [M23]Subject to section 247, where a company resident in the United Kingdom makes a qualifying distribution it shall be liable to pay an amount of corporation tax ("advance corporation tax") in accordance with subsection (3) below.

(2) [M24]In this Act "qualifying distribution" means any distribution other than—

(a) a distribution which, in relation to the company making it, is a distribution by virtue only of section 209(2)(c); or

(b) a distribution consisting of any share capital or security which the company making the distribution has directly or indirectly received from the company by which the share capital or security was issued and which, in relation to the latter company, is a distribution by virtue only of section 209(2)(c).

(3) [M25]Subject to section 241, for the financial year 1988 and any subsequent financial year advance corporation tax shall be payable on an amount equal to the amount or value of the distribution, and shall be so payable at a rate which shall be fixed by the fraction—

$$\frac{I}{100 - I}$$

where I **[**[F31]for the financial year 1993 is 22.5 and for any subsequent financial year is the percentage at which income tax at the lower rate**]** is charged for the year of assessment which begins on 6th April in that financial year.

(4) [M26]The provisions of this Act as to the charge, calculation and payment of corporation tax (including provisions conferring any exemption) shall not be construed as affecting the charge, calculation or payment of advance corporation tax, and the Corporation Tax Acts shall apply for the purposes of advance corporation tax whether or not they are for the time being applicable for the purposes of corporation tax other than advance corporation tax.

(5) Part VI contains further provisions relating to advance corporation tax and company distributions.

Textual Amendments

F31 Words in s. 14(3) substituted (with effect as mentioned in s. 78(2) of the amending Act) by 1993 c. 34, **s. 78(1)(2)**

Modifications etc. (not altering text)

C46 *For rates see* Table J Vol.1.

C47 *See* 1980 s.117*and* Sch.18—*demergers.*

Marginal Citations

M23 SOURCE-1972 s. 84(1)

M24 SOURCE-1972 s. 84(4)

M25 SOURCE-1972 s. 84(2); 1986 s. 17(1), (5)

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M26 SOURCE-1972 s. 111(2)

The six Schedules

15 Schedule A.

(1) [M27]The Schedule referred to as Schedule A is as follows:—

SCHEDULE A

(1) Tax under this Schedule shall be charged on the annual profits or gains arising in respect of any such rents or receipts as follows, that is to say—
  (a) rents under leases of land in the United Kingdom;
  (b) rentcharges, ground annuals and feuduties, and any other annual payments reserved in respect of, or charged on or issuing out of, such land;
  (c) other receipts arising to a person from or by virtue of his ownership of an estate or interest in or right over such land or any incorporeal hereditament or incorporeal heritable subject in the United Kingdom.

(2) Tax under this Schedule shall be charged by reference to the rents or receipts to which a person becomes entitled in the chargeable period.

Exceptions

(3) Paragraph 1 above does not apply—
  (a) to any yearly interest, or
  [[F32](aa) to any profits or gains arising from a person's occupation of any woodlands which are managed on a commercial basis and with a view to the realisation of profits, or**]**
  (b) to any profits or gains charged to tax under Schedule D by virtue of section 55, or
  (c) to any payment so charged by virtue of section 119 or 120;

and has effect subject also to the provisions of section 98 with respect to tied premises.

[[F33](4) in a case where—
  (a) a sum (whether rent or otherwise) is payable in respect of the use of premises (whether under a lease or otherwise),
  (b) the tenant or other person entitled to the use of the premises is entitled to the use of furniture, and
  (c) tax in respect of the payment for the use of the furniture is chargeable under Case VI of Schedule D,

tax in respect of the sum mentioned in sub-paragraph (a) above shall be charged under that Case instead of under this Schedule unless the person entitled to that sum elects that this paragraph shall not apply.**]**

(2) An election that paragraph 4 of Schedule A shall not apply shall be made by notice to the inspector given within two years after the end of the chargeable period; and where such notice is given, any adjustment of the liability to tax of the person giving it which is required in consequence thereof may be made by an assessment or by repayment or otherwise as the case may require.

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(3) *Profits or gains arising in any chargeable period from payments for any easement over or right to use any land made to the person who occupies the land shall not be excluded from the charge to tax under Schedule A by reason only that he is chargeable with respect to the land under Schedule B, but shall be treated for the purposes of Schedule A as limited to the amount (if any)by which they exceed the assessable value for the purposes of Schedule B of his occupation of the land in that period*[F34].

(4) Part II contains further provisions relating to the charge to tax under Schedule A.

Textual Amendments

F32 1988(F) Sch.6 para.6(6)—*into force on* 6*April* 1988.

F33 S. 15(1) paragraph 4 substituted (16.7.1992 in relation to chargeable periods beginning on or after 6.4.1992) by Finance (No. 2) Act 1992 (c. 48), **s.58**.

F34 S. 51(3) repealed (with effect from 6.4.1988) by Finance Act 1988 (c. 39), s.148, **Sch. 14 Part V**, Note 1

Modifications etc. (not altering text)

C48 Ss. 15-17: Schs. A-C excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)

C49 *See*—1970(M) s.19—*information for purposes of* Sch.A*and associated* Sch.D*charges.*1990(C) s.9(5)—*manner of making allowances and charges.*1990(C) s.67(3)—*allowances in respect of leased assets employed for thermal insulation.*1990(C) s.92—*allowances in respect of dwelling houses let on assured tenancies.*

Marginal Citations

M27 SOURCE-1970(1)–(3)

[F35]16 Schedule B.

. . . . . .

Textual Amendments

F35 S. 16 repealed (with effect from 6.4.1988) by Finance Act 1988 (c. 39) s.148, Sch.14 Pt. V

17 Schedule C.

(1) [M28]The Schedule referred to as Schedule C is as follows:—

SCHEDULE C

(1) Tax under this Schedule shall be charged in respect of all profits arising from public revenue dividends payable in the United Kingdom in any chargeable period.

(2) Tax under this Schedule shall also be charged in respect of profits arising from public revenue dividends payable in the Republic of Ireland in any chargeable period, being dividends on securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin.

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[[F36](3) Where a banker or any other person in the United Kingdom obtains payment of any overseas public revenue dividends by means of coupons received from any other person or otherwise on his behalf and either—

(a) the payment of those dividends was not entrusted to any person in the United Kingdom, or

(b) the securities in respect of which those dividends are paid are held in a recognised clearing system,

tax under this Schedule shall be charged in respect of those dividends.**]**

(4) Where—

(a) any banker in the United Kingdom sells or otherwise realises coupons for any overseas public revenue dividends and pays over the proceeds to any person or carries them to his account, or

(b) any dealer in coupons in the United Kingdom purchases any such coupons otherwise than from a banker or another dealer in coupons,

tax under this Schedule shall be charged in respect of the proceeds of the sale or other realisation.

(5) Notwithstanding anything in paragraphs 1 to 4 above but subject to paragraph 6 below, where any half-yearly payment in respect of any dividend entrusted to the Bank of England or the Bank of Ireland for payment and distribution or which is payable by the National Debt Commissioners or of which they have the distribution does not exceed £2.50, it shall not be charged under this Schedule, but shall be assessed and charged under Case III of Schedule D.

(6) Paragraph 5 above does not apply to any payment obtained by means of a coupon in respect of a bond to bearer or stock certificate.

(2) Part III contains further provisions relating to the charge to tax under Schedule C and to government securities; and section 45 shall apply for the interpretation of Schedule C.

Textual Amendments

F36 1988(F) s.76(1)*in respect of payments obtained on or after* 29*July* 1988.*Previously*
"3. Where a banker or any other person in the United Kingdom obtains payment of any overseas public revenue dividends by means of coupons received from any other person or otherwise on his behalf, tax under this Schedule shall be charged in respect of the dividends".

Modifications etc. (not altering text)

C50 Ss. 15-17: Schs. A-C excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)

C51 S. 17(1) applied (1.10.1993) by S.I. 1993/2004, **regs. 12(2)(a)**, 13(2)(a)

C52 *See also* Part XVIII—*double taxation relief.*

Marginal Citations

M28 SOURCE-1970 s. 93

18 Schedule D.

(1) [M29]The Schedule referred to as Schedule D is as follows:—

SCHEDULE D

Tax under this Schedule shall be charged in respect of—

(a) the annual profits or gains arising or accruing—

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(i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and

(ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere, and

(iii) to any person, whether a Commonwealth citizen or not, although not resident in the United Kingdom from any property whatever in the United Kingdom or from any trade, profession or vocation exercised within the United Kingdom, and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule A,*B*[F37], C or E, and not specially exempted from tax.

(2) [M30]Tax under Schedule D shall be charged under the Cases set out in subsection (3) below, and subject to and in accordance with the provisions of the Tax Acts applicable to those Cases respectively.

(3) The Cases are—

Case I:	tax in respect of any trade carried on in the United Kingdom or elsewhere;
Case II:	tax in respect of any profession or vocation not contained in any other Schedule;
Case III:	tax in respect of—
	(a) any interest of money, whether yearly or otherwise, or any annuity or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Schedule A, and
	(b) all discounts, and
	(c) income, except income charged under Schedule C, from securities bearing interest payable out of the public revenue;
Case IV:	tax in respect of income arising from securities out of the United Kingdom except such income as is charged under Schedule C;

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Case V:	tax in respect of income arising from possessions out of the United Kingdom not being income consisting of emoluments of any office or employment;
Case VI:	tax in respect of any annual profits or gains not falling under any other Case of Schedule D and not charged by virtue of Schedule A,*B* [F38] , C or E.

(4) [M31]The provisions of Schedule D and of subsection (2) above are without prejudice to any other provision of the Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases set out in subsection (3) above, and tax directed to be so charged shall be charged accordingly.

(5) Part IV contains further provisions relating to the charge to tax under Schedule D.

Textual Amendments

F37 *Repealed by 1988(F) s. 148 and Sch. 14 Part V from 6 April 1988.*

F38 *Repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

Modifications etc. (not altering text)

C53 *See, as regards exemption, the following provisions of this Act:*—s.320—*Commonwealth Agents*—*General and official agents etc.*s.322—*certain consular officers and employees.*s.323—*visiting forces and staffs of allied headquarters.*s.325—*certain savings bank interest.*s.326—*sums payable under certified contractual saving schemes.*s.327—*interest on damages for personal injuries.*s.328—*funds in court.*s.330—*German annuities in compensation for National Socialist persecution.*s.438—*annuity funds of insurance companies doing pension business.*s.459*to* 461—*certain friendly societies.*s.467—*certain trade unions*s.476—*certain dividends and interest payable by building societies* (*Repealed by* 1990 s.30*and* Sch.5 para.2*for* 1991-92*and subsequent years.*).s.484—*savings banks.*s.505*and* 506—*charities.*s.507—*British Museum.*s.508—*scientific research associations.*s.510—*agricultural societies.*s.514—*funds for reducing National Debt.*s.517—*issue departments of Reserve Bank of India and State Bank of Pakistan.*s.519—*local authorities.*s.578—*housing grants.*s.581—*interest on certain local authority borrowing in foreign currency.*s.613(4)—*Parliamentary pension funds.*s.614—*national insurance supplementary schemes etc; and certain Indian family pension funds.*s.614(3)—*certain pension funds for Crown service abroad.*s.614*and* 615—*certain pension funds for overseas employees.*s.620(5)*and* (6)—*approved retirement annuity trust schemes.*s.656*and* 657—*certain purchased life annuities.*s.688—*certain interest received by trustees of schemes for directors and employees to acquire shares.*
See also—1989 s.43*for periods of account ending after* 5*April* 1989*involving emoluments.*Income Tax (Repayment of Post-War Credits) Act 1959 s.2(4) (*see* Part II Vol.5)—*interest on post-war credits.*Diplomatic Privileges Act 1964 (c.81).Commonwealth Secretariat Act 1966 (c.10), **s.1(2)***and* Sch. Part I para.3—*the Commonwealth Secretariat.*International Organisations Act 1968 (c.48)—*certain international organisations and persons connected therewith.*Double taxation agreements (listed in Part III Vol.5)*in force under* ss.788-799*of this Act as to certain persons resident abroad.*

C54 *See* 1970(M) Part VIII*as to charges on non-residents.*

C55 *See*—1988 s.79A(4)—*charge on contributor to training and enterprise councils and local enterprise companies who receives benefits in return.*S.I. 1987 No.530 (*in* Part III Vol.5) regn.8—*computation of profits and gains in respect of payments attributable to non-resident entertainers and sportsmen.*

C56 *See*—1989 s.94*and* Sch.11 para.5—*deep gain securities transferred on or after* 14*March* 1989.S.I. 1986 No. 1948 (*in* Part III Vol.5) regn.8(2)(d)—*interest on cash deposits which are plan investments under personal equity plans.*1990 s.56*and* Sch.10 para.12(4)—*treatment of chargeable events in relation to convertible securities.*Housing Act 1957 (c.56) Sch.8 para.4*and*Housing (Scotland) Act 1966 (c.49) Sch.7 para.4—*interest on certain small holdings of housing bonds.*Housing Subsidies Act 1967 (c.29) s.24(2)(c) (*reproduced in* Part II Vol.5)—*payment received by lender from Minister in respect of subsidised loan.*

C57 *See*—1989 s.94*and* Sch.11 para.5—*deep gain securities transferred on or after* 14*March* 1989.1990 s.56*and* Sch.10 paras.12(4)*and* 20—*treatment of chargeable events in relation to income received in the U.K. from convertible securities.*

C58 *See also*—1990 ss.9(5)*and* 15—*certain balancing charges on lessors and others in respect of industrial buildings, machinery, etc.*1970(M) s.30—*recovery of overpayment of tax, etc.*1988 s.79A(4)—*charge on contributor to training and enterprise councils and local enterprise companies who receives benefit in return.*1989 ss.68, 71—*charge on certain profits or gains of employee share ownership trusts.*1990(C) s.92(2)—*balancing charge in respect of dwelling houses let on assured tenancies.*S.I. 1956 No.1230 (*in* Part III Vol. 5) regns. 4*and* 15—*additional liabilities in respect of purchased life annuities in certain contingencies.*S.I. 1989 No.469 (*in* Part III Vol. 5) regn.22(3)—*assessments to recover tax in respect of income under personal equity plans.*

C59 S. 18: Sch. D Case I extended (with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 171(2)(a)(4)**, 184(3)
S. 18: Sch. D Case I restricted (with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), **ss. 171(2)(b)(4)**, 184(3)
S. 18: Sch. D Case 1 extended (with application in accordance with s. 219(4) of the extending Act) by Finance Act 1994 (c. 9), **s. 219(2)(a)** (with s. 220)
S. 18: Sch. D Case I modified (29.7.1996) by Broadcasting Act 1996 (c. 55), ss. 135, 149(1)(f), **Sch. 7 para. 19** (with s. 43(6))
S. 18: Sch. D Cases I, II, VI extended (31.7.1998) by Finance Act 1998 (c. 36), **s. 47(4)**
S. 18: Sch. D Cases I, II restricted (with application in accordance with s. 42(3) of the restricting Act) by Finance Act 1998 (c. 36), **s. 42(1)(2)** (with s. 42(4)(5))
S. 18: Sch. D Cases I, III, V modified (with effect in accordance with s. 117(4)(5) of the modifying Act) by Finance Act 1998 (c. 36), s. 117(1), **Sch. 18 para. 84** (with Sch. 18 para. 59(2))
S. 18: Sch. D Cases I, VI restricted (with application in accordance with s. 46(7) of the restricting Act) by Finance Act 2000 (c. 17), **s. 46(1)-(6)**

C60 S. 18: Sch. D Cases II-VI excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)

C61 S. 18: Sch. D Case VI extended (16.7.1992 with effect in relation to chargeable periods ending after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 66, Sch. 12 paras. 1, 3(1), **7**.
S. 18: Sch. D Case VI extended (27.7.1993 with effect as mentioned in s. 165 of the amending Act) by Finance Act 1993 (c. 34), **ss. 130(2)(4)**, 165
S. 18: Sch. D Case VI restricted (27.7.1993) by Agriculture Act 1993 (c. 37), s. 12, Sch. 2 paras. 19(2), **20(2)**
S. 18: Sch. D Case VI extended (with application in accordance with Sch. 20 para. 11(1)(2) of the extending Act) by Finance Act 1994 (c. 9), s. 218, **Sch. 20 para. 11(3)** (with Sch. 20 para. 12(2))
S. 18: Sch. D Case VI extended (with effect in accordance with s. 117(4)(5) of the extending Act) by Finance Act 1998 (c. 36), s. 117(1), **Sch. 18 para. 52(4)** (with Sch. 18 para. 59(2))
S. 18: Sch. D Case VI extended (with effect in accordance with s. 579 of the extending Act) by Capital Allowances Act 2001 (c. 2), **ss. 256(2)(b)(4)** (with Sch. 3 paras. 54, 55)

Marginal Citations

M29 SOURCE-1970 s. 108(1)

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M30 SOURCE-1970 s. 109(1), (2)
M31 SOURCE-1970 ss. 108(3), 109(3)

19 Schedule E.

(1) [M32]The Schedule referred to as Schedule E is as follows:—

SCHEDULE E

(1) Tax under this Schedule shall be charged in respect of any office or employment on emoluments therefrom which fall under one or more than one of the following Cases—

[[F39]Case I:	any emoluments for any year of assessment in which the person holding the office or employment is resident and ordinarily resident in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section) and to section 193(1) if in the year of assessment concerned he performs the duties of the office or employment wholly or partly outside the United Kingdom;
Case II:	any emoluments, in respect of duties performed in the United Kingdom, for any year of assessment in which the person holding the office or employment is not resident (or, if resident, not ordinarily resident) in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section);
Case III:	any emoluments for any year of assessment in which the person holding the office or employment is resident in the United Kingdom (whether or not ordinarily resident there) so far as the emoluments are received in the United Kingdom;**]**

and tax shall not be chargeable in respect of emoluments of an office or employment under any other paragraph of this Schedule.

(2) Tax under this Schedule shall be charged in respect of every annuity, pension or stipend payable by the Crown or out of the public revenue of the United Kingdom or of Northern Ireland, other than annuities charged under Schedule C.

(3) Tax under this Schedule shall also be charged in respect of any pension which is paid otherwise than by or on behalf of a person outside the United Kingdom.

(4) Where—

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(a) any pension or annuity is payable in the United Kingdom by or through any public department, officer or agent of a government of a territory to which this paragraph applies (but otherwise than out of the public revenue of the United Kingdom or of Northern Ireland) to a person who has been employed in relevant service outside the United Kingdom in respect of that service, or

(b) any pension or annuity is so payable to the widow, child, relative or dependant of any such person as is mentioned above,

and the person in receipt of the pension or annuity is chargeable to tax as a person resident in the United Kingdom, the pension or annuity shall be chargeable to tax under this Schedule.

The territories to which this paragraph applies are—

(i) any country forming part of Her Majesty's dominions,

(ii) any other country for the time being mentioned in Schedule 3 to the [M33]British Nationality Act 1981, and

(iii) any territory under Her Majesty's protection;

and in this paragraph "relevant service" means the service of the Crown or service under the government of a territory to which this paragraph applies.

[[F40](4A) Where (apart from this paragraph) emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following rules shall apply for the purposes of the Cases set out in paragraph 1 above—

(a) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held;

(b) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.**]**

(5) The preceding provisions of this Schedule are without prejudice to any other provision of the Tax Acts directing tax to be charged under this Schedule and tax so directed to be charged shall be charged accordingly.

(2) References in the Tax Acts to Cases I, II and III of Schedule E shall be taken as referring to the Cases under which tax is chargeable under paragraph 1 of that Schedule.

(3) Part V contains further provisions relating to the charge to tax under Schedule E.

Textual Amendments

F39 1989 s.36(2)*for* 1989-90*or subsequent years of assessment. Previously*
"Case I: where the person holding the office or employment is resident and ordinarily resident in the United Kingdom, any emoluments for the chargeable period, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section) and to section 193(1) if in the chargeable period he performs the duties of the office or employment wholly or partly outside the United Kingdom and subject also to section 170; Case II: where that person is not resident or, if resident, then not ordinarily resident in the United Kingdom, any emoluments for the chargeable period in respect of duties performed in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section) and subject also to section 170; Case III: where that person is resident in the United Kingdom (whether or not ordinarily

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resident there), any emoluments received in the United Kingdom in the chargeable period being emoluments either for that period or for an earlier period in which he has been resident there and any emoluments for that period received in the United Kingdom in an earlier period;".

F40 1989 s.36(3)*where each of the years mentioned in* (a)*or* (b)*as the case may be is* 1989-90*or a subsequent year of assessment.*

Modifications etc. (not altering text)

C62 S. 19: Sch. E extended (for the year 1995-96 and subsequent years of assessment) by Finance Act 1994 (c. 9), **s. 139(1)** (with s. 139(2))
S. 19: Sch. E excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)
S. 19: Sch. E extended (with effect in accordance with Sch. 12 para. 22 of the extending Act) by Finance Act 2000 (c. 17), s. 60, **Sch. 12 para. 2** (with Sch. 12 para. 24)

C63 *For exemptions see* Index Vol.5.

Marginal Citations

M32 SOURCE-1970 s. 181; 1974 s. 21(1); 1977 s. 31(3)(a)

M33 1981 c. 61.

20 Schedule F.

(1) [M34]The Schedule referred to as Schedule F is as follows:—

SCHEDULE F

(1) Subject to section 95(1)(a), income tax under this Schedule shall be chargeable for any year of assessment in respect of all dividends and other distributions in that year of a company resident in the United Kingdom which are not specially excluded from income tax, and for the purposes of income tax all such distributions shall be regarded as income however they fall to be dealt with in the hands of the recipient.

(2) For the purposes of this Schedule and all other purposes of the Tax Acts any such distribution in respect of which a person is entitled to a tax credit shall be treated as representing income equal to the aggregate of the amount or value of that distribution and the amount of that credit, and income tax under this Schedule shall accordingly be charged on that aggregate.

[[F41](2) [M35]Except as provided for by **[**[F42]section 171 of the Finance Act 1993**]** (underwriters)**]** no distribution which is chargeable under Schedule F shall be chargeable under any other provision of the Income Tax Acts.

(3) Part VI contains further provisions relating to company distributions and tax credits.

Textual Amendments

F41 1988(F) s.61(1)(a)*for* 1988-89*and subsequent years; and see* s.61(3)*for amendment of* 1972 s.87(3)*for* 1986-87*and* 1987-88.

F42 Words in s. 20(2) substituted (with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), **ss. 183(1)**, 184(3)

Marginal Citations

M34 SOURCE-1970 s. 232(1); 1972 s. 87(2)

M35 SOURCE-1972 s. 87(3)

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PART II

PROVISIONS RELATING TO THE SCHEDULE A CHARGE AND THE ASSOCIATED SCHEDULE D CHARGES

General

21 Persons chargeable.

(1) [M36]Income tax under Schedule A shall be charged on and paid by the persons receiving or entitled to the profits or gains in respect of which tax under that Schedule is directed by the Income Tax Acts to be charged.

(2) Subsection (1) above does not apply for the purposes of the Corporation Tax Acts.

Marginal Citations
M36 SOURCE-1970 s. 68

VALID FROM 31/07/1998

[[F43]21A Computation of amount chargeable.

(1) Except as otherwise expressly provided, the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D.

(2) The following provisions apply in accordance with subsection (1)—

section 72 (apportionment);

the provisions of Chapter V of Part IV (computational provisions relating to the Schedule D charge), except as mentioned in subsection (4) below;

section 577 (business entertainment expenses);

section 577A (expenditure involving crime);

sections 579 and 580 (redundancy payments);

sections 588 and 589 (training courses for employees);

sections 589A and 589B (counselling services for employees);

section 73(2) of the [M37]Finance Act 1988 (consideration for restrictive undertakings);

section 43 of the [M38]Finance Act 1989 (deductions in respect of certain emoluments);

section 76 of that Act (expenses in connection with non-approved retirement benefit schemes);

sections 112 and 113 of that Act (expenditure in connection with provision of security asset or service);

sections 42 and 46(1) and (2) of the Finance Act 1998 (provisions as to computation of profits and losses).

(3) Section 74(1)(d) of this Act (disallowance of provisions for future repairs) applies in relation to a Schedule A business as if the reference to premises occupied for

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the purposes of the trade were to premises held for the purposes of the Schedule A business.

(4) The following provisions in Chapter V of Part IV of this Act do not apply, or are excepted from applying, in accordance with subsection (1)—

section 82 (interest paid to non-residents),

section 87 (treatment of premiums taxed as rent),

section 96 (farming and market gardening: relief for fluctuating profits), and

section 98 (tied premises: receipts and expenses treated as those of trade).**]**

Textual Amendments

F43 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

Marginal Citations

M37 1988 c. 39.

M38 1989 c. 26.

VALID FROM 31/07/1998

[F43 21B Application of other rules applicable to Case I of Schedule D.

The following provisions apply for the purposes of Schedule A in relation to a Schedule A business as they apply for the purposes of Case I of Schedule D in relation to a trade—

sections 103 to 106, 108, 109A and 110 (post-cessation receipts and expenses, etc.);

section 113 (effect for income tax purposes of change in the persons engaged in carrying on trade);

section 337(1) (effect of company beginning or ceasing to carry on trade);

section 401(1) (pre-trading expenditure);

section 44 of and Schedule 6 to the Finance Act 1998 (change of accounting basis).**]**

Textual Amendments

F43 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

VALID FROM 31/07/1998

[F44 21C The Schedule A charge and mutual business.

(1) The following provisions have effect for the purpose of applying the charge to tax under Schedule A in relation to mutual business.

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(2) The transactions or relationships involved in mutual business are treated as if they were transactions or relationships between persons between whom no relationship of mutuality existed.

(3) Any surplus arising from the business is regarded as a profit (and any deficit as a loss) if it would be so regarded if the business were not mutual.

(4) The person—
  (a) to whom the profit arises for corporation tax purposes, or
  (b) who is regarded as receiving or entitled to the profit for income tax purposes,

is the person who would satisfy that description if the business were not mutual business.

(5) Nothing in this section affects the operation of section 488 (co-operative housing associations).**]**

Textual Amendments

F44 S. 21C inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 5** (with Sch. 5 paras. 73, 76)

22 Assessments.

(1) [M39]The profits or gains arising to a person for any chargeable period which are assessable to tax under Schedule A may, if they arise from more than one source, be assessed in one or more assessments, and in the latter case, each assessment may relate to profits or gains from one or more sources.

(2) [M40]Subject to subsection (3) below, where an assessment to income tax under Schedule A for any year of assessment is made in that year—
  (a) it shall be made on the basis that all sources of income and all amounts relevant in computing profits or gains are the same as for the last preceding year of assessment, and
  (b) tax shall be leviable accordingly, but any necessary adjustments shall be made after the end of the year, whether by way of assessment, repayment of tax or otherwise, to secure that tax is charged by reference to the rents or receipts to which the person assessed becomes entitled in the year of assessment.

(3) If before the 1st January in any year a person delivers a statement in writing to the inspector—
  (a) showing that since the beginning of the last preceding year of assessment he has ceased to possess one or more sources of income chargeable under Schedule A, and
  (b) giving the aggregate of the rents and receipts relevant for the purposes of Schedule A to which he has become or is likely to become entitled in the current year (“the current aggregate”), and
  (c) showing that the current aggregate is less than the aggregate of such rents and receipts to which he became entitled in the last preceding year (“the previous aggregate”), and that it would not have been less if he had not ceased to possess the said source or sources,

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then, if the inspector is satisfied as to the correctness of the statement, an assessment made on that person in the current year shall be made on an amount which bears to the amount arrived at under subsection (2)(a) above the same proportion as the current aggregate bears to the previous aggregate, and subsection (2)(b) above shall apply accordingly.

Marginal Citations

M39 SOURCE-1970 s. 69(1)

M40 SOURCE-1979 s. 69(2)

23 Collection from lessees and agents.

(1) [M41]In any case where—

(a) any tax under Schedule A is charged in respect of profits or gains arising from any land to a person who is not the occupier of the land, and

(b) the tax is not paid by that person ("the person in default"),

the tax may be recovered in accordance with the following provisions of this section.

(2) [M42]Subject to subsection (3) below, the collector may from time to time, by notice in such form as may be prescribed by the Board, require any lessee of the land or any part thereof whose interest is derived, directly or indirectly, from that held by the person in default, (a "derivative lessee"), to pay to him, on the date or dates specified in the notice, such sum or sums as may be required to satisfy the tax.

(3) [M43]The sum demanded from a derivative lessee to be paid during any period shall not exceed the amount of the rent or other payments arising out of the land which becomes due from him at the end of the period and payable to the person in default or to another derivative lessee.

(4) [M44]In default of payment by a derivative lessee of any amount duly demanded of him under subsection (2) above, that amount may be recovered from him in like manner as if he had been charged with tax of that amount.

(5) [M45] Where any sum on account of tax has been collected from a derivative lessee in pursuance of this section, he may deduct that sum from any subsequent payment arising and payable as mentioned in subsection (3) above, and shall be acquitted and discharged of the amount so deducted.

(6) [M46]Where under subsection (5) above, or under that subsection as applied by this subsection, a sum is deducted from an amount payable to another derivative lessee—

(a) that subsection shall apply as if the sum had been collected from him under a demand made under subsection (2) above by the collector; and

(b) where the amounts from which he is entitled, under subsection (5) above, to make deductions during the following 12 months are less than that sum, he shall be entitled to recover from the Board an amount equal to the difference, which shall be treated as reducing the tax recovered under the preceding provisions of this section.

(7) [M47]In any case where—

(a) rents or receipts from land are received by any person ("the agent") on behalf of another ("the principal"), and

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(b) any tax under Schedule A charged on the principal has not been paid,

the collector may by notice, in such form as may be prescribed by the Board, require the agent to pay to the collector in or towards the satisfaction of the tax any sums from time to time received by the agent on behalf of the principal on account of rents or receipts from any land (including any sums so received which are in his hands when the notice is given) until the liability in respect of the tax has been satisfied; and the agent shall pay all such sums over to the collector accordingly, and the payment shall acquit and discharge him as against the person on whose behalf he received them.

(8) [M48]If the agent fails to comply with the requirements of a notice duly served on him, he shall be liable to a penalty not exceeding **[**[F45]£300**]** for each failure, and non-compliance as respects sums in his hands when the notice is given, or as respects any one payment subsequently received by him, shall be treated as a separate failure.

Textual Amendments

F45 1989 s.170(1)*in relation to things done or omitted on or after* 27*July* 1989.*Previously* "£50".

Marginal Citations

M41 SOURCE-1970 s. 70(1)
M42 SOURCE-1970 s. 70(1)(a)
M43 SOURCE -1970 s. 70(1)(b)
M44 SOURCE-1970 s. 70(1)(c)
M45 SOURCE-1970 s.70(1)(d)
M46 SOURCE-1970 s. 70(1)(e)
M47 SOURCE-1970 s. 70(2)
M48 SOURCE-1970 s. 70(2)

24 Construction of Part II.

(1) [M49]In this Part, except where the context otherwise requires—

"lease" includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security, and "lessee", "lessor" and "letting" shall be construed accordingly;

"lessee" and "lessor" include respectively the successors in title of a lessee or a lessor;

"premises" includes any land; and

"premium" includes any like sum, whether payable to the immediate or a superior landlord or to a person connected (within the meaning of section 839) with the immediate or a superior landlord.

(2) [M50]For the purposes of this Part, any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given.

(3) [M51]Where paragraph (c) of section 38(1) applies, the premium, or an appropriate part of the premium, payable for or in connection with either lease mentioned in that paragraph may be treated as having been required under the other.

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(4) References in this section to a sum shall be construed as including the value of any consideration, and references to a sum paid or payable or to the payment of a sum shall be construed accordingly.

(5) [M52]In the application of this Part to Scotland—

"assignment" means an assignation;

"intermediate landlord" means, where an occupying lessee is a sub-lessee, any person for the time being holding the interest of landlord under a sub-lease which comprises the property of which the occupying lessee is sub-lessee, but does not include the immediate landlord;

"premium" includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sub-lease; and

"reversion" means the interest of the landlord in the property subject to the lease.

(6) [M53]In Schedule A and in sections 25 to 31—

(a) references to a lease extend only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises;

(b) "rent" includes a payment by the tenant to defray the cost of work of maintenance of, or repairs to, the demised premises, not being work required by the lease to be carried out by the tenant; and

(c) "tenant's repairing lease" means a lease where the tenant is under an obligation to maintain and repair the whole or substantially the whole of the premises comprised in the lease.

(7) For the purposes of Schedule A and sections 25 to 31, a lease shall be taken to be at a full rent if the rent reserved under the lease (including an appropriate sum in respect of any premium under the lease) is sufficient, taking one year with another, to defray the cost to the lessor of fulfilling his obligations under the lease and of meeting any expenses of maintenance, repairs, insurance and management of the premises subject to the lease which fall to be borne by him.

Marginal Citations

M49 SOURCE-1970 s. 90(1); 1972 s. 81(3)
M50 SOURCE-1970 s. 90(2)
M51 SOURCE-1970 s. 90(2A), (2B); 1972 s. 81(4)
M52 SOURCE-1970 s. 90(3)
M53 SOURCE-1970 s. 71(2)

Deductions and other allowances

25 Deductions from rent: general rules.

(1) [M54]In computing for the purposes of Schedule A the profits or gains arising to a person (the "person chargeable") in any chargeable period, the amounts of any permitted deductions shall be deducted from rent to which he becomes entitled under a lease in that period.

(2) [M55]In this section—

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"permitted deductions" means any payments, except any payment of interest, made by the person chargeable in respect of any of the following matters—

(a) maintenance, repairs, insurance or management;

(b) any services provided by him otherwise than by way of maintenance or repairs, being services which he was obliged to provide but in respect of which he received no separate consideration;

(c) rates or other charges on the occupier which the person chargeable was obliged to defray;

(d) any rent, rentcharge, ground annual, feuduty or other periodical payment reserved in respect of, or charged on or issuing out of, land;

being payments which are deductible in accordance with subsections (3) to (9) below and section 26; and

"void period" means a period during which the person chargeable was not in occupation of the premises or any part thereof but was entitled to possession thereof.

(3) [M56]There may be deducted from rent to which the person chargeable becomes entitled in a chargeable period the amount of any permitted deduction which became due in that period, or at an earlier time falling within the currency of the lease, in so far as the payment—

(a) was made in respect of the premises comprised in the lease, and

(b) in the case of a payment for maintenance or repairs, was incurred by reason of dilapidation attributable to a period falling within the currency of the lease or, in the case of any other payment, was incurred in respect of such a period.

(4) Where the person chargeable became the landlord after the lease began, references in subsection (3) above to the currency of the lease shall not include any time before he became the landlord.

(5) [M57]In the case of a lease at a full rent, subsection (3) above shall have effect as if references to the currency of the lease included any period ("a previous qualifying period")—

(a) during which the person chargeable was the landlord in relation to a previous lease of the premises, being a lease at a full rent; or

(b) which was a void period beginning either with the termination of an earlier lease at a full rent of the premises or with the acquisition by the person chargeable of the interest in the premises giving him the right to possession thereof;

but a period shall not be a previous qualifying period if it preceded a period ending before the beginning of the lease which was not itself a previous qualifying period.

(6) Where during any period the conditions necessary for the period to be a previous qualifying period were fulfilled as respects part of the premises, but not the whole, the period shall be treated as a previous qualifying period as respects that part of the premises only, and subsection (5) above shall have effect accordingly, any necessary apportionment being made of rent, payments or other matters.

(7) [M58]In the case of a lease at a full rent, not being a tenant's repairing lease, there may also be deducted the amount of any payment made in respect of other premises by the person chargeable—

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(a) in so far as that amount could be deducted under subsections (3) and (5) above from rent to which he became entitled in the chargeable period under a lease of those other premises, being a lease at a full rent, or could be so deducted if that rent were not insufficient, or

(b) if any part of the chargeable period is, in respect of those other premises, a void period beginning with the termination of a lease at a full rent, in so far as the amount could be so deducted if the lease had continued until the end of the period.

(8) [M59]Where by reason of any change of circumstances a lease ceases to be, or becomes, a tenant's repairing lease, or ceases to be, or becomes, a lease at a full rent, subsections (5) and (7) above shall apply in relation to the lease as it subsists after the change of circumstances as if it were a new lease granted when the change occurred.

(9) [M60]Where the person chargeable retains possession of a part of the premises and that part is used in common by persons respectively occupying other parts of the premises, this section shall apply as if a payment made in respect of the part used in common had been made in respect of those other parts.

Marginal Citations

M54 SOURCE-1970 ss. 71(1), 72(1)
M55 SOURCE-1970 s. 72(1), (7)
M56 SOURCE- 1970 s. 72(2)
M57 SOURCE-1970 s. 72(3)
M58 SOURCE-1970 s. 72(4)
M59 SOURCE-1970 s. 72(5)
M60 SOURCE-1970 s. 72(6)

26 Deductions from rent: land managed as one estate.

(1) [M61]Where this section applies to an estate for a chargeable period, the owner shall be treated—

(a) in relation to a part of the estate which for any portion of that period is not comprised in a lease under which he is the landlord, as if he were entitled under a lease of that part at a full rent (not being a tenant's repairing lease) to rent for that portion, becoming due from day to day, at a rate per annum equal to the relevant annual value, and

(b) in relation to a part of the estate which for any portion of that period is comprised in a lease under which he is the landlord, not being a lease at a full rent, as if the lease were at a full rent, and as if the rent so far as it relates to that part were at a rate per annum not less than the relevant annual value;

and section 25 shall apply accordingly.

(2) In any case where subsection (1) above applies—

(a) a payment relating to premises comprised in the estate shall not be deductible from rent in respect of premises not so comprised; and

(b) paragraph (a) of that subsection shall not apply to premises occupied by the owner wholly and exclusively for purposes connected with the management of the estate or for the purposes of a trade, profession or vocation.

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(3) [M62]This section shall apply to an estate if, at the end of the year 1962-63, the land comprised in the estate was managed as one estate and the owner for the time being of the estate by notice to the inspector so elects; but such an election—

(a) must be made within 12 months after the end of the first chargeable period for which the person making it became entitled to make it or such further time as the Board may allow;

(b) except in the case of the first election that can be made under this subsection or the first election made under section 73(2) of the 1970 Act, shall not have effect unless an election under this section has had effect as respects the immediately preceding ownership;

(c) shall apply in relation to the estate throughout the ownership of the person making it.

(4) [M63]Where in any chargeable period the estate comprises premises not included in it at the end of the year 1962-63, subsection (1) above (but not subsection (2)) shall apply in relation to the chargeable period as if the premises were not included in the estate in that period.

(5) [M64]Subsection (4) above shall not have effect in relation to any premises if—

(a) at the end of the year 1962-63 the owner of the remainder of the estate as then subsisting was entitled under trusts arising under a settlement or on an intestacy, or in Scotland, under a disposition by way of liferent and fee, to an interest such that, on the occurrence of some future event or events, he might become the owner of the premises in question, and

(b) before the end of that year, the premises and the remainder of the estate, as then subsisting, were together managed as one estate.

(6) [M65]In this section—

"estate" means land in one ownership managed as one estate (but without prejudice to section 27); and

"relevant annual value", in relation to any part of an estate, means the annual value of that part ascertained in accordance with section 837.

Modifications etc. (not altering text)

C64 S. 26 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 5**

Marginal Citations

M61 SOURCE-1970 s. 73(1)
M62 SOURCE-1970 s. 73(2)
M63 SOURCE-1970 s. 73(3)
M64 SOURCE-1970 s. 73(3)
M65 SOURCE-1970 s. 73(4)

27 Deductions from rent: maintenance funds for historic buildings.

(1) [M66]Where a building or land which is qualifying property for the purposes of paragraph 3(1) of Schedule 4 to the [M67]Inheritance Tax Act 1984 (maintenance funds for historic buildings) forms part of an estate in relation to which an election has effect under section 26—

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(a) the election shall not cease to have effect by reason only of another part of the estate becoming comprised in, and managed by the trustees of, a settlement in relation to which the Treasury give a direction under paragraph 1 of that Schedule, and

(b) while such a direction has effect that other part shall be treated as continuing to form part of the estate to which the election relates.

(2) In any case where—

(a) a person becomes the owner of any such building or land as is mentioned in subsection (1) above, and

(b) that building or land, in the immediately preceding ownership, formed part of an estate in relation to which an election under section 26 had effect,

any other part of that estate which continues to be or becomes comprised in a settlement of the kind mentioned in subsection (1) above shall, while such a direction as is mentioned in that subsection has effect, be treated as part of the estate in relation to which an election under section 26 may be made by him.

(3) Where by virtue of this section an election has effect in relation to an estate part of which is comprised in a settlement—

(a) there may be treated as deductible from the rents arising from that part—

(i) any payments which are made in respect of the other part of the estate by the trustees of the settlement and which would be so deductible under section 25 if that part were also comprised in the settlement; and

(ii) any payments made in respect of the other part of the estate by its owner to the extent to which they cannot be deducted by him under that section in the chargeable period in which they become due because of an insufficiency of the rents arising in that period from that part; and

(b) any relief available to the trustees under section 33 in respect of the part of the estate comprised in the settlement shall instead be available to the owner of the other part of the estate.

(4) Where by virtue of this section an election has effect in relation to an estate part of which is comprised in a settlement, the election shall not cease to have effect in relation to any of that part by reason of its ceasing to be comprised in that settlement if either—

(a) it becomes comprised in another settlement in circumstances such that by virtue of paragraph 9(1) of Schedule 4 to the [M68]Inheritance Tax Act 1984 there is (or would but for paragraph 9(4) be) no charge to inheritance tax in respect of the property so ceasing; or

(b) both immediately before and immediately after its so ceasing it is property in respect of which a direction has effect under paragraph 1 of that Schedule.

(5) The inclusion by virtue of this section in an estate of property comprised in a settlement shall not be construed as requiring it to be treated as the property of the person who owns the remainder of the estate or as affecting any question as to the person entitled to the income arising from that property.

Modifications etc. (not altering text)

C65 S. 27(3)(a) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 6(1)**

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C66 S. 27(3)(b) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 6(2)**

Marginal Citations

M66 SOURCE-1980 s. 53; 1982 Sch. 10 para. 3; ITA Sch. 8 para 18
M67 1984 c.51.
M68 1984 c. 51.

28 Deductions from receipts other than rent.

[M69]Subject to section 122, where a person becomes entitled in a chargeable period to a sum other than rent payable under a lease, then in computing for the purposes of Schedule A the profits or gains arising to that person in that period, there shall be deducted from that sum—

(a) so much of any payment made by that person as was made in respect of maintenance, repairs, insurance or management of premises to which the sum relates and constituted an expense of the transaction under which he became entitled to that sum;

(b) so much of any rent, rentcharge, ground annual, feuduty or other periodical payment made by that person as was reserved in respect of, or was charged upon or issued out of, premises to which the sum relates and constituted an expense of that transaction;

(c) so much of any other payment made by that person as constituted an expense of that transaction, not being an expense of a capital nature; and

(d) where, in or before the chargeable period, that person entered into any like transaction, any amount which, under paragraphs (a) to (c) above, is deductible from a sum to which he is entitled under that like transaction in the period, or was deductible from a sum to which he was so entitled in a previous chargeable period but has not been deducted.

Marginal Citations

M69 SOURCE-1970 ss. 71(1), 74(1)

29 Sporting rights.

(1) [M70]Subject to subsection (2) below, in any case where the person entitled to possession of any land ("the person chargeable")—

(a) is in the practice of granting sporting rights over the land for payment, but

(b) in any year of assessment, such rights are for any reason not granted by him,

the aggregate of any amounts paid by him which, if such rights had been granted in that year (the "relevant year"), would have been deductible under section 28 from payments receivable by him in respect of the grant shall be treated for the purposes of section 25(7) as a deduction which, by virtue of section 25(3), might have been made by him from rent to which he was entitled for that year under a lease of the land, being a lease at a full rent.

(2) [M71]If in the relevant year sporting rights over the land are exercised—

(a) by the person chargeable, or

(b) by any other person at his invitation, or

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(c) where the person chargeable is a close company, by a person who is, within the meaning of Part XI, a director of, or a participator in, that company,

the aggregate referred to in subsection (1) above shall be treated as reduced by an amount equal to the price which might reasonably be expected to have been paid for that exercise of the rights if the person exercising them had had to give full consideration therefor.

(3) [M72]For the purposes of subsection (2) above, an exercise of sporting rights shall be disregarded if it gives rise to a charge to tax under Schedule E by virtue of section 154.

(4) Where the person chargeable is a company, section 9(1) shall not have effect so as to require references in that subsection to a year of assessment to be read as references to an accounting period, but any deduction thereby authorised shall be apportioned between the accounting periods (if more than one) comprising the year of assessment.

(5) In this section, "sporting rights" means rights of fowling, shooting or fishing, or of taking or killing game, deer or rabbits.

Marginal Citations

M70 SOURCE-1970 ss. 71(1), 75(1)

M71 SOURCE-1970 s. 75(1)

M72 SOURCE-1970 s. 75(2), (3), (4); 1970 Sch. 9 para. 12

30 Expenditure on making sea walls.

(1) [M73]Where in any year of assessment the owner or tenant of any premises incurs any expenditure in the making of any sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river, he shall be treated for the purposes of sections 25, 28 and 31 as making in that year of assessment and in each of the succeeding 20 years of assessment a payment in relation to the premises preserved or protected by the embankment of an amount equal to a twenty-first part of the expenditure and incurred in respect of dilapidation attributable to the year.

(2) Where the whole of that person's interest in the premises or any part thereof is transferred (whether by operation of law or otherwise) to some other person—

(a) the amount of the payment which he would be so treated as making for the year of assessment in which the transfer takes place shall be treated as being made partly by the transferor and partly by the transferee, as may be just; and

(b) the transferee shall, to the exclusion of the transferor, be treated in any subsequent year—

(i) where the interest transferred is in the whole of the premises, as having made the whole of the payment for that year, and

(ii) where the interest transferred is in part only of the premises, as having made so much of the payment as is properly referable to that part of the premises.

(3) For the purposes of subsection (2) above, where an interest in any premises is a lease and that lease comes to an end, that interest shall be deemed to have been transferred—

(a) if an incoming lessee makes any payment to the outgoing lessee in respect of the embankment in question, to the incoming lessee, and

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(b) in any other case, to the owner of the interest in immediate reversion on the lease and, in relation to Scotland, the expression "the owner of the interest in immediate reversion on the lease" shall be construed as a reference to the landlord.

(4) In relation to a company, section 9(1) shall not have effect so as to require references in this section to a year of assessment to be read as references to an accounting period, but any deduction authorised by this section shall be apportioned between the accounting periods (if more than one) comprising the year of assessment, other than any such period ended before the expenditure is incurred, or transfer takes place, by virtue of which the company is entitled to the deduction.

(5) This section shall not apply in relation to any expenditure in respect of which a capital allowance has been made.

Modifications etc. (not altering text)

C67 S. 30(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 7**

C68 *See* 1979(C) s.34(4)(b)—*restriction, by reference to capital allowances, of capital losses for purpose of capital gains.*

Marginal Citations

M73 SOURCE-1970 s. 76

31 Provisions supplementary to sections 25 to 30.

(1) [M74]Schedule 1, which makes provision in relation to certain expenditure incurred before the beginning of the year 1963-64, shall have effect (and the preceding provisions of this Part shall have effect subject to that Schedule).

(2) [M75]Any reference in this section to a deduction is a reference to a sum which is deductible under any of the provisions of sections 25 to 30 and Schedule 1, and any reference to a sum which can be deducted or which is deductible shall be construed accordingly.

(3) Subject to subsections (4) to (7) below, where a sum or part of a sum can be deducted for the chargeable period in which it is paid, it shall be so deducted, and, where it cannot, it shall be deducted for the earliest chargeable period for which it can be deducted.

(4) [M76]Where for any chargeable period the amount from which deductions can be made is sufficient to allow the deduction from that amount of some, but not all, of different sums or parts of sums which are deductible, the sum or parts to be deducted for that period shall in the aggregate be equal to that amount, and, subject to that requirement, shall be such as the person whose liability to tax is in question may choose.

(5) No deduction shall be made in respect of—

(a) a payment made by any person to the extent that the payment has been or will be—

(i) balanced by the receipt of insurance moneys, or

(ii) recovered from, or in any other manner borne by, some other person, otherwise than by means of an amount on the profits or gains arising

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from which the first-mentioned person would be chargeable under Schedule A, or

(b) a payment made by a person other than a company, if payable under deduction of income tax.

(6) An amount, or part of an amount, shall not be deducted more than once from any sum, or from more than one sum, and shall not in any case be deducted if it has otherwise been allowed as a deduction in computing the income of any person for tax purposes.

(7) Where, on account of a payment made in any chargeable period, a deduction falls to be made from any rents or receipts to which the person making the payment became entitled in a previous period, all such adjustments of liability to tax shall be made, by repayment or otherwise, as may be necessary to give effect to the deduction.

Marginal Citations

M74 SOURCE-1970 s. 71(1)

M75 SOURCE-1970 s. 77(1); 1987 Sch. 15 para. 13

M76 SOURCE- 1970 s. 77(2)–(5)

VALID FROM 19/07/2007

[F46 31ZA Deduction for expenditure on energy-saving items

(1) This section applies if—

(a) a company carries on a Schedule A business in relation to land which consists of or includes a dwelling-house,

(b) the company incurs expenditure in acquiring and installing an energy-saving item in the dwelling-house or in a building containing the dwelling-house (see subsections (5) to (7)),

(c) the expenditure is incurred before 1st April 2015,

(d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and

(e) no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

(2) In calculating the profits of the Schedule A business, a deduction for the expenditure is allowed.

(3) But any deduction is subject to—

(a) section 31ZB (restrictions on the relief), and

(b) any provision made by regulations under section 31ZC.

(4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.

(5) "Energy-saving item" means an item of an energy-saving nature of such description as is for the time being specified in regulations made by the Treasury.

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(6) The Treasury may by regulations provide for an item to be an energy-saving item only if it satisfies such conditions as may be—

(a) specified in, or

(b) determined in accordance with,

the regulations.

(7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.

(8) In this section—

"the capital prohibition rule" means the rule in section 74(1)(f) or (g) (capital expenditure), as applied by section 21A, and

"the wholly and exclusively rule" means the rule in section 74(1)(a) or (e) (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 21A.**]**

Textual Amendments

F46 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

VALID FROM 19/07/2007

[F46 31ZB Restrictions on relief

(1) This section restricts deductions that would otherwise be allowable under section 31ZA.

(2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—

(a) is in the course of construction, or

(b) is comprised in land in which the company does not have an interest or is in the course of acquiring an interest or further interest.

(3) No deduction is allowed in respect of expenditure in an accounting period if—

(a) the Schedule A business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of section 503, and

(b) the dwelling-house constitutes some or all of that accommodation for the accounting period.

(4) No deduction is allowed in respect of expenditure treated by section 401 (as applied by section 21B) as incurred on the date on which the company starts to carry on the Schedule A business unless the expenditure was incurred not more than 6 months before that date.

(5) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.**]**

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Textual Amendments

F46 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

VALID FROM 19/07/2007

[F46 31ZC Regulations

(1) In relation to any deduction under section 31ZA, the Treasury may make regulations for—

(a) restricting or reducing the amount of expenditure for which the deduction is allowable,

(b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,

(c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,

(d) making apportionments if the Schedule A business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.

(2) The apportionments that may be made include apportionments to persons within the charge to income tax.

(3) Regulations under this section may—

(a) make different provision for different cases, and

(b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).]

Textual Amendments

F46 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

VALID FROM 22/07/2004

[F47 31A Deductions for expenditure by landlords on energy-saving items

(1) This section applies to a Schedule A business if the land mentioned in paragraph 1(1) of Schedule A consists of or includes a dwelling-house.

(2) In computing for the purposes of income tax the profits of a Schedule A business to which this section applies, a deduction shall be allowed in respect of any expenditure to which subsection (3) applies.

That is subject to any provision of regulations under subsection (13).

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(3) This subsection applies to expenditure as respects which the numbered conditions set out in the following provisions of this section ("the qualifying conditions") are satisfied.

(4) Condition 1 is that the expenditure is incurred in the provision of a qualifying energy-saving item in the dwelling-house.

(5) Condition 2 is that the expenditure is incurred on or after 6th April 2004 but before 6th April 2009.

(6) Condition 3 is that the expenditure is incurred wholly and exclusively for the purposes of the Schedule A business.

(7) Condition 4 is that the expenditure is capital expenditure.

(8) Condition 5 is that, apart from this section, the expenditure is not deductible in computing the profits of the Schedule A business.

(9) Condition 6 is that no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

(10) Condition 7 is that the expenditure is not incurred in respect of the provision of an item in a dwelling-house which, at the time when the item is installed,—
- (a) is in the course of construction, or
- (b) is comprised in land in which the person claiming the deduction under this section does not have an interest or is in the course of acquiring an interest or further interest.

(11) Condition 8 is that for the purposes of section 503 (letting of furnished holiday accommodation to be treated as a trade for certain purposes) either—
- (a) the Schedule A business does not consist to any extent in the commercial letting of furnished holiday accommodation, or
- (b) if it does so consist to any extent, the dwelling-house does not constitute any or all of the furnished holiday accommodation in question.

(12) Condition 9 is that the income of the person claiming the deduction is not computed in accordance with paragraph 9 or 11 of Schedule 10 to the Finance (No. 2) Act 1992 (furnished accommodation) in respect of any qualifying residence which consists of or includes the dwelling-house.

(13) The Treasury may by regulations make provision for any of the following purposes—
- (a) restricting or reducing the amount of expenditure in respect of which deductions may be claimed under this section;
- (b) excluding entitlement to a deduction under this section in such cases as may be specified in, or determined in accordance with, the regulations;
- (c) determining which of two or more persons is (and which is not) entitled to a deduction under this section in cases where different persons have different interests in land consisting of or including the whole or part of a building containing one or more dwelling-houses;
- (d) making apportionments (including apportioning amounts to companies which are not entitled to a deduction under this section) in cases where—
  - (i) a Schedule A business is carried on by two or more persons in partnership, or

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(ii) an interest in land is beneficially owned by two or more persons jointly or in common.

(14) Section 31B supplements this section.**]**

Textual Amendments

F47 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 143(1)**

VALID FROM 22/07/2004

[F47 31B Provisions supplementary to section 31A

(1) This section has effect for the purpose of supplementing section 31A and shall be construed as one with that section.

(2) Section 31A does not have effect for the purposes of corporation tax.

(3) No deduction may be made under section 31A unless a claim is made.

(4) Where, on a just and reasonable apportionment of any expenditure, the qualifying conditions—

(a) would be satisfied as respects some part or parts of the expenditure, but

(b) would not be satisfied as respects the remainder of the expenditure,

a deduction under section 31A shall be allowed in respect of the part or parts mentioned in paragraph (a) but not in respect of the remainder.

Any such deduction is subject to, and must be in accordance with, the other provisions of this section and regulations under section 31A(13).

(5) Expenditure incurred by a person—

(a) for the purposes of a Schedule A business, but

(b) before the time when he begins to carry on that business,

is not deductible under section 31A by virtue of section 401 (relief for pre-trading expenditure) unless the expenditure is incurred not more than 6 months before that time (and on or after 6th April 2004).

The reference to section 401 is a reference to that section as it applies for the purposes of Schedule A in relation to a Schedule A business by virtue of section 21B.

(6) "Qualifying energy-saving items"are items of any of the following descriptions—

(a) cavity wall insulation;

(b) loft insulation.

(7) The Treasury may by regulations amend subsection (6)—

(a) by adding further descriptions of items; or

(b) by removing or varying descriptions of items.

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(8) The Treasury may by regulations provide that an item is to be regarded as an item of any particular description in subsection (6) only if it satisfies such conditions as may be specified in, or determined in accordance with, the regulations.

(9) The conditions that may be imposed by regulations under subsection (8) include conditions imposed by reference to information or documents issued by any body, person or organisation.

(10) The provision that may be made by regulations under this section or section 31A which are made on or before 31st December 2004 includes provision—
  (a) having effect before the date on which the regulations are made, or
  (b) having effect in relation to expenditure incurred before that date.

(11) Any reference to the provision of a qualifying energy-saving item is a reference to the acquisition of such an item and its installation in the dwelling-house.**]**

Textual Amendments

F47 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 143(1)**

32 Capital allowances for machinery and plant used in estate management.

(1) [M77]Subject to the provisions of this section, **[**[F48]Part II of the 1990 Act**]**, and such other provisions of the Tax Acts as relate to allowances or charges under **[**[F48]that Part**]**, shall apply with any necessary adaptations in relation to machinery or plant provided for use or used by a person entitled to rents or receipts falling within Schedule A for the maintenance, repair or management of premises in respect of which those rents or receipts arise as they apply in relation to machinery or plant provided for use or used for the purposes of a trade.

(2) Except as provided by subsection (3) below, the Tax Acts shall apply in relation to any allowances or balancing charges which fall to be made by virtue of this section as if they were to be made in taxing a trade.

(3) [M78]Allowances and balancing charges which by virtue of this section fall to be made to or on a person for any chargeable period shall be made by—
  (a) adding the amount of any such allowances to the expenditure on maintenance, repair or management of the premises which is deductible under sections 25 or 28 in computing his profits or gains for the purposes of Schedule A; and
  (b) deducting the amount on which any such charge is to be made from that expenditure (or from the sum of that expenditure and any addition made to it under this subsection);

and **[**[F49]section 73 of the 1990 Act**]** (manner of making allowances or charges) shall not apply.

(4) Any charge falling to be made under this section shall, in so far as a deduction cannot be made for it under subsection (3)(b) above, be made under Case VI of Schedule D.

(5) [M79]No allowance or balancing charge shall be made by virtue of this section for any chargeable period in respect of expenditure incurred by any person on machinery or plant, except in pursuance of an election made by him for that period; but an election

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for any chargeable period shall have effect as an election for that and all subsequent chargeable periods.

(6) Any such election shall be made by notice to the inspector either for all machinery or plant provided for use or used for the maintenance, repair or management of the relevant premises or for any class of machinery or plant so provided or used; but an election for machinery or plant of any class shall not be made for any chargeable period after payments made in that or a subsequent chargeable period for the maintenance, repair or management of the relevant premises have been taken into account in an assessment or claim for repayment of tax which has been finally determined.

(7) Corresponding allowances or charges in the case of the same machinery or plant shall not be made under **[**[F50]Part II of the 1990 Act**]** (whether for the same or different chargeable periods) both in computing profits or gains for the purposes of Schedule A and in some other way; and, on any assessment to tax, expenditure to which an election under this section applies shall not be taken into account otherwise than under **[**[F50]that Part**]**.

(8) The Tax Acts shall have effect as if this section were contained in **[**[F51]Part II of the 1990 Act**]**.

Textual Amendments

F48 1990(C) s.164*and* Sch.1 para.8(2)(a).*Previously*
"Chapter II of Part I of the 1968 Act and Chapter I of Part III of the Finance Act 1971,"
and
"those Chapters"
respectively.

F49 1990(C) s.164*and* Sch.1 para.8(2)(b).*Previously*
"sections 46 of the 1968 Act and 48 of the Finance Act 1971".

F50 1990(C) s.164*and* Sch.1 para.8(2)(c).*Previously*
"Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971",*and*
"those chapters"
respectively.

F51 1990(C) s.164*and* Sch.1 para.8(2)(d).*Previously*
"Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971, as the case may require.".

Modifications etc. (not altering text)

C69 S. 32 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 8**; and s. 32 (as so modified) applied in part by Capital Allowances Act 1990 (c. 1), s. 67(3) (as amended by Sch. 6 para. 32 of the modifying Act)

Marginal Citations

M77 SOURCE-1970 s. 78 (1); 1971 s. 47(2)
M78 SOURCE-1970 S. 78(2); 1971 S. 47(2)
M79 SOURCE-1970 S. 78(3)–(6); 1971 s. 47(2)

33 Agricultural land: allowance for excess expenditure on maintenance.

(1) Where in the case of an estate which consists of or includes agricultural land—

(a) [M80]provision is made in sections 25 to 32 for the deduction of a sum in respect of payments in a chargeable period for maintenance, repairs, insurance or

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management of the estate, or in respect of allowances for machinery or plant provided for use or used on the estate, and

(b) owing to the insufficiency of rents and receipts to which the owner of the estate becomes entitled in that period, whether from the estate or from other property, the sum in question cannot be deducted (other amounts deductible under Schedule A being treated as deductible in priority thereto),

then, subject to subsection (2) below, the sum in question shall be treated as if it were the amount of an allowance falling to be made under **[**[F52]the 1990 Act**]** by way of discharge or repayment of tax, and available primarily against agricultural income as defined in **[**[F52]section 133**]** of that Act.

(2) The sum in question shall not exceed the sum which would have fallen to be so treated if—

(a) the estate had not included such parts thereof as were used wholly for purposes other than purposes of husbandry, and

(b) payments or allowances in respect of parts thereof which were used partly for purposes of husbandry and partly for other purposes were reduced to an extent corresponding to the extent to which those parts were used for other purposes.

(3) [M81]In this section—

"agricultural land" means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry; and

"estate" means any land (including any houses or other buildings) managed as one estate.

[[F53](4) Sections 141 and 145 of the 1990 Act shall apply as if this section were contained in Part V of that Act.**]**

Textual Amendments

F52 1990(C) s.164*and* Sch.1 para.8(3)(a).*Previously*
"the 1968 Act"
and
"section 69"
respectively.

F53 1990(C) s.164*and* Sch.1 para.8(3)(b).*Previously*
"(4) Sections 71 and 74 of the 1968 Act shall apply as if this section were contained in Part I of that Act.".

Modifications etc. (not altering text)

C70 *See* 1979(C) s.34(4)(a)—*allowance under* s.33*not to be treated as a capital allowance in computing capital losses.*

Marginal Citations

M80 SOURCE-1970 s. 79(1); 1987 Sch. 15 para. 13

M81 SOURCE-1970 s. 79(2)

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[F54 Connected persons]

Textual Amendments

F54 Ss. 33A, 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

F55 33A Rents or receipts payable by a connected person.

(1) Subsection (2) below applies where—

(a) any rents or receipts in respect of which a person is chargeable to tax under Schedule A accrue in a chargeable period of his earlier than the one in which they are payable,

(b) the person by whom they are payable is entitled to a deduction in respect of them in computing his profits or gains for tax purposes, and

(c) the two persons are connected with one another when the rents or receipts accrue, or were connected with one another at any time before they accrue and after both 9th March 1992 and the making of the lease or other agreement under which they accrue.

(2) The chargeable person shall be regarded for the purposes of Schedule A as becoming entitled to the rents or receipts in the chargeable period in which they accrue (rather than in the chargeable period in which they become payable).

(3) For the purposes of this section, any rents or receipts shall be taken to accrue at the times at which, and in the amounts in which, they are taken to accrue for the purposes of calculating the deduction mentioned in subsection (1)(b) above.

(4) Section 839 (connected persons) shall apply for the purposes of this section.

Textual Amendments

F55 S. 33A inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

F56 33B Rents or receipts relating to land in respect of which a connected person makes payments to a third party.

(1) Subsection (2) below applies where—

(a) any rents or receipts in respect of which a person is chargeable to tax under Schedule A accrue in a chargeable period of his earlier than the one in which they are payable,

(b) the land to which the rents or receipts relate is land in respect of which another person becomes entitled to a relevant tax deduction at any time before the rents or receipts become payable,

(c) the two persons are connected with one another when the rents or receipts accrue, or were connected with one another at any time before they accrue and after both 9th March 1992 and the making of the lease or other agreement referred to in subsection (4) below, and

(d) section 33A(2) does not apply.

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(2) The chargeable person shall be regarded for the purposes of Schedule A as becoming entitled to the rents or receipts in the chargeable period in which they accrue (rather than in the chargeable period in which they become payable).

(3) For the purposes of this section, any rents or receipts payable to the chargeable person shall be taken to accrue at the times at which, and in the amounts in which, they would be taken to accrue for the purposes of calculating a deduction in respect of them in computing his profits or gains for tax purposes if—
  (a) they were payable by him instead of to him, and
  (b) he were assessable to tax under Case I of Schedule D in respect of his profits or gains.

(4) In this section, "relevant tax deduction", in relation to a person and any land, means a deduction (in computing the person's profits or gains for tax purposes) in respect of any rents or other sums payable after they accrue under a lease or other agreement relating to the land or any part of it.

(5) For the purposes of this section—
  (a) a person shall be regarded as becoming entitled to a relevant tax deduction when the rents or other sums to which the deduction relates accrue, and
  (b) any rents or other sums to which a relevant tax deduction relates shall be taken to accrue at the times at which, and in the amounts in which, they are taken to accrue for the purposes of calculating the deduction.

(6) Section 839 (connected persons) shall apply for the purposes of this section.

Textual Amendments

F56 S. 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

Premiums, leases at undervalue etc

34 Treatment of premiums etc. as rent or Schedule D profits.

(1) [M82]Where the payment of any premium is required under a lease, or otherwise under the terms subject to which a lease is granted, and the duration of the lease does not exceed 50 years, the landlord shall be treated for the purposes of the Tax Acts as becoming entitled when the lease is granted to an amount by way of rent (in addition to any actual rent) equal to—

$$P - \frac{(\mathrm{Py}Y)}{50}$$

where P is the premium and Y is the number of complete periods of 12 months (other than the first) comprised in the duration of the lease.

(2) Where the terms subject to which a lease is granted impose on the tenant an obligation to carry out any work on the premises, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition

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to any other premium) of an amount equal to the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its then value would have been if those terms did not impose that obligation on the tenant.

(3) [M83]Subsection (2) above shall not apply in so far as the obligation requires the carrying out of work the payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible from the rent under sections 25 to 30.

(4) [M84]Where, under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or a part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—

(a) in computing tax chargeable by virtue of this subsection in respect of a sum payable in lieu of rent, the duration of the lease shall be treated as not including any period other than that in relation to which the sum is payable; and

(b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the sum in question becomes payable by the tenant.

(5) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—

(a) in computing tax chargeable by virtue of this subsection, the duration of the lease shall be treated as not including any period which precedes the time at which the variation or waiver takes effect, or falls after the time at which it ceases to have effect; and

(b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be deemed to become due when the contract providing for the variation or waiver is entered into.

(6) [M85]Where a payment falling within subsection (1), (4) or (5) above is due to a person other than the landlord, no charge to tax shall arise under that subsection, but any amount which would otherwise fall to be treated as rent shall be treated as profits or gains of that other person chargeable under Case VI of Schedule D.

(7) Subsection (6) above shall not apply in relation to any payment falling within subsection (5) above unless it is due to a person who is, within the meaning of section 839, connected with the landlord.

(8) [M86]Where an amount by reference to which a person is chargeable to tax by virtue of this section is payable by instalments ("the tax instalments"), the tax chargeable by reference to that amount may, if that person satisfies the Board that he would otherwise suffer undue hardship, be paid at his option by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the tax instalments is payable.

(9) Section 22(2) and (3) shall not apply in relation to amounts which, in computing profits or gains for the purposes of Schedule A, are relevant only by virtue of this section.

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Modifications etc. (not altering text)

C71 *See* 1976(D) s.34*and* Sch.6 para.4. 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part. X*with effect from* 19*March* 1985.

C72 *See* 1979(C) s.106*and* Sch.3 paras.5*and* 7*—exclusion of amounts taxed under this section in computing capital gains.*

Marginal Citations

M82 SOURCE-1970 s. 80(1), (2)

M83 SOURCE-1970 s. 80(2); 1987 Sch. 15 para. 13

M84 SOURCE-1970 s. 80(3), (4)

M85 SOURCE-1970 s. 80(5)

M86 SOURCE-1970 s. 80(6), (7); 1972 s. 81(1)

35 Schedule D charge on assignment of lease granted at an undervalue.

(1) [M87]This section applies to any lease of a duration not exceeding 50 years where the terms subject to which it was granted are such that the grantor, having regard to values prevailing at the time it was granted and on the assumption that the negotiations for the lease were at arm's length, could have required the payment of an additional sum by way of premium, or additional premium, for the grant of the lease; and in this section any such additional sum is referred to as the "amount foregone".

(2) On any assignment of a lease to which this section applies for a consideration—

(a) where the lease has not previously been assigned, exceeding the premium, if any, for which it was granted, or

(b) where the lease has been previously assigned, exceeding the consideration for which it was last assigned,

the amount of the excess, in so far as it is not greater than the amount foregone reduced by the amount of any such excess arising on a previous assignment of the lease, shall in the same proportion as the amount foregone would, under section 34(1), have fallen to be treated as rent if it had been a premium under the lease, be treated as profits or gains of the assignor chargeable to tax under Case VI of Schedule D.

(3) [M88]If there is submitted to the inspector, by the grantor or any assignor or assignee of the lease, a statement showing whether or not a charge to tax arises or may arise under this section and, if so, the amount on which the charge arises or may arise, then, if the inspector is satisfied as to the accuracy of the statement, he shall certify the accuracy thereof.

Modifications etc. (not altering text)

C73 *See* 1979(C) s.106*and* Sch.3 para.6(2)—1979(C) s.31 (*exclusion from capital gains computation of sums charged to income tax or corporation tax*)*not to apply to amounts on which tax paid under* s.35.

C74 S. 35 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), s. 8, **Sch. 3 para. 9(1)**

C75 S. 35 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), ss. 21, 68(4), **Sch. 4 para. 15(1)** (with s. 40(7)); S.I. 1994/2189, **art. 2**, Sch.
S. 35 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), s. 8, **Sch. 3 para. 9(1)**
S. 35 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), ss. 135, 149(1)(f), **Sch. 7 para. 21(1)**

C76 S. 35(2) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 10**

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Marginal Citations

M87 SOURCE-1970 s. 81(1)

M88 SOURCE-1970 s. 81(2)

36 Schedule D charge on sale of land with right to reconveyance.

(1) [M89]Where the terms subject to which an estate or interest in land is sold provide that it shall be, or may be required to be, reconveyed at a future date to the vendor or a person connected with him, the vendor shall be chargeable to tax under Case VI of Schedule D on any amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed or, if the earliest date at which in accordance with those terms it would fall to be reconveyed is a date two years or more after the sale, on that excess reduced by one-fiftieth thereof for each complete year (other than the first) in the period between the sale and that date.

(2) Where, under the terms of the sale, the date of the reconveyance is not fixed, then—

(a) if the price on reconveyance varies with the date, the price shall be taken, for the purposes of this section, to be the lowest possible under the terms of the sale, and

(b) there shall be repaid to the vendor, on a claim made before the expiry of six years after the reconveyance takes place, any amount by which tax assessed on him by virtue of this section exceeded the amount which would have been so assessed if that date had been treated for the purposes of this section as the date fixed by the terms of the sale.

(3) [M90]Where the terms of the sale provide for the grant of a lease directly or indirectly out of the estate or interest to the vendor or a person connected with him, this section shall, subject to subsection (4) below, apply as if the grant of the lease were a reconveyance of the estate or interest at a price equal to the sum of the amount of the premium (if any) for the lease and the value at the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.

(4) Subsection (3) above shall not apply in any case where the lease is granted and begins to run within one month after the sale.

(5) [M91]In this section references to a person connected with another shall be construed in accordance with section 839.

Modifications etc. (not altering text)

C77 S. 36 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), ss. 252(1)(3), **Sch. 24 para. 24**

C78 *See* 1976(D) Sch.6 para.4. 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*with effect from* 19*March* 1985.

C79 S. 36(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 11**

C80 *See* 1979(C) s.106*and* Sch.3 para.6(3)*—effect of claim under* s.36(2)(b)*on computation of capital gains.*

C81 *See* 1979(C) s.106*and* Sch.3 para.5(3)*—deduction of amounts chargeable under* s.36*in computing capital gains.*

Marginal Citations

M89 SOURCE-1970 s. 82(1), (2)

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M90 SOURCE-1970 S. 82(3)
M91 SOURCE-1970 s. 82(1), (3)

37 Premiums paid etc: deductions from premiums and rent received.

(1) [M92]This section applies in any case where in respect of a lease of any premises—

(a) tax has become chargeable under the provisions of section 34 or 35 on any amount (disregarding any reduction in that amount under **[**[F57]subsection (2) or (3) below**]**); or

(b) tax would have become so chargeable on that amount but for the operation of **[**[F57]subsection (2) or (3) below**]**, or but for any exemption from tax;

and **[**[F57]that amount**]** is in this section referred to as "the amount chargeable on the superior interest" and any such lease is referred to as "the head lease".

(2) Where—

(a) a lease is granted out of, or there is a disposition of, the head lease, and

(b) in respect of that grant or disposition a person would, apart from this subsection, be chargeable under section 34 or 35 on any amount ("the later chargeable amount"),

then the amount on which he is so chargeable shall, subject to subsection (3) below, be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.

(3) Where a person would, apart from subsection (2) above, be chargeable under section 34 or 35 in respect of a lease or disposition which extends to a part only of the premises subject to the head lease, the amount on which he is so chargeable shall be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.

(4) [M93]Subject to subsection (5) below, the person for the time being entitled to the head lease shall be treated for the purposes of deductions under sections 25 and 26 from rent receivable by him in respect of those or other premises as paying rent for those premises (in addition to any actual rent), becoming due from day to day, during any part of the period in respect of which the amount chargeable on the superior interest arose for which he was entitled to the head lease, and, in all, bearing to that amount the same proportion as that part of the period bears to the whole.

(5) [M94]Where subsection (2) above applies, subsection (4) above shall apply for the period in respect of which the later chargeable amount arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the later chargeable amount, and shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.

(6) Where subsection (3) above applies, subsections (4) and (5) above shall be applied separately to the part of the premises referred to in subsection (3) above and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were substituted a reference to that amount proportionately adjusted.

(7) [M95]For the purposes of this section—

(a) the appropriate fraction of the amount chargeable on the superior interest is the fraction—

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$$\frac{A}{B}$$

where—

A is the period in respect of which the later chargeable amount arose; and

B is the period in respect of which the amount chargeable on the superior interest arose; and

(b) the period in respect of which an amount arose—

(i) where it arose under section 34, shall be the period treated in computing the amount as being the duration of the lease;

(ii) where it arose under section 35, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment.

(8) [M96]Where the amount chargeable on the superior interest arose under section 34(2) by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, subsections (1) to (6) above shall apply as if the obligation had not included the carrying out of that work and that amount had been calculated accordingly.

(9) [M97]An amount or part of an amount shall not be deducted under this section more than once from any sum, or from more than one sum, and shall not in any case be so deducted if it has been otherwise allowed as a deduction in computing the income of any person for tax purposes.

Textual Amendments

F57 1990 s.89*and* Sch.14 para.2 (*correction of errors*)*—deemed always to have had effect. Previously*
"subsection (2) below", "this subsection"
and
"the amount of that tax"
respectively.

Modifications etc. (not altering text)

C82 S. 37 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 12**

C83 *See* 1979(C) s.106*and* Sch.3 para.6(1)*—allowance under this subsection to be deducted from any loss on disposal of lease.*

C84 *See* 1976(D) Sch.6 para.4(4)*—no account to be taken of any deduction of realised development value.*
1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*with effect from* 19*March* 1985.

Marginal Citations

M92 SOURCE-1970 s. 83(1); 1978 s. 32(2)
M93 SOURCE-1970 s. 83(2)
M94 SOURCE-1970 s. 83(3)
M95 SOURCE-1970 s. 83(4)
M96 SOURCE-1970 s. 83(5)
M97 SOURCE-1970 s. 83(7)

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VALID FROM 06/04/2005

[F58 37A Section 37(4) and reductions in receipts under ITTOIA 2005

(1) This section applies if—

(a) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 ("the ITTOIA receipt"), there is a reduction under section 288 of that Act by reference to a taxed receipt, and

(b) the taxed receipt is the amount chargeable on the superior interest for the purposes of section 37.

(2) Section 37(4) shall apply for the period in respect of which the ITTOIA receipt arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the amount of the ITTOIA receipt given by the formula in section 277, 279, 280, 281 or 282 of ITTOIA 2005, as the case may be.

(3) Section 37(4) shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.

(4) Subsection (5) applies if—

(a) the ITTOIA receipt is in respect of a lease granted out of the taxed lease,

(b) the taxed lease is the head lease for the purposes of section 37, and

(c) the lease granted as mentioned in paragraph (a) does not extend to the whole of the premises subject to the head lease.

(5) Section 37(4) and subsections (2) and (3) above shall be applied separately to the part of the premises subject to the lease and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were a reference to that amount proportionately adjusted.

(6) For the purposes of this section the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

where—

A is the period in respect of which the ITTOIA receipt arose, and

B is the period in respect of which the amount chargeable on the superior interest arose for the purposes of section 37.

(7) For the purposes of this section the period in respect of which an ITTOIA receipt arose is its receipt period (within the meaning of Chapter 4 of Part 3 of ITTOIA 2005 (see section 288(6))).

(8) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—

"reduction under section 288 by reference to a taxed receipt" (see section 290(6) of that Act),

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"taxed lease" (see section 287(4) of that Act), and
"taxed receipt" (see section 287(4) of that Act).

(9) In the application of this section to Scotland, references to a lease granted out of a taxed lease are to be construed as references to a sublease of land subject to the taxed lease.**]**

Textual Amendments

F58 S. 37A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 21** (with Sch. 2)

38 Rules for ascertaining duration of leases.

(1) [M98]In ascertaining the duration of a lease for the purposes of sections 34 to 36—

(a) in any case where—

(i) any of the terms of the lease (whether relating to forfeiture or any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiry of the term of the lease, and

(ii) the premium was not substantially greater than it would have been, on the assumptions required by subsections (3) and (4) below, had the term been one expiring on that date,

the lease shall not be treated as having been granted for a term longer than one ending on that date;

(b) where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended; and

(c) where the tenant or a person connected with him (within the meaning of section 839) is or may become entitled to a further lease or the grant of a further lease (whenever commencing) of the same premises or of premises including the whole or part of the same premises, the term of the lease may be treated as not expiring before the term of the further lease.

(2) [M99]Subsection (1) above shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease, or in relation to tax under section 34(5), at a time when the contract providing for the variation or waiver is entered into.

(3) It shall be assumed in applying subsection (1) above that all parties concerned, whatever their relationship, act as they would act if they were at arm's length.

(4) In any case where—

(a) by the lease or in connection with the granting of it benefits were conferred other than—

(i) vacant possession and beneficial occupation of the premises, or

(ii) the right to receive rent at a reasonable commercial rate in respect of the premises, or

(b) payments were made which would not be expected to be made by parties acting at arm's length if no other benefits had been so conferred,

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it shall also be assumed, unless it is shown that the benefits were not conferred or the payments made for the purpose of securing a tax advantage in the application of this Part, that the benefits would not have been conferred nor the payments made had the lease been for a term ending on the date mentioned in subsection (1)(a) above.

(5) [M100]Where an inspector has reason to believe that a person has information relevant to the ascertainment of the duration of a lease in accordance with subsections (1) to (4) above, the inspector may by notice require him to give, within a time specified in the notice, such information on the matters so specified as is in his possession; but a solicitor shall not be so required to do more, in relation to anything done by him on behalf of a client, than state that he is or was so acting and give the name and address of his client.

(6) [M101]In this section in relation to Scotland, the expression "term", where referring to the duration of a lease, means period.

(7) [M102]This section has effect subject to paragraphs 2 and 3 of Schedule 30.

Modifications etc. (not altering text)

C85 S. 38(1)(a)(4) excluded (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 77, Sch. 17 paras. 5(4)(6), 6(1), 7.

C86 *See* 1990(C) s.11(4)—*rules applied in connection with leases for industrial buildings and structures.*

Marginal Citations

M98 SOURCE-1970 S. 84(1)(b)–(d); 1972 s. 81(2)(a), (b)

M99 SOURCE-1970 s. 84(2); 1972 s. 81(2)(c)

M100 SOURCE-1970 s. 84(3A); 1972 s. 81(5)

M101 SOURCE-1970 s. 84(3); 1972 s. 81(2)(d)

M102 SOURCE-1970 s. 84(4)

39 Saving for pre-1963 leases, and special relief for individuals.

(1) [M103]Subject to subsection (2) below, sections 34 to 36 shall not apply in relation to a lease granted, or an estate or interest in land sold, before the beginning of the year 1963-64 or in pursuance of a contract entered into before 4th April 1963.

(2) Section 34(5) shall apply to the variation or waiver of any terms of a lease (not being a variation or waiver made in pursuance of a contract entered into before 4th April 1963) notwithstanding that the lease was granted before the beginning of the year 1963-64.

(3) *Schedule* 2*shall have effect for giving relief on a claim being made by him in that behalf from any increase in an individual's liability to income tax which is attributable to amounts being treated by virtue of section* 34, 35*or* 36*as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable*[F59].

Textual Amendments

F59 *Repealed by* 1988(F) ss.75, 148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

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Marginal Citations
M103 SOURCE-1970 s. 85(1)

Supplemental: Schedules A and D

40 Tax treatment of receipts and outgoings on sale of land.

(1) [M104]Where—

(a) by virtue of a contract for the sale of an estate or interest in land there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which becomes due after the making of the contract but before the time to which the apportionment falls to be made, and

(b) a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser,

the purchaser shall be treated for the purposes of tax under Schedule A as if that part had become receivable or payable on his behalf immediately after the time to which the apportionment falls to be made.

(2) Where by virtue of such a contract there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of tax under Schedule A as if the contract had been entered into before the receipt or outgoing became due, and subsection (1) above shall apply accordingly.

(3) Where on the sale of an estate or interest in land there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which is to become receivable or be paid by the purchaser after the making of the apportionment, then for the purposes of tax under Schedule A—

(a) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of it shall be treated as reduced by so much thereof as was apportioned to the vendor, and

(b) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and had become receivable, or had been paid, directly by him immediately before the time to which the apportionment is made and, where it is part of an outgoing, had become due immediately before that time.

(4) Any reference in subsection (1) or (2) above to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.

(5) This section shall apply as respects tax under Case VI of Schedule D in a case falling within paragraph 4 of Schedule A as it applies as respects tax under Schedule A in other cases.

Marginal Citations
M104 SOURCE-1970 s. 86

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41 Relief for rent etc. not paid.

(1) [M105]Where on a claim in that behalf a person proves—

(a) that he has not received an amount which he was entitled to receive in respect of any rents or receipts on the profits or gains arising from which he would be chargeable under Schedule A; and

(b) if the non-receipt of that amount was attributable to the default of another person by whom it was payable, that the claimant has taken any reasonable steps available to him to enforce payment; or

(c) if the claimant waived payment of that amount, that the waiver was made without consideration, and was reasonably made in order to avoid hardship;

then subject to subsection (2) below, the claimant shall be treated for tax purposes for all relevant chargeable periods as if he had not been entitled to that amount, and such adjustments shall be made, by repayment or otherwise, as the case may require.

(2) If all or any part of that amount is subsequently received, the claimant or, if he is dead, his executors or administrators shall not later than six months thereafter give notice to the inspector, and such readjustment of liability to tax (for all relevant chargeable periods) shall be made as may be necessary, and may be made at any time at which it could be made if it related only to tax for the chargeable period in which the amount, or that part of the amount, is received.

(3) [M106]Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 34 to 36 as it applies to profits or gains chargeable to tax under Schedule A.

Marginal Citations

M105 SOURCE-1970 s. 87(1)

M106 SOURCE-1970 s. 87(2)

42 Appeals against determinations under sections 34 to 36.

(1) [M107]Where it appears to the inspector that the determination of any amount on which a person may be chargeable to tax by virtue of section 34, 35 or 36 may affect the liability to income tax, corporation tax or capital gains tax of other persons he may give notice to those persons as well as to the first-mentioned person of the determination he proposes to make and of the rights conferred on them by this section.

(2) Any person to whom such a notice is given may, within 30 days after the date on which it is given, object to the proposed determination by notice given to the inspector.

(3) Where notices have been given under subsection (1) above and no notice of objection is duly given under subsection (2) above the inspector shall make the determination as proposed in his notices and the determination shall not be called in question in any proceedings.

(4) Where a notice of objection is duly given the amount mentioned in subsection (1) above shall be determined in like manner as an appeal and shall be so determined by the Special Commissioners or such body of General Commissioners as may be agreed on by the person to be charged and all persons who have given notice of objection.

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(5) All persons to whom notices have been given under subsection (1) above may take part in any proceedings under subsection (4) above and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings; and their successors in title shall also be so bound.

(6) A notice under subsection (1) above may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.

(7) An inspector may by notice require any person to give within the time specified in the notice such information as appears to the inspector to be required for deciding whether to give a notice under subsection (1) above to any person.

Modifications etc. (not altering text)

C87 S. 42 applied (3.11.2004 with effect in accordance with reg. 1(1) of the affecting S.I.) by The Energy-Saving Items (Deductions for Expenditure etc.) Regulations 2004 (S.I. 2004/2664), **reg. 4**

Marginal Citations

M107 SOURCE- 1972 s. 82

VALID FROM 01/05/1995

[F60 42A Non-residents and their representatives.

(1) The Board may by regulations make provision for the charging, assessment, collection and recovery on or from prescribed persons falling within subsection (2) below of prescribed amounts in respect of the tax which is or may become chargeable under Schedule A on the income of any person who has his usual place of abode outside the United Kingdom ("the non-resident").

(2) A person falls within this subsection if he is—
- (a) a person by whom any such sums are payable to the non-resident as fall, or would fall, to be treated as receipts of a Schedule A business carried on by the non-resident; or
- (b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.

(3) A person on whom any obligation to make payments to the Board is imposed by regulations under this section shall be entitled—
- (a) to be indemnified by the non-resident for all such payments; and
- (b) to retain, out of any sums otherwise due from him to the non-resident, or received by him on behalf of the non-resident, amounts sufficient for meeting any liabilities under the regulations to make payments to the Board which have been discharged by that person or to which he is subject.

(4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may include any or all of the following provisions, that is to say—

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(a) provision for the amount of any payment to be made to the Board in respect of the tax on any income to be calculated by reference to such factors as may be prescribed;

(b) provision for the determination in accordance with any such regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Board;

(c) provision for requiring the payment of interest on amounts which are not paid to the Board at the times required under any such regulations;

(d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a person falling within subsection (2) above, and as to the particulars to be included in any such certificate;

(e) provision for the making of repayments of tax to the non-resident and for such repayments to be made in prescribed cases to persons falling within subsection (2) above;

(f) provision for the payment of interest by the Board on sums repaid under any such regulations;

(g) provision for the rights and obligations arising under any such regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed;

(h) provision for the making and determination of applications for requirements of any such regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications;

(i) provision for appeals with respect to questions arising under any such regulations;

(j) provision requiring prescribed persons falling within subsection (2)(b) above to register with the Board;

(k) provision requiring persons registered with the Board and other prescribed persons falling within subsection (2) above to make returns and supply prescribed information to the Board and to make available prescribed books, documents and other records for inspection on behalf of the Board;

(l) provision for the partnership, as such, to be treated as the person falling within subsection (2) above in a case where a liability to make any payment under the regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership;

(m) provision which, in relation to payments to be made by virtue of this section in respect of any tax or to any sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from this section with respect to cases in which tax is or is treated as deducted from any income.

(5) Interest required to be paid by any regulations under this section shall be paid without deduction of tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.

(6) Regulations under this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate;

and the provision that may be made by virtue of paragraph (b) above may include provision which, in connection with any other provision made by any such

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regulations, modifies the operation in any case of section 59A of the Management Act or Schedule 21 to the Finance Act 1995 (payments on account of income tax).

(7) In this section—

"prescribed" means prescribed by, or determined by an officer of the Board in accordance with, regulations made by the Board under this section; and

"subordinate legislation" has the same meaning as in the [M108]Interpretation Act 1978.

(8) This section shall have effect—

(a) as if references in this section to a Schedule A business included references to any activities which would be comprised in a Schedule A business if they were carried on by an individual, rather than by a company; and

(b) in relation to companies that carry on such activities, as if the reference in subsection (1) above to tax which is or may become chargeable under Schedule A included a reference to tax which is or may become chargeable under Case VI of Schedule D.**]**

Textual Amendments

F60 S. 42A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 40(1)**

Marginal Citations

M108 1978 c. 30.

43 Non-residents.

(1) [M109]Section 78 of the Management Act (taxation of non-residents in name of agent) shall not apply to tax on profits or gains chargeable to tax under Schedule A, or on any of the profits or gains chargeable under Case VI of Schedule D—

(a) in a case falling within paragraph 4 of Schedule A; or

(b) which arise under the terms of a lease, but to a person other than the landlord, or otherwise arise out of any disposition or contract such that if they arose to the person making it they would be chargeable under Schedule A,

where payment is made (whether in the United Kingdom or elsewhere) directly to a person whose usual place of abode is outside the United Kingdom, but sections 349(1) and 350 shall apply in relation to the payment as they apply to annual payments charged with tax under Case III [F61]. . . of Schedule D and not payable out of profits or gains brought into charge to income tax.

(2) Subsection (1) above shall apply in relation to sums chargeable to tax under Case VI of Schedule D by virtue of any provision of sections 34 to 36 as it applies to profits or gains chargeable to tax under Schedule A.

(3) Where by virtue of subsection (1) above the income tax chargeable for any year of assessment on a person's profits or gains chargeable to tax under Schedule A or Case VI of Schedule D or both would, apart from this subsection, be greater than the tax which would be chargeable thereon apart from section 22(2) and (3), then, on a claim in that behalf being made, relief shall be given from the excess, whether by way of repayment or otherwise.

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Textual Amendments

F61 Words "or IV" in s. 43(1) repealed (retrospectively) by Finance Act 1994 (c. 9), ss. 146, 258, Sch. 17 para. 1, **Sch. 26 Pt. V(22)**, Note

Marginal Citations

M109 SOURCE-1970 s. 89

VALID FROM 28/07/2000

[F62 Rent factoring

Textual Amendments

F62 Ss. 43A-43G and cross-heading inserted (with effect in accordance with s. 110(2) of the amending Act) by Finance Act 2000 (c. 17), **s.110(1)**

43A Finance agreement: interpretation.

(1) A transaction is a finance agreement for the purposes of sections 43B to 43F if in accordance with normal accounting practice the accounts of a company which receives money under the transaction would record a financial obligation (whether in respect of a lease creditor or otherwise) in relation to that receipt.

(2) In subsection (1) "normal accounting practice" in relation to a company means normal accounting practice for a company incorporated in a part of the United Kingdom (irrespective of where the company is in fact incorporated).

(3) The reference to a company's accounts in subsection (1) shall be taken to include a reference to the consolidated group accounts of a group of companies of which it is a member; and—

(a) "group of companies" means a set of companies which, if each were incorporated in Great Britain, would form a group within the meaning given by section 262(1) of the [M110]Companies Act 1985, and

(b) "consolidated group accounts" means accounts of a kind which would satisfy the requirements of section 227 of the Companies Act 1985.

(4) For the purposes of subsection (1) a company shall be treated as receiving any money which—

(a) falls to be taken into account as a receipt for the purpose of calculating the company's liability to corporation tax, or

(b) would fall to be taken into account as a receipt for that purpose if the company were resident in the United Kingdom.

Marginal Citations

M110 1985 c. 6.

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43B Transfer of rent.

(1) This section applies to a finance agreement if it transfers a right to receive rent in respect of land in the United Kingdom from one person to another, otherwise than by means of the grant of a lease of land in the United Kingdom.

(2) A person who receives a finance amount shall be treated for the purposes of the Tax Acts as receiving it—
- (a) by way of rent,
- (b) in the course of a business falling within paragraph 1(1) of Schedule A, and
- (c) in the chargeable period in which the agreement is made;

and the finance amount shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

(3) In subsection (2) "finance amount" means a receipt in respect of which section 43A(1) is satisfied.

43C Transfer of rent: exceptions, &c.

(1) Section 43B shall not apply to a finance agreement if the term over which the financial obligation is to be reduced exceeds 15 years.

(2) Section 43B shall not apply to a finance agreement if—
- (a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under the Capital Allowances Acts, and
- (b) that person is not connected to the person from whom the right to receive rent is transferred.

(3) Section 43B shall not apply to a finance agreement if—
- (a) section 36(1) applies (without reference to section 36(3)), or
- (b) section 36(1) would apply (without reference to section 36(3)) if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed.

(4) If—
- (a) section 36(1) would apply in relation to a finance agreement by virtue only of section 36(3), and
- (b) section 43B applies in relation to the agreement,

section 36(1) shall not apply.

(5) Section 43B shall not apply to a finance agreement if section 780 applies.

(6) Section 43B(2) shall not apply to a finance amount which is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the [M111]Finance Act 1989 (life assurance)).

Marginal Citations

M111 1989 c. 26.

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43D Interposed lease.

(1) This section applies to a finance agreement under which—
- (a) a lease is granted in respect of land in the United Kingdom,
- (b) a premium is payable in respect of the lease, and
- (c) section 43A(1) is satisfied by reference to the receipt of the premium.

(2) Where this section applies, the person to whom the premium is payable shall be treated for the purposes of the Tax Acts as receiving it—
- (a) by way of rent,
- (b) in the course of a business falling within paragraph 1(1) of Schedule A, and
- (c) in the chargeable period in which the agreement is made;

and the premium shall be taken into account in computing the profits of the Schedule A business for the chargeable period in which the agreement is made.

43E Interposed lease: exceptions, &c.

(1) Section 43D shall not apply to a finance agreement if—
- (a) the term over which the financial obligation is to be reduced exceeds 15 years, or
- (b) the length of the lease does not exceed 15 years, or
- (c) the length of the lease is not significantly different from the term over which the financial obligation is to be reduced.

(2) For the purpose of subsection (1) the length of a lease shall be calculated in accordance with section 38.

(3) Section 43D shall not apply to a finance agreement if—
- (a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under the Capital Allowances Acts, and
- (b) that person is not connected to the person who grants the lease in respect of which the premium is payable.

(4) Section 43D(2) shall not apply where all or part of the premium is brought into account in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the [M112]Finance Act 1989 (life assurance)).

(5) Section 34 shall not apply in relation to a premium to which section 43D(2) applies.

Marginal Citations
M112 1989 c. 26.

43F Insurance business.

(1) In the application of sections 43A to 43E to companies carrying on insurance business a reference to accounts does not include a reference to accounts required to be prepared under Part II of the [M113]Insurance Companies Act 1982.

(2) Neither section 43B(2) nor section 43D(2) shall require any amount to be brought into account in a computation of profits of life assurance business, or any category

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of life assurance business, carried on by a company where the computation is made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Section 432A shall have effect in relation to any sum which is or would be treated as received by virtue of section 43B(2) or 43D(2) of this Act.

(4) Expressions used in this section and in Chapter I of Part XII have the same meaning in this section as in that Chapter.

Modifications etc. (not altering text)

C88 S. 43F(1) modified (with effect in accordance with reg. 4A(3) of the 1997 modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 4A(1)(2)** (as inserted (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 3, and as amended by: S.I. 2003/23, **regs. 1**, 3; S.I. 2005/2005, **regs. 1**, 4)

Marginal Citations

M113 1982 c. 50.

43G Interpretation.

(1) This section applies for the purposes of sections 43A to 43F.

(2) In those sections—

"connected" in relation to persons has the meaning given by section 839,

"rent" includes any sum which is chargeable to tax under Schedule A,

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things, but does not include a mortgage or heritable security,

"premium" has the meaning given by section 24(1) (and, in relation to Scotland, section 24(5)), and subsections (4) and (5) of section 34 shall have effect in relation to sections 43A to 43F as they have effect in relation to section 34, and

"sum" has the meaning given by section 24(4).

(3) A reference to a transfer of a right to receive rent from one person to another includes a reference to any arrangement under which rent ceases to form part of the receipts taken into account for the purposes of calculating a company's liability to corporation tax or income tax.

(4) In calculating the term over which a financial obligation is to be reduced no account shall be taken of any period during which the arrangements for reduction differ from the arrangements which apply in a previous period if—

(a) the period begins after the financial obligation has been substantially reduced, and

(b) the different arrangements for reduction are not the result of a provision for periodic review, on commercial terms, of rent under a lease.**]**

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PART III

PROVISIONS RELATING TO THE SCHEDULE C CHARGE AND GENERAL PROVISIONS ABOUT GOVERNMENT SECURITIES

General

44 Income tax: mode of charge.

(1) [M114]Income tax under Schedule C shall be charged by the Board, and shall be paid on behalf of the persons entitled to the profits, dividends or proceeds which are the subject of the tax—

(a) in the case of tax charged under paragraph 1 of that Schedule, by the persons and bodies of persons respectively entrusted with payment;

(b) in the case of tax charged under paragraph 2 of that Schedule, by the Bank of England;

(c) in the case of tax charged under paragraph 3 or 4 of that Schedule, by the banker or other person, or by the banker or dealer in coupons, as the case may be.

(2) Schedule 3 shall have effect in relation to the assessment, charge and payment of income tax under Schedule C.

Marginal Citations

M114 SOURCE-1970 s. 94

45 Interpretation of Part III.

[M115]In this Part—

"banker" includes a person acting as a banker;

"coupons" and "coupons for any overseas public revenue dividends" include warrants for and bills of exchange purporting to be drawn or made in payment of any overseas public revenue dividends;

"dividends" means any interest, public annuities, dividends or shares of annuities;

[[F63]"overseas public revenue dividends" means public revenue dividends payable out of any public revenue other than that of the United Kingdom;**]**

"public revenue", except where the context otherwise requires, includes the public revenue of any government whatsoever, and the revenue of any public authority or institution in any country outside the United Kingdom; and

"public revenue dividends" means dividends payable out of any public revenue.

Textual Amendments

F63 1988(F) s.76(2)*with respect to payments obtained on or after* 29*July* 1988.*Previously*
" "overseas public revenue dividends" means public revenue dividends payable elsewhere than in the United Kingdom (whether they are also payable in the United Kingdom or not) out of any public revenue other than public revenue of the United Kingdom;".

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Marginal Citations
M115 SOURCE-1970 s. 107, Sch. 5 para. 14

Government securities: exemptions from tax

46 Savings certificates and tax reserve certificates.

(1) [M116]Subject to subsections (3) to (6) below, income arising from savings certificates shall not be liable to tax.

(2) [M117]Tax shall not be chargeable in respect of the interest on tax reserve certificates issued by the Treasury.

(3) [M118]Subsection (1) above does not apply to any savings certificates which are purchased by or on behalf of a person in excess of the amount which a person is for the time being authorised to purchase under regulations made by the Treasury or, as respects Ulster Savings Certificates, by the Department of Finance and Personnel.

(4) Subsection (1) above does not apply to Ulster Savings Certificates unless—
  (a) the holder is resident and ordinarily resident in Northern Ireland when the certificates are repaid; or
  (b) the certificates were purchased by him and he was so resident and ordinarily resident when they were purchased.

(5) A claim under this section in respect of Ulster Savings Certificates shall be made to the Board.

(6) In this section "sa00vings certificates" means savings certificates issued under section 12 of the [M119]National Loans Act 1968 or section 7 of the [M120]National Debt Act 1958 or Section 59 of the [M121]Finance Act 1920 and any war savings certificates as defined in section 9(3) of the [M122]National Debt Act 1972, together with any savings certificates issued under any corresponding enactment forming part of the law of Northern Ireland.

Modifications etc. (not altering text)
C89 *And see, as regards Ulster Savings Certificates,* Part III Vol.5.

Marginal Citations
M116 SOURCE-1981 S. 34(1)
M117 SOURCE-1970 s. 98
M118 SOURCE-1981 s. 34(2)–(5); 1979 (C) s. 71(2)(a)
M119 1968 c. 13.
M120 1958 c.6.
M121 1920 c.18.
M122 1972 c. 65.

47 United Kingdom government securities held by non-residents.

(1) [M123]The interest on securities which—

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(a) the Treasury have power to issue for the purpose of raising any money or any loan with a condition that the interest thereon shall not be liable to income tax so long as it is shown that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, and

(b) have been issued with such a condition,

shall, subject to subsection (3) below, be exempt from tax accordingly.

(2) A claim under this section shall be made to the Board.

(3) Where any income of any person is, by virtue of any provision of the Tax Acts (and, in particular, but without prejudice to the generality of the preceding words, by virtue of Chapter III of Part XVII) to be deemed to be income of any other person, that income is not exempt from tax as being derived from a security issued by the Treasury with any condition regulating the treatment of the interest thereon for tax purposes by reason of the first-mentioned person not being ordinarily resident, or being neither domiciled nor ordinarily resident, in the United Kingdom.

Marginal Citations
M123 SOURCE-1970 s. 99

48 Securities of foreign states.

(1) [M124]Subject to subsection (3) below, no tax shall be chargeable in respect of—

(a) dividends payable in the United Kingdom on the securities of any state or territory outside the United Kingdom, or

(b) any dividends or proceeds chargeable apart from this subsection under paragraph 3 or 4 of Schedule C,

if it is proved, on a claim in that behalf made to the Board, that the person owning the securities and entitled to the dividends or proceeds is not resident in the United Kingdom.

(2) Where—

(a) securities are held under a trust, and

(b) the person who is the beneficiary in possession is the sole beneficiary in possession and can, by means either of revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust,

that person shall for the purposes of subsection (1) above be deemed to be the person owning the securities.

(3) Where any income of any person is, by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, by virtue of Chapter III of Part XVII) to be deemed to be income of any other person, that income is not exempt from tax by virtue of this section by reason of the first-mentioned person not being resident in the United Kingdom.

(4) [M125]Paragraph 1 of Schedule C shall not apply, in the case of dividends payable out of any public revenue other than the public revenue of the United Kingdom, if the securities in respect of which the dividends are payable are held in a recognised clearing system.

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Marginal Citations
M124 SOURCE-1970 s. 100
M125 SOURCE-1986 s. 48(1)

49 Stock and dividends in name of Treasury etc.

(1) [M126]No tax shall be chargeable in respect of the stock or dividends transferred to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners in pursuance of any Act of Parliament, but the Bank of England shall transmit to the Board an account of the total amount thereof.

(2) No tax shall be chargeable in respect of the stock or dividends belonging to the Crown, in whatever name they may stand in the books of the Bank of England.

Marginal Citations
M126 SOURCE-1970 s. 106(1), (2)

Government securities: interest payable without deduction of tax

50 United Kingdom securities: Treasury directions for payment without deduction of tax.

(1) [M127]The Treasury may direct that any of the following securities, that is to say—

(a) any securities issued under the War Loan Acts 1914 to 1919 or under section 60 of the [M128]Finance Act 1916;

(b) any securities issued or deemed to be issued under the [M129]National Loans Act 1939 or issued under the [M130]National Loans Act 1968;

(c) any government stock issued under section 1 of the [M131]Bank of England Act 1946, section 1 of the [M132]Cable and Wireless Act 1946, section 65(1) of the [M133]Town and Country Planning Act 1947 or section 62(1) of the [M134]Town and Country Planning (Scotland) Act 1947; and

(d) any such stock as is mentioned in section 33(1) of the [M135]Coal Industry Nationalisation Act 1946 or section 26(1) of the [M136]Iron and Steel Act 1967;

shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and subject to the provisions of this section the interest shall be so paid accordingly, but shall be chargeable under Case III of Schedule D.

(2) [M137]The holder of any registered securities the interest on which is by virtue of directions given under subsection (1) above payable without deduction of tax may make an application to the Bank under this subsection requesting that income tax shall be deducted from the interest on those securities before payment thereof.

(3) Where any such application is made, income tax in respect of the interest on those securities shall, so long as they remain registered in the name of the applicant and subject to the withdrawal of the application under subsection (5) below, be deducted and charged in the same manner as if they were not securities to which subsection (1) above applied.

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(4) [M138]An application under subsection (2) above shall be made in such form as the Bank with the approval of the Treasury may prescribe, and any application made less than two months before the date on which a payment of interest falls due shall only have effect as regards any payment of interest subsequent to that payment.

(5) An application made under subsection (2) above may at any time be withdrawn by notice to the Bank in such form as the Bank may with the approval of the Treasury prescribe, but an application so withdrawn shall, notwithstanding the withdrawal, continue to have effect as regards any interest payable less than two months after the date the notice is received at the Bank.

(6) Where any securities to which subsection (2) above applies are held on trust, the holders of the securities may make an application under that subsection in respect thereof without the consent of any other person, notwithstanding anything in the instrument creating the trust.

(7) In this section—

"the Bank" means the Bank of England or the Bank of Ireland as the case requires, and

"registered" means entered in the register of the Bank.

Marginal Citations

M127 SOURCE-1970 s. 101(1)
M128 1916 c. 89.
M129 1939 c. 117.
M130 1968 c. 13.
M131 1946 c. 46.
M132 1946 c. 82.
M133 1947 c. 51.
M134 1947 c. 53.
M135 1946 c. 59.
M136 1967 c. 17.
M137 SOURCE-1970 s. 101(2)
M138 SOURCE-1970 s. 101(3)–(6)

51 Treasury directions as respects Northern Ireland securities.

(1) [M139]The Treasury may, on the application of the Department of Finance and Personnel, as respects any securities to which this section applies, direct that the securities specified in the direction shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and in relation to any securities so specified and the interest thereon, section 50 shall have effect as if—

(a) the securities were securities in respect of which a direction had been given by the Treasury under subsection (1) of that section;

(b) references in that section to "the Bank" were (notwithstanding subsection (7) of that section) references to the bank in the books of which the securities are registered or inscribed; and

(c) the references in subsections (4) and (5) of that section to the Treasury were references to the Department of Finance and Personnel.

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(2) The securities to which this section applies are securities issued under section 11(1)(c) of the [M140]Exchequer and Financial Provisions Act (Northern Ireland) 1950 for money borrowed by the Department of Finance and Personnel for the purposes of making issues from the Consolidated Fund of Northern Ireland.

Marginal Citations

M139 SOURCE-1970 s. 102

M140 1950 c. 3 (N.I.)

VALID FROM 29/04/1996

[[F64]51AA Commencement of direction under section 50 or 51.

A direction under section 50 or 51 that any security shall be deemed to have been issued subject to the condition that the interest thereon shall be paid without deduction of tax may provide that the direction is to have effect in relation only to payments of interest made on or after such date as may be specified in the direction.**]**

Textual Amendments

F64 S. 51AA inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 155**

VALID FROM 01/05/1995

[[F65]51A Gilt-edged securities held under authorised arrangements.

(1) Subject to the provisions of any regulations under section 51B, where gilt-edged securities of an eligible person are for the time being held under arrangements that satisfy the applicable requirements—

(a) those securities shall be deemed to have been issued subject to the condition that the interest on them is paid without deduction of income tax; and

(b) that interest shall be so paid accordingly, but shall be chargeable under Case III of Schedule D.

(2) For the purposes of this section gilt-edged securities are securities of an eligible person so long as—

(a) they are in the beneficial ownership of a company, local authority or local authority association or of any health service body (within the meaning of section 519A) and that company, authority, association or body is beneficially entitled to the interest on them;

(b) they are in the beneficial ownership of a person who does not fall within paragraph (a) above but is of any such description as may be prescribed by regulations made by the Treasury and that person is beneficially entitled to the interest on those securities;

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(c) the circumstances in which they are held are such that any income from them is eligible for relief from tax by virtue of section 505(1)(c), or would be so eligible but for section 505(3);

(d) the circumstances in which they are held are such that any income from them is eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2);

(e) they are assets of any such trust fund as is referred to in section 83 of the [M14I]Insurance Companies Act 1982 (premiums trust funds of members of Lloyd's); or

(f) the circumstances in which they are held are such that any income from them falls to be treated as the income of, or of the government of, a sovereign power or of an international organisation.

(3) For the purposes of this section the arrangements under which any gilt-edged securities are held shall be taken to satisfy the applicable requirements if—

(a) such conditions as may be imposed by or under any such regulations as may be made by the Treasury are satisfied in relation to those arrangements; and

(b) a declaration with respect to the satisfaction of those conditions has been made in accordance with any such regulations by such person having an entitlement to or in respect of the securities as may be determined under the regulations.

(4) The conditions that may, for the purposes of subsection (3)(a) above, be imposed by regulations under this section in relation to arrangements for the holding of any gilt-edged securities shall include—

(a) conditions as to the accounts in which the securities are to be held under the arrangements and as to the accounts into which interest on the securities is to be paid;

(b) conditions requiring persons holding the securities, or otherwise having functions under or in connection with the arrangements, to be persons of a description specified in the regulations or to be approved in accordance with the regulations;

(c) conditions requiring persons who, for purposes connected with the arrangements, act directly or indirectly—

(i) on behalf of the person beneficially entitled to the securities, or

(ii) on behalf of the person who holds them,

to be persons registered with the Board in accordance with the regulations; and

(d) conditions as to the provision about transfers of securities held under the arrangements that is to be contained in the arrangements.

(5) Regulations made by the Treasury for the purposes of this section may—

(a) impose requirements in relation to any such persons as are mentioned in subsection (4)(b) and (c) above with respect to the manner in which their functions under or in connection with the arrangements are exercised;

(b) require such persons—

(i) to consider the accuracy of any declaration made for the purposes of subsection (3)(b) above; and

(ii) themselves to make declarations as to the extent to which conditions or other requirements imposed for the purposes of this section appear to be, or to have been, satisfied or complied with;

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(c) make provision—
(i) about the making of applications for approval or registration under any such regulations;
(ii) for the circumstances in which any approval or registration is to be or may be given or refused;
(iii) for the withdrawal or cancellation of any approval or registration;
(iv) for appeals against any refusal to grant an approval or to register any person, or against the withdrawal or cancellation of any approval or registration;

(d) make provision for the publication of information showing the effect of any determinations in pursuance of regulations made by virtue of paragraph (c) above;

(e) make provision for notices to be issued by the Board to such persons as may be described in the regulations where the Board are satisfied that this section has effect, or does not have effect, in relation to any gilt-edged securities;

(f) impose obligations—
(i) on persons having any rights in relation to gilt-edged securities held under arrangements described in the regulations,
(ii) on any such persons as are mentioned in subsection (4)(b) and (c) above, and
(iii) on persons who are applying to be approved or registered for the purposes of this section,

as to the provision of information, and the production of documents, to the Board or, on request, to an officer of the Board;

and

(g) impose requirements, framed wholly or partly by reference to the opinion of the Board, as to—
(i) the contents of any declaration to be made in accordance with regulations under this section,
(ii) the form and manner in which any declaration or information is to be made or provided in accordance with any such regulations, and
(iii) the keeping and production to, or to an officer of, the Board of any document in which any such declaration or information is contained.

(6) Any person who—
(a) contravenes, or fails to comply with, any requirement imposed on him by or under any regulations under this section, or
(b) fraudulently or negligently makes or produces any incorrect declaration, information or document in pursuance of any such requirement,

shall be liable to a penalty not exceeding £25,000.

(7) In this section "gilt-edged securities" means any securities which—
(a) are gilt-edged securities for the purposes of the 1992 Act; or
(b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they were issued.

(8) In this section "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if, in any proceedings, any question arises whether a person is an

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international organisation for the purposes of this section a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

(9) Regulations made by the Treasury for the purposes of this section may—
- (a) make different provision for different cases; and
- (b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.

(10) This section shall not apply to any interest paid before such day as the Treasury may by order appoint, and different days may be appointed under this subsection for different purposes.**]**

Subordinate Legislation Made
P1 S. 51A(10) power exercised: 2.1.1996 appointed by S.I. 1995/2932

Textual Amendments
F65 S. 51A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 77**

Marginal Citations
M141 1982 c. 50.

VALID FROM 01/05/1995

[F66 51B Periodic accounting for tax on interest on gilt-edged securities.

(1) The Treasury may by regulations provide for persons to whom payments of interest on relevant gilt-edged securities are made without deduction of tax to be required to make periodic returns to an officer of the Board of—
- (a) amounts of any payments of such interest made to that person, and
- (b) amounts of tax for which, assuming the payments to bear tax at the basic rate for the relevant year of assessment, that person is to be accountable under the regulations in respect of those payments;

and any such regulations may further provide for the amounts of tax required to be included in any such return to become due, at the time when the return is required to be made, from the person required to make it.

(2) Regulations made by the Treasury for the purposes of this section may—
- (a) specify such periods as the Treasury may consider appropriate as the periods for which returns are to be made, and in respect of which any person is to account for tax, under the regulations;
- (b) make provision for enabling returns under the regulations to be combined with returns under Schedule 16 and for requiring particulars of claims and calculations made for the purposes of the regulations to be set out in the returns;
- (c) provide, in respect of any period for which a return is to be made by any person under the regulations, for that person to be obliged, before the end of the period, to make a payment on account of amounts that may become due from him in respect of that period;

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(d) impose a requirement for a special return to be made for the purposes of any obligation imposed by virtue of paragraph (c) above;

(e) provide for the amount which, under the regulations, is to be due from any person in respect of any period to be reduced by reference to amounts which—

(i) are paid by or on behalf of that person under contracts or arrangements relating to transfers of gilt-edged securities; and

(ii) are or fall to be treated as representative of interest on those securities;

(f) authorise amounts in respect of which there is an obligation to account for tax under the regulations to be treated for specified purposes of the Tax Acts as payments on which a person has borne income tax by deduction;

(g) make provision for the assessment of amounts due under the regulations and for the repayment in specified circumstances of amounts paid under the regulations;

(h) make provision for interest to be payable, at such rate as may be determined by or under the regulations, on amounts that have become due under the regulations but have not been paid;

(i) make provision, where payments of interest on any relevant gilt-edged securities would be comprised in the income of a member of Lloyd's, for obligations that may be imposed by regulations under this section on the person to whom the interest is paid to be imposed, instead, on such other person as may be described in the regulations.

(3) Regulations made by the Treasury for the purposes of this section may—

(a) include provision which for the purposes of the regulations makes any provision corresponding, with or without modifications, to any of the provisions of Schedule 16;

(b) make provision modifying the operation of Schedule 19AB in relation to cases where payments of interest on relevant gilt-edged securities are made without deduction of tax to companies carrying on pension business;

(c) include provision which requires obligations and liabilities under the regulations to be treated as obligations and liabilities to which provisions of Schedule 23 to the Finance Act 1995 (UK representatives) apply; and

(d) include provision which, for any of the purposes of the regulations, applies provisions of sections 126 and 127 of, and Schedule 23 to, that Act in relation to times before those provisions otherwise come into force.

(4) Regulations made by the Treasury for the purposes of this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate;

and subsection (3) of section 178 of the [M142]Finance Act 1989 (extent of powers to set rates of interest) shall apply for the purposes of the power conferred by virtue of subsection (2)(h) above as it applies for the purposes of the power to make regulations under that section.

(5) In this section "relevant gilt-edged securities" means securities which are gilt-edged securities within the meaning of section 51A, other than any to which a direction of the Treasury under section 50 relates.

(6) In this section "relevant year of assessment"—

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(a) in relation to a manufactured payment, means the year of assessment in which it is received by the person to whom it is paid; and

(b) in relation to any other payment of interest, means the year of assessment in which the payment is made;

and in this subsection "manufactured payment" means any payment which for the purposes of Schedule 23A is a payment of manufactured interest.**]**

Textual Amendments

F66 S. 51B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 78(1)**

Marginal Citations

M142 1989 c. 26.

52 Taxation of interest on converted government securities and interest which becomes subject to deduction.

(1) [M143]Where the income which any individual is required under the Income Tax Acts to include in a statement of his total income for any year includes both—

(a) interest received without deduction of income tax in respect of government securities ("the original securities") which have been exchanged for any other government securities ("substituted securities"), and

(b) interest taxed by deduction in respect of such substituted securities,

and the amount of the interest so included exceeds the full amount of the interest for a complete year on the original securities, then, if that individual so requires—

(i) the excess shall not be taken into account in ascertaining his total income for that year for the purposes of income tax, but

(ii) the excess shall nevertheless be chargeable to income tax for that year at such rate or rates, and subject to such reliefs, if any, as would be applicable if it constituted the highest part of an income equal, subject to section 833(3), to the amount of his total income exclusive of the excess.

(2) Where an application is made under section 50(2) with respect to any securities, subsection (1) above shall have effect as if—

(a) during the period in which the interest on those securities was paid without deduction of income tax, those securities were original securities, and

(b) during any later period, they were substituted securities.

Marginal Citations

M143 SOURCE-1970 s. 104

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PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS

53 Farming and other commercial occupation of land (except woodlands).

(1) [M144]All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits and gains thereof shall be charged to tax under Case I of Schedule D accordingly.

(2) All the farming carried on by any particular person or partnership or body of persons shall be treated as one trade.

(3) [M145]Subject to subsection (4) below, the occupation of land in the United Kingdom for any purpose other than farming or market gardening shall, if the land is managed on a commercial basis and with a view to the realisation of profits, be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the profits or gains thereof shall be charged to tax under Case I of Schedule D accordingly.

[[F67](4) Subsection (3) above shall not apply in relation to the occupation of land which comprises woodlands or is being prepared for use for forestry purposes.**]**

Textual Amendments

F67 1988(F) Sch.6 para.6(7),*into force on* 6*April* 1988*subject to certain provisos. Previously*
"(4) Subsection (3) above shall not affect the taxation of woodlands which are managed on a commercial basis and with a view to the realisation of profits".

Marginal Citations

M144 SOURCE-1970 s. 110(1), (2)
M145 SOURCE-1970 s. 110(3)

[F68]54 Woodlands managed on a commercial basis.

. . . . . .

Textual Amendments

F68 S. 54 repealed (15.3.1988) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 5**, Note 2

55 Mines, quarries and other concerns.

(1) [M146]Profits or gains arising out of land in the case of any concern specified in subsection (2) below shall be charged to tax under Case I of Schedule D.

(2) The concerns are—

(a) mines and quarries (including gravel pits, sand pits and brickfields);

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(b) ironworks, gasworks, salt springs or works, alum mines or works (not being mines falling within the preceding paragraph) and waterworks and streams of water;
(c) canals, inland navigation, docks and drains or levels;
(d) fishings;
(e) rights of markets and fairs, tolls, bridges and ferries;
(f) railways and other ways;
(g) other concerns of the like nature as any of the concerns specified in paragraphs (b) to (e) above.

Marginal Citations
M146 SOURCE-1970 s. 112

56 Transactions in deposits with and without certificates or in debts.

(1) [M147][M148]Subsection (2) below applies to the following rights—
(a) the right to receive the amount, with or without interest, stated in a certificate of deposit;
(b) the right to receive an amount payable with interest—
(i) in a transaction in which no certificate of deposit or security is issued, and
(ii) which is payable by a bank or similar institution or a person regularly engaging in similar transactions;
and the right to receive that interest.

(2) [M149]Profits or gains arising to a person from the disposal of a right to which this subsection applies or, except so far as it is a right to receive interest, from the exercise of any such right (whether by the person to whom the certificate was issued or by some other person, or, as the case may be, by the person who acquired the right in the transaction referred to in subsection (1) above or by some person acquiring it directly or indirectly from that person), shall, if not falling to be taken into account as a trading receipt, be treated as annual profits or gains chargeable to tax under Case VI of Schedule D.

(3) [M150]Subsection (2) above does not apply in the case of the disposal or exercise of a right to receive an amount stated in a certificate of deposit or interest on such an amount—
(a) if the person disposing of the right acquired it before 7th March 1973;
(b) to any profits or gains arising to a fund or scheme in the case of which provision is made by section 592(2), 613, 614(1) to (3) or 620(6) for exempting the whole or part of its income from income tax;
(c) in so far as they are applied to charitable purposes only, to any profits or gains arising to a charity within the meaning of section 506.

[[F69](3A) Subsection (3B) below applies where—
(a) profits or gains arise from the disposal of a right to which subsection (2) above applies and fall to be charged to tax under Case VI of Schedule D by virtue of that subsection, and
(b) the profits or gains arise to a qualifying company.

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(3B) For the purposes of the charge under Case VI the profits or gains—

(a) shall be increased by the amount of any non-trading exchange loss, or the aggregate of the amounts of any non-trading exchange losses, accruing to the company as regards the right for any accrual period or periods constituting or falling within the holding period;

(b) shall (after taking account of paragraph (a) above) be reduced by the amount of any non-trading exchange gain, or the aggregate of the amounts of any non-trading exchange gains, accruing to the company as regards the right for any accrual period or periods constituting or falling within the holding period.

(3C) For the purposes of subsections (3A) and (3B) above—

(a) "accrual period" and "qualifying company" have the same meanings as in Chapter II of Part II of the Finance Act 1993;

(b) the question whether a non-trading exchange gain or loss accrues to the company as regards the right for an accrual period shall be decided in accordance with that Chapter.

(3D) For the purposes of subsection (3B) above the holding period is the period which—

(a) begins when the company acquired (or last acquired) the right before the disposal, and

(b) ends when the disposal is made.**]**

(4) [M151]For the purposes of this section, profits or gains shall not be treated as falling to be taken into account as a trading receipt by reason only that they are included in the computation required by section 76(2).

(5) [M152] In this section—

"certificate of deposit" means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable; and

"security" has the same meaning as in section **[**[F70]132 of the 1992 Act**]**.

Textual Amendments

F69 S. 56(3A)-(3D) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.2**

F70 Words in s. 56(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(3)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C90 *See* s.608—*exemption for certain superannuation funds.*

Marginal Citations

M147 SOURCE-1973 s. 26(1)

M148 SOURCE-1974 s. 30(1)

M149 SOURCE-1973 s. 26(1); 1974 s. 30(1)

M150 SOURCE-1973 s. 26(1)(a)(b); 1975 (No. 2) s. 50(1)

M151 SOURCE-1973 s. 26(3); 1974 s. 30(2)

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M152 SOURCE-1973 s. 26(4); 1974 s. 30(2), (1); 1968 s. 55(3); 1979(C) Sch. 7

[F71 56A Disposal or exercise of rights in pursuance of deposits.

(1) This section applies where there is an arrangement under which—

(a) there is a right to receive an amount (with or without interest)

in pursuance of a deposit of money,

(b) when the right comes into existence there is no certificate of deposit in respect of the right, and

(c) the person for the time being entitled to the right is entitled to call for the issue of a certificate of deposit in respect of the right.

(2) In such a case—

(a) the right shall be treated as not falling within section 56(1)(b), and

(b) if there is a disposal or exercise of the right before such time (if any) as a certificate of deposit is issued in respect of it, section 56(2) shall apply to it by virtue of this paragraph.

(3) In the application of section 56 by virtue of this section—

(a) subsection (2) shall have effect as if the words from "(whether" to "person)" read "(whether by the person originally entitled to the right or by some other person)", and

(b) subsection (3) shall have effect as if the words "stated in a certificate of deposit" read "under an arrangement".

(4) In this section "certificate of deposit" has the meaning given by section 56(5).]

Textual Amendments

F71 S. 56A inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras.1, **6**.

57 Deep discount securities.

M153 Schedule 4 shall have effect with respect to the treatment for the purposes of income tax and corporation tax of deep discount securities (within the meaning of that Schedule).

Marginal Citations

M153 SOURCE-1984 s. 36(1)

58 Foreign pensions.

(1) M154 A pension which—

(a) is paid by or on behalf of a person outside the United Kingdom, and

(b) is not charged under paragraph 4 of Schedule E,

shall be charged to tax under Case V of Schedule D.

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(2) Where—

(a) a person has ceased to hold any office or employment, and

(b) a pension or annual payment is paid to him, or to his widow or child or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and

(c) that pension or annual payment is paid by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax and shall be assessed and charged to tax under Case V of Schedule D as income from a pension.

Marginal Citations
M154 SOURCE-1970 s. 113

59 Persons chargeable.

(1) [M155]Subject to subsections (2) and (3) below, income tax under Schedule D shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged.

(2) Income tax to be charged under Schedule D in respect of any of the concerns mentioned in section 55 shall be assessed and charged on the person carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.

(3) Where, in accordance with that section, income tax is charged under Schedule D on the profits of markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(4) Subsections (1) to (3) above shall not apply for the purposes of corporation tax.

Marginal Citations
M155 SOURCE-1970 S. 114

CHAPTER II

INCOME TAX: BASIS OF ASSESSMENT ETC.

Cases I and II

60 Assessment on preceding year basis.

(1) [M156] Subject to the provisions of this section and sections 61 to 63, income tax shall be charged under Cases I and II of Schedule D on the full amount of the profits or gains of the year preceding the year of assessment.

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(2) [M157]Subsection (3) or (4) below shall apply where, in the case of a trade, profession or vocation, an account has, or accounts have, been made up to a date or dates within the period of three years immediately preceding the year of assessment.

(3) [M158]If—

(a) an account was made up to a date within the year preceding the year of assessment, and

(b) that account was the only account made up to a date in that year, and

(c) it was for a period of one year beginning either—

(i) at the commencement of the trade, profession or vocation, or

(ii) at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed,

the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment.

(4) [M159]If subsection (3) does not apply, the Board shall decide what period of 12 months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.

(5) [M160]Where—

(a) the Board have given a decision under subsection (4) above, and

(b) it appears to them that, in consequence of that decision, income tax for the last preceding year of assessment in respect of the profits or gains from the same source should be computed on the profits or gains of a corresponding period,

they may give a direction to that effect, and an assessment or, on a claim therefor, repayment of tax shall be made accordingly.

(6) The decision whether or not to give a direction under subsection (5) above shall be subject to an appeal which shall lie to the General Commissioners unless the appellant elects (in accordance with section 46(1) of the Management Act) to bring it before the Special Commissioners, and the Commissioners hearing the appeal shall grant such relief, if any, as is just.

(7) An appeal under subsection (6) above shall be brought within 30 days of receipt of notice of the decision, save that, if the decision is to give a direction and an assessment is made in accordance with the direction, the appeal against the decision shall be by way of an appeal against the assessment.

(8) In the case of the death of a person who, if he had not died, would under subsections (2) to (5) above have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

Marginal Citations

M156 SOURCE-1970 s. 115(1)
M157 SOURCE-1970 s. 115(2)
M158 SOURCE-1970 s. 115(2)(a)
M159 SOURCE-1970 s. 115(2)(b)
M160 SOURCE-1970 s. 115(3)–(6)

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61 Special basis at commencement of trade, profession or vocation.

(1) [M161]Subject to subsection (4) below, where the trade, profession or vocation has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under subsection (1) above.

(3) Where the trade, profession or vocation has been set up and commenced within the year preceding the year of assessment, the computation of the profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be made on the profits or gains for one year from its first being set up.

(4) Subsections (1) to (3) above shall not apply in any case where **[**[F72]there is a change in the persons engaged in carrying on a trade, profession or vocation in partnership and**]** section 113(1) and (2) apply but no election is made under section 113(2), but in such a case the computation of the profits or gains chargeable to income tax under Case I or II of Schedule D for the year of assessment in which the new trade, profession or vocation is treated as having been set up and commenced, and for each of the three years following that year of assessment, shall be made on the full amount of the profits or gains arising in the year of assessment in question.

Textual Amendments

F72 1988(F) s.146*and* Sch.13 para.2 (*deemed always to have had effect*).

Marginal Citations

M161 SOURCE-1970 s. 116

62 Special basis for early years following commencement.

(1) [M162]In this section—

"charged" means charged to income tax in respect of the profits or gains of a trade, profession or vocation;

"the second year of assessment" and "the third year of assessment" means respectively the year next after, and the year next but one after, the year of assessment in which the trade, profession or vocation in question was set up and commenced; and

"the fifth year of assessment" and "the sixth year of assessment" mean respectively the year next but three after, and the year next but four after, the year of assessment in which the trade, profession or vocation in question was set up and commenced.

(2) [M163]Subject to subsection (4) below, the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the second year of assessment, to require that tax shall be charged for both the second year of assessment and the third year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.

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[[F73](2A) Where—

(a) the second year of assessment is the year 1989-90,

(b) the person charged, or liable to be charged, for that year is a married man, and

(c) the person charged, or liable to be charged, for the year 1990-91 is his wife,

subsection (2) above shall have effect as if it conferred the right to give notice on her and not on him.**]**

(3) A notice under subsection (2) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the third year of assessment and, where it is so revoked, tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.

(4) [M164]Subsections (2) and (3) above shall not apply in any case where—

(a) section 113(1) and (2) apply and the change in the persons engaged in carrying on the trade, profession or vocation in partnership occurs after 19th March 1985; but

(b) no election is made under section 113(2);

but in such a case the person charged, or liable to be charged, shall be entitled, on giving notice to the inspector within seven years after the end of the fifth year of assessment, to require that tax shall be charged for both the fifth year of assessment and the sixth year of assessment (but not for one or other only of those years) on the amount of the profits or gains for each such year respectively.

(5) A notice under subsection (4) above may be revoked by the person who gave it by notice given to the inspector within six years after the end of the sixth year of assessment and, where it is so revoked, tax shall be charged for both the fifth year of assessment and the sixth year of assessment as if the first notice had never been given.

(6) [M165]If at any time during the second or third year of assessment—

(a) a change occurs, by reason of retirement or death, in a partnership of persons engaged in the trade, profession or vocation, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged in it; or

(b) a change occurs such that a person who until that time was engaged in the trade, profession or vocation on his own account continues to be engaged in it but as a partner in a partnership;

a notice given for the purposes of subsection (2) above must, if given after the occurrence of the change and after notice has been given as respects the change under section 113(2), comply with the requirements of subsection (7) or (8) below, as the case may require.

(7) A notice given within 12 months after the end of the second year of assessment must be signed by—

(a) each of the individuals who were engaged in the trade, profession or vocation at any time between the commencement of that year and the giving of the notice; or

(b) in the case of a deceased person, his personal representatives.

(8) A notice given after the end of the third year of assessment must be signed by—

(a) each of the individuals who were engaged in the trade, profession or vocation at any time during the second or third year of assessment; or

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(b) in the case of a deceased person, his personal representatives.

(9) [M166]In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on his personal representatives, and shall be a debt due from and payable out of his estate.

(10) There shall be made such assessments, reductions of assessments or, on a claim in that behalf, repayments of tax as may in any case be required in order to give effect to the preceding provisions of this section.

Textual Amendments

F73 1988(F) s.35*and* Sch.3 para.2.

Marginal Citations

M162 SOURCE-1970 s. 117(1); 1985 s. 47(2), (4)(a)
M163 SOURCE-1970 s. 117(2)
M164 SOURCE-1970 S. 117(2); 1985 S. 47(2), (4)(b)
M165 SOURCE-1970 s. 117(3); 1987 Sch. 15 para. 2(8)
M166 SOURCE-1970 s. 117(4), (5); 1987 Sch. 15 para. 2(8)

VALID FROM 03/05/1994

[F74 62A Conditions for such a change.

(1) This section applies in relation to an accounting change if the following are fulfilled, namely—
(a) the first and second conditions mentioned below, and
(b) either the third or the fourth condition so mentioned.

(2) The first condition is that the first accounting period ending with the new date does not exceed 18 months.

(3) The second condition is that notice of the accounting change is given to an officer of the Board on or before the 31st January next following the year of assessment.

(4) The third condition is that no accounting change as respects which section 62(2) has applied has been made or treated as made in any of the five years immediately preceding the year of assessment.

(5) The fourth condition is that—
(a) the notice required by the second condition sets out the reasons for which the change is made; and
(b) either the officer is satisfied that the change is made for bona fide commercial reasons or he does not, within 60 days of receiving the notice, give notice to the person carrying on the trade, profession or vocation that he is not so satisfied.

(6) An appeal may be brought against the giving of a notice under subsection (5)(b) above within the period of 30 days beginning with the date on which the notice is given.

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(7) Subject to subsection (8) below, the provisions of the Management Act relating to appeals shall have effect in relation to an appeal under subsection (6) above as they have effect in relation to an appeal against an assessment to tax.

(8) On an appeal under subsection (6) above section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—
  (a) if they are satisfied that the change is made for bona fide commercial reasons, set the notice under subsection (5)(b) above aside; or
  (b) if they are not so satisfied, confirm that notice.

(9) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of subsections (5) and (8) above.

(10) In this section—
  (a) "accounting period" means a period for which accounts are made up, and
  (b) expressions which are also used in section 62 have the same meanings as in that section.**]**

Textual Amendments

F74 S. 62A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 203** (with Sch. 20)

63 Special basis on discontinuance.

(1) [M167]Where in any year of assessment a trade, profession or vocation is permanently discontinued, then notwithstanding anything in sections 60 to 62—
  (a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or set-off to which he may be entitled under section 385 in respect of any loss; and
  (b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds—
    (i) the aggregate of the amounts on which **[**[F75]income tax**]** has been charged for each of those two years; or
    (ii) the aggregate of the amounts on which **[**[F75]income tax**]** would have been so charged if no deduction or set-off under section 385 had been allowed;

  [[F75]income tax**]** may be charged instead, for each of those two years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on the 5th April in that year.

(2) Where **[**[F75]income tax has been charged**]** otherwise than in accordance with subsection (1) above, any such assessment to tax, reduction or discharge of an assessment to tax, or on a claim therefor, repayment of tax shall be made as may be necessary to give effect to that subsection.

(3) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to income tax for any year, the tax which

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would have been so chargeable shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

(4) Subsection (1)(b) above shall not apply where a trade is permanently discontinued in consequence of the nationalisation of any property constituting the assets of the trade.

For the purposes of this subsection "nationalisation" means, in relation to any property, a transfer of the property for which provision is made by any Act passed after the beginning of August 1945 and embodying a scheme for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control, being a transfer, as part of the initial putting into force of the scheme, either to the Crown or to a body corporate constituted for the purposes of the scheme or of some previous scheme for such national ownership or control.

Textual Amendments

F75 1988(F) s.35*and* Sch.3 para.3.*Previously*
"that person", "he", and "a person has been charged with income tax"
respectively.

Marginal Citations

M167 SOURCE-1970 s. 118

VALID FROM 03/05/1994

[F76 63A Overlap profits and overlap losses.

(1) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 62(2)(b), a deduction shall be made in computing the profits or gains of that year of an amount equal to that. given by the formula in subsection (2) below.

(2) The formula referred to in subsection (1) above is—

$$A \times \frac{B - C}{D}$$

where—

A = the aggregate of any overlap profits less the aggregate of any amounts previously deducted under subsection (1) above;

B = the number of days in the basis period;

C = the number of days in the year of assessment;

D = the aggregate of the overlap periods of any overlap profits less the aggregate number of days given by the variable "B — C" in any previous applications of this subsection.

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(3) Where, in the case of any trade, profession or vocation, the basis period for a year of assessment is given by section 63, a deduction shall be made in computing the profits or gains of that year of an amount equal to—

(a) the aggregate of any overlap profits, less

(b) the aggregate of any amounts deducted under subsection (1) above.

(4) Where, in the case of any trade, profession or vocation, an amount of a loss would, apart from this subsection, fall to be included in the computations for two successive years of assessment, that amount shall not be included in the computation for the second of those years.

(5) In this section—

"overlap profit" means an amount of profits or gains which, by virtue of sections 60 to 62, is included in the computations for two successive years of assessment; and

"overlap period", in relation to an overlap profit, means the number of days in the period in which the overlap profit arose.**]**

Textual Amendments

F76 S. 63A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 205** (with Sch. 20)

Modifications etc. (not altering text)

C91 Ss. 61-63A excluded (1.12.1997 with effect in accordance with reg. 1 of the excluding S.I.) by The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **reg. 6(1)(a)**

Cases III, IV and V

64 Case III assessments: general.

[M168]Subject to sections 66 and 67, income tax under Case III of Schedule D shall be computed on the full amount of the income arising within the year preceding the year of assessment, and shall be paid on the actual amount of that income, without any deduction.

Modifications etc. (not altering text)

C92 *See* 1990 s.56*and* Sch.10 para.12(4)—*tax on income in respect of chargeable securities on income of year of assessment.*

C93 *See* 1989(F) s.94*and* Sch. 11 para.5—*deep gain securities.*

Marginal Citations

M168 SOURCE-1970 s. 119

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65 Cases IV and V assessments: general.

(1) [M169]subject to the provisions of this section and sections 66 and 67, income tax chargeable under Case IV or Case V of Schedule D shall be computed on the full amount of the income arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—

(a) to the same deductions and allowances as if it had been so received, and

(b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.

(2) [M170]Subject to section 330, income tax chargeable under Case IV or V of Schedule D on income arising from any pension shall be computed on the amount of that income subject to a deduction of one-tenth of the amount of the income.

(3) [M171]Income tax chargeable under Case IV or V of Schedule D on income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation either solely or in partnership shall be computed in accordance with the rules applicable to Cases I and II of Schedule D; and subsection (1)(a) above shall not apply.

Nothing in this subsection shall be taken to apply sections 60 to 63 or 113 in relation to income chargeable under Case V of Schedule D but computed in accordance with this subsection.

(4) [M172]Subsections (1), (2) and (3) above shall not apply to any person who, on a claim made to the Board, satisfies the Board that he is not domiciled in the United Kingdom, or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom.

(5) [M173]Where subsection (4) above applies the tax shall, subject to sections 66 and 67, be computed—

(a) in the case of tax chargeable under Case IV, on the full amount, so far as the same can be computed, of the sums received in the United Kingdom in the year preceding the year of assessment, without any deduction or abatement; and

(b) in the case of tax chargeable under Case V, on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, without any deduction or abatement other than is allowed under the provisions of the Income Tax Acts in respect of profits or gains charged under Case I of Schedule D.

(6) For the purposes of subsection (5) above, any income arising from securities or possessions out of the United Kingdom which is applied outside the United Kingdom by a person ordinarily resident in the United Kingdom in or towards satisfaction of—

(a) any debt for money lent to him in the United Kingdom or for interest on money so lent, or

(b) any debt for money lent to him outside the United Kingdom and received in or brought to the United Kingdom, or

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(c) any debt incurred for satisfying in whole or in part a debt falling within paragraph (a) or (b) above,

shall be treated as received by him in the United Kingdom (and, for the purposes of subsection (5)(b) above, as so received from remittances payable in the United Kingdom).

(7) Where a person ordinarily resident in the United Kingdom receives in or brings to the United Kingdom money lent to him outside the United Kingdom, but the debt for that money is wholly or partly satisfied before he does so, subsection (6) above shall apply as if the money had been received in or brought to the United Kingdom before the debt was so satisfied, except that any sums treated by virtue of that subsection as received in the United Kingdom shall be treated as so received at the time when the money so lent is actually received in or brought to the United Kingdom.

(8) Where—

(a) a person ("the borrower") is indebted for money lent to him, and

(b) income is applied by him in such a way that the money or property representing it is held by the lender on behalf of or to the account of the borrower in such circumstances as to be available to the lender for the purpose of satisfying or reducing the debt by set-off or otherwise,

that income shall be treated as applied by the borrower in or towards satisfaction of the debt if, under any arrangement between the borrower and the lender, the amount for the time being of the borrower's indebtedness to the lender, or the time at which the debt is to be repaid in whole or in part, depends in any respect directly or indirectly on the amount or value so held by the lender.

(9) For the purposes of subsections (6) to (8) above—

(a) a debt for money lent shall, to the extent to which that money is applied in or towards satisfying another debt, be deemed to be a debt incurred for satisfying that other debt, and a debt incurred for satisfying in whole or in part a debt falling within paragraph (c) of subsection (6) above shall itself be treated as falling within that paragraph; and

(b) "lender" includes, in relation to any money lent, any person for the time being entitled to repayment.

Modifications etc. (not altering text)

C94 *See* 1990 s.56*and* Sch.10 para.12(4)*—tax on income in respect of chargeable securities on income of year of assessment.*

C95 *See*—1979(C) s.14(2)*—capital gains tax on gains applied outside the United Kingdom in payment of certain debts.*1989 s.94*and* Sch.11 paras.5, 13*—deep gain securities.*

C96 *See* 1988(F) s.38(9)*—no deduction under* s.65(1)(b)*on account of a payment to which* s.38 (*maintenance payments*)*applies.*

C97 S. 65(6)-(9) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 12(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M169 SOURCE-1970 s. 122(1)(a), (b)

M170 SOURCE-1974 S. 22(1)

M171 SOURCE-1974 s. 23(1), 6(b)

M172 SOURCE-1970 s. 122(2)(a)

M173 SOURCE-1970 s. 122(3)–(7)

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VALID FROM 01/05/1995

[F77 65A Case V income from land overseas etc.

(1) Notwithstanding anything in section 21(4), subsection (2A) of section 65 shall require the rules referred to in that subsection to be applied separately in relation to—
  (a) any business which is treated for the purposes of that subsection as if it were a Schedule A business, and
  (b) any actual Schedule A business of the person chargeable,
as if, in each case, that business were the only Schedule A business carried on by that person.

(2) Section 21(3), so far as applied by virtue of section 65(2A) for the purposes of the computation of the amount of any income chargeable to tax under Case V of Schedule D, shall have effect as if it required sections 80 and 81 to be disregarded in the computation of the amount of any profits or gains, or losses, of a Schedule A business.

(3) Sections 503 and 504 of this Act and section 29 of the 1990 Act (furnished holiday accommodation) shall be disregarded in the computation in accordance with section 65(2A) of any income chargeable to tax under Case V of Schedule D.

(4) Section 65(2A) and this section shall not apply for the purposes of corporation tax.**]**

Textual Amendments

F77 S. 65A inserted (with effect in accordance with s. 41(5)-(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 41(2)**

66 Special rules for fresh income.

(1) [M174]Income tax under Case III, IV or V of Schedule D shall, in the following cases, be computed on the following amounts, and, where the tax is charged under Case III, paid on those actual amounts without any deduction—
  (a) as respects the year of assessment in which the income first arises, on the full amount of the income arising within that year;
  (b) where the income first arose on some day in the year preceding the year of assessment other than 6th April, on the amount of the income of the year of assessment; and
  (c) where the income first arose on 6th April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than 6th April, and the person charged so requires by notice given to the inspector at any time within six years after the end of the year of assessment, on the amount of the income of that year.

(2) [M175]Where subsection (1)(c) above applies, and income tax charged otherwise than in accordance with that provision has been paid, any amount overpaid shall be repaid.

(3) [M176]If at any time a person acquires a new source of any income in respect of which he is chargeable under Case III, IV or V of Schedule D, or an addition to any source of any such income, then, for the year of assessment in which income first arises from the

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source or addition and the two following years of assessment, income tax in respect of the income from the source or addition shall, notwithstanding section 73, be computed separately and subsection (1) above shall apply.

(4) [M177]For the purposes of the charge under Case III, if at any time interest on a debt ceases to be payable subject to deduction of income tax, subsection (3) above shall apply as if the debt were a new source of income acquired by the creditor at that time.

(5) [M178]Where income arising to any person from any security or possession in any place out of the United Kingdom ceases at any time to be chargeable to income tax by deduction under the provisions of section 123, subsection (3) above shall apply as if that security or possession were a new source of income acquired by that person at that time.

(6) In any case where tax is to be charged under Case IV or V by reference to the amount of income received in the United Kingdom, references in this section to income which arises or arose shall have effect as references to income which is or was so received.

Modifications etc. (not altering text)
C98 *See* 1989 s.94 and Sch.11 para.5—*deep gain securities*

Marginal Citations
M174 SOURCE-1970 SS. 120(1), 123(1)
M175 SOURCE-1970 ss. 120(2), 123(2)
M176 SOURCE-1970 ss. 120(3), 123(3)
M177 SOURCE-1970 s. 120(4)
M178 SOURCE-1970 s. 123(4), (5)

67 Special rules where source of income disposed of or yield ceases.

(1) [M179]Subject to the provisions of this section, if in any year of assessment a person charged or chargeable to income tax in respect of any income chargeable under Case III, IV or V of Schedule D ceases to possess any particular source of any such income or any part of any such source, the following provisions shall apply to the tax in respect of the income from that source or part—

(a) notwithstanding section 73, the tax shall for that year, and (if necessary) for the preceding year, be computed separately;

(b) subject to paragraph (c) below, the tax shall for that year be computed on the amount of the income arising within the year (instead of the income arising within the preceding year), and shall for that preceding year also be computed on the amount of the income arising within it if greater than the amount on which tax is to be computed for that preceding year apart from this provision; and

(c) if no income arose within those two years and the person charged or chargeable makes a claim under this section not later than two years after the end of them, then, subject to subsection (4) below—

(i) paragraphs (a) and (b) above shall apply to the year of assessment in which income did last arise and the year preceding it as, apart from this paragraph, they would apply to the year in which he ceases to possess the source or part and the year preceding it, and

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(ii) tax for the year of assessment following that in which income did last arise shall not be chargeable on the amount of the income so arising.

(2) [M180]For the purposes of the charge under Case III, if at any time interest on a debt begins to be payable subject to deduction of income tax, subsection (1) above shall apply as if the debt were a source of income which the creditor ceased to possess at that time.

(3) [M181]Where income in respect of which a person has previously been charged or chargeable to income tax under Case IV or V of Schedule D becomes at any time chargeable to income tax by deduction under the provisions of section 123, subsection (1) above shall apply as if the security or possession in question were a source of income which he ceased to possess at that time.

(4) [M182]Without prejudice to subsection (5) below, a person shall not be entitled by virtue of subsection (1)(c) above to make a claim under this section in respect of any source of income or any part of such a source more than eight years after the end of the year of assessment in which income last arose from that source.

(5) A person possessing a source of income chargeable to income tax under Case III, IV or V of Schedule D and having possessed it for six consecutive years of assessment without any income arising from it, shall be entitled, if income did arise from it in the year preceding those six years, to make a claim under this section not later than two years after the end of those six years; and if he does so—

(a) subsection (1) above shall apply as if he had ceased to possess the source of income immediately before the end of those six years; and

(b) section 66(3) shall apply in relation to later years of assessment as if he had acquired the source as a new source immediately after the end of those six years.

(6) [M183]References in this section to income arising shall, in cases where tax under Case IV or V is to be computed by reference to the amount of income received in the United Kingdom, be construed as references to income being so received.

(7) [M184]There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section.

(8) [M185]A person's executors or administrators may make any claim under this section which he might have made, if he had not died, in respect of any source of income, or part of such a source, which he ceased to possess before his death, and may also make a claim under this section in respect of sources of income which he ceased to possess by dying; and after a person's death—

(a) any tax paid by him and repayable by virtue of a claim under this section (whether made by him or by his executors or administrators) shall be repaid to his executors or administrators, and

(b) any additional tax chargeable by virtue of such a claim shall be assessed and charged on his executors or administrators, and shall be a debt due from and payable out of his estate.

Modifications etc. (not altering text)

C99 *See* 1989 s.94*and* Sch.11 para.5—*deep gain securities.*

C100 *See*—1989 s.80*for amendment in case of certain gilt unit trusts.*1990 s.52(3), (4)*modification of* subs. (1)(b)*in the case of certain assessments under* Case III Sch.D*on unit trusts.*

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Marginal Citations

M179 SOURCE-1970 ss. 121(1), 124(1)
M180 SOURCE-1970 s. 121(2)
M181 SOURCE-1970 s. 124(2)
M182 SOURCE-1970 SS. 121(3), 124(3)
M183 SOURCE-1970 s. 124(4)
M184 SOURCE-1970 ss. 121(4), 124(5)
M185 SOURCE-1970 ss. 121(5), 124(6)

68 Special rules where property etc. situated in Republic of Ireland.

(1) [M186]Notwithstanding anything in sections 65 or 66, but subject to the provisions of this section, income tax chargeable under Case IV or V of Schedule D shall, in the case of property situated and profits or gains arising in the Republic of Ireland, be computed on the full amount of the income arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom—

(a) to the same deductions and allowances as if it had been so received; and

(b) to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom.

(2) Subsection (1) above shall not apply—

(a) to any income which is immediately derived by a person from the carrying on by him of any trade, profession or vocation, either solely or in partnership; or

(b) to any income which arises from any pension.

(3) The tax in respect of any such income as is mentioned in subsection (2) above arising in the Republic of Ireland shall be computed either—

(a) on the full amount thereof arising in the year of assessment; or

(b) on the full amount thereof on an average of such period as the case may require and as may be directed by the inspector;

so that, according to the nature of the income, the tax may be computed on the same basis as that on which it would have been computed if the income had arisen in the United Kingdom, and subject in either case to a deduction on account of any annuity or other annual payment (not being interest) payable out of the income to a person not resident in the United Kingdom; and the person chargeable and assessable shall be entitled to the same allowances, deductions and reliefs as if the income had arisen in the United Kingdom.

The jurisdiction of the General or Special Commissioners on any appeal shall include jurisdiction to review the inspector's decision under this subsection.

[[F78](3A) The fact that the allocations of shares in the company to which persons who are not directors or employees of the company are entitled are smaller than those to which directors or employees of the company are entitled shall not be regarded for the purposes of subsection (2)(b) above as meaning that they are not entitled on similar terms if—

(a) each of the first-mentioned persons is also entitled, by reason of his office or employment and in priority to members of the public, to an allocation of

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shares in another company or companies which are offered to the public (at a fixed rate or by tender) at the same time as the shares in the company, and

(b) in the case of each of those persons the aggregate value (measured by reference to the fixed price or the lowest price successfully tendered) of all the shares included in the allocations to which he is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable director or employee of the company.**]**

(4) In charging any income which is excluded from subsection (1) above by subsection (2)(a) above there shall be the same limitation on reliefs as under section 391(2) in the case of income computed by virtue of section 65(3) in accordance with the rules applicable to Cases I and II of Schedule D.

(5) In charging income arising from a pension under subsection (3) above, a deduction of one-tenth shall be allowed unless it is the income of a person falling within section 65(4).

Textual Amendments

F78 1990 s.79*in relation to offers made on or after* 26*July* 1990.

Marginal Citations

M186 SOURCE-1970 Sch. 12 Pt. III 2; 1976 s. 49(4), (6)

VALID FROM 06/04/2003

[F79 68A Share incentive plans: application of section 68B

(1) Section 68B applies for income tax purposes in connection with shares awarded under an approved share incentive plan.

(2) But that section does not apply to an individual if, at the time of the award of shares in question—

(a) the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, or

(b) in the case of an award made before 6th April 2003, he was not chargeable to tax under Schedule E in respect of the employment by reference to which he met the requirement of paragraph 14 of Schedule 8 to the Finance Act 2000 (employee share ownership plans: the employment requirement) in relation to the plan.

(3) For the purposes of subsection (2)(a)—

(a) "the eligible employment" means the employment which results in the individual meeting the employment requirement in relation to the plan, and

(b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).**]**

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Textual Amendments

F79 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C101 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

VALID FROM 06/04/2003

[F79 68B Share incentive plans: cash dividends and dividend shares

(1) Where a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested), the participant is chargeable to tax on the amount paid over, to the extent that it represents a foreign cash dividend, under Case V of Schedule D for the year of assessment in which the dividend is paid over to the participant.

(2) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on the participant's behalf, the participant is chargeable to tax on the amount of the relevant dividend, to the extent that it represents a foreign cash dividend, under Case V of Schedule D for the year of assessment in which the shares cease to be subject to the plan.

For this purpose "the relevant dividend" is the cash dividend applied to acquire those shares on the participant's behalf.

(3) Where the participant is charged to tax under subsection (2) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts under section 501 of ITEPA 2003 in respect of those shares.

(4) Subsection (2) has effect subject to section 498 of that Act (no charge on shares ceasing to be subject to plan in certain circumstances).]

Textual Amendments

F79 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C102 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

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VALID FROM 06/04/2003

[F79 68C Share incentive plans: interpretation

(1) Sections 68A and 68B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in those sections and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) In section 68B, "foreign cash dividend" means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.**]**

Textual Amendments

F79 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

Modifications etc. (not altering text)

C103 Ss. 68A-68C applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

Case VI

69 Assessment on current year basis unless otherwise directed.

(1) [M187]Income tax under Case VI of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to an average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) On an appeal to the General or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under this section.

Marginal Citations

M187 SOURCE-1970 s. 125

CHAPTER III

CORPORATION TAX: BASIS OF ASSESSMENT ETC

70 Basis of assessment etc.

(1) [M188]In accordance with sections 6 to 12 and 337 to 344, for the purposes of corporation tax for any accounting period income shall be computed under Cases I to VI of Schedule D on the full amount of the profits or gains or income arising in the period

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(whether or not received in or transmitted to the United Kingdom), without any other deduction than is authorised by the Corporation Tax Acts.

(2) [M189]Where a company is chargeable to corporation tax in respect of a trade or vocation under Case V of Schedule D, the income from the trade or vocation shall be computed in accordance with the rules applicable to Case I of Schedule D.

(3) [M190]Cases IV and V of Schedule D shall for the purposes of corporation tax extend to companies not resident in the United Kingdom, so far as those companies are chargeable to tax on income of descriptions which, in the case of companies resident in the United Kingdom, fall within those Cases (but without prejudice to any provision of the Tax Acts specially exempting non-residents from tax on any particular description of income).

Marginal Citations

M188 SOURCE-1970 s. 129(1)
M189 SOURCE-1970 s. 129(4)
M190 SOURCE-1970 s. 129(5)

VALID FROM 31/07/1998

[[F80]70A Case V income from land outside UK: corporation tax.

(1) This section applies where a company is chargeable to corporation tax under Case V of Schedule D in respect of income which—
   (a) arises from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land outside the United Kingdom, and
   (b) is not income to which section 70(2) applies (income from a trade or vocation).

(2) The provisions of Schedule A apply to determine whether income falls within subsection (1)(a) above as they would apply to determine whether the income fell within paragraph 1(1) of that Schedule if—
   (a) the land in question were in the United Kingdom, or
   (b) a caravan or houseboat which is to be used at a location outside the United Kingdom were to be used at a location in the United Kingdom.

(3) Any provision of the Taxes Acts which deems there to be a Schedule A business in the case of land in the United Kingdom applies where the corresponding circumstances arise with respect to land outside the United Kingdom so as to deem there to be a business within subsection (1)(a) above.

(4) All businesses and transactions carried on or entered into by a particular company or partnership, so far as they are businesses or transactions the income from which is chargeable to tax under Case V of Schedule D in accordance with this section, are treated for the purposes of the charge to tax under Case V as, or as entered into in the course of carrying on, a single business (an “overseas property business").

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(5) The income from an overseas property business shall be computed for the purposes of Case V of Schedule D in accordance with the rules applicable to the computation of the profits of a Schedule A business.

Those rules apply separately in relation to—

(a) an overseas property business, and

(b) any actual Schedule A business of the company chargeable,

as if each were the only Schedule A business carried on by that company.

(6) Sections 503 and 504 of this Act and section 29 of the 1990 Act (provisions relating to furnished holiday accommodation) do not apply to the profits or losses of an overseas property business.

(7) Where under this section rules expressed by reference to domestic concepts of law apply in relation to land outside the United Kingdom, they shall be interpreted so as to produce the result that most closely corresponds with the result produced for Schedule A purposes in relation to land in the United Kingdom.**]**

Textual Amendments

F80 S. 70A inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 25** (with Sch. 5 para. 73)

CHAPTER IV

PROVISIONS SUPPLEMENTARY TO CHAPTERS II AND III

71 Computation of income tax where no profits in year of assessment.

[M191]Where it is provided by the Income Tax Acts that income tax under Schedule D in respect of profits or gains or income from any source is to be computed by reference to the amount of the profits or gains or income of some period preceding the year of assessment, tax as so computed shall be charged for that year of assessment notwithstanding that no profits or gains or income arise from that source for or within that year.

Marginal Citations

M191 SOURCE-1970 s. 126

72 Apportionments etc. for purposes of Cases I, II and VI.

(1) [M192]Where in the case of any profits or gains chargeable under Case I, II or VI of Schedule D it is necessary in order to arrive for the purposes of income tax or corporation tax at the profits or gains or losses of any year of assessment, accounting period or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits, gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.

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(2) [M193]Any apportionment under this section shall be made in proportion to the number of months, or fractions of months, in the respective periods.

Modifications etc. (not altering text)
C104 *See* S.I. 1987 No. 530 (in Part III Vol. 5) regn. 16—*payments attributable to non-resident entertainers and sportsmen.*

Marginal Citations
M192 SOURCE-1970 ss. 127(1), 129(2)
M193 SOURCE-1970 s. 127(2), 527(4)

73 Single assessments for purposes of Cases III, IV and V.

[M194]Except as otherwise provided by the Tax Acts all income in respect of which a person is chargeable to tax under Case III, IV or V of Schedule D may respectively be assessed and charged in one sum.

Marginal Citations
M194 SOURCE-1970 ss. 128, 129(3)

CHAPTER V

COMPUTATIONAL PROVISIONS

Modifications etc. (not altering text)
C105 *See*—1979(C) s.122—*election to take capital gain or loss into account when asset appropriated to stock in trade.*1989 ss.67-74—*employee share ownership trusts.*Banking Act 1987 (c.22) s.66—*contributions to the Deposit Protection Fund.*

Deductions

74 General rules as to deductions not allowable.

[M195]Subject to the provisions of the Tax Acts, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation;

(c) the rent of the whole or any part of any dwelling-house or domestic offices, except any such part as is used for the purposes of the trade, profession or vocation, and where any such part is so used, the sum so deducted shall

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not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling-house or those offices;

(d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade, profession or vocation, beyond the sum actually expended for those purposes;

(e) any loss not connected with or arising out of the trade, profession or vocation;

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade, profession or vocation, but so that this paragraph shall not be treated as disallowing the deduction of any interest;

(g) any capital employed in improvements of premises occupied for the purposes of the trade, profession or vocation;

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;

(j) any debts, except bad debts proved to be such, and doubtful debts to the extent that they are respectively estimated to be bad, and in the case of the bankruptcy or insolvency of a debtor the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof;

(k) any average loss beyond the actual amount of loss after adjustment;

(l) any sum recoverable under an insurance or contract of indemnity;

(m) any annuity or other annual payment (other than interest) payable out of the profits or gains;

(n) any interest paid to a person not resident in the United Kingdom if and so far as it is interest at more than a reasonable commercial rate;

(o) [M196]any relevant loan interest within the meaning of section 369, other than interest to which section 375(2) applies;

(p) [M197]any royalty or other sum paid in respect of the user of a patent;

(q) any rent, royalty or other payment which is by section 119 or 120 declared to be subject to deduction of tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

Modifications etc. (not altering text)

C106 *See* 1989 ss.112-113—*expenditure on security on or after* 6*April* 1989.

C107 *Other deductions, where allowed:*—1988(F) s.73(2)—*sums in connection with restrictive undertakings paid on or after* 6*June* 1988.1990 s.126(1), (2), (3)—*deduction for capital expenditure on improving safety etc. at football grounds as a result of reduction in pool betting duty under* 1990 s.4.1990(C) s.136—*expenditure on scientific research.*S.I. 1987 No.530 (*in* Part III Vol.5) regn.8(2)—*just and reasonable expenses incurred in relation to payments attributable to non resident entertainers or sportsmen.*

Marginal Citations

M195 SOURCE-1970 s. 130(a)–(m); 1987 Sch. 15para. 2(9)

M196 SOURCE-1982 s. 26(8)

M197 SOURCE-1970 s. 130(n), (o)

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75 Expenses of management: investment companies.

(1) [M198]In computing for the purposes of corporation tax the total profits for any accounting period of an investment company resident in the United Kingdom there shall be deducted any sums disbursed as expenses of management (including commissions) for that period, except any such expenses as are deductible in computing profits apart from this section.

(2) For the purposes of subsection (1) above there shall be deducted from the amount treated as expenses of management the amount of any income derived from sources not charged to tax, other than franked investment income, group income and any regional development grant. In this subsection "regional development grant" means a payment by way of grant under Part II of the [M199]Industrial Development Act 1982.

(3) [M200]Where in any accounting period of an investment company the expenses of management deductible under subsection (1) above, together with any charges on income paid in the accounting period wholly and exclusively for purposes of the company's business, exceed the amount of the profits from which they are deductible—

(a) the excess shall be carried forward to the succeeding accounting period; and

(b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section, including any further application of this subsection, as if it had been disbursed as expenses of management for that accounting period.

(4) For the purposes of this section there shall be added to a company's expenses of management in any accounting period the amount of any allowances falling to be made to the company for that period by virtue of **[**[F81]section 28 of the 1990 Act (capital allowances for investment and insurance companies)**]** in so far as effect cannot be given to them under subsection (2) of that section.

(5) [M201]Where an appeal against an assessment to corporation tax or against a decision on a claim under section 242 relates exclusively to the relief to be given under subsection (1) above, the appeal shall lie to the Special Commissioners, and if and so far as the question in dispute on any such appeal which does not lie to the Special Commissioners relates to that relief, that question shall, instead of being determined on the appeal, be referred to and determined by the Special Commissioners, and the Management Act shall apply as if that reference were an appeal.

Textual Amendments

F81 1990(C) s.164*and* Sch.1 para.8(4).*Previously*
"section 306 of the 1970 Act (capital allowances for machinery and plant)".

Modifications etc. (not altering text)

C108 *See the following sections of this Act:*—s.77*—incidental costs of obtaining loan finance.*s.78*—incidental costs in securing acceptance of bills of exchange by banks.*s.79*—contributions to approved local enterprise agencies on or after* 1*April* 1982*and before* 1*April* 1992.s.85*—profit sharing schemes.*s.86*—expenditure incurred in relation to employees seconded to charities; and, from* 26*November* 1986*to* 31*March* 1997*,educational establishments.*s.88*—sums paid to Export Credits Guarantee Dept. under investment insurance schemes.*s.90*—additional payments to redundant employees.*s.242(2)*—set-off of losses, etc., against franked investment income.*s.403*—group relief.*s.468*—application to authorised unit trusts.*s.573*—losses on unquoted shares in trading companies allowed before*

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*charges against income of investment companies.*s.577*—exclusion of certain entertaining expenses.*s.579*—inclusion of statutory redundancy payments.*s.586*—disallowance of deductions for war risk premiums.*s.587*—disallowance of certain payments in respect of war injuries to employees.*s.588*—relief for costs of training incurred on or after* 6*April* 1987.s.592*—inclusion of employer's contribution under exempt approved retirement benefits schemes.*s.779*—limitation on reliefs: land sold and leased back.*s.780*—land sold and leased back: relief in respect of rent under new lease.*s.834*—definitions of "profits" and "trade" in* s.6(4)*to apply for purposes of* s.75.

C109 *See*—1988(F) s.73(3)*—sums in connection with restrictive undertakings paid on or after* 6*June* 1988.1989 s.44*for periods of account ending after* 5*April* 1989*involving emoluments.*1989 s.67*—employee share ownership trusts.*1989 s.76*—non-approved retirement benefit schemes.*1989 ss.86-87*—changes in respect of insurance companies.*

Marginal Citations

M198 SOURCE-1970 s. 304(1); 1984 s. 54(2)(b); 1987 s. 41
M199 1982 c. 52.
M200 SOURCE-1970 s. 304(2), (3)
M201 SOURCE-1970 s. 304(4)

VALID FROM 22/07/2004

[F82 75A Accounting period to which expenses of management are referable

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—
- (a) expenses of management are debited in accounts drawn up by a company for a period of account,
- (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and
- (c) the period of account coincides with an accounting period,

the expenses of management are referable to that accounting period.

(3) Where—
- (a) expenses of management are debited in accounts drawn up by a company for a period of account, and
- (b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but
- (c) the period of account does not coincide with an accounting period,

subsection (4) below applies.

(4) Where this subsection applies, the expenses of management—
- (a) shall be apportioned between any accounting periods that fall within the period of account, and
- (b) are referable to an accounting period to the extent that they are so apportioned to it.

(5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work

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unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(6) Where—

(a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but

(b) accounts are drawn up by the company for a period of account, and

(c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,

the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.

(7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.

(8) Those assumptions are—

(a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and

(b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.

(9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.

(10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—

(a) in the company's profit and loss account, or

(b) in a statement of total recognised gains and losses or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose "debit" means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.**]**

Textual Amendments

F82 S. 75A inserted (with effect in accordance with ss. 42, 43 of the amending Act) by Finance Act 2004 (c. 12), **s. 39**

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VALID FROM 22/07/2004

[F83 75B Amounts reversing expenses of management deducted: charge to tax

(1) This section applies in any case where the following conditions are satisfied—

(a) a credit is brought into account by a company in a period of account (the "reversal period") which ends on or after the commencement date,

(b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),

(c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company ("the period of deductibility"),

(d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),

(e) the period of deductibility ends before, or at the same time as, the reversal period,

(f) the reversal period does not coincide with an accounting period beginning before the commencement date.

(2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.

(3) In this section "the reversal amount" means so much of the credit as—

(a) reverses so much of the debit as represents the expenses of management, and

(b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.

For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.

(4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.

(5) If the reversal period does not coincide with an accounting period of the company—

(a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and

(b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.

(6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—

(a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company's expenses of management deductible for that

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period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and

(b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.

(8) In subsection (1) above "brought into account", in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

(9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.

(10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.

(11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and then in whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).

(12) In this section—

"the commencement date" means 1st April 2004;

"credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;

"debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.**]**

Textual Amendments

F83 S. 75B inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(1)** (with s. 45(2)(3))

76 Expenses of management: insurance companies.

(1) [M202]Subject to the provisions of this section and of section 432, section 75 shall apply for computing the profits of a company carrying on life assurance business, whether mutual or proprietary, (and not charged to corporation tax in respect of it under Case I of Schedule D), whether or not the company is resident in the United Kingdom, as that section applies in relation to an investment company except that—

(a) there shall be deducted from the amount treated as the expenses of management for any accounting period the amount of any fines, fees or profits arising from reversions, and

(b) no deduction shall be made under section 75(2) **[**[F84]; and

(c) there shall be deducted from the amount treated as the expenses of management for any accounting period any repayment or refund (in whole or in part) of a sum disbursed by the company (for that or any earlier period) as acquisition expenses; and

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[[F85](ca) there shall also be deducted from the amount treated as the expenses of management for any accounting period any reinsurance commission earned in the period which is referable to **[**[F86]basic life assurance and general annuity business**]**; and**]**

(d) the amount treated as expenses of management shall not include any amount in respect of expenses referable to [F87]. . . **[**[F88], pension business or overseas life assurance business**]**; and

(e) the amount of profits from which expenses of management may be deducted for any accounting period shall not exceed the net income and gains of that accounting period referable to **[**[F86]basic life assurance and general annuity business**]**;

and for this purpose "net income and gains" means income and gains after deducting any reliefs or exemptions which fall to be applied before taking account of this section.**]**

(2) [M203]Relief in respect of management expenses shall not be given to any such company, whether under section 242 or subsection (1) above, so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the corporation tax borne by the company on the income and gains of its life assurance business for any accounting period to less than would have been paid if the company had been charged to tax in respect of that business under Case I of Schedule D.

In this subsection the references to reliefs do not include references to any set-off under section 239.

(3) [M204]For the purposes of subsection (2) above—

(a) any tax credit to which the company is entitled in respect of a distribution received by it shall be treated as an equivalent amount of corporation tax borne or paid in respect of that distribution; and

(b) any payment in respect of that credit under section 242 shall be treated as reducing the tax so treated as borne or paid.

(4) In applying subsection (2) above to an accounting period in which a company—

(a) carries on any business in addition to life assurance business, or

(b) carries on both ordinary life assurance business and industrial life assurance business,

the tax that would have been paid if the company had been charged under Case I of Schedule D in respect of its life assurance business, or its life assurance business of either of those classes, shall be calculated as if any advance corporation tax set against the company's liability to corporation tax for that accounting period were apportioned to the corporation tax attributable to each business in proportion to the profits of that business charged to corporation tax for that accounting period.

(5) [M205]Where relief has been withheld in respect of any accounting period by virtue of subsection (2) above, the excess to be carried forward by virtue of section 75(3) shall be increased accordingly.

(6) [M206]The relief under this section available to an overseas life insurance company (within the meaning of section 431) in respect of its expenses of management shall be limited to expenses attributable to the life assurance business carried on by the company at or through its branch or agency in the United Kingdom.

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(7) [M207]For the purposes of this section any sums paid by a company under **[**[F89](a)**]**a long term business levy imposed by virtue of the [M208]Policyholders Protection Act 1975 **[**[F90]or

(b) a levy imposed in pursuance of a scheme established by rules under section 54 of the 1986 Act (compensation fund for unsatisfied claims),**]**

shall be treated as part of its expenses of management.

[[F91](7A) The Treasury may by regulations make provision for any sums paid by a company under a prescribed levy imposed under a prescribed investor protection scheme established under the rules of a prescribed recognised self-regulating organisation to be treated for the purposes of this section as part of the company's expenses of management; and, without prejudice to the generality of the foregoing, regulations under this subsection may, in particular—

(a) provide for only a prescribed part of any sums so paid to be so treated;

(b) provide for sums paid before, as well as after, the coming into force of the regulations to be so treated; and

(c) make different provision for different cases or in relation to different levies, schemes or organisations.**]**

[[F92](8) In this section—

"the 1986 Act" means the Financial Services Act 1986;

"acquisition expenses" means expenses falling within paragraphs (a) to (c) of subsection (1) of section 86 of the Finance Act 1989;

"authorised person" has the same meaning as it has in the 1986 Act by virtue of section 207(1) of that Act;

"investment business" has the same meaning as it has in the 1986 Act by virtue of section 1(2) of that Act;

"investor" includes a person who is an investor for the purposes of the 1986 Act;

"investor protection scheme" means a scheme established under the rules of a recognised self-regulating organisation for purposes which consist of or include the compensating of investors in cases where persons, or persons of some class or description, who are or have been authorised persons, are, or are likely to be, unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their investment businesses;

"prescribed" means specified in regulations made by the Treasury under subsection (7A) above;

"recognised self-regulating organisation" has the same meaning as it has in the 1986 Act;

and other expressions have the same meaning as in Chapter I of Part XII.**]**

Textual Amendments

F84 1989 s.87(2)*with respect to accounting periods beginning on or after* 1*January* 1990 (*see* s.87(5)*re straddling periods*).

F85 1990 s.44(3)*with respect to accounting periods beginning on or after* 1*January* 1990 (*see* 1989 s.87(5)*re straddling periods*).

F86 Words in s. 76(1)(ca)(e) substituted (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 1(a), **18**

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F87 Words in s. 76(1)(d) repealed (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 1(b), 18, **Sch. 19 Pt. V** Note 3

F88 1990 s.42*and* Sch.7 para.1*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*
"or pension business".

F89 '(a)' in s. 76(7) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(1)**(with effect as mentioned in s. 47(4))

F90 Words in s. 76(7) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(1)**(with effect as mentioned in s. 47(4))

F91 S. 76(7A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(2)**

F92 S. 76(8) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 47(3)**

Modifications etc. (not altering text)

C110 See 1989 s. 44 - periods of assessment ending after 5 April 1989 involving endowments. 1989 ss. 85-88 - changes in respect of insurance companies.

C111 See the following sections of this Act:
—s.85—
profit sharing schemes.
s.88—
sums paid to Exports Credits Guarantee Dept. under investment insurance scheme.
s.90—
additional payments to redundant employees.
s.242—
set-off of losses etc., against franked investment income.
s.403—
management expenses of life assurance companies excluded from group relief.
s.573(4)—
losses on unquoted shares in trading companies allowed before charges against income of investment companies.
s.579—
deduction for statutory redundancy payments.
s.586—
disallowance of deductions for war risk premiums.
s.587—
disallowance of certain payments in respect of war injuries to employees.
s.779—
limitation on reliefs: land sold and leased back.
s.780—
land sold and leased back: relief in respect of rent under new lease.
s.781—
assets leased to traders and others: cancellation of reliefs.
s.834—
definitions of "profits" and "trade" in
s.6(4)
to apply for purposes of
s.76

C112 *See* S.I. 1989 No.2417 (*in* Part III Vol.5)*for modifications applicable to life or endowment business carried on by registered friendly societies.*

C113 S. 76(7) modified (31.7.1992 with effect as stated in reg. 1 of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations (S.I. 1992/1655), {reg. 4}

C114 S. 76(7) amendment to earlier affecting provision S.I. 1992/1655 reg. 4 (31.12.1993 with effect as stated in reg. 1(2)(3) of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111) {reg. 5}

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Marginal Citations

M202 SOURCE-1970 s. 305(1)
M203 SOURCE-1970 s. 305(2); 1972 Sch. 18 para. 1(2)
M204 SOURCE-1972 Sch. 18 para. 1(1), (3)
M205 SOURCE-1970 s. 305(2)
M206 SOURCE-1970 s. 317
M207 SOURCE-1976 s. 47
M208 1975 c. 75.

VALID FROM 01/12/2001

76A Levies and repayments under the Financial Services and Markets Act 2000.

(1) In computing the amount of the profits to be charged under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

(a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;

(b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.

[[F93](2) "Levy" means—

(a) a payment required under rules made under section 136(2) of the Financial Services and Markets Act 2000 ("the Act of 2000");

(b) a levy imposed under the Financial Services Compensation Scheme;

(c) a payment required under rules made under section 234 of the Act of 2000;

(d) a payment required under scheme rules in accordance with paragraph 15(1) of Schedule 17 to the Act of 2000;

(e) a payment required in accordance with the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000 other than an award which is not an award of costs under cost rules.**]**

[[F94](3) "Repayment provision" means—

(a) any provision made by virtue of section 136(7) or 214(1)(e) of the Act of 2000;

(b) any provision by scheme rules for fees to be refunded in specified circumstances.**]**

(4) "Authorised person" has the same meaning as in the Act of 2000.

[[F95](5) "Scheme rules" means the rules referred to in paragraph 14(1) of Schedule 17 to the Act of 2000.

(6) "Costs rules" means—

(a) rules made under section 230 of the Act of 2000;

(b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000.**]**

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Textual Amendments

F93 S. 76A(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(3)**

F94 S. 76A(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(4)**

F95 S. 76A(5)(6) added (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(5)**

VALID FROM 01/12/2001

76B Levies and repayments under the Financial Services and Markets Act 2000: investment companies.

(1) For the purposes of section 75 any sums paid by an investment company—

(a) by way of a levy, or

(b) as a result of an award of costs under costs rules,

shall be treated as part of its expenses of management.

(2) If a payment is made to an investment company as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.

(3) "Levy" has the meaning given in section **[**[F96]76A(2)**]**.

[[F97](4) "Costs rules" has the meaning given in section 76A(6).**]**

(5) "Repayment provision" has the meaning given in section 76A(3).

Textual Amendments

F96 Words in s. 76B(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(7)**

F97 S. 76B(4) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(8)**

77 Incidental costs of obtaining loan finance.

(1) [M209]Subject to subsection (5) below, in computing the profits or gains to be charged under Case I or II of Schedule D there may be deducted the incidental costs of obtaining finance by means of a qualifying loan or the issue of qualifying loan stock or a qualifying security; and the incidental costs of obtaining finance by those means shall be treated for the purposes of section 75 as expenses of management.

(2) Subject to subsections (3) and (4) below, in this section—

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(a) [M210] "a qualifying loan" and "qualifying loan stock" mean a loan or loan stock the interest on which is deductible—

(i) in computing for tax purposes the profits or gains of the person by whom the incidental costs in question are incurred; or

(ii) under section 338 against his total profits; and

(b) [M211] "qualifying security" means any deep discount security, as defined by paragraph 1 of Schedule 4, in respect of which the income elements, as defined by paragraph 4 of that Schedule, are deductible under paragraph 5(1) of that Schedule in computing the total profits of the company by which the incidental costs in question are incurred.

(3) [M212]Except as provided by subsection (4) below, a loan or loan stock which carries the right of conversion into or to the acquisition of—

(a) shares, or

(b) other securities not being a qualifying loan or qualifying loan stock,

is not a qualifying loan or qualifying loan stock if that right is exercisable before the expiry of the period of three years from the date when the loan was obtained or the stock issued.

(4) [M213]A loan or loan stock—

(a) which carries such a right as is referred to in subsection (3) above, and

(b) which by virtue of that subsection is not a qualifying loan or qualifying loan stock,

shall nevertheless be regarded as a qualifying loan or qualifying loan stock, as the case may be, if the right is not, or is not wholly, exercised before the expiry of the period of three years from the date when the loan was obtained or the stock was issued.

(5) For the purposes of the application of subsection (1) above in relation to a loan or loan stock which is a qualifying loan or qualifying loan stock by virtue of subsection (4) above—

(a) if the right referred to in subsection (4)(a) above is exercised as to part of the loan or stock within the period referred to in that subsection, only that proportion of the incidental costs of obtaining finance which corresponds to the proportion of the stock in respect of which the right is not exercised within that period shall be taken into account; and

(b) in so far as any of the incidental costs of obtaining finance are incurred before the expiry of the period referred to in subsection (4) above they shall be treated as incurred immediately after that period expires.

(6) [M214]In this section "the incidental costs of obtaining finance" means expenditure on fees, commissions, advertising, printing and other incidental matters (but not including stamp duty), being expenditure wholly and exclusively incurred for the purpose of obtaining the finance (whether or not it is in fact obtained), or of providing security for it or of repaying it.

(7) This section shall not be construed as affording relief—

(a) for any sums paid in consequence of, or for obtaining protection against, losses resulting from changes in the rate of exchange between different currencies; or

(b) for the cost of repaying a loan or loan stock or a qualifying security so far as attributable to its being repayable at a premium or to its having been obtained or issued at a discount.

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Marginal Citations

M209 SOURCE-1980 s. 38(1); 1984 s. 43(1), Sch. 9 para. 3(6)
M210 SOURCE-1980 s. 38(2); 1984 s. 43(1)
M211 SOURCE-1984 Sch. 9 para. 3(7)
M212 SOURCE-1980 S. 38(3); 1984 S. 43(1)
M213 SOURCE-1980 s. 38(3A), (3B); 1984 s. 43(2)
M214 SOURCE-1980 s. 38(4), (5); 1984 Sch. 9 para. 3(6)

78 Discounted bills of exchange.

(1) [M215]This section applies in any case where—

(a) a bill of exchange drawn by a company is or was accepted by a bank and discounted by that or any other bank or by a discount house; and

(b) the bill becomes or became payable on or after 1st April 1983; and

(c) the discount suffered by the company is not (apart from this section) deductible in computing the company's profits or any description of those profits for purposes of corporation tax.

(2) Subject to subsection (3) below, in computing, in a case where this section applies, the corporation tax chargeable for the accounting period of the company in which the bill of exchange is paid, an amount equal to the discount referred to in subsection (1)(c) above shall be allowed as a deduction against the total profits for the period as reduced by any relief other than group relief and, except for the purposes of an allowance under section 338(1), that amount shall be treated for the purposes of the Corporation Tax Acts as a charge on income.

(3) Subsection (2) above shall not apply if the discount is not ultimately suffered by the company and shall not apply unless—

(a) the company exists wholly or mainly for the purposes of carrying on a trade; or

(b) the bill is drawn to obtain funds which are wholly and exclusively expended for the purposes of a trade carried on by the company; or

(c) the company is an investment company.

(4) Where an amount falls to be allowed as mentioned in subsection (2) above, there may be deducted, in computing the profits or gains of the company to be charged under Case I of Schedule D, the incidental costs incurred on or after 1st April 1983 in securing the acceptance of the bill by the bank; and those incidental costs shall be treated for the purposes of section 75 as expenses of management.

(5) For the purposes of subsection (4) above "incidental costs" means fees, commission and any other expenditure wholly and exclusively incurred for the purpose of securing the acceptance of the bill.

(6) In this section "bank" means a bank carrying on a bona fide banking business in the United Kingdom and "discount house" means a person bona fide carrying on the business of a discount house in the United Kingdom.

Marginal Citations

M215 SOURCE-1984 s. 42

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79 Contributions to local enterprise agencies.

(1) [M216]Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to an approved local enterprise agency, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the agency concerned or from any other person.

(4) In this section "approved local enterprise agency" means a body approved by the Secretary of State for the purposes of this section; but he shall not so approve a body unless he is satisfied that—

(a) its sole objective is the promotion or encouragement of industrial and commercial activity or enterprise in a particular area in the United Kingdom with particular reference to encouraging the formation and development of small businesses; or

(b) one of its principal objectives is that set out in paragraph (a) above and it maintains or is about to maintain a fund separate from its other funds which is or is to be applied solely in pursuance of that objective;

and where the Secretary of State approves a body by virtue of paragraph (b) above, the approval shall specify the fund concerned and, in relation to a body so approved, any reference in this section to a contribution is a reference to a contribution which is made wholly to or for the purposes of that fund.

(5) [M217]A body may be approved under subsection (4) above whether or not it is a body corporate or a body of trustees or any other association or organisation and whether or not it is described as a local enterprise agency.

(6) A body may not be approved under subsection (4) above unless it is precluded, by virtue of any enactment, contractual obligation, memorandum or otherwise, from making any direct or indirect payment or transfer to any of its members, or to any person charged with the control and direction of its affairs, of any of its income or profit by way of dividend, gift, division, bonus or otherwise howsoever by way of profit.

(7) For the purposes of subsection (6) above, the payment—

(a) of reasonable remuneration for goods, labour or power supplied or for services rendered, or

(b) of reasonable interest for money lent, or

(c) of reasonable rent for any premises,

does not constitute a payment or transfer which is required to be so precluded.

(8) [M218]Any approval given by the Secretary of State may be made conditional upon compliance with such requirements as to accounts, provision of information and other matters as he considers appropriate; and if it appears to the Secretary of State that—

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(a) an approved local enterprise agency is not complying with any such requirement, or

(b) one or other of the conditions for his approval contained in subsection (4) above or the precondition for his approval in subsection (6) above has ceased to be fulfilled with respect to an approved local enterprise agency,

he shall by notice withdraw his approval from the body concerned with effect from such date as he may specify in the notice (which may be a date earlier than the date on which the notice is given).

(9) In any case where—

(a) a contribution has been made to an approved local enterprise agency in respect of which relief has been given under subsection (1) above, and

(b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(10) Section 839 applies for the purposes of subsections (3) and (9) above.

(11) This section applies to contributions made on or after 1st April 1982 and before 1st April **[**[F98]1995**]**.

Textual Amendments

F98 1990 s.75.*Previously*
"1992".

Marginal Citations

M216 SOURCE-1982 s. 48(1)–(4)
M217 SOURCE-1982 s. 48(5)
M218 SOURCE-1982 s. 48(6)–(9)

[[F99]**79A Contributions to training and enterprise councils and local enterprise companies.**

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to a training and enterprise council or a local enterprise company, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the council or company concerned or from any other person.

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(4) In any case where—

(a) relief has been given under subsection (1) above in respect of a contribution, and

(b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D, or if he is not chargeable to tax under either of those Cases for that period under Case VI of Schedule D, on an amount equal to the value of that benefit.

(5) In this section—

(a) "training and enterprise council" means a body with which the Secretary of State has made an agreement (not being one which has terminated) under which it is agreed that the body shall carry out the functions of a training and enterprise council, and

(b) "local enterprise company" means a company with which an agreement (not being one which has terminated) under which it is agreed that the company shall carry out the functions of a local enterprise company has been made by the Scottish Development Agency, the Highlands and Islands Development Board, Scottish Enterprise or Highlands and Islands Enterprise.

(6) Section 839 applies for the purposes of subsections (3) and (4) above.

(7) This section applies to contributions made on or after 1st April 1990 and before 1st April 1995.**]**

Textual Amendments

F99 1990 s.76.

VALID FROM 10/07/2003

79B Contributions to urban regeneration companies

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to a designated urban regeneration company, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits of the trade, profession or vocation if it would not otherwise be so deductible.

(2) Where any such contribution is made by an investment company, any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

(3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the urban regeneration company concerned or from any other person.

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(4) In any case where—
  (a) relief has been given under subsection (1) above in respect of a contribution, and
  (b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "urban regeneration company" means any body of persons (whether corporate or unincorporate) which the Treasury by order designates as an urban regeneration company for the purposes of this section.

(6) The Treasury may only make an order under subsection (5) above designating a body as an urban regeneration company for the purposes of this section if they consider that each of the criteria in subsection (7) below is satisfied in the case of the body.

(7) The criteria are that—
  (a) the sole or main function of the body is to co-ordinate the regeneration of a specific urban area in the United Kingdom;
  (b) the body is expected to seek to perform that function by creating a plan for the development of that area and endeavouring to secure that the plan is carried into effect;
  (c) in co-ordinating the regeneration of that area, the body is expected to work together with some or all of the public or local authorities which exercise functions in relation to the whole or part of that area.

(8) An order under subsection (5) above may be framed so as to take effect on a date earlier than the making of the order, but not earlier than—
  (a) 1st April 2003, in the case of the first order under that subsection, or
  (b) three months before the date on which the order is made, in the case of any subsequent order.

(9) Section 839 (connected persons) applies for the purposes of this section.

(10) This section applies to contributions made on or after 1st April 2003.

80 Expenses connected with foreign trades etc.

(1) [M219]This section applies in the case of a trade, profession or vocation carried on wholly outside the United Kingdom by an individual ("the taxpayer") who does not satisfy the Board as mentioned in section 65(4); and it is immaterial in the case of a trade or profession whether the taxpayer carries it on solely or in partnership.

(2) Expenses of the taxpayer—
  (a) in travelling from any place in the United Kingdom to any place where the trade, profession or vocation is carried on;
  (b) in travelling to any place in the United Kingdom from any place where the trade, profession or vocation is carried on; or
  (c) on board and lodging for the taxpayer at any place where the trade, profession or vocation is carried on;

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shall, subject to subsections (3) and (4) below, be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation.

(3) Subsection (2) above does not apply unless the taxpayer's absence from the United Kingdom is occasioned wholly and exclusively for the purpose of performing the functions of the trade, profession or vocation or of performing those functions and the functions of any other trade, profession or vocation (whether or not one in the case of which this section applies).

(4) Where subsection (2) above applies and more than one trade, profession or vocation in the case of which this section applies is carried on at the place in question, the expenses shall be apportioned on such basis as is reasonable between those trades, professions or vocations; and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(5) Where the taxpayer is absent from the United Kingdom for a continuous period of 60 days or more wholly and exclusively for the purpose of performing the functions of one or more trades, professions or vocations in the case of which this section applies, expenses to which subsection (6) below applies shall be treated in accordance with subsection (7) or (8) below (as the case may be).

(6) This subsection applies to the expenses of any journey by the taxpayer's spouse, or any child of his, between any place in the United Kingdom and the place of performance of any of those functions outside the United Kingdom, if the journey—

(a) is made in order to accompany him at the beginning of the period of absence or to visit him during that period; or

(b) is a return journey following a journey falling within paragraph (a) above;

but this subsection does not apply to more than two outward and two return journeys by the same person in any year of assessment.

(7) The expenses shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation concerned (if there is only one).

(8) The expenses shall be apportioned on such basis as is reasonable between the trades, professions or vocations concerned (if there is more than one) and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(9) In subsection (6) above "child" includes a stepchild and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the outward journey.

(10) Nothing in this section shall permit the same sum to be deducted for more than one trade, profession or vocation in respect of expenses in computing profits or gains.

Marginal Citations

M219 SOURCE-1986 s. 35

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81 Travel between trades etc.

(1) [M220]Where a taxpayer (within the meaning of section 80) travels between a place where he carries on a trade, profession or vocation in the case of which section 80 applies and a place outside the United Kingdom where he carries on another trade, profession or vocation (whether or not one in the case of which that section applies) expenses of the taxpayer on such travel shall, subject to subsections (3) to (5) below, be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of the trade, profession or vocation mentioned in subsection (2) below.

(2) The trade, profession or vocation is—
- (a) the one carried on at the place of the taxpayer's destination; or
- (b) if that trade, profession or vocation is not one in the case of which section 80 applies, the one carried on at the place of his departure.

(3) This section does not apply unless the journey was made—
- (a) after performing functions of the trade, profession or vocation carried on at the place of departure; and
- (b) for the purpose of performing functions of the trade, profession or vocation carried on at the place of destination.

(4) This section does not apply unless the taxpayer's absence from the United Kingdom is occasioned wholly and exclusively for the purpose of performing the functions of both the trades, professions or vocations concerned or of performing those functions and the functions of any other trade, profession or vocation.

(5) Where this section applies and more than one trade, profession or vocation in the case of which section 80 applies is carried on at the place of the taxpayer's destination or (in a case falling within subsection (2)(b) above) at the place of his departure, the expenses shall be apportioned on such basis as is reasonable between those trades, professions or vocations; and the expenses so apportioned to a particular trade, profession or vocation shall be treated for the purposes of section 74(a) as having been wholly and exclusively expended for the purposes of that trade, profession or vocation.

(6) Nothing in this section shall permit the same sum to be deducted for more than one trade, profession or vocation in respect of expenses in computing profits or gains.

Marginal Citations
M220 SOURCE-1986 s. 36

82 Interest paid to non-residents.

(1) [M221]In computing the profits or gains arising from a trade, profession or vocation, no sum shall be deducted in respect of any annual interest paid to a person not resident in the United Kingdom unless—
- (a) the person making the payment has deducted income tax from the payment in accordance with section 349(2) and accounts for the tax so deducted, or
- (b) the conditions set out in subsection (2) below are satisfied.

(2) The conditions referred to in subsection (1)(b) above are as follows—
- (a) that the trade, profession or vocation is carried on by a person residing in the United Kingdom, and

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(b) that the liability to pay the interest was incurred exclusively for the purposes of the trade, profession or vocation, and

(c) that either—

(i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the trade, profession or vocation carried on outside the United Kingdom, or

(ii) the interest is payable in a currency other than sterling, and

(d) that, under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom, and

(e) that the interest is in fact paid outside the United Kingdom.

(3) Where the trade, profession or vocation is carried on by a partnership, subsection (1)(b) above shall not apply to any interest which is payable to any of the partners, or is payable in respect of the share of any partner in the partnership capital.

(4) Subsection (1)(b) above shall not apply where—

(a) the trade, profession or vocation is carried on by a body of persons over whom the person entitled to the interest has control; or

(b) the person entitled to the interest is a body of persons over whom the person carrying on the trade, profession or vocation has control; or

(c) the person carrying on the trade, profession or vocation and the person entitled to the interest are both bodies of persons and some other person has control over both of them.

In this subsection, the references to a body of persons include references to a partnership, and "control" has the meaning given by section 840.

(5) If interest paid under deduction of tax in accordance with section 349(2) is deductible in computing the profits or gains of a trade, profession or vocation the amount so deductible shall be the gross amount.

(6) This section does not apply for the purposes of corporation tax.

Marginal Citations

M221 SOURCE-1970 s. 131(1)–(5), (7); 1982 s. 64(1)

VALID FROM 28/07/2000

82A Expenditure on research and development.

(1) Notwithstanding anything in section 74, where a person carrying on a trade incurs expenditure not of a capital nature on research and development—

(a) related to that trade, and

(b) directly undertaken by him or on his behalf,

the expenditure incurred may be deducted as an expense in computing the profits of the trade for the purposes of tax.

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(2) For this purpose expenditure on research and development does not include expenditure incurred in the acquisition of rights in, or arising out of, research and development.

Subject to that, it includes all expenditure incurred in carrying out, or providing facilities for carrying out, research and development.

(3) The reference in subsection (1) above to research and development related to a trade includes—
- (a) research and development which may lead to or facilitate an extension of that trade;
- (b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

(4) The same expenditure may not be taken into account under this section in relation to more than one trade.

(5) In this section "research and development" has the meaning given by section 837A and includes oil and gas exploration and appraisal.

Modifications etc. (not altering text)

C115 S. 82A modified (1.1.2005 with effect in accordance with art. 2 of the commencing S.I.) by Finance Act 2004 (c. 12), **s. 53(2)**; S.I. 2004/3268, **art. 2**

VALID FROM 28/07/2000

82B Payments to research associations, universities etc.

(1) Notwithstanding anything in section 74, where a person carrying on a trade—
- (a) pays any sum to a scientific research association that—
  - (i) has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs, and
  - (ii) is for the time being approved for the purposes of this section by the Secretary of State, or
- (b) pays any sum to be used for such scientific research as is mentioned in paragraph (a) above to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the sum paid may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) In this section "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge.

(3) The reference in this section to scientific research related to a class of trade includes—
- (a) scientific research which may lead to or facilitate an extension of trades of that class;

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(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of that class.

(4) If a question arises under this section whether, or to what extent, any activities constitute or constituted scientific research, the Board shall refer the question for decision to the Secretary of State.

The decision of the Secretary of State is final.

(5) The same expenditure may not be taken into account under this section in relation to more than one trade.

83 Patent fees etc. and expenses.

[M222]Notwithstanding anything in section 74, in computing the profits or gains of a trade there may be deducted as expenses any fees paid or expenses incurred—

(a) in obtaining for the purposes of the trade the grant of a patent, an extension of the term of a patent, the registration of a design or trade mark, **[**[F100]an extension of the period for which the right in a registered design subsists**]** or the renewal of registration of a trade mark, or

(b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.

References in this section to a trade mark include references to a service mark within the meaning of the [M223]Trade Marks (Amendment) Act 1984.

Textual Amendments

F100 Sch.7 para.36(2)Copyright, Designs and Patents Act 1988 (c.48)—*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced.*)*Previously* "the extension of the period of copyright in a design".

Marginal Citations

M222 SOURCE-1970 s. 132

M223 1984 c. 19.

VALID FROM 27/07/1999

83A Gifts in kind to charities etc.

(1) This section applies where a person carrying on a trade, profession or vocation gives an article falling within subsection (2) below to—

(a) a charity within the meaning of section 506, or

(b) a body listed in section 507(1).

(2) An article falls within this subsection if—

(a) it is an article manufactured, or of a class or description sold, by the donor in the course of his trade; or

(b) it is an article used by the donor in the course of his trade, profession or vocation which for the purposes of Part II of the 1990 Act constitutes

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machinery or plant used by him wholly or partly in the course of that trade, profession or vocation.

(3) Subject to subsection (4) below, where this section applies in the case of the gift of an article—

(a) no amount shall be required, in consequence of the donor's disposal of that article from trading stock, to be brought into account for the purposes of the Tax Acts as a trading receipt of the donor; and

(b) section 24(6) of the 1990 Act shall not require the donor to bring into account any disposal value in respect of the article for the purposes of that section.

(4) In any case where—

(a) relief is given under subsection (3) above in respect of the gift of an article, and

(b) any benefit received in any chargeable period by the donor or any person connected with him is in any way attributable to the making of that gift,

the donor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) Section 839 applies for the purposes of this section.

[84 [F101]Gifts to educational establishments.

(1) This section applies where a person carrying on a trade, profession or vocation ("the donor") makes a gift for the purposes of a designated educational establishment of—

(a) an article manufactured, or of a class or description sold, by the donor in the course of his trade which qualifies as machinery or plant in the hands of the educational establishment; or

(b) an article used by the donor in the course of his trade, profession or vocation—

(i) which, for the purposes of Part II of the 1990 Act (capital allowances for machinery and plant), constitutes machinery or plant used by him wholly or partly in the course of that trade, profession or vocation; and

(ii) in respect of which he has claimed an allowance under that Part of that Act.

(2) For the purposes of this section, an article "qualifies as machinery or plant in the hands of an educational establishment" if, and only if, it is an article such that—

(a) were the activities carried on by the educational establishment regarded as a trade carried on by a body of persons, and

(b) had that body, at the time of the gift, incurred capital expenditure wholly and exclusively on the provision of an identical article for the purposes of those activities, and

(c) had the identical article belonged to that body in consequence of the incurring of that expenditure,

the identical article would be regarded for the purposes of Part II of the 1990 Act as machinery or plant provided by the body for the purposes of that trade.

(3) Where this section applies—

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(a) if the gift is of an article falling within paragraph (a) of subsection (1) above, then, for the purposes of the Tax Acts, no amount shall be required to be brought into account as a trading receipt of the donor in consequence of his disposal of that article from trading stock; and

(b) if the gift is of an article falling within paragraph (b) of that subsection, subsection (6) of section 24 of the 1990 Act shall not require the donor to bring into account any disposal value in respect of the article for the purposes of that section;

but this subsection shall not apply unless, within two years of making the gift, the donor makes a claim for relief under this subsection, specifying the article given and the name of the educational establishment in question.

(4) In any case where—

(a) relief is given under subsection (3) above in respect of the gift of an article, and

(b) any benefit received in any chargeable period by the donor or any person connected with him is in any way attributable to the making of that gift,

the donor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "designated educational establishment" means any educational establishment designated, or of a category designated,—

(a) as respects Great Britain, in regulations made by the Secretary of State; or

(b) as respects Northern Ireland, in regulations made by the Department of Education for Northern Ireland;

and any such regulations may make different provision for different areas.

(6) If any question arises as to whether a particular establishment falls within a category designated in regulations under subsection (5) above, the Board shall refer the question for decision—

(a) in the case of an establishment in Great Britain, to the Secretary of State, or

(b) in the case of an establishment in Northern Ireland, to the Department of Education for Northern Ireland.

(7) The power of the Secretary of State to make regulations under subsection (5) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.

(8) Regulations made under subsection (5) above for Northern Ireland—

(a) shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and

(b) shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

(9) Section 839 applies for the purposes of subsection (4) above.**]**

Textual Amendments

F101 S. 84 substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 68(1)(2)**

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[84A [F102]Costs of establishing share option or profit sharing schemes: relief.

(1) Subsection (2) below applies where—

(a) a company incurs expenditure on establishing a share option scheme which the Board approve and under which no employee or director obtains rights before such approval is given, or

(b) a company incurs expenditure on establishing a profit sharing scheme which the Board approve and under which the trustees acquire no shares before such approval is given.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) In a case where—

(a) subsection (2) above applies, and

(b) the approval is given after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the approval is given (and not the period of account mentioned in paragraph (b) above).

(4) References in this section to approving are to approving under Schedule 9.

(5) This section applies where the expenditure is incurred on or after 1st April 1991.**]**

Textual Amendments

F102 S. 84A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 42**

85 Payments to trustees of approved profit sharing schemes.

(1) [M224]Any sum expended in making a payment to the trustees of an approved profit sharing scheme by a company which is in relation to that scheme the grantor or a participating company—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by that company; or

(b) if that company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management,

if, and only if, one of the conditions in subsection (2) below is fulfilled.

(2) The conditions referred to in subsection (1) above are—

(a) that before the expiry of the relevant period the sum in question is applied by the trustees in the acquisition of shares for appropriation to individuals who are eligible to participate in the scheme by virtue of their being or having been employees or directors of the company making the payment; and

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(b) that the sum is necessary to meet the reasonable expenses of the trustees in administering the scheme.

(3) For the purposes of subsection (2)(a) above "the relevant period" means the period of nine months beginning on the day following the end of the period of account in which the sum in question is charged as an expense of the company incurring the expenditure or such longer period as the Board may allow by notice given to that company.

(4) For the purposes of this section, the trustees of an approved profit sharing scheme shall be taken to apply sums paid to them in the order in which the sums are received by them.

(5) In this section—

"approved profit sharing scheme" means a profit sharing scheme approved under Schedule 9; and

"the grantor" and "participating company" have the meaning given by paragraph 1(3) and (4) of that Schedule.

Marginal Citations
M224 SOURCE-1978 s. 60

[85A F103Costs of establishing employee share ownership trusts: relief.

(1) Subsection (2) below applies where a company incurs expenditure on establishing a qualifying employee share ownership trust.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) In a case where—

(a) subsection (2) above applies, and

(b) the trust is established after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the trust is established (and not the period of account mentioned in paragraph (b) above).

(4) In this section "qualifying employee share ownership trust" shall be construed in accordance with Schedule 5 to the Finance Act 1989.

(5) For the purposes of this section the trust is established when the deed under which it is established is executed.

(6) This section applies where the expenditure is incurred on or after 1st April 1991.**]**

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Textual Amendments

F103 S. 85A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 43**

VALID FROM 06/04/2003

85B Approved share incentive plans

Schedule 4AA (which provides for deductions relating to approved share incentive plans) shall have effect.

86 Employees seconded to charities and educational establishments.

(1) [M225]If a person ("the employer") carrying on a trade, profession, vocation or business for the purposes of which he employs a person ("the employee") makes available to a charity, on a basis which is expressed and intended to be of a temporary nature, the services of the employee then, notwithstanding anything in section 74 or 75, any expenditure incurred (or disbursed) by the employer which is attributable to the employment of that employee shall continue to be deductible in the manner and to the like extent as if, during the time that his services are so made available to the charity, they continued to be available for the purposes of the employer's trade, business, profession or vocation.

(2) In subsection (1) above—

"charity" has the same meaning as in section 506;

"deductible" means deductible as an expense in computing the profits or gains of the employer to be charged under Case I or II of Schedule D or, as the case may be, deductible as expenses of management for the purposes of section 75.

(3) With respect to expenditure attributable to the employment of a person on or after 26th November 1986 [F104]. . . , this section shall have effect as if the references to a charity included references to any of the following bodies, that is to say—

(a) in England and Wales, any local education authority and any educational institution maintained by such an authority;

(b) in Scotland, any education authority, any educational establishment maintained by such an authority, and any college of education or central institution within the meaning of the [M226]Education (Scotland) Act 1980;

(c) in Northern Ireland, any education and library board, college of education or controlled school within the meaning of the [M227]Education and Libraries (Northern Ireland) Order 1986 and any institution of further education which is under the management of an education and library board by virtue of Article 28 of that Order; and

(d) any other educational body which is for the time being approved for the purposes of this section by the Secretary of State or, in Northern Ireland, the Department of Education for Northern Ireland.

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Textual Amendments

F104 Words in s. 86(3) repealed (retrospectively) by Finance Act 1999 (c. 16), s. 58(2)(5), **Sch. 20 Pt. 3(14)**, Note

Marginal Citations

M225 SOURCE-1983 s. 28; 1984 s. 33; 1987 s. 34

M226 1980 c. 44.

M227 S.I. 1986/594 (N.I. 3).

[F105 86A Charitable donations: contributions to agent's expenses.

(1) This section applies where—

(a) a person (the employer) is liable to make to any individual payments from which income tax falls to be deducted by virtue of section 203 and regulations under that section, and

(b) the employer withholds sums from those payments in accordance with a scheme falling within subsection (3) of section 202 and pays the sums to an agent (within the meaning of subsection (4)(a) of that section).

(2) Any relevant expenditure incurred by the employer on or after 16th March 1993—

(a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade, profession or vocation carried on by the employer, or

(b) if the employer is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) Relevant expenditure is expenditure incurred in making to the agent any payment in respect of expenses which have been or are to be incurred by the agent in connection with his functions under the scheme.]

Textual Amendments

F105 S. 86A inserted (27.7.1993) by 1993 c. 34, **s.69**

87 Taxable premiums etc.

(1) M228 This section applies where in relation to any land used in connection with a trade, profession or vocation—

(a) tax has become chargeable under section 34 or 35 on any amount (disregarding any reduction in that amount under section 37(2) and (3)); or

(b) tax would have become so chargeable on that amount but for the operation of section 37(2) and (3) or but for any exemption from tax;

and that amount is referred to below as "the amount chargeable".

(2) M229 Subject to subsections (3) to (8) below, where—

(a) during any part of the relevant period the land in relation to which the amount chargeable arose is occupied by the person for the time being entitled to the lease as respects which it arose, and

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(b) that occupation is for the purposes of a trade, profession or vocation carried on by him,

he shall be treated, in computing the profits or gains of the trade, profession or vocation chargeable to tax under Case I or II of Schedule D, as paying in respect of that land rent for the period (in addition to any actual rent), becoming due from day to day, of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole.

(3) As respects any period during which a part only of the land in relation to which the amount chargeable arose is occupied as mentioned in subsection (2) above, that subsection shall apply as if the whole were so occupied, but the amount chargeable shall be treated as reduced by so much thereof as, on a just apportionment, is attributable to the remainder of the land.

(4) [M230]Where a person, although not in occupation of the land or any part of the land, deals with his interest in the land or that part as property employed for the purposes of a trade, profession or vocation carried on by him, subsections (2) and (3) above shall apply as if the land or part were occupied by him for those purposes.

(5) [M231]Where section 37(2) and (3) has effect in relation to a lease granted out of the interest referred to in subsection (4) above, subsections (5) and (6) of that section shall apply for modifying the operation of subsections (2) and (3) above as they apply for modifying the operation of subsection (4) of that section.

(6) [M232]In computing profits or gains chargeable under Case I or II of Schedule D for any chargeable period, rent shall not by virtue of subsection (4) above be treated as paid by a person for any period in respect of land in so far as rent treated under section 37(4) as paid by him for that period in respect of the land has in any previous chargeable period been deducted, or falls in that chargeable period to be deducted under Part II.

(7) [M233]Where, in respect of expenditure on the acquisition of his interest in the land in relation to which the amount chargeable arose, a person has become entitled to an allowance under **[**[F106]Part IV of the 1990 Act in respect of expenditure falling within section 105(1)(b) of that Act**]** (mineral depletion) for any chargeable period, then—

(a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed him under this section for that or any subsequent chargeable period; or

(b) if the allowance is in respect of part only of the expenditure ("the allowable part"), a deduction allowed him under this section for that or any subsequent chargeable period shall be the fraction—

$$\frac{A - B}{A}$$

of the amount which apart from this subsection would fall to be deducted, where—

A is the whole of the expenditure, and

B is the allowable part of the expenditure;

. . . [F107]

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(8) Where the amount chargeable arose under section 34(2) by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, this section shall apply as if the obligation had not included the carrying out of that work and the amount chargeable had been calculated accordingly.

(9) [M234]In this section "the relevant period" means—

(a) where the amount chargeable arose under section 34, the period treated in computing that amount as the duration of the lease;

(b) where the amount chargeable arose under section 35, the period treated in computing that amount as the duration of the lease remaining at the date of the assignment.

Textual Amendments

F106 1990(C) s.164*and* Sch.1 para.8(5).*Previously* "section 60 of the 1968 Act".

F107 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

Modifications etc. (not altering text)

C116 *See*—1976(D) Sch.6 para.4(4)—*no account to be taken of any deduction of realised development value.* 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*from* 19*March* 1985.1990(C) s.111—*reduction of qualifying expenditure for premium relief.*

C117 S. 87 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 15(2)** (with s. 40(7)); S. I. 1994/2189, **art. 2**, Sch.

Marginal Citations

M228 SOURCE-1970 s. 134(1); 1978 s. 32
M229 SOURCE-1970 s. 134(2), (3); 1978 s. 32
M230 SOURCE-1970 s. 134(4)
M231 SOURCE-1970 s. 134(4)(a)
M232 SOURCE-1970 s. 134(4)(b)
M233 SOURCE-1970 s. 134(5), (6); 1986 Sch. 13 para. 26
M234 SOURCE-1970 s. 134(1)(i), (ii)

VALID FROM 06/04/2005

87A Section 87(2) and (3) and reductions in receipts under ITTOIA 2005

(1) This section applies if—

(a) a lease has been granted out of the interest referred to in section 87(4),

(b) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 in respect of the lease, there is a reduction under section 288 of that Act by reference to a taxed receipt, and

(c) the taxed receipt is the amount chargeable for the purposes of section 87.

(2) Section 37A (section 37(4) and reductions in receipts under ITTOIA 2005) shall apply for modifying the operation of section 87(2) and (3) as it applies for modifying the operation of section 37(4).

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(3) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—

"reduction under section 288 by reference to a taxed receipt" (see section 290(6) of that Act), and

"taxed receipt" (see section 287(4) of that Act).

88 Payments to Export Credit Guarantee Department.

[M235]Any sums paid by a person to the Export Credits Guarantee Department under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the [M236]Export Guarantees and Overseas Investment Act 1978, or with a view to entering into such an agreement, shall be included—

(a) in the sums to be deducted in computing for the purposes of Case I or Case II of Schedule D the profits or gains of any trade, profession or vocation carried on by that person; or

(b) if that person is an investment company or a company in the case of which section 75 applies by virtue of section 76, in the sums to be deducted as expenses of management in computing the company's profits for the purposes of corporation tax;

whether or not they would fall to be so included apart from this section.

Marginal Citations

M235 SOURCE-1972 s. 124(1)

M236 1978 c. 18.

[[F108]88A Debts of overseas governments etc.

(1) For any period of account of a company ending on or after 20th March 1990, section 88B shall have effect for the purpose of restricting the extent to which a debt to which subsection (2) below applies may be estimated to be bad for the purposes of section 74(j); and—

(a) any deduction which may fall to be made in computing the company's profits or gains for the period, and

(b) any addition which may fall to be so made (for example because the relevant percentage of the debt for the period is smaller than the amount estimated to be bad for an earlier period),

shall be determined accordingly.

(2) Subject to subsection (3) below, this subsection applies to any debt—

(a) which is owed by an overseas State authority, or

(b) payment of which is guaranteed by an overseas State authority, or

(c) which is estimated to be bad for the purposes of section 74(j) wholly or mainly because due payment is or may be prevented, restricted or subjected to conditions—

(i) by virtue of any law of a State or other territory outside the United Kingdom or any act of an overseas State authority, or

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(ii) under any agreement entered into in consequence or anticipation of such a law or act.

(3) Subsection (2) above does not apply to interest on a debt or to a debt which represents the consideration for the provision of goods or services.

(4) In this section "overseas State authority" means—

(a) a State or other territory outside the United Kingdom,

(b) the government of such a State or territory,

(c) the central bank or other monetary authority of such a State or territory,

(d) a public or local authority in such a State or territory, or

(e) a body controlled by such a State, territory, government, bank or authority;

and for this purpose "controlled" shall be construed in accordance with section 840.**]**

Textual Amendments

F108 1990 s.74.

88B Section 88A debts: restriction on deductions under section 74(j).

(1) Where this section has effect in relation to a debt, no more than the relevant percentage of the debt shall be estimated to be bad for the purposes of section 74(j).

(2) The relevant percentage of a debt for any period of account of the company is such percentage (which may be zero) as may be determined in accordance with regulations by reference to the position at the end of that period.

(3) Subsection (2) above has effect subject to the following provisions of this section, and in those provisions—

(a) "the base period" means the last period of account of the company ending before 20th March 1990, and

(b) "the base percentage", in relation to a debt, means such percentage (which may be zero) as may be determined in accordance with regulations by reference to the position at the end of the base period.

(4) If for any period of account of the company which ends less than two years after the base period the percentage provided for in subsection (2) above in relation to a debt is greater than the base percentage, the base percentage shall be the relevant percentage for the first-mentioned period.

(5) If for any later period of account of the company the percentage provided for in subsection (2) above in relation to a debt is greater than the base percentage increased by five percentage points for each complete year (except the first) that has elapsed between—

(a) the end of the base period, and

(b) the end of the later period in question,

then the base percentage as so increased shall be the relevant percentage for the later period.

(6) In relation to a company which had no periods of account ending before 20th March 1990, the relevant percentage in relation to a debt shall be the same as it would have been on the assumption that the company had had such periods of account (and that

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any notional periods of account before its first actual period of account had been of one year each).

(7) In this section "regulations" means regulations made by the Treasury; but the Treasury shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

88C Section 88A debts: restriction on other deductions.

(1) Where—
- (a) on or after 20th March 1990 a company incurs in respect of a debt a loss which would be allowed as a deduction in computing the amount of the company's profits or gains under Case I or Case II of Schedule D,
- (b) section 88A(2) applies to the debt,
- (c) either—
  - (i) a deduction is made in respect of the debt in accordance with section 74(j) for any period of account of the company before that in which the loss is incurred, or
  - (ii) the debt was acquired by the company on or after 20th March 1990 for a consideration greater than the price which it might reasonably have been expected to fetch on a sale in the open market at the time of acquisition, and
- (d) the amount of the loss is greater than 5 per cent. of the debt,

then, subject to subsection (3) below, only such part of the loss as equals 5 per cent. of the debt shall be allowed as a deduction for the period of account in which the loss is incurred; but further parts calculated in accordance with subsection (2) below may be allowed for subsequent periods until the loss is exhausted.

(2) The part of the loss allowed as a deduction for any period of account after that in which the loss is incurred shall not exceed such amount as, together with any parts allowed under this section for earlier periods, is equal to 5 per cent. of the debt for each complete year that has elapsed between—
- (a) the beginning of the period in which the loss was incurred, and
- (b) the end of the period in question.

(3) Subsections (1) and (2) above shall not apply to a loss incurred on a disposal of the debt to an overseas State authority if the State or territory by reference to which it is an overseas State authority is the same as that by reference to which section 88A(2) applies to the debt.

(4) References in subsections (1) and (2) above to the incurring of a loss in respect of a debt include references to the making of a deduction, otherwise than in accordance with section 74(j), in respect of a reduction in the value of a debt; and for the purposes of those subsections such a deduction shall be treated as made immediately before the end of the period of account for which it is made.

VALID FROM 07/05/2005

88D Restriction of deductions in respect of certain debts

(1) This section applies to debts to which the following provisions do not apply—

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(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships, etc);
(b) Schedule 26 to the Finance Act 2002 (derivative contracts);
(c) Schedule 29 to that Act (intangible fixed assets).

(2) In calculating the profits of a company's trade for the purposes of corporation tax, no deduction is allowed in respect of a debt owed to the company, except—
(a) by way of impairment loss, or
(b) to the extent that the debt is released wholly and exclusively for the purposes of that trade as part of a statutory insolvency arrangement.

(3) In this section "debt" includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

(4) In this section "trade" has the meaning given by section 6(4).

89 Debts proving irrecoverable after event treated as discontinuance.

[M237]Where section 113 or 337(1) applies to treat a trade, profession or vocation as discontinued by reason of any event, then, in computing for tax purposes the profits or gains of the trade, profession or vocation in any period after the event, there may be deducted a sum equal to any amount proved during that period to be irrecoverable in respect of any debts credited in computing for tax purposes the profits or gains for any period before the event (being debts the benefit of which was assigned to the persons carrying on the trade, profession or vocation after the event) in so far as the total amount proved to be irrecoverable in respect of those debts exceeds any deduction allowed in respect of them under section 74(j) in a computation for any period before the event.

Marginal Citations
M237 SOURCE-1970 s. 135

90 Additional payments to redundant employees.

(1) [M238]Where a payment is made by way of addition to a redundancy payment or to the corresponding amount of any other employer's payment and the additional payment would be—
(a) allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of a trade, profession or vocation; or
(b) eligible for relief under section 75 or 76 as expenses of management of a business,

but for the permanent discontinuance of the trade, profession, vocation or business, the additional payment shall, subject to subsection (2) below, be so allowable or so eligible notwithstanding that discontinuance and, if made after the discontinuance, shall be treated as made on the last day on which the trade, profession, vocation or business was carried on.

(2) Subsection (1) above applies to an additional payment only so far as it does not exceed three times the amount of the redundancy payment or of the corresponding amount of the other employer's payment.

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(3) In this section references to the permanent discontinuance of a trade, profession, vocation or business include references to any occasion on which it is treated as permanently discontinued by virtue of section 113(1) or 337(1).

(4) In this section references to a redundancy payment or to the corresponding amount of an employer's payment shall be construed as in sections 579 and 580.

Marginal Citations
M238 SOURCE-1980 s. 41

91 Cemeteries.

(1) [M239]In computing the profits or gains or losses for any period of a trade which consists of or includes the carrying on of a cemetery, there shall be allowed as a deduction—
- (a) any capital expenditure incurred by the person engaged in carrying on the trade in providing any land in the cemetery sold during that period for the purpose of interments, and
- (b) the appropriate fraction of the residue at the end of that period of the relevant capital expenditure.

(2) [M240]Subject to subsection (3) below, the relevant capital expenditure is capital expenditure incurred for the purposes of the trade in question by the person engaged in carrying it on, being—
- (a) expenditure on any building or structure other than a dwelling-house, being a building or structure in the cemetery likely to have little or no value when the cemetery is full; and
- (b) expenditure incurred in providing land taken up by any such building or structure, and any other land in the cemetery not suitable or adaptable for use for interments and likely to have little or no value when the cemetery is full.

(3) Relevant capital expenditure—
- (a) does not include expenditure incurred on buildings or structures which have been destroyed before the beginning of the first period to which subsection (1) above applies in the case of the trade in question; and
- (b) of other expenditure incurred before that time, includes only the fraction—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces which at that time were or could have been made available in the cemetery for sale, and

B is the number already sold.

(4) [M241]For the purposes of this section—
- (a) the residue of any expenditure at the end of a period is the amount incurred before that time which remains after deducting—

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(i) any amount allowed in respect of that expenditure under subsection (1)(b) above in computing the profits or gains or losses of the trade for any previous period, and

(ii) if, after the beginning of the first period to which subsection (1) above applies in the case of a trade and before the end of the period mentioned at the beginning of this subsection, any asset representing that expenditure is sold or destroyed, the net proceeds of sale or, as the case may be, any insurance money or other compensation of any description received by the person carrying on the trade in respect of the destruction and any money received by him for the remains of the asset; and

(b) the appropriate fraction of the residue of any expenditure at the end of any period is—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces in the cemetery sold in the period, and

B is the number of grave-spaces which at the end of the period are or could be made available in the cemetery for sale.

(5) Where in any chargeable period there is a change in the persons engaged in carrying on a trade which consists of or includes the carrying on of a cemetery, any allowance to be made under this section to the persons carrying on the trade after the change shall, whether or not it is to be assumed for other purposes that the trade was discontinued and a new trade set up and commenced, be computed—

(a) as if they had at all times been engaged in carrying on the trade;

(b) as if everything done to or by any of their predecessors in carrying on the trade had been done to or by them; and

(c) without regard to the price paid on any sale on the occasion of any such change.

(6) No expenditure shall be taken into account under both paragraph (a) and paragraph (b) of subsection (1) above, whether for the same or different periods.

(7) This section shall apply in relation to a trade which consists of or includes the carrying on of a crematorium and, in connection therewith, the maintenance of memorial garden plots, as it applies in relation to a trade which consists of or includes the carrying on of a cemetery, but subject to the modifications that—

(a) references to the cemetery or land in the cemetery shall be taken as references to the land which is devoted wholly to memorial garden plots, and

(b) references to grave-spaces shall be taken as references to memorial garden plots, and

(c) references to the sale or use of land for interments shall be taken as references to its sale or use for memorial garden plots.

(8) In this section—

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(a) references to the sale of land include references to the sale of a right of interment in land, and to the appropriation of part of a memorial garden in return for a dedication fee or similar payment;

(b) references to capital expenditure incurred in providing land shall be taken as references to the cost of purchase and to any capital expenditure incurred in levelling or draining it or otherwise rendering it suitable for the purposes of a cemetery or a memorial garden; and

(c) the reference in subsection (4)(a)(ii) to subsection (1) above includes a reference to section 141 of the 1970 Act and section 22 of the [M242]Finance Act 1952 (which made similar provision to that made by this section).

(9) **[**[F109]Section 153 of the 1990 Act**]** (which relates to expenditure which is reimbursed to a person carrying on a trade) shall apply for the purposes of this section as it applies for the purposes of **[**[F109]that Act**]**.

Textual Amendments

F109 1990(C) Sch.1 para.8(6).*Previously*
"Section 84 of the 1968 Act"
and
"Part I of that Act"
respectively.

Marginal Citations

M239 SOURCE-1970 s. 141(1)
M240 SOURCE-1970 s. 141(2)
M241 SOURCE-1970 s. 141(3)–(8)
M242 1952 c. 33.

[[F110]**91A Waste disposal: restoration payments.**

(1) This section applies where on or after 6th April 1989 a person makes a site restoration payment in the course of carrying on a trade.

(2) Subject to subsection (3) below, for the purposes of income tax or corporation tax the payment shall be allowed as a deduction in computing the profits or gains of the trade for the period of account in which the payment is made.

(3) Subsection (2) above shall not apply to so much of the payment as—

(a) represents expenditure which has been allowed as a deduction in computing the profits or gains of the trade for any period of account preceding the period of account in which the payment is made, or

(b) represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

(4) For the purposes of this section a site restoration payment is a payment made—

(a) in connection with the restoration of a site or part of a site, and

(b) in order to comply with any condition of a relevant licence, or any condition imposed on the grant of planning permission to use the site for the carrying out of waste disposal activities, or **[**[F111]any relevant obligation**]**.

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(5) For the purposes of this section waste disposal activities are the collection, treatment, conversion and final depositing of waste materials, or any of those activities.

(6) For the purposes of this section a relevant icence is—

(a) a disposal licence under Part I of the [M243]Control of Pollution Act 1974 or Part II of the [M244]Pollution Control and Local Government (Northern Ireland) Order 1978, or

(b) a waste management licence under Part II of the Environmental Protection Act 1990 or any corresponding provision for the time being in force in Northern Ireland **[**[F112]or

(c) any authorisation under the [M245]Radioactive Substances Act 1960 or the [M246]Radioactive Substances Act 1993 for the disposal of radioactive waste or any nuclear site licence under the [M247]Nuclear Installations Act 1965.**]**

[F113](7) **[** For the purposes of this section a relevant obligation is—

(a) an obligation arising under an agreement made under—

(i) section 106 of the [M248]Town and Country Planning Act 1990, as originally enacted;

(ii) section 50 of the [M249]Town and Country Planning (Scotland) Act 1972;

(b) a planning obligation entered into under section 106 of the Act of 1990, as substituted by section 12 of the [M250]Planning and Compensation Act 1991, or under section 299A of the Act of 1990;

(c) an obligation arising under or under an agreement made under any provision—

(i) corresponding to section 106 of the [M248]Town and Country Planning Act 1990, as originally enacted or as substituted by the Act of 1991 or to section 299A of the Act of 1990; and

(ii) for the time being in force in Northern Ireland.**]**

(8) For the purposes of this section a period of account is a period for which an account is made up.**]**

Textual Amendments

F110 Ss. 91A, 91B inserted by Finance Act 1990 (c. 29), **s. 78**.

F111 Words in s. 91A(4)(b) substituted (25.10.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1, 2), **s. 83(a)**; S.I. 1991/2272, **art. 3(2)**

F112 S. 91A(6)(c) and the word "or" immediately preceding it inserted (27.7.1993 with effect in relation to any case where the trade in question is begun after 31.3.1993) by 1993 c. 34, **s. 110(1)(3)**

F113 S. 91A(7) substituted (25.10.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1, 2), **s. 83(b)**; S.I. 1991/2272, **art. 3(2)**

Marginal Citations

M243 1974 c. 40.

M244 S.I. 1978/1049 (N.I.19).

M245 1960 c. 34.

M246 1993 c. 12.

M247 1965 c. 57.

M248 1990 c. 8.

M249 1972 c. 52.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M250 1991 c. 34.

91B Waste disposal: preparation expenditure.

(1) This section applies where a person—

(a) incurs, in the course of carrying on a trade, site preparation expenditure in relation to a waste disposal site (the site in question),

(b) holds, at the time the person first deposits waste materials on the site in question, a relevant licence which is then in force,

(c) makes a claim for relief under this section in such form as the Board may direct, and

(d) submits such plans and other documents (if any) as the Board may require;

and it is immaterial whether the expenditure is incurred before or after the coming into force of this section.

(2) In computing the profits or gains of the trade for a period of account ending after 5th April 1989, the allowable amount shall be allowed as a deduction for the purposes of income tax or corporation tax.

(3) In relation to a period of account (the period in question) the allowable amount shall be determined in accordance with the formula—

$$\left(A\text{-}B\right) \times \frac{C}{C+D}$$

(4) A is the site preparation expenditure incurred by the person at any time before the beginning of, or during, the period in question—

(a) in relation to the site in question, and

(b) in the course of carrying on the trade;

but this subsection is subject to subsections (5) and (9) below.

(5) A does not include any expenditure—

(a) which has been allowed as a deduction in computing the profits or gains of the trade for any period of account preceding the period in question, or

(b) which constitutes capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

(6) B is an amount equal to any amount allowed as a deduction under this section, if allowed—

(a) in computing the profits or gains of the trade for any period of account preceding the period in question, and

(b) as regards expenditure incurred in relation to the site in question;

and if different amounts have been so allowed as regards different periods, B is the aggregate of them.

(7) C is the volume of waste materials deposited on the site in question during the period in question; but if the period is one beginning before 6th April 1989 C shall be reduced by the volume of any waste materials deposited on the site during the period but before that date.

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(8) D is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs at the end of the period in question.

(9) Where any of the expenditure which would be included in A (apart from this subsection) was incurred before 6th April 1989, A shall be reduced by an amount determined in accordance with the formula—

$$E \times \frac{F}{F+G}$$

(10) For the purposes of subsection (9) above—

(a) E is so much of the initial expenditure (that is, the expenditure which would be included in A apart from subsection (9) above) as was incurred before 6th April 1989,

(b) F is the volume of waste materials deposited on the site in question before 6th April 1989, and

(c) G is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs immediately before 6th April 1989.

[[F114](10A) For the purposes of this section any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by that person on the first day on which he does carry it on and in the course of doing so.**]**

(11) For the purposes of this section—

(a) a waste disposal site is a site used (or to be used) for the disposal of waste materials by their deposit on the site,

(b) in relation to such a site, site preparation expenditure is expenditure on preparing the site for the deposit of waste materials (and may include expenditure on earthworks),

(c) in relation to such a site, "capacity" means capacity expressed in volume,

(d) "relevant licence" has the same meaning as in section 91A, and

(e) a period of account is a period for which an account is made up.

Textual Amendments

F114 S. 91B(10A) inserted (27.7.1993 with effect in relation to any case where the trade in question is begun after 31.3.1993) by 1993 c. 34, **s. 110(2)(3)**

VALID FROM 28/07/2000

91BA Waste disposal: entitlement of successor to allowances.

(1) This section applies where—

(a) site preparation expenditure has been incurred in relation to a waste disposal site,

(b) that expenditure was incurred by a person in the course of carrying on a trade, and

(c) on or after 21st March 2000—

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(i) that person ("the predecessor") ceases to carry on that trade, or ceases to carry it on so far as it relates to that site, and

(ii) another person ("the successor") begins to carry on that trade, or to carry on in the course of a trade the activities formerly carried on by the predecessor in relation to that site.

(2) If the conditions specified in the following provisions of this section are met, then, for the purposes of section 91B above—

(a) the trade carried on by the successor shall be treated as the same trade as that carried on by the predecessor, and

(b) allowances shall be made to the successor (and not to the predecessor) as if everything done to or by the predecessor had been done to or by the successor.

(3) The first condition is that the whole of the site in question is transferred to the successor.

Provided the successor holds an estate or interest in the whole of the site, it need not be the same as that held by the predecessor.

(4) The second condition is that the successor, at the time he first deposits waste material at the site, holds a relevant licence in respect of the site which is then in force.

(5) Expressions used in this section have the same meaning as in section 91B.

VALID FROM 19/03/1997

91C Mineral exploration and access.

Where—

(a) a person carrying on a trade incurs expenditure on mineral exploration and access as defined in section 121(1) of the [M251]Capital Allowances Act 1990 in an area or group of sands in which the presence of mineral deposits in commercial quantities has already been established, and

(b) if the presence in that area or group of sands of mineral deposits in commercial quantities had not already been established, that expenditure would not have been allowed to be deducted in computing the profits or gains of the trade for the purposes of tax,

that expenditure shall not be so deducted.

Marginal Citations

M251 1990 c. 1.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/04/2009

[F115 Payments for restrictive undertakings

Textual Amendments

F115 S. 76ZA and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 31** (with Sch. 2 Pts. 1, 2)

76ZA Payments for restrictive undertakings

(1) This section applies if a payment—

(a) is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and

(b) is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by a company in relation to which section 76 applies.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.**]**

VALID FROM 01/04/2009

[F116 Seconded employees

Textual Amendments

F116 S. 76ZB and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 32** (with Sch. 2 Pts. 1, 2)

76ZB Employees seconded to charities and educational establishments

(1) This section applies if a company to which section 76 applies makes the services of a person employed for the purposes of the company's life assurance business available to—

(a) a charity, or

(b) an educational establishment,

on a basis that is stated and intended to be temporary.

(2) Expenses of the employer that are attributable to the employee's employment during the period of the secondment are treated as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(3) In this section—

"educational establishment" has the same meaning as in section 70 of CTA 2009, and

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"the period of the secondment" means the period for which the employee's services are made available to the charity or educational establishment.**]**

VALID FROM 01/04/2009

[F117 Counselling and retraining expenses

Textual Amendments

F117 S. 76ZC and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 33** (with Sch. 2 Pts. 1, 2)

76ZC Counselling and other outplacement services

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs counselling expenses,

(b) the expenses are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

(3) In this section "counselling expenses" means expenses incurred—

(a) in the provision of services to the employee in connection with the cessation of the office or employment,

(b) in the payment or reimbursement of fees for such provision, or

(c) in the payment or reimbursement of travelling expenses in connection with such provision.

(4) In this section "the relevant conditions" means—

(a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and

(b) in the case of travel expenses, condition E for those purposes.

[F118 76ZD Retraining courses

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs training course expenses,

(b) they are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

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(3) In this section—

"retraining course expenses" means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and

"the relevant conditions" means—

(a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and

(b) in the case of travel expenses, the conditions in subsection (5) of that section.**]**

Textual Amendments

F118 S. 76ZD inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 34** (with Sch. 2 Pts. 1, 2)

[F119 76ZE Retraining courses: recovery of tax]

(1) This section applies if—

(a) an employer's liability to corporation tax for an accounting period is determined on the assumption that it is entitled by virtue of section 76ZD to bring an amount into account in determining the amount of a deduction to be made under section 76, and

(b) without section 76ZD the employer would not have been so entitled.

(2) If, subsequently—

(a) the condition in section 311(4)(a) of ITEPA 2003 is not met because of the employee's failure to begin the course within the period of one year after ceasing to be employed, or

(b) the condition in section 311(4)(b) of ITEPA 2003 is not met because of the employee's continued employment or re-employment,

an assessment of an amount or further amount of corporation tax due as a result of the condition not being met may be made under paragraph 41 of Schedule 18 to FA 1998.

(3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the accounting period in which the failure to meet the condition occurred.

(4) If subsection (2) applies, the employer must give an officer of Revenue and Customs a notice containing particulars of—

(a) the employee's failure to begin the course,

(b) the employee's continued employment, or

(c) the employee's re-employment,

within 60 days of coming to know of it.

(5) If an officer of Revenue and Customs has reason to believe that the employer has failed to give such a notice, the officer may by notice require the employer to provide such information as the officer may reasonably require for the purposes of this section about—

(a) the failure to begin the course,

(b) the continued employment, or

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(c) the re-employment.

(6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.]

Textual Amendments

F119 S. 76ZE inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 35** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C118 S. 76ZE applied (with modifications) (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **Sch. 2 para. 139(3)(4)** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F120 Redundancy payments etc

Textual Amendments

F120 S. 76ZF and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 36** (with Sch. 2 Pts. 1, 2)

76ZF Redundancy payments and approved contractual payments

(1) Sections 76ZG to 76ZI apply if—

(a) a company to which section 76 applies ("the employer") makes a redundancy payment or an approved contractual payment to another person ("the employee"), and

(b) the payment is in respect of the employee's employment wholly in the employer's life assurance business or partly in the employer's life assurance business and partly in one or more other capacities.

(2) For the purposes of this section and sections 76ZG to 76ZH "redundancy payment" means a redundancy payment payable under—

(a) Part 11 of the Employment Rights Act 1996, or

(b) Part 12 of the Employment Rights (Northern Ireland) Order 1996.

(3) For the purposes of this section and those sections—

"contractual payment" means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is "approved" if, in respect of that agreement, an order is in force under—

(a) section 157 of the Employment Rights Act 1996, or

(b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

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[F121 76ZG Payments in respect of employment wholly in employer's business

(1) This section applies if the payment is in respect of the employee's employment wholly in the employer's life assurance business.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.

(3) The amount brought into account by virtue of this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.

(4) If the payment is referable to an accounting period beginning after the business has permanently ceased to be carried on, it is treated as referable to the last accounting period in which the business was carried on.]

Textual Amendments

F121 S. 76ZG inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 37** (with Sch. 2 Pts. 1, 2)

[F122 76ZH Payments in respect of employment in more than one capacity

(1) This section applies if the payment is in respect of the employee's employment with the employer—
  (a) partly in the employer's life assurance business, and
  (b) partly in one or more other capacities.

(2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
  (a) the employment in the life assurance business, and
  (b) the employment in the other capacities.

(3) The part of the payment apportioned to the employment in the life assurance business is treated as a payment in respect of the employee's employment wholly in the life assurance business for the purposes of section 76ZG.]

Textual Amendments

F122 S. 76ZH inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 38** (with Sch. 2 Pts. 1, 2)

[F123 76ZI Additional payments

(1) This section applies if the employer's business, or part of it, ceases (permanently) to be carried on and the employer makes a payment to the employee in addition to—
  (a) the redundancy payment, or
  (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

(2) If—

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(a) the additional payment would not otherwise be regarded as expenses payable for the purposes of section 76, but

(b) that is only because the business, or the part of the business, has ceased to be carried on,

the additional payment is regarded as expenses payable for the purposes of section 76.

(3) So far as the additional payment would, apart from this subsection, be regarded as expenses payable for the purposes of Step 5 in subsection (7) of section 76, it is not to be so regarded for the purposes of that subsection (or of subsection (2) above so far as relating to section 76).

(4) The amount treated under this section as expenses payable for the purposes of section 76 is limited to 3 times the amount of—

(a) the redundancy payment, or

(b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

(5) If the payment is referable to an accounting period beginning after the business or the part of the business has ceased to be carried on, it is treated as referable to the last accounting period in which the business, or the part concerned, was carried on.**]**

Textual Amendments

F123 S. 76ZI inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 39** (with Sch. 2 Pts. 1, 2)

[F124 76ZJ Payments by the Government]

(1) This section applies if—

(a) a redundancy payment or an approved contractual payment is payable by a company to which section 76 applies ("the employer"), and

(b) a payment to which subsection (2) applies is made in respect of the payment.

(2) This subsection applies to—

(a) payments made by the Secretary of State under section 167 of the Employment Rights Act 1996, and

(b) payments made by the Department for Employment and Learning under Article 202 of the Employment Rights (Northern Ireland) Order 1996.

(3) So far as the employer reimburses the Secretary of State or Department for the payment, sections 76ZG to 76ZI apply as if the payment were—

(a) a redundancy payment, or

(b) an approved contractual payment,

made by the employer.**]**

Textual Amendments

F124 S. 76ZJ inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 40** (with Sch. 2 Pts. 1, 2)

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VALID FROM 01/04/2009

[F125 Contributions to local enterprise organisations or urban regeneration companies

Textual Amendments

F125 S. 76ZK and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 41** (with Sch. 2 Pts. 1, 2)

76ZK Contributions to local enterprise organisations or urban regeneration companies

(1) This section applies if a company to which section 76 applies ("the contributor") incurs expenses in making a contribution (whether in cash or in kind)—
- (a) to a local enterprise organisation, or
- (b) to an urban regeneration company.

(2) The expenses are treated for the purposes of section 76 as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(3) But if, in connection with the making of the contribution, the contributor or a connected person—
- (a) receives a disqualifying benefit of any kind, or
- (b) is entitled to receive such a benefit,

the amount treated in accordance with subsection (2) is restricted to the amount of the expenses less the value of the benefit.

(4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit—
- (a) from the local enterprise organisation or urban regeneration company concerned, or
- (b) from anyone else.

(5) Subsection (6) applies if—
- (a) an amount has been brought into account in accordance with subsection (2), and
- (b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.

(6) The contributor is to be treated as receiving, when the benefit is received, an amount—
- (a) which is equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction), and
- (b) to which the charge to corporation tax on income applies.

(7) In this section—

"disqualifying benefit" means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be expenses payable for the purposes of section 76,

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"local enterprise organisation" has the meaning given by section 83 of CTA 2009,

"urban regeneration company" has the meaning given by section 86 of CTA 2009.

(8) Section 839 ("connected person") applies for the purposes of subsections (3) and (5).]

VALID FROM 01/04/2009

[F126 *Unpaid remuneration*

Textual Amendments

F126 S. 76ZL and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 42** (with Sch. 2 Pts. 1, 2)

76ZL Unpaid remuneration

(1) This section applies if—

(a) an amount is charged in respect of employees' remuneration in the accounts for a period of a company to which section 76 applies,

(b) the amount would apart from this section be brought into account under section 76 as expenses payable, and

(c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.

(2) If the remuneration is paid after the end of that period of 9 months, the amount is brought into account for the period of account in which it is paid.

(3) But—

(a) subsection (2) is subject to section 86 of FA 1989 (spreading of relief for acquisition expenses), and

(b) in interpreting that section the remuneration is treated as expenses payable which fall to be included at Step 1 in section 76(7) for the period of account in which the remuneration is paid.

(4) The amount is not brought into account under section 76 as expenses payable if it is not paid.

[F127 76ZM Unpaid remuneration: supplementary]

(1) For the purposes of section 76ZL an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.

(2) For the purposes of section 76ZL it does not matter whether an amount is charged for—

(a) particular employments, or

(b) employments generally.

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(3) If the profits of the company are calculated before the end of the 9 month period mentioned in section 76ZL(1)(c)—

(a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but

(b) if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.

(4) For the purposes of this section and section 76ZL remuneration is paid when it—

(a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or

(b) would be so treated if it were not exempt income.

(5) In this section and section 76ZL—

"employee" includes an office-holder and "employment" therefore includes an office, and

"remuneration" means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of ITEPA 2003.**]**

Textual Amendments

F127 S. 76ZM inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 43** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F128 Car or motor cycle hire]

Textual Amendments

F128 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

[F129 76ZN Car or motor cycle hire

(1) Subsection (2) applies if—

(a) in calculating the corporation tax to which a company is liable for an accounting period, an amount representing expenses incurred on the hiring of a car or motor cycle can be brought into account under section 76 as expenses payable,

(b) the car or motor cycle is not a qualifying hire car or motor cycle, and

(c) the retail price of the car or motor cycle when new exceeds £12,000.

(2) The amount that would otherwise be capable of being brought into account as expenses payable is reduced by multiplying the amount by the fraction—

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$$\frac{£\ 12{,}000 + RP}{2 \times RP}$$

where RP is the retail price of the car or motor cycle when new.

(3) Subsection (4) applies if an amount is reduced as a result of subsection (2), or a corresponding provision, and—

(a) subsequently—

(i) there is a rebate (however described) of the hire charges, or

(ii) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency agreement, and

(b) an amount is brought into account in respect of the rebate or release.

(4) For the purposes of subsection (3)(b) an amount is brought into account in respect of a rebate of hire charges or the release of a debt if—

(a) the amount of a reversal representing the rebate or release falls to be deducted under Step 4 in section 76(7), or

(b) (in the case of a rebate of hire charges) an amount representing the rebate is chargeable under section 85(1) of the Finance Act 1989 (c. 26).

(5) The amount that would otherwise be deductible as mentioned in subsection (4)(a) or chargeable as mentioned in subsection (4)(b) is reduced by multiplying it by the fraction set out in subsection (2).

(6) In this section "corresponding provision" means—

(a) section 56(2) of CTA 2009 (car or motor cycle hire: trade profits and property income),

(b) section 1251(2) of CTA 2009 (car or motor cycle hire: companies with investment business), and

(c) section 48(2) of ITTOIA 2005 (car or motor cycle hire: trade profits and property income).

(7) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(c) or (2).

(8) In this section "car or motor cycle" and "qualifying hire car or motor cycle" have the meanings given by section 57 of CTA 2009.**]**

Textual Amendments

F129 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

[F130 76ZO Hiring cars (but not motor cycles) with low CO_2 emissions before 1 April 2013

(1) Section 76ZN does not apply to expenses incurred on the hiring of a car with low CO_2 emissions, or an electrically-propelled car, if—

(a) the car was first registered on or after 17 April 2002, and

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(b) the period of hire begins before 1 April 2013 under a contract entered into before that date.

(2) For this purpose—

"car with low CO_2 emissions" has the meaning given by section 45D of CAA 2001, and

"electrically-propelled car" has the meaning given by that section.]

Textual Amendments

F130 S. 76ZO inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 45** (with Sch. 2 Pts. 1, 2)

Treatment of regional development and other grants and debts released etc.

92 Regional development grants.

(1) [M252]A regional development grant which, apart from this subsection, would be taken into account as a receipt in computing the profits of a trade, profession or vocation which are chargeable under Case I or II of Schedule D, shall not be taken into account as a receipt in computing those profits.

(2) [M253]A regional development grant which is made to an investment company—

(a) shall not be taken into account as a receipt in computing its profits under Case VI of Schedule D; and

(b) shall not be deducted, by virtue of section 75(2), from the amount treated as expenses of management.

(3) In this section "regional development grant" means a payment by way of grant under Part II of the [M254]Industrial Development Act 1982.

Marginal Citations

M252 SOURCE-1984 s. 54(1), (4)
M253 SOURCE-1984 s. 54(2), (3)
M254 1982 c. 52.

93 Other grants under Industrial Development Act 1982 etc.

(1) [M255]A payment to which this section applies which is made to a person carrying on a trade the profits of which are chargeable under Case I of Schedule D shall be taken into account as a receipt in computing those profits; and any such payment which is made to an investment company shall be taken into account as a receipt in computing its profits under Case VI of Schedule D.

(2) [M256]This section applies to any payment which would not, apart from this section, be taken into account as mentioned in subsection (1) above, being a payment by way of a grant under—

(a) section 7 or 8 of the Industrial Development Act 1982 or section 7 or 8 of the [M257]Industry Act 1972; or

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(b) section 1 of the [M258]Industries Development Act (Northern Ireland) 1966 or section 4 of the [M259]Industries Development Act (Northern Ireland) 1971; or

(c) [M260]any of Articles 7, 9 and 30 of the [M261]Industrial Development (Northern Ireland) Order 1982;

other than a grant designated as made towards the cost of specified capital expenditure or as made by way of compensation for the loss of capital assets and other than a grant falling within subsection (3) below.

(3) [M262]A payment by way of grant which is made—

(a) under Article 7 of the Order referred to in subsection (2)(c) above, and

(b) in respect of a liability for corporation tax (including a liability which has already been met),

shall not be taken into account as mentioned in subsection (1) above, whether by virtue of this section or otherwise.

Marginal Citations

M255 SOURCE-1980 s. 42(1)
M256 SOURCE-1980 s. 42(2)
M257 1972 c. 63.
M258 1966 c. 36 (N.I.).
M259 1971 c. 22 (N.I.).
M260 SOURCE-1980 s. 42(2); 1984 s. 55(1)
M261 S.I. 1982/1083 (N.I. 15).
M262 SOURCE-1980 s. 42(3); 1984 s. 55(2)

94 Debts deducted and subsequently released.

[M263]Where, in computing for tax purposes the profits or gains of a trade, profession or vocation, a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, then, if the whole or any part of the debt is thereafter released, the amount released shall be treated as a receipt of the trade, profession or vocation arising in the period in which the release is effected.

Marginal Citations

M263 SOURCE-1970 s. 136

95 Taxation of dealer's receipts on purchase by company of own shares.

(1) [M264]Where a company purchases its own shares from a dealer, the purchase price shall be taken into account in computing the profits of the dealer chargeable to tax under Case I or II of Schedule D; and accordingly—

(a) tax shall not be chargeable under Schedule F in respect of any distribution represented by any part of the price, and

(b) the dealer shall not be entitled in respect of the distribution to a tax credit under section 231, and

(c) sections 208 and 234(1) shall not apply to the distribution.

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(2) For the purposes of subsection (1) above a person is a dealer in relation to shares of a company if the price received on their sale by him otherwise than to the company would be taken into account in computing his profits chargeable to tax under Case I or II of Schedule D.

(3) Subject to subsection (4) below, in subsection (1) above—
- (a) the reference to the purchase of shares includes a reference to the redemption or repayment of shares and to the purchase of rights to acquire shares, and
- (b) the reference to the purchase price includes a reference to any sum payable on redemption or repayment.

(4) Subsection (1) above shall not apply in relation to—
- (a) the redemption of fixed-rate preference shares, or
- (b) the redemption, on terms settled or substantially settled before 6th April 1982, of other preference shares issued before that date,

if in either case the shares were issued to and continuously held by the person from whom they are redeemed.

(5) In this section—

"fixed-rate preference shares" means shares which—
- (a) were issued wholly for new consideration, and
- (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and
- (c) do not carry any right to dividends other than dividends which—
  - (i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and
  - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued;

"new consideration" has the meaning given by section 254; and

"shares" includes stock.

Marginal Citations

M264 SOURCE-1982 s. 54

VALID FROM 21/07/2008

[F131 95ZA Taxation of UK distributions received by insurance companies

(1) If the total amount of relevant distributions received by a company in an accounting period exceeds £50,000, those distributions are to be taken into account in calculating for corporation tax purposes the profits of the company in that period (and accordingly section 208 does not apply in relation to those distributions).

(2) A company ("company A") receives a "relevant distribution" if—
- (a) it receives a distribution made by a company resident in the United Kingdom ("company B"),

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(b) the value of the shares or stock in respect of which the distribution is made ("the holding") is materially reduced by reason of the distribution,

(c) a profit on the sale of the holding (to anyone other than company B) would be taken into account in calculating company A's profits in respect of relevant insurance business, and

(d) either—

(i) the holding amounts to, or is an ingredient in a holding amounting to, 10% of all holdings of the same class in company B, or

(ii) the period between the acquisition by company A of the holding and that company first taking steps to dispose of the holding does not exceed 30 days.

(3) In this section "relevant insurance business" means any kind of insurance business other than life assurance business.

(4) Section 177(7) of TCGA 1992 (provision supplementing provision corresponding to subsection (2)(d)(i) above) applies for the purposes of subsection (2)(d)(i).

(5) Section 731(4) below (interpretation of "taking steps to dispose of securities") applies for the purposes of subsection (2)(d)(ii) as if the reference to the securities were to the holding.**]**

Textual Amendments

F131 S. 95ZA inserted (with effect in accordance with Sch. 17 para. 16(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 16(1)**

Special provisions

VALID FROM 11/05/2001

[F132 95A Creative artists: relief for fluctuating profits

Schedule 4A (which enables individuals to make an averaging claim in respect of profits derived wholly or mainly from creative works) shall have effect.

The provisions of that Schedule apply for the year 2000-01 and subsequent years of assessment (so that the first years which may be the subject of an averaging claim are 2000-01 and 2001-02).**]**

Textual Amendments

F132 S. 95A inserted (11.5.2001) by Finance Act 2001 (c. 9), **s. 71(1)**

96 Farming and market gardening: relief for fluctuating profits.

(1) M265 Subject to the provisions of this section, a person who is or has been carrying on a trade of farming or market gardening in the United Kingdom may claim that subsection (2) or (3) below shall have effect in relation to his profits from that trade

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for any two consecutive years of assessment if his profits for either year do not exceed such part of his profits for the other year as is there specified.

(2) If the claimant's profits for either year do not exceed seven-tenths of his profits for the other year or are nil, his profits for each year shall be adjusted so as to be equal to one-half of his profits for the two years taken together or, as the case may be, for the year for which there are profits.

(3) If the claimant's profits for either year exceed seven-tenths but are less than three-quarters of his profits for the other year, his profits for each year shall be adjusted by adding to the profits that are lower and deducting from those that are higher an amount equal to three times the difference between them less three-quarters of those that are higher.

(4) No claim shall be made under this section—
   (a) in respect of any year of assessment before a year in respect of which a claim has already been made under this section; or
   (b) in respect of a year of assessment in which the trade is (or by virtue of section 113(1) is treated as) set up and commenced or permanently discontinued.

(5) Any adjustment under this section shall have effect for all the purposes of the Income Tax Acts (including any further application of this section where the second of any two years of assessment is the first of a subsequent pair) except that—
   (a) subsection (2) above shall not prevent a person obtaining relief under those Acts for a loss sustained by him in any year of assessment;
   (b) any adjustment under this section shall be disregarded for the purposes of section 63(1)(b); and
   (c) where, after a claim has been made under this section in respect of the profits for any two years of assessment, the profits for both or either of those years are adjusted for any other reason, this section shall have effect as if the claim had not been made but without prejudice to the making of a further claim in respect of those profits as so adjusted.

(6) This section applies to the profits of a trade carried on by a person in partnership as it applies to the profits of a sole trader except that—
   (a) the profits to which the claim relates shall be those chargeable in accordance with section 111; and
   (b) any claim in respect of those profits shall be made jointly by all the partners who are individuals;

   and where during the years of assessment to which the claim relates there is a change in the persons engaged in carrying on the trade but a notice is given under section 113(2), the claim shall be made jointly by all the persons who are individuals and have been engaged in carrying on the trade at any time during those years.

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

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

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(b) any deduction or addition for capital allowances or charges (not being allowances or charges given or made by deduction or addition in the computation of profits or gains);

(c) any deduction for relief under Schedule 9 to the Finance Act 1981 (stock relief).

(8) Any claim under this section shall be made by notice given to the inspector not later than two years after the end of the second of the years of assessment to which the claim relates but any such further claim as is mentioned in subsection (5)(c) above shall not be out of time if made before the end of the year of assessment following that in which the adjustment is made.

(9) Where a person makes a claim under this section in respect of any year of assessment, any claim by him for relief for that year under any other provision of the Income Tax Acts—

(a) shall not be out of time if made before the end of the period in which the claim under this section is required to be made; and

(b) if already made, may be revoked or amended before the end of that period;

but no claim shall by virtue of this subsection be made, revoked or amended after the determination of the claim under this section.

(10) There shall be made all such alterations of assessments or repayments of tax (whether in respect of such profits as are mentioned in subsection (1) above or of other income of the person concerned) as may be required in consequence of any adjustment under this section.

(11) Nothing in this section shall be construed as applying to profits chargeable to corporation tax.

(12) This section applies where the first of the two years mentioned in subsection (1) above is the year 1987-88 or a subsequent year of assessment.

Modifications etc. (not altering text)

C119 S. 96(8) modified for the year of assessment 1988-89 by S.I. 1991/851, regs. 1(1), 9, **Sch.2**.
S. 96(8) modified for the year of assessment 1989-90 by S.I. 1992/511, regs. 1(1), 9, **Sch.2**.
S. 96(8) applied (with modifications) for the year of assessment 1990-91 by S.I. 1993/415, regs. 1(1), 9, **Sch.2**

C120 S. 96(8) modified (5.4.1994 with effect in accordance with reg. 1 of the modifying S.I.) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728) {reg. 9}, Sch. 2

Marginal Citations

M265 SOURCE-1978 s. 28; 1981 s. 35(4)

97 Treatment of farm animals etc.

[M266]Schedule 5 shall have effect with respect to the treatment, in computing profits or gains for the purposes of Case I of Schedule D, of animals and other living creatures kept for the purposes of farming or any other trade.

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Marginal Citations
M266 SOURCE-1970 s. 139

98 Tied premises.

(1) [M267]In computing for tax purposes the profits or gains or losses of a trade carried on by a lessor of tied premises—

(a) there shall be taken into account as a trading receipt any rent payable for the premises to him, and there shall be allowed as deduction any rent paid for the premises by him, but

(b) no deduction shall be allowed in respect of the premises either by reference to his being entitled to a rent for the premises which is less than the rent which might have been obtained (or less than their annual value or the rent payable by him for them) or in respect of the annual value of the premises.

(2) For the purposes of this section, premises shall be deemed to be tied premises in relation to any lessor of the premises, and in relation to any trade carried on by him, if, but only if, in the course of that trade, he is concerned (whether as principal or agent) in the supply of goods sold or used on the premises and accordingly deals with the premises or his interest in the premises as property employed for the purposes of that trade; and in this section "the relevant trade", in relation to any tied premises and to any lessor thereof, means any trade carried on by him in relation to which they are tied premises.

(3) Where part only of premises in respect of which rent is paid by or payable to a lessor of the premises are tied premises in relation to him, the rent paid or payable for the tied premises shall for the purposes of this section be taken to be that part of the entire rent which, on a fair and just apportionment, is attributable to them.

(4) Subject to subsection (5) below, a lessor of tied premises who is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade shall not be liable for that period (or for the part of it during which he carries on that trade) to any tax in respect of the premises under Schedule A.

(5) Where, for any chargeable period or part of a chargeable period, a lessor of tied premises becomes entitled to any rent under a lease comprising the tied premises and other premises, but is by virtue of subsection (4) above relieved of liability to tax in respect of the tied premises under Schedule A—

(a) his liability in respect of the rent shall be computed in the first instance as it would be apart from this section, but

(b) his total liability (so computed) in respect of the rent shall be reduced by the part which, on a fair and just apportionment, is attributable to the tied premises for the chargeable period or part thereof for which he is so relieved of liability in respect of them.

(6) If the lessor of tied premises outside the United Kingdom is chargeable to tax for any chargeable period in respect of the profits or gains of the relevant trade, he shall not be liable for that period (or for the part of it during which he carries on that trade) to tax under Case V of Schedule D in respect of any rent for the premises.

(7) Where the person carrying on a trade is, in the case of any premises, entitled in equity to the interest of any lessor of those premises, then, in relation to that person, subsections

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(1) to (3) above shall apply as if he were the lessor of the premises, and as if any rent payable to or paid by the lessor were payable to or paid by him; and, in relation to the lessor of the premises, subsections (4) and (5) above (or, in the case of premises outside the United Kingdom, subsection (6) above) shall apply as they would apply to the person carrying on the trade if the lessor's interest in the premises and in any other relevant land were vested in him.

(8) In this section "lease" includes an agreement for a lease if the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage or heritable security, and "lessor" shall be construed accordingly, and includes the successors in title of a lessor.

Modifications etc. (not altering text)

C121 S. 98(2) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.156**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M267 SOURCE-1970 s. 140

99 Dealers in land.

(1) [M268]In computing for tax purposes the profits or gains of a trade of dealing in land, there shall be disregarded—

(a) so much of the cost of woodlands in the United Kingdom purchased in the course of the trade as is attributable to trees or saleable underwood growing on the land; and

(b) where any amount has been disregarded under paragraph (a) above and, on a subsequent sale of the woodlands in the course of the trade, all or any of the trees or underwood to which the amount disregarded was attributable are still growing on the land, so much of the price for the land as is equal to the amount so disregarded in respect of those trees or underwood.

(2) [M269]In computing the profits or gains of a trade of dealing in land, any trading receipt falling within subsection (1), (4) or (5) of section 34 or section 35 or 36 shall be treated as reduced by the amount on which tax is chargeable by virtue of that section.

(3) Where, on a claim being made under subsection (2)(b) of section 36, the amount on which tax was chargeable by virtue of that section is treated as reduced, subsection (2) above shall be deemed to have applied to the amount as reduced, and any such adjustment of liability to tax shall be made (for all relevant chargeable periods) whether by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to tax for the chargeable period in which that claim is made.

(4) [M270]Subsection (1) above shall not apply where the purchase mentioned in paragraph (a) of that subsection was made under a contract entered into before 1st May 1963.

Marginal Citations

M268 SOURCE-1970 s. 142(1)

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M269 SOURCE-1970 s. 142(2), (4)
M270 SOURCE-1970 s. 142(2), (4)

CHAPTER VI

DISCONTINUANCE, AND CHANGE OF BASIS OF COMPUTATION

Valuation of trading stock etc.

100 Valuation of trading stock at discontinuance of trade.

(1) [M271]In computing for any tax purpose the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance shall be valued as follows—

(a) if—

(i) the stock is sold or transferred for valuable consideration to a person who carries on, or intends to carry on, a trade in the United Kingdom, and

(ii) the cost of the stock may be deducted by the purchaser as an expense in computing for any tax purpose the profits or gains of that trade,

the value of the stock shall be taken to be the amount realised on the sale or the value of the consideration given for the transfer; and

(b) if the stock does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

(2) [M272]For the purposes of this section "trading stock", in relation to any trade—

(a) means property of any description, whether real or personal, being either—

(i) property such as is sold in the ordinary course of the trade, or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or

(ii) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in sub-paragraph (i) above; and

(b) includes also any services, article or material which would, if the trade were a profession or vocation, be treated, for the purposes of section 101, as work in progress of the profession or vocation, and references to the sale or transfer of trading stock shall be construed accordingly.

Modifications etc. (not altering text)

C122 *See*—1988(F) Sch.12 para.2—*building societies converting to companies.*Trustee Savings Bank Act 1985 (c.58) s.5*and* Sch.2 para.6(1)—*this provision not to apply to the discontinuance of an existing bank under the* TSB Act 1985.

Marginal Citations

M271 Source—1970 s.137(1)
M272 Source—1970 s.137(4)

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101 Valuation of work in progress at discontinuance of profession or vocation.

(1) [M273]Where, in computing for any tax purpose the profits or gains of a profession or vocation which has been discontinued, a valuation is taken of the work of the profession or vocation in progress at the discontinuance, that work shall be valued as follows—

(a) if—

(i) the work is transferred for money or any other valuable consideration to a person who carries on, or intends to carry on, a profession or vocation in the United Kingdom, and

(ii) the cost of the work may be deducted by that person as an expense in computing for any tax purpose the profits or gains of that profession or vocation,

the value of the work shall be taken to be the amount paid or other consideration given for the transfer; and

(b) if the work does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which would have been paid for a transfer of the work on the date of the discontinuance as between parties at arm's length.

(2) [M274]Where a profession or vocation is discontinued, and the person by whom it was carried on immediately before the discontinuance so elects by notice sent to the inspector at any time within 12 months after the discontinuance—

(a) the amount (if any) by which the value of the work in progress at the discontinuance (as ascertained under subsection (1) above) exceeds the actual cost of the work shall not be brought into account in computing the profits or gains of the period immediately before the discontinuance; but

(b) the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax by virtue of section 103 as if it were a sum to which that section applies received after the discontinuance.

(3) [M275]References in this section to work in progress at the discontinuance of a profession or vocation shall be construed as references to—

(a) any services performed in the ordinary course of the profession or vocation, the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession or vocation had not been discontinued; and

(b) any article produced, and any such material as is used, in the performance of any such services,

and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

Marginal Citations

M273 Source—1970 s.138(1)

M274 Source—1970 s.138(3)

M275 Source—1970 s.138(5)

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102 Provisions supplementary to sections 100 and 101.

(1) [M276]Any question arising under section 100(1)(a) or 101(1)(a) shall be determined as follows, for the purpose of computing for any tax purpose the profits or gains of both the trades or, as the case may be, the professions or vocations concerned—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to both the trades, professions or vocations concerned, the question shall be determined by those Commissioners unless all parties concerned agree that it shall be determined by the Special Commissioners;

(b) in any other case, the question shall be determined by the Special Commissioners; and

(c) the General or Special Commissioners shall determine the question in like manner as an appeal.

(2) [M277]Where, by virtue of section 113 or 337(1), a trade, profession or vocation is treated as having been permanently discontinued for the purpose of computing tax, it shall also be so treated for the purposes of sections 100 and 101; but those sections shall not apply in a case where a trade, profession or vocation carried on by a single individual is discontinued by reason of his death.

Marginal Citations

M276 Source—1970 s.137(2), 138(2)

M277 Source—1970 s.137(3), 138(4)

Case VI charges on receipts

103 Receipts after discontinuance: earnings basis charge and related charge affecting conventional basis.

[M278](1) Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, tax shall be charged under Case VI of that Schedule in respect of any sums to which this section applies which are received after the discontinuance.

(2) Subject to subsection (3) below, this section applies to the following sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance (not being sums otherwise chargeable to tax)—

(a) where the profits or gains for that period were computed by reference to earnings, all such sums in so far as their value was not brought into account in computing the profits or gains for any period before the discontinuance, and

(b) where those profits or gains were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those profits or gains had been computed by reference to earnings, would not have been brought into the computation for any period before the discontinuance because the date on which they became due, or the date on which the amount due in respect thereof was ascertained, fell after the discontinuance.

(3) This section does not apply to any of the following sums—

(a) sums received by a person beneficially entitled thereto who is not resident in the United Kingdom, or by a person acting on his behalf, which represent

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income arising directly or indirectly from a country or territory outside the United Kingdom, or

(b) a lump sum paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as consideration for the assignment by them, wholly or partially, of the copyright in the work, or

[[F133](bb) a lump sum paid to the personal representatives of the designer of a design which design right subsists as consideration for the assignment by them, wholly or partially, of that right,**]**

(c) sums realised by the transfer of trading stock belonging to a trade at the discontinuance of the trade, or by the transfer of the work of a profession or vocation in progress at its discontinuance.

Paragraph (b) above shall have effect in relation to public lending right as it has effect in relation to copyright.

(4) Where—

(a) in computing for tax purposes the profits or gains of a trade, profession or vocation a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, and

(b) the whole or any part of that debt is thereafter released, and

(c) the trade, profession or vocation has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected,

subsections (1) to (3) above shall apply as if the amount released were a sum received after the discontinuance.

(5) For the purposes of this section the value of any sum received in payment of a debt shall be treated as not brought into account in the computation of the profits or gains of a trade, profession or vocation to the extent that a deduction has been allowed in respect of that sum under section 74(j).

Textual Amendments

F133 Sch.7 para.36(3)Copyright Designs and Patents Act 1988 (c.48)*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced*).

Marginal Citations

M278 Source—1970 s.143; 1983 s.27(b)

104 Conventional basis: general charge on receipts after discontinuance or change of basis.

(1) [M279]Where any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D has been permanently discontinued, and the profits or gains for any period before the discontinuance were computed on a conventional basis, tax shall be charged under Case VI of that Schedule in respect of any sums to which this subsection applies which are received on or after the discontinuance.

(2) Subject to subsection (3) below, subsection (1) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance, not being sums otherwise chargeable to tax, in so far as the amount

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or value of the sums was not brought into account in computing the profits or gains for any period before the discontinuance.

(3) In subsection (2) above the reference to sums otherwise chargeable to tax includes any sums which (disregarding this section) are chargeable to tax under section 103 or to which that section would have applied but for subsection (3)(a) and (b) of that section.

(4) [M280]Where, in the case of any trade, profession or vocation the profits or gains of which are chargeable to tax under Case I or II of Schedule D, there has been—

(a) a change from a conventional basis to the earnings basis, or

(b) a change of conventional basis which may result in receipts dropping out of computation,

tax shall be charged under Case VI of that Schedule in respect of sums to which this subsection applies which are received after the change and before the trade, profession or vocation is permanently discontinued.

(5) Subsection (4) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the change, not being sums otherwise chargeable to tax, in so far as the amount or value of the sums was not brought into account in computing the profits or gains for any period.

(6) [M281]It is hereby declared that where work in progress at the discontinuance of a profession or vocation, or the responsibility for its completion, is transferred, the sums to which subsection (1) above applies include any sums received by way of consideration for the transfer, and any sums received by way of realisation by the transferee, on behalf of the transferor, of the work in progress transferred.

(7) Where in the case of any profession or vocation, the profits or gains of which are chargeable to tax under Case II of Schedule D—

(a) there has been a change from a conventional basis to the earnings basis, or a change of conventional basis, and

(b) the value of the work in progress at the time of the change was debited in the accounts and allowed as a deduction in computing profits for tax purposes for a period after the change,

then, in so far as no counterbalancing credit was brought into account in computing profits for tax purposes for any period ending before or with the date of the change, tax shall be charged under subsection (4) above in respect of that amount for the year of assessment in which the change occurred as if that amount were a sum to which that subsection applies, and the change of basis were a change of the kind described in that subsection.

Marginal Citations

M279 Source—1970 s.144(1)

M280 Source—1970 s.144(2)

M281 Source—1970 s.144(3), (4)

105 Allowable deductions.

[M282](1) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 103 or 104(1) (including amounts treated as sums

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received by him by virtue of section 103(4)), there shall be deducted from the amount which, apart from this subsection, would be chargeable to tax—

(a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade, profession or vocation had not been discontinued, would have been deducted in computing for tax purposes the profits or gains of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits or gains as so computed, and

(b) any capital allowance to which the person who carried on the trade, profession or vocation was entitled immediately before the discontinuance and to which effect has not been given by way of relief before the discontinuance.

(2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts.

(3) No amount shall be deducted more than once under subsection (1) above; and—

(a) any expense or debit shall be apportioned between a sum chargeable under section 103 and a sum chargeable under section 104(1) in such manner as may be just;

(b) as between sums chargeable, whether under section 103 or 104(1), for one chargeable period and sums so charged for a subsequent chargeable period, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier chargeable period;

(c) subject to paragraph (b) above, as between sums chargeable for any chargeable period under section 103 and sums so chargeable under section 104(1), any deduction in respect of a loss or capital allowance shall be made against the last-mentioned sums rather than the first-mentioned;

but, in the case of a loss which is to be allowed after the discontinuance, not so as to authorise its deduction from any sum chargeable for a chargeable period preceding that in which the loss is incurred.

(4) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of section 104(4), there shall be deducted any expense or debit which is not otherwise allowable and which, but for the change in basis, would have been deducted in computing for tax purposes the profits or gains of the trade, profession or vocation, but no amount shall be deducted more than once under this subsection.

Marginal Citations

M282 Source—1970 s.145

106 Application of charges where rights to payments transferred.

M283(1) Subject to subsection (2) below, in the case of a transfer for value of the right to receive any sum to which section 103, 104(1) or 104(4) applies, any tax chargeable by virtue of either of those sections shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in this Chapter, except section 101(2), to sums received shall be construed accordingly.

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(2) Where a trade, profession or vocation is treated as permanently discontinued by reason of a change in the persons carrying it on, and the right to receive any sum to which section 103 or 104(1) applies is or was transferred at the time of the change to the persons carrying on the trade, profession or vocation after the change, tax shall not be charged by virtue of either of those sections, but any sum received by those persons by virtue of the transfer shall be treated for all purposes as a receipt to be brought into the computation of the profits or gains of the trade, profession or vocation in the period in which it is received.

Marginal Citations
M283 Source—1970 s.147

Reliefs

107 Treatment of receipts as earned income.

[M284]Where an individual is chargeable to tax by virtue of section 103 or 104, and the profits or gains of the trade, profession or vocation to which he was entitled before the discontinuance or, as the case may be, change of basis fell to be treated as earned income for the purposes of income tax, the sums in respect of which he is so chargeable shall also be treated as earned income for those purposes (but, in the case of sums chargeable by virtue of section 104, after any reduction in those sums under section 109).

Marginal Citations
M284 Source—1970 s.148

108 Election for carry-back.

[M285]Where any sum is—

(a) chargeable to tax by virtue of section 103 or 104, and

(b) received in any year of assessment beginning not later than six years after the discontinuance or, as the case may be, change of basis by the person by whom the trade, profession or vocation was carried on before the discontinuance or change, or by his personal representatives,

that person or (in either case) his personal representatives may, by notice sent to the inspector within two years after that year of assessment, elect that the tax so chargeable shall be charged as if the sum in question were received on the date on which the discontinuance took place or, as the case may be, on the last day of the period at the end of which the change of basis took place; and, in any such case, an assessment shall (notwithstanding anything in the Tax Acts) be made accordingly, and, in connection with that assessment, no further deduction or relief shall be made or given in respect of any loss or allowance deducted in pursuance of section 105.

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Marginal Citations
M285 Source—1970 s.149

109 Charge under section 104: relief for individuals born before 6th April 1917.

M286(1) If an individual born before 6th April 1917, or the personal representatives of such an individual, is chargeable to tax under section 104 and—

(a) the individual was engaged in carrying on a trade, profession or vocation on 18th March 1968, and

(b) the profits or gains of the trade, profession or vocation were not computed by reference to earnings in the period in which that 18th March fell, or in any subsequent period ending before or with the relevant date,

the net amount with which he is so chargeable to tax shall be reduced by multiplying that net amount by the fraction given below.

(2) Where section 104(4) applies in relation to a change of basis taking place on a date before 19th March 1968, then, in relation to tax chargeable by reference to that change of basis, that earlier date shall be substituted for the date in subsection (1)(a) above and subsection (1)(b) above shall be omitted.

(3) The fraction referred to in subsection (1) above is—

(a) where on 5th April 1968 the individual had not attained the age of 52—

$$\frac{19}{20}$$

(b) where on that date he had attained the age of 52, but had not attained the age of 53—

$$\frac{18}{20}$$

and so on, reducing the fraction by—

$$\frac{1}{20}$$

for each year he had attained up to the age of 64;

(c) where on that date he had attained the age of 65, or any greater age—

$$\frac{5}{20}$$

(4) In this section—

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"the net amount" with which a person is chargeable to tax under section 104 means the amount with which he is so chargeable after making any deduction authorised by section 105 but before giving any relief under this section; and

"relevant date"—

(a) in relation to tax under section 104(1), means the date of the permanent discontinuance, and

(b) in relation to tax under section 104(4), means the date of the change of basis.

(5) Subsections (1) to (4) above shall apply as follows as respects the net amount of any sum chargeable under section 104 which is assessed by reference to a sum accruing to a partnership—

(a) the part of that net amount which is apportioned to any partner (who is an individual), or the personal representative of such an individual, shall be a net amount with which that person is chargeable under that section, and

(b) if the part of that net amount which is so apportioned is a greater proportion of that amount than is the individual's share (that is to say, the part to be included in his total income) of the total amount of the partnership profits assessed to income tax for the three years of assessment ending with the year in which the discontinuance or change of basis took place, the amount of the reduction to be given by way of relief shall not exceed the amount of relief which would have been so given if the apportionment had been made by reference to his share of that total amount.

(6) For the purposes of this section the trade, profession or vocation carried on before a permanent discontinuance shall not be treated as the same as any carried after the discontinuance.

Marginal Citations

M286 Source—1970 s.150

VALID FROM 01/05/1995

[F134 Relief for post-cessation expenditure

Textual Amendments

F134 S. 109A and preceding cross-heading inserted (with effect in accordance with s. 90(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 90(1)**

109A Relief for post-cessation expenditure.

(1) Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.

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(2) This section applies to payments made wholly and exclusively—

(a) in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or

(b) in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective;

(c) in insuring against any liabilities arising out of any such claim or against the incurring of such expenses; or

(d) for the purpose of collecting a debt taken into account in computing the profits or gains of the former trade, profession or vocation.

(3) Where a payment of any of the above descriptions is made in circumstances such that relief under this section is available, the following shall be treated as sums to which section 103 applies (whether or not they would be so treated apart from this subsection)—

(a) in the case of a payment within paragraph (a) or (b) of subsection (2) above, any sum received, by way of the proceeds of insurance or otherwise, for the purpose of enabling the payment to be made or by means of which it is reimbursed,

(b) in the case of a payment within paragraph (c) of that subsection, any sum (not falling within paragraph (a) above) received by way of refund of premium or otherwise in connection with the insurance, and

(c) in the case of a payment within paragraph (d) of that subsection, any sum received to meet the costs of collecting the debt;

and no deduction shall be made under section 105 in respect of any such sums.

Where such a sum is received in a year of assessment earlier than that in which the related payment is made, it shall be treated as having been received in that later year and not in the earlier year; and any such adjustment shall be made, by way of modification of any assessment or discharge or repayment of tax, as is required to give effect to this subsection.

(4) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the profits or gains of that trade, profession or vocation and to the benefit of which he is entitled—

(a) is proved to be bad, or

(b) is released, in whole or in part, as part of a relevant arrangement or compromise (within the meaning of section 74),

he shall be treated as making a payment to which this section applies of an amount equal to the amount of the debt or, as the case may be, the amount released or, if he was entitled to only part of the benefit of the debt, to an appropriate proportion of that amount.

If any sum is subsequently received by him in payment of a debt for which relief has been given by virtue of this subsection, the sum shall be treated as one to which section 103 applies; and no deduction shall be made under section 105 in respect of any such sum.

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(5) Where in the case of a trade, profession or vocation which has subsequently been permanently discontinued a deduction was made in computing the profits or losses of the trade, profession or vocation in respect of an expense not actually paid (an "unpaid expense"), then—

(a) if relief under this section in connection with that trade, profession or vocation is claimed in respect of any year of assessment, the amount of the relief shall be reduced by the amount of any unpaid expenses at the end of that year;

(b) for the purposes of the application of paragraph (a) above in relation to a subsequent year of assessment, any amount by which relief under this section has been reduced by virtue of that paragraph shall be treated as having been paid in respect of the expense in question; and

(c) if subsequently any amount is in fact paid in respect of an expense in respect of which a reduction has been made under paragraph (a), that amount (or, if less, the amount of the reduction) shall be treated as a payment to which this section applies.

(6) Relief shall not be given under this section in respect of an amount for which relief has been given or is available under any other provision of the Income Tax Acts.

In applying this subsection relief available under section 105 shall be treated as given in respect of other amounts before any amount in respect of which relief is available under this section.

(7) This section does not apply for the purposes of corporation tax.**]**

Modifications etc. (not altering text)

C123 S. 109A(1) modified (with application as stated in s. 90(7) of the modifying Act) by Finance Act 1995 (c. 4), **s. 90(2)**

Supplemental

110 Interpretation etc.

(1) [M287]The following provisions have effect for the purposes of sections 103 to 109.

(2) [M288]For the purposes of those sections, any reference to the permanent discontinuance of a trade, profession or vocation includes a reference to the occurring of any event which, under section 113 or 337(1), is to be treated as equivalent to the permanent discontinuance of a trade, profession or vocation.

(3) [M289]The profits or gains of a trade, profession or vocation in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of its being carried on are brought into account in computing those profits or gains for tax purposes, and not otherwise, and "earnings basis" shall be construed accordingly.

(4) "Conventional basis" has the meaning given by section 103(2), so that profits or gains are computed on a conventional basis if computed otherwise than by reference to earnings.

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(5) There is a change from a conventional basis to the earnings basis at the end of a period the profits or gains of which were computed on a conventional basis if the profits or gains of the next succeeding period are computed by reference to earnings; and, if the profits or gains of two successive periods are computed on different conventional bases, a change of conventional basis occurs at the end of the earlier period.

(6) In sections 103 and 104—
- (a) "trading stock" has the meaning given by section 100(2);
- (b) references to work in progress at the discontinuance of a profession or vocation, and to the transfer of work in progress, are to be construed in accordance with section 101(3); and
- (c) the reference to work in progress at the time of a change of basis is also to be construed in accordance with section 101(3), substituting therein for this purpose references to the change of basis for references to the discontinuance.

Marginal Citations

M287 Source—1970 s.151(1)
M288 Source—1970 s.146
M289 Source—1970 s.151(2)-(5)

VALID FROM 01/05/1995

Change of residence

110A Change of residence.

(1) Where there is a change of residence by an individual who is carrying on any trade, profession or vocation wholly or partly outside the United Kingdom and otherwise than in partnership with others, tax shall be chargeable, and loss relief may be claimed, as if the change—
- (a) constituted the permanent discontinuance of the trade, profession or vocation; and
- (b) was immediately followed, in so far as the trade, profession or vocation continues to be carried on by that individual, by the setting up and commencement of a new one;

but nothing in this subsection shall prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change.

(2) For the purposes of this section there is a change of residence by an individual if—
- (a) not being resident in the United Kingdom, he becomes so resident; or
- (b) being so resident, he ceases to be so resident.

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CHAPTER VII

PARTNERSHIPS AND SUCCESSIONS

Modifications etc. (not altering text)

C124 *See also*—1970(M) s.9—*partnership returns.*1990(C), ss.65, 78—*capital allowances for machinery, etc., used for trade carried on in partnership.*

General

111 Partnership assessments to income tax.

[M290]Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

Marginal Citations

M290 Source—1970 s.152

112 Partnerships controlled abroad.

[M291](1) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the partnership are resident in the United Kingdom and that some of its trading operations are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situated abroad consists of trading operations within the United Kingdom, the firm shall, subject to subsection (3) below, be chargeable in respect of the profits of those trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more members of the firm are resident in the United Kingdom.

(3) For the purpose of charging any such firm as is mentioned in subsection (2) above in respect of the profits of its trading operations within the United Kingdom, an assessment may be made on the firm in respect of those profits in the name of any partner resident in the United Kingdom.

(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 788 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 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.

(6) Section 115(5) has effect as respects the application of this section where the partners in a partnership include a company.

Modifications etc. (not altering text)

C125 S. 112(1)(2) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 59(c)**, 289 (with ss. 60, 101(1), 171, 201(3)).

C126 S. 112(4)-(6) modified (with retrospective effect) by Finance Act 2008 (c. 9), **s. 58(5)(6)(b)**

Marginal Citations

M291 1970 s.153; 1987 (No.2) s.62

113 Effect, for income tax, of change in ownership of trade, profession or vocation.

M292(1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or II of Schedule D, then, subject to the provisions of this section and of section 114(3)(b), the amount of the profits or gains of the trade, profession or vocation on which income tax is chargeable for any year of assessment and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been permanently discontinued, and a new one set up and commenced, at the date of the change.

(2) Subject to section 114(3)(b), where there is such a change as is mentioned in subsection (1) above, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the persons so engaged immediately before and the persons so engaged immediately after the change may, by notice signed by them and sent to the inspector at any time within two years after the date of the change, elect that subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.

(3) Where there is in any year of assessment a change in the persons engaged in carrying on a trade, profession or vocation, and subsection (1) above does not apply by reason of a notice under subsection (2) above, then—

(a) income tax in respect of the trade, profession or vocation for that year shall be assessed and charged separately on those so engaged before the change and on those so engaged after the change, but the amount on which tax is chargeable shall be computed as if there had been no such change in that year, and shall be apportioned as may be just; and

(b) if, after the change but before the end of the second year of assessment following that in which the change occurred, there is a permanent

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discontinuance of the trade, profession or vocation (including a change treated as such), then, on that discontinuance, section 63 shall apply, as respects any period before the first-mentioned change, to the persons charged or chargeable for that period as it would apply if no such change had taken place and they had been charged to tax accordingly for the subsequent period up to the discontinuance.

(4) There shall be made any such assessment, reduction of an assessment or, on the making of a claim therefor, repayment of income tax as may in any case be necessary for giving effect to this section.

(5) Any question which arises as to the manner in which any sum is to be apportioned under subsection (3)(a) above shall be determined, for the purposes of the tax of all of the persons as respects whose liability to tax the apportionment is material—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners;

and any such Commissioners shall determine the question in like manner as an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.

(6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate; and where under those provisions an election may be made by any person, it may in the case of his death be made by his executors or administrators instead of by him.

(7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

Modifications etc. (not altering text)

C127 *See* 1990(C) s.134(4)—*treatment of succession for purposes of capital allowances for dredging.*

Marginal Citations

M292 Source—1970 s.154; 1971 s.17(1)

Partnerships involving companies

114 Special rules for computing profits and losses.

(1) [M293]So long as a trade is carried on by persons in partnership, and any of those persons is a company, the profits and losses (including terminal losses) of the trade shall be

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computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company, and without regard to any change in the persons carrying on the trade, except that—

(a) references to distributions shall not apply; and

(b) subject to section 116(5), no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period nor for any expenditure to which section 401(1) applies; and

(c) a change in the persons engaged in carrying on the trade shall be treated as the transfer of the trade to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.

(2) [M294]A company's share in the profits or loss of any accounting period of the partnership, or in any matter excluded from the computation by subsection (1)(b) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade carried on by the company alone in its corresponding accounting period or periods; and the company shall be assessed and charged to tax for its corresponding accounting period or periods accordingly.

In this subsection "corresponding accounting period or periods" means the accounting period or periods of the company comprising or together comprising the accounting period of the partnership, and any necessary apportionment shall be made between corresponding accounting periods if more than one.

(3) [M295]Where any of the persons engaged in carrying on the trade is an individual, income tax shall be chargeable in respect of his share of the profits, and he shall be entitled to relief for his share of any loss, as if all the partners had been individuals except that—

(a) income tax shall be chargeable, and any relief from income tax shall be given, by reference to the computations made for corporation tax, but so that the amounts so computed for an accounting period of the capital allowances and charges falling to be made in taxing the trade shall (as regards the individual's share of them) be given or made for the year or years of assessment comprising that period and, where necessary, apportioned accordingly; and

(b) section 113 shall not apply by reason of any change in the persons engaged in carrying on the trade unless an individual begins or ceases to be so engaged, and, where it does apply, an election under subsection (2) of that section shall be made only by the individuals so engaged, and only if an individual so engaged before the change continues to be so engaged after it; [F135] . . .

[F135](c) . . .

(4) Section 111 shall apply to income tax chargeable in accordance with this section, matters relevant only to corporation tax being omitted from the assessment.

Textual Amendments

F135 S. 114(3)(c) and the word 'and' preceding it repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 3, **Sch. 19 Pt.V** Note 4.(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

Marginal Citations

M293 Source—1970 s.155(1); 1973 s.31(5); 1980 s.39(3)

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M294 Source—1970 s.155(2); 1972 s.107(2)
M295 Source—1970 s.155(3), (4)

115 Provisions supplementary to section 114.

(1) [M296]Subsections (2) and (3) below have effect as respects income tax chargeable in accordance with section 114 for any year of assessment throughout all or any part of which one or more of the persons engaged in carrying on the trade is an individual.

(2) Notwithstanding any difference between the partners' interests during the basis period and their interests during the year of assessment, the amount of the individual's income from the partnership for the year of assessment, or the total of the amounts of the individuals' incomes from the partnership for that year, shall be deemed to be not less than the profits of the basis period, reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share.

(3) Where there are two or more individuals and, but for subsection (2) above, the total of the amounts of the individuals' incomes from the partnership for the year would fall short of the profits of the basis period reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share, that amount shall be apportioned—

(a) according to the individuals' interests during the year of assessment, disregarding any company's interest; and

(b) in so far as that does not determine, or fully determine, the apportionment, between the individuals in equal shares.

(4) [M297]Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad but those persons include a company resident in the United Kingdom, then as regards that company, this section and section 114 shall have effect as if the partnership were resident in the United Kingdom, and an assessment may be made on the company accordingly.

(5) Subject to subsection (4) above, where the partners in a partnership include a company, section 112 shall apply whether for corporation tax or for income tax; and this section and section 114 shall have effect accordingly.

[[F136](5C) For the purposes of subsections (5) to (5B) the members of a partnership include any company which is entitled to a share of income or capital gains of the partnership.**]**

(6) In this section and section 114—

"basis period", in relation to a year of assessment, means any accounting period or part of an accounting period which is, or forms part of, the period on the profits or gains of which income tax for the year of assessment in question falls to be computed under Schedule D in respect of the trade;

"capital allowances and charges" means any allowances or charges under any of the Capital Allowances Acts, not being allowances or charges which, for income tax, are given or made by deduction or addition in the computation of profits or gains;

and references in subsection (1) above to an individual's income from the partnership are references to that income before deduction of capital allowances or charges on income.

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(7) For the purposes of this section and section 114 "profits" shall not be taken as including chargeable gains.

Textual Amendments

F136 S. 115(5C) inserted (retrospectively) by Finance Act 2008 (c. 9), **s. 58(1)(4)**

Modifications etc. (not altering text)

C128 S. 115(5) modified (with retrospective effect) by Finance Act 2008 (c. 9), **s. 58(5)(6)(b)**

Marginal Citations

M296 Source—1970 s.155(5)

M297 Source—1970 s.155(6)-(9); 1971 Sch.8 16(5); 1986 s.56(7)(a), Sch.13 2(5)(a)

116 Arrangements for transferring relief.

M298(1) The provisions of subsection (2) below shall apply in relation to a company ("the partner company") which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

(a) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth; or

(b) in respect of the whole or any part of the cost of, or of any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company or any person connected with that company receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

(2) In any case where the provisions of this subsection apply in relation to the partner company—

(a) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and

(b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company's share in the profits of the relevant accounting period of the partnership; and

(c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of its share in the profits of the relevant accounting period of the partnership; and

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(d) notwithstanding anything in section 239, no advance corporation tax may be set against the company's liability to corporation tax on its share in the profits of the relevant accounting period of the partnership.

(3) In subsection (2) above "relevant accounting period of the partnership" means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.

(4) If a company is a member of a partnership and tax in respect of any profits of the partnership is chargeable under Case VI of Schedule D, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—

(a) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and

(b) any allowance which falls to be made under section **[**[F137]61(1) of the 1990 Act**]** (machinery and plant on lease) were an allowance made in taxing that trade.

(5) For the purposes of this section, subsection (2) of section 114 shall have effect for determining a company's share in the profits or loss of any accounting period of a partnership as if, in subsection (1)(b) of that section, the words " or for capital allowances and charges " were omitted.

(6) In this section "arrangements" means arrangements of any kind whether in writing or not.

(7) Section 839 shall apply for the purposes of this section.

Textual Amendments

F137 1990(C) s.164*and* Sch.1 para.8(7).*Previously* "46(1) of the Finance Act 1971".

Marginal Citations

M298 Source—1973 s.31(1)-(5), (9), 32(6)

Limited partners

117 Restriction on relief: individuals.

(1) [M299]An amount which may be given or allowed to an individual under section 353, 380 or 381 below or section **[**[F138]141 of the 1990 Act**]**—

(a) in respect of a loss sustained by him in a trade, or of interest paid by him in connection with the carrying on of a trade, in a relevant year of assessment; or

(b) as an allowance falling to be made to him for a relevant year of assessment either in taxing a trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in a trade,

may be given or allowed otherwise than against income consisting of profits or gains arising from the trade only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) [M300]In this section—

"limited partner" means—

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(i) a person who is carrying on a trade as a limited partner in a limited partnership registered under the [M301]Limited Partnerships Act 1907;

(ii) a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or

(iii) a person who carries on a trade jointly with others and who, under the law of any territory outside the United Kingdom, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

"relevant year of assessment" means a year of assessment at any time during which the individual carried on the trade as a limited partner;

"the aggregate amount" means the aggregate of any amounts given or allowed to him at any time under section 353, 380 or 381 below or section **[**[F139]141 of the 1990 Act**]**—

(a) in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a relevant year of assessment; or

(b) as an allowance falling to be made to him for a relevant year of assessment either in taxing the trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in the trade;

"the relevant sum" means the amount of his contribution to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant year of assessment in which the loss is sustained or the interest paid or for which the allowance falls to be made (except that where he ceased to carry on the trade during that year of assessment it is the time when he so ceased).

(3) [M302]A person's contribution to a trade at any time is the aggregate of—

(a) the amount which he has contributed to it as capital and has not, directly or indirectly, drawn out or received back (other than anything which he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a limited partner or which he is or may be entitled to require another person to reimburse to him), and

(b) the amount of any profits or gains of the trade to which he is entitled but which he has not received in money or money's worth.

(4) [M303]To the extent that an allowance is taken into account in computing profits or gains or losses in the year of the loss by virtue of section 383(1) it shall, for the purposes of this section, be treated as falling to be made in the year of the loss (and not the year of assessment for which the year of loss is the basis year).

Textual Amendments

F138 1990(C) s.164*and* Sch.1 para.8(8).*Previously* "71 of the 1968 Act".

F139 1990(C) s.164*and* Sch.1 para.8(8).*Previously* "71 of the 1968 Act".

Marginal Citations

M299 Source—1985 Sch.12 2(1)-(3).

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M300 1985 Sch.12 1, 2(4)
M301 1907 c. 24.
M302 Source—1985 Sch.12 4
M303 Source—1985 Sch.12 2(5)

118 Restriction on relief: companies.

(1) [M304]An amount which may be given or allowed under section 338, **[**[F140]393A(1)**]**or 403(1) to (3) and (7) below or section **[**[F141]145 of the 1990 Act**]**—

(a) in respect of a loss incurred by a company in a trade, or of charges paid by a company in connection with the carrying on of a trade, in a relevant accounting period; or

(b) as an allowance falling to be made to a company for a relevant accounting period either in taxing a trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in a trade,

may be given or allowed to that company ("the partner company") otherwise than against profits or gains arising from the trade, or to another company, only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) [M305]In this section—

"relevant accounting period" means an accounting period of the partner company at any time during which it carried on the trade as a limited partner (within the meaning of section 117(2));

"the aggregate amount" means the aggregate of any amounts given or allowed to the partner company or another company at any time under section 338, **[**[F142]393A(1)**]**or 403(1) to (3) and (7) below or section **[**[F141]145 of the 1990 Act**]**—

(a) in respect of a loss incurred by the partner company in the trade, or of charges paid by it in connection with carrying it on, in any relevant accounting period; or

(b) as an allowance falling to be made to the partner company for any relevant accounting period either in taxing the trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

"the relevant sum" means the amount of the partner company's contribution (within the meaning of section 117(3)) to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant accounting period in which the loss is incurred or the charges paid or for which the allowance falls to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).

Textual Amendments

F140 Words in s. 118(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(a)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

F141 1990(C) s.164*and* Sch.1 para.8(9).*Previously*
"74 of the 1968 Act".

F142 Words in s. 118(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

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Marginal Citations

M304 Source—1985 Sch.12 3(1)-(3)

M305 Source—1985 Sch.12 3(4), 1, 4

VALID FROM 06/04/2001

[F143 *Limited liability partnerships*

Textual Amendments

F143 Ss. 118ZA-118ZD and preceding cross-heading inserted (6.4.2001) by Limited Liability Partnerships Act 2000 (c. 12), **ss. 10(1)**, 19(1); S.I. 2000/3316, **art. 2**

118ZA Treatment of limited liability partnerships.

For the purposes of the Tax Acts, a trade, profession or business carried on by a limited liability partnership with a view to profit shall be treated as carried on in partnership by its members (and not by the limited liability partnership as such); and, accordingly, the property of the limited liability partnership shall be treated for those purposes as partnership property.

118ZB Restriction on relief.

Sections 117 and 118 have effect in relation to a member of a limited liability partnership as in relation to a limited partner, but subject to sections 118ZC and 118ZD.

118ZC Member's contribution to trade.

(1) Subsection (3) of section 117 does not have effect in relation to a member of a limited liability partnership.

(2) But, for the purposes of that section and section 118, such a member's contribution to a trade at any time ("the relevant time") is the greater of—
  (a) the amount subscribed by him, and
  (b) the amount of his liability on a winding up.

(3) The amount subscribed by a member of a limited liability partnership is the amount which he has contributed to the limited liability partnership as capital, less so much of that amount (if any) as—
  (a) he has previously, directly or indirectly, drawn out or received back,
  (b) he so draws out or receives back during the period of five years beginning with the relevant time,
  (c) he is or may be entitled so to draw out or receive back at any time when he is a member of the limited liability partnership, or
  (d) he is or may be entitled to require another person to reimburse to him.

(4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which—

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(a) he is liable to contribute to the assets of the limited liability partnership in the event of its being wound up, and

(b) he remains liable so to contribute for the period of at least five years beginning with the relevant time (or until it is wound up, if that happens before the end of that period).

118ZD Carry forward of unrelieved losses.

(1) Where amounts relating to a trade carried on by a member of a limited liability partnership are, in any one or more chargeable periods, prevented from being given or allowed by section 117 or 118 as it applies otherwise than by virtue of this section (his "total unrelieved loss"), subsection (2) applies in each subsequent chargeable period in which—

(a) he carries on the trade as a member of the limited liability partnership, and

(b) any of his total unrelieved loss remains outstanding.

(2) Sections 380, 381, 393A(1) and 403 (and sections 117 and 118 as they apply in relation to those sections) shall have effect in the subsequent chargeable period as if—

(a) any loss sustained or incurred by the member in the trade in that chargeable period were increased by an amount equal to so much of his total unrelieved loss as remains outstanding in that period, or

(b) (if no loss is so sustained or incurred) a loss of that amount were so sustained or incurred.

(3) To ascertain whether any (and, if so, how much) of a member's total unrelieved loss remains outstanding in the subsequent chargeable period, deduct from the amount of his total unrelieved loss the aggregate of—

(a) any relief given under any provision of the Tax Acts (otherwise than as a result of subsection (2)) in respect of his total unrelieved loss in that or any previous chargeable period, and

(b) any amount given or allowed in respect of his total unrelieved loss as a result of subsection (2) in any previous chargeable period (or which would have been so given or allowed had a claim been made).**]**

VALID FROM 22/07/2004

[F144 Non-active general partners and non-active members of limited liability partnerships

Textual Amendments

F144 Ss. 118ZE-118ZK and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(1)**

118ZE Restriction on relief for non-active partners

(1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest

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paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.

(2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—
  (a) the amount given, or
  (b) (as the case may be) the aggregate amount,

does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.

(3) A "qualifying year of assessment" means a year of assessment—
  (a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,
  (b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),
  (c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  (d) the basis period for which ends on or after 10 February 2004, and
  (e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.

(4) In this section—
  (a) a "general partner" means any partner who is not a limited partner, and
  (b) "limited partner" has the meaning given by section 117(2),

and in paragraph (a) "any partner" does not include a member of a limited liability partnership.

(5) In this section and sections 118ZF to 118ZK, "basis period" means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).

(6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

(7) In subsection (1) "a trade" does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd's underwriters).

(8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

118ZF Meaning of "the aggregate amount"

(1) In section 118ZE(2) "the aggregate amount" means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).

(2) A year of assessment falls within this subsection if—
  (a) it is a qualifying year of assessment within the meaning of section 118ZE, or
  (b) it is a year of assessment—

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(i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and

(ii) the basis period for which ends on or after 10 February 2004.

118ZG "The individual's contribution to the trade"

(1) For the purposes of section 118ZE(2), the individual's contribution to the trade at any time ("the relevant time") is the sum of—

(a) the amount subscribed by him,

(b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money's worth, and

(c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.

(2) For the purposes of subsection (1)(a) the "amount subscribed"by an individual is the sum of—

(a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and

(b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—

(i) the pre-announcement allowance (within the meaning given by section 118ZJ),

(ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and

(iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).

(3) A year of assessment falls within this subsection if—

(a) it does not fall within section 118ZE(3)(d), and

(b) it is either—

(i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or

(ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).

(4) The individual's "withdrawn capital"is so much, if any, of the amount that he has contributed to the trade as capital as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within

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subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

(6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

118ZH "A significant amount of time"

(1) For the purposes of section 118ZE the individual shall be treated as having "devoted a significant amount of time to the trade"in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—
   (a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date, and
   (b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

118ZI Carry forward of unrelieved losses of non-active partners

(1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—
   (a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and
   (b) any of his total restricted loss remains outstanding.

(2) His "total restricted loss" means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.

(3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—
   (a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or
   (b) (if no loss is sustained) a loss of that amount were so sustained.

(4) To ascertain whether any (and, if so, how much) of the individual's total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

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(a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and

(b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).

(5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—

(a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and

(b) any loss deemed by subsection (3)(b) to have been so sustained,

shall be treated as having been sustained in a qualifying year of assessment.

(6) Subsection (7) applies where the subsequent year of assessment—

(a) is one in which the trade is not carried on in partnership by the individual, but

(b) is one in which he contributes to the assets of the partnership on its winding up.

(7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section "qualifying year of assessment" has the meaning given by section 118ZE.

18ZJ Commencement: the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 ("the first restricted year").

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and "the first restricted year" means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from "only to the extent that" there were substituted only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance.

(4) The "pre-announcement allowance"is the sum of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

(b) any interest paid by him in that period in connection with the carrying on of the trade.

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(5) The "post-announcement allowance"is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and

(b) any interest paid by him in that period in connection with the carrying on of the trade,

as does not exceed the individual's contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual's share of the losses shall be determined according to his interest in the partnership during that period.

(7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—

(a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and

(b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.

(8) If the individual had an interest in the partnership at any time that falls within—

(a) the basis period for the first restricted year, and

(b) the period beginning with 10 February 2004 and ending with 25 March 2004,

he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

118ZK Transitional provision for years after the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.

(2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

(a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or

(b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.

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(3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.

(4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.

(5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.

(6) In this section "the first restricted year" and "the pre-announcement allowance" have the meanings given by section 118ZJ.**]**

VALID FROM 22/07/2004

[F145 Partnerships exploiting films

Textual Amendments

F145 Ss. 118ZL, 118ZM and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 125**

118ZL Partnerships exploiting films

(1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss ("the loss in question") sustained by him—
  (a) in a trade consisting of or including the exploitation of films, and
  (b) in an affected year of assessment,

none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

(2) An "affected year of assessment" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—
  (a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,
  (b) a year of assessment in which he did not devote a significant amount of time to the trade, and
  (c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.

(3) For the purposes of subsection (2)(c)—
  (a) "a relevant agreement" means—
    (i) an agreement that was made with a view to the individual's carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or
    (ii) an agreement related to an agreement falling within sub-paragraph (i),

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(b) an agreement "guarantees" the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and

(c) it is immaterial when the amount of income would be received under the agreement.

(4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.

(5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

(6) Expenditure is exempt expenditure for the purposes of this section if it is—

(a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or

(b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or

(c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.

(7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

118ZM Partnerships exploiting films: supplementary

(1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

(2) Section 118ZH (meaning of "a significant amount of time" etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.

(3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.

(5) In section 118ZL(6) "incidental expenditure" means expenditure on management, administration or obtaining finance.

(6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.

(7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.

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(8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3).**]**

Modifications etc. (not altering text)

C129 S. 118ZM modified (retrospective to 2.12.2004) by Finance Act 2005 (c.7), Sch. 3 paras. 17, **31(3)**

VALID FROM 02/12/2004

[F146 Partners: meaning of "contribution to the trade"

Textual Amendments

F146 Ss. 118ZN, 118ZO and preceding cross-heading inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(1)(5)**

118ZN Partners: meaning of "contribution to the trade"

(1) This section applies for the purposes of the application of any of the following provisions ("the relevant provisions")—

(a) section 117 (restriction on relief for limited partners),

(b) that section as applied by section 118ZB in relation to a member of a limited liability partnership, and

(c) section 118ZE (restriction on relief for non-active partners),

to an amount which may be given to an individual under section 380 or 381 in respect of a relevant loss sustained by him in a trade ("the relevant trade").

(2) The Board may by regulations provide that, for those purposes, any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's contribution to the relevant trade at any time for the purposes of the relevant provisions.

(3) Regulations under this section may—

(a) make provision having effect before the date on which the regulations are made,

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and

(c) make different provision for different cases or different purposes.

(4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the passing of the Finance Act 2005.

(5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.

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118ZO Meaning of "relevant loss" in section 118ZN

(1) For the purposes of section 118ZN a "relevant loss" means—

(a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or

(b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.

(2) For the purposes of this section—

"basis period" means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

"post-announcement loss", in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

(a) begins with 2nd December 2004, and

(b) ends with the end of the basis period for that straddling year of assessment;

"straddling year of assessment" means a year of assessment the basis period for which begins before and includes 2nd December 2004.

(3) In the definition of "post-announcement loss" in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and

(b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.

(4) In subsection (3) the references to "the partnership" are to the partnership as a member of which the individual carries on the relevant trade.

(5) In relation to years of assessment which are before the year 2005-06, this section has effect as if—

(a) in subsection (2) for the definition of "basis period" there were substituted—

""basis period" means the basis period given by sections 60 to 63 as applied by section 111(4) and (5), except that the basis period for a year of assessment to which section 61(1) applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;", and

(b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of this Act.**]**

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VALID FROM 29/04/1996

CHAPTER VIIA

PAYING AND COLLECTING AGENTS

118A Definitions.

In this Chapter—

(a) except in the terms "agent concerned", "collecting agent" and "paying agent", references to an "agent" include a person acting as nominee or sub-agent for an agent;

(b) "bank" has the meaning given by section 840A;

(c) the "chargeable date"—

(i) in the case of a relevant payment, has the meaning given by section 118B(5); and

(ii) in the case of a relevant receipt, has the meaning given by section 118C(4);

(d) "collecting agent" has the meaning given by section 118C(1), and in relation to any relevant receipt or chargeable receipt, a reference to the collecting agent is a reference to the collecting agent by virtue of whose performance of a relevant function that receipt was received or arose;

(e) in relation to any dividends, references to "coupons" include warrants for and bills of exchange purporting to be drawn or made in payment of those dividends;

(f) references to a depositary include references to a person acting as agent or nominee for a depositary;

(g) except in paragraph (h) below, references to "dividends" are references to foreign dividends, United Kingdom public revenue dividends or relevant dividends as the context requires;

(h) "foreign dividends" means any annual payments, interest or dividends payable out of or in respect of foreign holdings;

(i) "foreign holdings" means the stocks, funds, shares or securities of any body of persons not resident in the United Kingdom or of a government or public or local authority in a country outside the United Kingdom;

(j) "gilt-edged securities" means any securities which—

(i) are gilt-edged securities for the purposes of the 1992 Act; or

(ii) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they were issued;

(k) "international organisation" has the meaning given by section 51A(8);

(l) references to a "nominee" include a person acting as agent or nominee for a nominee;

(m) "paying agent" has the meaning given by section 118B(1);

(n) "prescribed" means prescribed in regulations made by the Board under this Chapter or prescribed by the Board in accordance with such regulations;

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(o) "quoted Eurobond" means a quoted Eurobond within the meaning of section 124 the interest on which is chargeable to tax under Case III of Schedule D, and "quoted Eurobond interest" means interest on such a quoted Eurobond;

(p) "relevant dividends" means foreign dividends and quoted Eurobond interest;

(q) "relevant holdings" means foreign holdings and quoted Eurobonds;

(r) "relevant payment" has the meaning given by section 118B(5);

(s) "relevant receipt" has the meaning given by section 118C(2);

(t) "securities" includes any loan stocks or similar securities, whether secured or unsecured; and

(u) "United Kingdom public revenue dividends" means income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland.

118B Paying agents.

(1) A person specified in column 1 of Table A below shall be a paying agent for the purposes of this Chapter in relation to such dividends as are—

(a) of a description set out in column 2 of that Table opposite his specification; and

(b) entrusted to him for payment or distribution.

Table A

1	2
1. Any person in the United Kingdom.	United Kingdom public revenue dividends
2. The Bank of England	United Kingdom public revenue dividends paid on securities entered in the register of the Bank of Ireland in Dublin
3. Any person in the United Kingdom	foreign dividends which are payable to persons in the United Kingdom and do not fall within subsection (4) below

(2) The Bank of England and the Bank of Ireland shall be treated as paying agents for the purposes of this Chapter in relation to United Kingdom public revenue dividends which are payable to them.

(3) The National Debt Commissioners shall be treated as paying agents for the purposes of this Chapter in relation to United Kingdom public revenue dividends payable by them.

(4) Foreign dividends fall within this subsection if they are payable out of, or in respect of, the stocks, funds, shares or securities of an organisation which is for the time being designated for the purposes of this subsection pursuant to section 582A(1).

(5) Any payment in relation to which a person is a paying agent shall be a relevant payment for the purposes of this Chapter; and the chargeable date is—

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(a) in relation to such a payment as is mentioned in subsection (2) above, the date on which the payment is received; and

(b) in relation to any other relevant payment, the date on which the payment is made.

118C Collecting agents.

(1) Subject to subsection (3) below, a person described in column 1 of Table B below shall be a collecting agent for the purposes of this Chapter in relation to such functions performed by him as are set out in that description, which shall be relevant functions for the purposes of this Chapter.

(2) Such dividends or proceeds of sale or other realisation as—

(a) are set out in column 2 of Table B below opposite the description of a collecting agent in column 1; and

(b) are received or arise by virtue of that collecting agent's performance of a relevant function comprised in that description

shall be relevant receipts for the purposes of this Chapter.

Table B

1	2
1. Any person in the United Kingdom who, in the course of a trade or profession, acts as custodian of any relevant holdings	any relevant dividends in respect of those relevant holdings which are received by him or are paid to another person at his direction or with his consent
2. Any person in the United Kingdom who, in the course of a trade or profession, by means of coupons collects or secures payment of or receives relevant dividends for another person	the relevant dividends which he so collects or receives or of which he so secures payment
3. Any person in the United Kingdom who, in the course of a trade or profession, otherwise acts for another person in arranging to collect or secure payment of relevant dividends	the relevant dividends which he so collects or of which he so secures payment
4. Any bank in the United Kingdom which sells or otherwise realises coupons for relevant dividends and pays over the proceeds or carries them into an account	the proceeds of sale or other realisation of those coupons
5. Any dealer in coupons in the United Kingdom who purchases any coupons for relevant dividends otherwise than from a bank or another dealer in coupons	the proceeds of sale of those coupons

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(3) Neither the clearing of a cheque, nor the arranging for the clearing of a cheque, shall of itself be a relevant function.

(4) The chargeable date, in relation to a relevant receipt, is—
- (a) in the case of a relevant receipt falling within paragraph 4 or 5 of Table B above, the date on which the sale or realisation is effected, and
- (b) in any other case, the date on which the dividends are paid.

(5) For the purposes of paragraph 1 of Table B above, a person acts as a custodian of relevant holdings if he holds them, or an entitlement to them, for another person.

(6) The Board may by regulations provide for the application of the provisions of this Chapter relating to collecting agents where—
- (a) a person in the United Kingdom—
  - (i) holds, beneficially or otherwise, a right (the relevant right) which is a right to delivery of, or to amounts representing the whole or substantially the whole of the value of, a specified quantity of shares or securities comprised in a relevant holding which is held by a person outside the United Kingdom, and
  - (ii) is entitled to receive income (the relevant income) which is derived from, or which represents, foreign dividends or quoted Eurobond interest on that quantity of shares or securities; and
- (b) apart from the provisions of the regulations, the relevant right is not a relevant holding, or the relevant income does not constitute foreign dividends or quoted Eurobond interest.

(7) Regulations under subsection (6) above may—
- (a) treat the relevant right as a foreign holding or, as the case may be, a holding of quoted Eurobonds (the notional holding); and
- (b) treat the relevant income as foreign dividends or, as the case may be, quoted Eurobond interest paid on the notional holding.

118D Chargeable payments and chargeable receipts.

(1) For the purposes of this Chapter, every relevant payment shall be a chargeable payment unless—
- (a) it is made in respect of a foreign dividend—
  - (i) which is payable on foreign holdings held in a recognised clearing system; and
  - (ii) in respect of which any conditions imposed by virtue of subsection (8) below are satisfied; or
- (b) it is a payment of interest on an exempted certificate of deposit; or
- (c) the making of the payment is excluded from being a chargeable payment by subsections (4), (5) or (6) below or by section 118G.

(2) For the purposes of this Chapter, every relevant receipt shall be a chargeable receipt, unless—
- (a) it arises in respect of relevant holdings which are held in a recognised clearing system and—
  - (i) the collecting agent pays or accounts for the relevant receipt directly or indirectly to the recognised clearing system, and

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(ii) any conditions imposed by virtue of subsection (8) below are satisfied; or

(b) it arises in respect of relevant holdings which are held in a recognised clearing system for which the collecting agent is acting as depositary; or

(c) it is excluded from being a chargeable receipt by subsection (7) below or by section 118G.

(3) In subsection (1)(b) above, "exempted certificate of deposit" means a certificate of deposit (within the meaning of section 56(5)) issued by a person in the United Kingdom relating to a deposit with a branch in the United Kingdom through which a company resident outside, and not resident in, the United Kingdom carries on a trade.

(4) The payment of United Kingdom public revenue dividends on securities the interest on which is, by virtue of directions given (or treated by section 51 as having been given) under section 50(1), payable without deduction of income tax shall not be a chargeable payment unless the interest is for the time being payable under deduction of income tax pursuant to an application made (or treated by section 51 as having been made) under section 50(2).

(5) The payment of United Kingdom public revenue dividends in respect of securities standing in the name of the official custodian for charities, or in respect of which there is given to the paying agent a certificate from the Board to the effect that the dividends are subject only to charitable trusts and are exempt from tax, shall not be a chargeable payment.

(6) In a case where—

(a) foreign dividends are entrusted by a company which at the time they are entrusted (the "relevant time") is not resident in the United Kingdom,

(b) they are entrusted for payment to a company which at the relevant time is resident in the United Kingdom, and

(c) at the relevant time the company mentioned in paragraph (b) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (a) above,

the payment of those dividends shall not be a chargeable payment.

(7) In a case where—

(a) foreign dividends are payable by a company which at the time of the payment (the "relevant time") is not resident in the United Kingdom,

(b) payment of those dividends is collected, received or secured, or coupons for those dividends are realised, on behalf of a company which at the relevant time is resident in the United Kingdom, and

(c) at the relevant time the company mentioned in paragraph (b) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (a) above,

those dividends or, as the case may be, the proceeds of realisation of those coupons shall not be a chargeable receipt.

(8) The Board may by regulations provide that subsection (1)(a) above does not apply in respect of a relevant payment, or that subsection (2)(a) above does not apply in respect of a relevant receipt, unless the paying agent or, as the case may be, the collecting agent has obtained a declaration from the recognised clearing system or its depositary in such form, and containing such information, as may be required by those regulations.

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(9) The Board may by regulations make such provision as they may consider appropriate for requiring paying agents and collecting agents to deliver returns setting out particulars of—

(a) any relevant payments made by them which would have been chargeable payments but for the provisions of section 118D(1)(a);

(b) any relevant receipts which would have been chargeable receipts but for the provisions of section 118D(2)(a) or (b);

and for the keeping and production to, or to an officer of, the Board of any document in which any such declaration as is mentioned in subsection (8) above is contained.

Modifications etc. (not altering text)

C130 S. 118D(1)(a) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 3(1)**

C131 S. 118D(2)(a) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 3(1)**

118E Deduction of tax from chargeable payments and chargeable receipts.

(1) Subject to subsection (2) below, where a paying agent makes a chargeable payment—

(a) he shall, on making the payment, deduct from it a sum representing the amount of income tax thereon;

(b) he shall become liable to account for that sum;

(c) the person to whom the chargeable payment is made shall allow the deduction on receipt of the residue of the payment, and the paying agent shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid; and

(d) the deduction shall be treated as income tax paid by the person entitled to the chargeable payment.

(2) In relation to United Kingdom public revenue dividends payable to the Bank of Ireland out of the public revenue of the United Kingdom, or which are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast, subsection (1) above shall not apply, but—

(a) the money which, apart from this subsection, would be issuable to the Bank of Ireland under section 14 of the [M306]National Debt Act 1870, or otherwise payable to the Bank of Ireland for the purpose of dividends on securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin, shall be issued and paid to the Bank of England;

(b) the Bank of England shall deduct from the money so issued and paid to it a sum representing the amount of income tax on the dividends payable to the Bank of Ireland, and on the dividends on the securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin, and shall become liable to account for the same under section 118F(1);

(c) the Bank of England shall pay to the Bank of Ireland the residue of the money so issued and paid to it, to be applied by the Bank of Ireland in payment of the dividends; and

(d) the deduction shall be treated as income tax paid by the person entitled to the dividends, and the Bank of England and the Bank of Ireland shall

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be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid.

(3) Where a collecting agent performs a relevant function—

(a) he shall on the chargeable date become liable to account for a sum representing the amount of income tax on any chargeable receipt in relation to which he is the collecting agent;

(b) he shall be entitled—

(i) to be indemnified by the person entitled to the chargeable receipt against the income tax for which he is liable to account in accordance with paragraph (a) above; and

(ii) to deduct out of the chargeable receipt or to retain from any other sums otherwise due from him to the person entitled to the chargeable receipt, or received by him on behalf of that person, amounts sufficient for meeting any liability to account for such income tax which he has discharged or to which he is subject;

(c) the person entitled to the chargeable receipt shall allow the deduction or retention on receipt of the residue of the chargeable receipt, and the collecting agent shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid; and

(d) the amount for which the collecting agent is liable to account shall be treated as income tax paid by the person entitled to the chargeable receipt.

(4) A paying agent who makes a chargeable payment, or a collecting agent who is required to account for tax on a chargeable receipt, shall, if the person entitled to the chargeable payment or, as the case may be, the chargeable receipt so requests in writing, furnish him within thirty days after receiving that request with a certificate showing—

(a) the gross amount of the payment or receipt;

(b) the amount of income tax treated as paid by him;

(c) the actual amount actually paid or accounted for to him; and

(d) the chargeable date.

(5) The Board may by regulations—

(a) require a certificate furnished pursuant to subsection (4) above to contain information additional to that set out in paragraphs (a) to (d) of that subsection or a declaration made by or on behalf of the paying agent or collecting agent;

(b) make provision for the form of such a certificate or declaration.

(6) The duty imposed by subsection (4) above shall be enforceable at the suit or instance of the person requesting the certificate.

Marginal Citations

M306 1870 c. 71.

118F Accounting for tax on chargeable payments and chargeable receipts.

(1) Income tax in respect of United Kingdom public revenue dividends for which the Bank of England, the Bank of Ireland, the National Debt Commissioners or

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any public office or department of the Crown are liable to account pursuant to section 118E(1) or (2) shall become due and payable on the seventh day after the chargeable date and shall be paid into the general account of the Board at the Bank of England or, in the case of the Bank of Ireland, at the Bank of Ireland.

(2) Any other income tax for which a paying agent is liable to account under section 118E(1), and any income tax for which a collecting agent is liable to account under section 118E(3), shall become due and payable on the fourteenth day from the end of the month in which the chargeable date falls.

(3) Any tax due under subsection (1) or (2) above shall carry interest, at the rate applicable under section 178 of the [M307]Finance Act 1989, from the date on which it becomes due until it is paid.

(4) The Board may by regulations make such provision as they may consider appropriate—

(a) for requiring paying agents and collecting agents to deliver returns setting out particulars of—

(i) chargeable payments made by them;

(ii) chargeable receipts in respect of which they are liable to account for tax;

(iii) any relevant payments made by them which would have been chargeable payments but for the provisions of section 118G;

(iv) any relevant receipts which would have been chargeable receipts but for the provisions of section 118G;

(v) the amount of any tax accounted for by them, or for which they are liable to account, in relation to chargeable payments or chargeable receipts;

(vi) in the case of relevant payments falling within sub-paragraph (iii) above, the paragraphs of subsection (3) or (4) of section 118G that applied to them;

(vii) in the case of relevant receipts falling within sub-paragraph (iv) above, the paragraphs of subsection (4) of section 118G that applied to them;

(viii) the names and addresses of the persons entitled to the relevant payments or relevant receipts;

(b) with respect to the furnishing of information by paying agents or collecting agents, including the inspection of books, documents and other records on behalf of the Board;

(c) for the assessment under the regulations of amounts due and for appeals against such assessments;

(d) for the repayment in specified circumstances of amounts paid (or purporting to be paid) under this Chapter.

Subordinate Legislation Made

P2 9.12.1997 appointed for s. 118F (for periods beginning on or after which s. 178(1) of the Finance Act 1989 (c. 26) shall have effect) by S.I. 1997/2708, **art. 2**

Marginal Citations

M307 1989 c. 26.

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118G Relevant securities of eligible persons.

(1) Subject to subsection (2) below, and to the provisions of any regulations under section 118H—

(a) any relevant payment to which subsection (3) or (4) below applies shall not be a chargeable payment; and

(b) any relevant receipt to which subsection (4) below applies shall not be a chargeable receipt.

(2) Regulations made under paragraph (g), (h) or (i) of subsection (4) below may provide that only one of paragraphs (a) and (b) of subsection (1) above is to apply by virtue of those regulations in relation to relevant payments or relevant receipts of a particular kind or from a particular source.

(3) This subsection applies to payments of United Kingdom public revenue dividends so long as—

(a) they are exempt from tax by virtue of section 46, 49, 516 or 517;

(b) they are payable in respect of gilt-edged securities which for the time being are treated by section 51A as issued subject to the condition that interest on them is paid without deduction of income tax;

(c) they are payable in respect of securities which have been issued with such a condition as is authorised by section 22(1) of the [M308]Finance (No. 2) Act 1931 and which are for the time being beneficially owned by a person who is not ordinarily resident in the United Kingdom;

(d) they are eligible for relief from tax by virtue of section 505(1)(c) or (d), or would be so eligible but for section 505(3);

(e) they are eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4) or 643(2); or

(f) they are payable in respect of securities held by or on behalf of a person of such a description as may be prescribed.

(4) This subsection applies to relevant payments (not being payments of United Kingdom public revenue dividends) and relevant receipts—

(a) to which a person who, at the chargeable date—

(i) is not resident in the United Kingdom, and

(ii) beneficially owns the relevant holdings from which they are derived,

is beneficially entitled;

(b) which consist of, or of the proceeds of sale or other realisation of coupons for, interest (other than quoted Eurobond interest) to which a bank which, at the chargeable date—

(i) is resident in the United Kingdom, and

(ii) beneficially owns the foreign holdings from which they are derived,

is beneficially entitled;

(c) which arise to the trustees of a qualifying discretionary or accumulation trust in their capacity as such in respect of relevant holdings held on the trusts thereof;

(d) which are eligible for relief from tax by virtue of section 505(1)(c) or (d), or would be so eligible but for section 505(3);

(e) which are eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2);

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(f) which consist of, or of the proceeds of sale or other realisation of coupons for, dividends payable out of the public revenue of the Republic of Ireland or out of or in respect of shares or securities issued by or on behalf of any Republic of Ireland company, society, adventure or concern;

(g) to which a person of such a description as may be prescribed and who, at the chargeable date, beneficially owns the securities from which they are derived, is beneficially entitled;

(h) which are derived from relevant holdings held by or on behalf of a person of such a description as may be prescribed;

(i) which are of such a description as may be prescribed; or

(j) which fall to be treated as the income of, or of the government of, a sovereign power or of an international organisation.

(5) For the purposes of subsection (4)(c) above, a trust is a qualifying discretionary or accumulation trust if—

(a) it is such that some or all of any income arising to the trustees would fall (unless treated as income of the settlor or applied in defraying expenses of the trustees) to be comprised for the year of assessment in which it arises in income to which section 686 (liability to additional rate tax of certain income of discretionary trusts) applies;

(b) the trustees are not resident in the United Kingdom; and

(c) none of the beneficiaries of the trust is resident in the United Kingdom.

(6) The persons who are to be taken for the purposes of subsection (5) above to be the beneficiaries of a discretionary or accumulation trust shall be every person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—

(a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or

(b) a person to or for the benefit of whom the whole or any part of such income may be paid or applied in exercise of any discretion conferred by the trust;

and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income.

(7) The Board may by regulations provide that a paying agent who is entrusted with the payment or distribution of—

(a) United Kingdom public revenue dividends on securities which are held by a nominee approved for the purposes of this subsection, or

(b) foreign dividends on foreign holdings held by such a nominee,

shall treat those dividends as not being chargeable payments.

(8) For the purpose of giving relief from tax pursuant to arrangements which have effect by virtue of section 788, the Board may by regulations provide that a paying agent who is entrusted with the payment or distribution of United Kingdom public revenue dividends on gilt-edged securities held by a nominee approved for the purposes of this subsection shall—

(a) treat those dividends as not being chargeable payments, or

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(b) deduct tax from them at such reduced rates (being lower than the rate that would otherwise be applicable by virtue of section 118E(1)) as may be prescribed.

(9) Where, pursuant to subsection (7) or (8) above, dividends are paid without deduction of tax, or subject to deduction of tax at a reduced rate, the provisions of this Chapter shall apply, subject to subsection (10) below and to the provisions of regulations under section 118H, as though the nominee was the paying agent in relation to those dividends and the chargeable date was the date on which he received them.

(10) Where tax has been deducted from dividends at a reduced rate pursuant to regulations under subsection (8) above, the tax for which the nominee is liable to account by virtue of subsection (9) above shall not exceed the difference between the amount of tax on those dividends at the rate that is applicable by virtue of section 118E(1) and the tax already deducted from them.

Modifications etc. (not altering text)

C132 S. 118G(1) excluded (30.7.1996) by The Income Tax (Paying and Collecting Agents) Regulations 1996 (S.I. 1996/1780), **reg. 4(1)**

Marginal Citations

M308 1931 c. 49.

118H Relevant securities of eligible persons: administration.

(1) The Board may by regulations provide that section 118G(1) shall not apply as regards relevant payments or relevant receipts—

(a) unless such conditions as may be prescribed are fulfilled;

(b) where the Board have reason to believe that section 118G(3) does not apply to, or to the whole of, any relevant payments; or

(c) where the Board have reason to believe that section 118G(4) does not apply to, or to the whole of, any relevant payments or relevant receipts.

(2) In subsection (3) below, references to the relevant exclusion are to exclusion from being a chargeable payment or chargeable receipt pursuant to section 118G(1) or regulations made under section 118G(7) or (8), or to the deduction of tax at a reduced rate pursuant to regulations under section 118G(8), as the case may be; and references to the agent concerned are to the paying agent or collecting agent or, as the case may be, to the nominee approved for the purpose of section 118G(7) or (8).

(3) Regulations under this section or section 118G(7) or (8) may—

(a) disapply the relevant exclusion in respect of any relevant payments or relevant receipts derived from any securities or relevant holdings unless the appropriate person has made a declaration in writing to the agent concerned, in such form as may be prescribed or authorised by the Board, confirming that the requirements for the exclusion are satisfied;

(b) require the person who makes such a declaration to undertake in the declaration to notify the agent concerned if the circumstances set out in the declaration change;

(c) require the agent concerned to consider the accuracy of any declaration made pursuant to a requirement imposed by virtue of paragraph (a) above;

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(d) impose obligations—

(i) on persons having any rights in relation to relevant payments or relevant receipts in respect of which the relevant exclusion applies or is claimed to apply; and

(ii) on persons who are the agents concerned in relation to such relevant payments or relevant receipts as are mentioned in sub-paragraph (i) above

as to the provision of information, and the production of documents, to the Board or, on request, to an officer of the Board;

(e) provide for notices to be issued by the Board to persons who fail to comply with requirements for the provision of information or documents mentioned in paragraph (d) above, disapplying the relevant exclusion in relation to relevant payments or relevant receipts in relation to which they have any rights or in relation to which they are the agents concerned;

(f) impose requirements as to—

(i) the form and contents of any declaration to be made in accordance with the regulations under this section;

(ii) the appropriate person to make such a declaration;

(iii) the form and manner in which, and the time at which, any declaration is to be made or provided; and

(iv) the keeping and production to, or to an officer of, the Board of any document in which any such declaration is contained;

(g) provide for notices to be issued by the Board to such persons as may be described in the regulations where the Board are satisfied that the relevant exclusion applies, or where the Board are satisfied or have reason to believe that the relevant exclusion does not apply.

(4) Regulations under section 118G(7) or (8) may—

(a) prescribe conditions for the inclusion of securities or foreign holdings in arrangements established under that subsection;

(b) set out procedures for the approval of nominees for the purpose of that subsection and for the withdrawal of such approval.

118I Deduction of tax at reduced rate.

The Board may make regulations which provide for the amount of any income tax which a paying agent would otherwise be liable to deduct under section 118E(1)(a), or for which a collecting agent would otherwise be liable to account under section 118E(3)(a), to be reduced by reference to liabilities for such tax paid under the law of a territory outside the United Kingdom as may be prescribed.

118J Prevention of double accounting.

(1) A relevant dividend the payment of which is a chargeable payment shall not be a chargeable receipt for the purpose of this Chapter.

(2) Subsection (1) above does not prevent the proceeds of sale or other realisation of a coupon from being a chargeable receipt.

(3) The Board may make regulations—

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(a) for preventing more than one collecting agent from being liable to account for tax on the same dividend; or

(b) which provide that—

(i) where more than one person is a collecting agent in relation to a dividend, those persons may agree between themselves which one of their number shall be treated as the collecting agent in relation to that dividend; and

(ii) the person so identified shall for all the purposes of this Chapter be treated as the sole collecting agent in relation to that dividend.

118K Regulations.

(1) Any power to make regulations under this Chapter—

(a) may be exercised as regards prescribed cases or descriptions of case; and

(b) may be exercised differently in relation to different cases or descriptions of case, or in relation to different persons or descriptions of person.

(2) Regulations under this Chapter may include such supplementary, incidental, consequential or transitional provisions as appear to the Board to be necessary or expedient.

(3) No specific provision of this Chapter about regulations shall prejudice the generality of subsections (1) and (2) above.

CHAPTER VIII

MISCELLANEOUS AND SUPPLEMENTAL

119 Rent etc. payable in connection with mines, quarries and similar concerns.

[M309](1) Where rent is payable in respect of any land or easement, and either—

(a) the land or easement is used, occupied or enjoyed in connection with any of the concerns specified in section 55(2); or

(b) the lease or other agreement under which the rent is payable provides for the recoupment of the rent by way of reduction of royalties or payments of a similar nature in the event of the land or easement being so used, occupied or enjoyed,

the rent shall, subject to section 122 **[**[F147]and section 201 of the 1992 Act**]**, be charged to tax under Schedule D, and, subject to subsection (2) below, shall be subject to deduction of income tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

(2) Where the rent is rendered in produce of the concern, it shall, instead of being treated as provided by subsection (1) above, be charged under Case III of Schedule D, and the value of the produce so rendered shall be taken to be the amount of the profits or income arising therefrom.

(3) For the purposes of this section—

"easement" includes any right, privilege or benefit in, over or derived from land; and

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"rent" includes a rent service, rentcharge, fee farm rent, feuduty or other rent, toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise.

Textual Amendments

F147 Words in s. 119(1) inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(4)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C133 S. 119(1) excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 201(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M309 Source—1970 s.156

120 Rent etc. payable in respect of electric line wayleaves.

M310(1) Where rent is payable in respect of any easement enjoyed in the United Kingdom in connection with any electric, telegraphic or telephonic wire or cable (not being such an easement as is mentioned in section 119(1)), the rent shall be charged to tax under Schedule D, and, subject to subsections (2) to (5) below, shall be subject to deduction of income tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent.

(2) Any payment of rent to which subsection (1) above applies which does not exceed £2.50 per year may, if the payer so elects, be treated as not affected by so much of that subsection as provides that the rent shall be subject to deduction of income tax, and shall in that event be made without deduction of income tax accordingly.

(3) Any payment of rent to which subsection (1) above applies which is made without deduction of income tax, whether by virtue of subsection (2) above or otherwise, shall, unless income tax is assessed thereon under section 350, be chargeable to tax under Case III of Schedule D.

(4) Any payment of rent to which subsection (1) above applies which is made subject to deduction of income tax shall, if it is paid by a person carrying on a trade which consists of or includes the provision of a radio relay service and the wire or cable in question is used by that person for the purposes of that service—

(a) be deductible (notwithstanding anything in section 74(q)) in computing the amount of the profits or gains of the trade to be charged under Case I of Schedule D, and

(b) be deemed for the purposes of sections 348 and 349 not to be payable out of profits or gains brought into charge to income tax.

(5) In this section—

(a) "easement" and "rent" have the same meanings as in section 119;

(b) the reference to easements enjoyed in connection with any electric, telegraphic or telephonic wire or cable includes (without prejudice to the generality of that expression) references to easements enjoyed in connection with any pole

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or pylon supporting any such wire or cable, or with any apparatus (including any transformer) used in connection with any such wire or cable; and

(c) "radio relay service" means the retransmission by wire to their customers of broadcast programmes (which may or may not be television programmes) which the persons carrying on the service receive either by wire or by wireless from the British Broadcasting Corporation or from the persons outside the United Kingdom who broadcast the programmes in question.

Marginal Citations
M310 Source—1970 s.157

121 Management expenses of owner of mineral rights.

M311(1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall, subject to subsection (2) below, be entitled, on making a claim for the purpose, to be repaid so much of the income tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to have been wholly, exclusively and necessarily disbursed by him as expenses of management or supervision of those minerals in that year.

(2) No repayment of tax shall be made under subsection (1) above if, or to such extent as, the expenses in question have been otherwise allowed as a deduction in computing income for the purposes of income tax.

(3) In computing for the purposes of corporation tax the income of a company for any accounting period from the letting of rights to work minerals in the United Kingdom, there may be deducted any sums disbursed by the company wholly, exclusively and necessarily as expenses of management or supervision of those minerals in that period.

Marginal Citations
M311 Source—1970 s.158(1), (2)

122 Relief in respect of mineral royalties.

(1) M312Subject to the following provisions of this section, a person resident or ordinarily resident in the United Kingdom who in any year of assessment or accounting period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated—

(a) for the purposes of income tax, or as the case may be for the purposes of corporation tax on profits exclusive of chargeable gains, as if the total of the mineral royalties receivable by him under that lease or agreement in that year or period and any management expenses available for set-off against those royalties in that year or period were each reduced by one-half; F148. . .

F148(b) . . . . . .

and this section shall have effect notwithstanding any provision of section 119(1) making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, but without prejudice to any provision of that section providing for any such royalties to be subject to deduction of income tax under section 348 or 349.

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(2) [M313]For the purposes of subsection (1)(a) above, "management expenses available for set-off" against royalties means—

(a) where section 121 applies in respect of the royalties, any sum brought into account under subsection (1) of that section in determining the amount of the repayment of income tax in respect of those royalties or, as the case may be, deductible from those royalties under subsection (2) of that section in computing the income of a company for the purposes of corporation tax; and

(b) if the royalties are chargeable to tax under Schedule A, any sums deductible under Part II as payments made in respect of management of the property concerned;

and if neither paragraph (a) nor paragraph (b) above applies, the reference in subsection (1)(a) above to management expenses available for set-off shall be disregarded.

(3 [F149] . . . . . .

(4) [M314]Where subsection (1) above applies in relation to mineral royalties receivable under a mineral lease or agreement by a person not chargeable to corporation tax in respect of those royalties, then, in so far as the amount of income tax paid, by deduction or otherwise, by him in respect of those mineral royalties in any year of assessment exceeds the amount of income tax for which he is liable in respect of those royalties by virtue of subsection (1)(a) above—

(a) the amount of the excess shall in the first instance be set against the tax for which he is chargeable by virtue of **[**[F150]section 201(1) of the 1992 Act**]**; and

(b) on the making of a claim in that behalf, he shall be entitled to repayment of tax in respect of the balance of that excess.

(5) In this section references to mineral royalties refer only to royalties receivable on or after 6th April 1970, and the expression "mineral royalties" means so much of any rents, tolls, royalties and other periodical payments in the nature of rent payable under a mineral lease or agreement as relates to the winning and working of minerals; and the Board may by regulations—

(a) provide whether, and to what extent, payments made under a mineral lease or agreement and relating both to the winning and working of minerals and to other matters are to be treated as mineral royalties; and

(b) provide for treating the whole of such payments as mineral royalties in cases where the extent to which they relate to matters other than the winning and working of minerals is small.

(6) In this section—

"minerals" means all minerals and substances in or under land which are ordinarily worked for removal by underground or surface working but excluding water, peat, top-soil and vegetation; and

"mineral lease or agreement" means—

(a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom;

(b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom; and

(c) a grant of a right under section 1 of the [M315]Mines (Working Facilities and Support) Act 1966, other than an ancillary right within the meaning of that Act.

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(7) In the application of this section to Northern Ireland—

(a) references to mineral royalties include references to periodical payments—

(i) of compensation under section 29 or 35 of the [M316]Mineral Development Act (Northern Ireland) 1969 ("the 1969 Act") or under section 4 of the [M317]Petroleum (Production) Act (Northern Ireland) 1964 ("the 1964 Act"); and

(ii) made as mentioned in section 37 of the 1969 Act or under section 55(4)(b) of that Act or under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the [M318]Irish Land Act 1903); and

(b) in its application to any such payments as are mentioned in paragraph (a) above, references to the mineral lease or agreement under which mineral royalties are payable shall be construed as references to the enactment under which the payments are made.

[F149](8) . . . . . .

Textual Amendments

F148 S. 122(1)(b) and the word "and" immediately preceding it repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

F149 S. 122(3)(8) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

F150 Words in s. 122(4)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(5)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C134 *For regulations see* Part III Vol.5.

C135 S. 122(5)-(7) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 203(1)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M312 Source—1970(F) s.29(1), (3); 1971 Sch.9 4

M313 Source—1970(F) s.29(2)

M314 Source—1970(F) s.29(4), (6)-(9)

M315 1966 c. 4.

M316 1969 c. 35 (N.I.).

M317 1964 c. 28 (N.I.).

M318 1903 c. 37.

123 Foreign dividends.

[M319](1) In this section—

(a) "foreign dividends" means any interest, dividends or other annual payments payable out of or in respect of the stocks, funds, shares or securities of any body of persons not resident in the United Kingdom (but not including any such payment to which section 348 or 349(1) applies) and references to dividends shall be construed accordingly;

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(b) "relevant foreign dividends" means foreign dividends payable out of or in respect of stocks, funds, shares or securities which are not held in a recognised clearing system;

(c) "banker" includes a person acting as a banker; and

(d) references to coupons include, in relation to any dividends, warrants for or bills of exchange purporting to be drawn or made in payment of those dividends.

(2) Where relevant foreign dividends are entrusted to any person in the United Kingdom for payment to any persons in the United Kingdom **[**[F151]they shall be chargeable to income tax under Schedule D**]**.

(3) Where—

(a) a banker or any other person in the United Kingdom, by means of coupons received from any other person or otherwise on his behalf, obtains payment of any foreign dividends **[**[F152]and either—

(i) the payment of those dividends was not entrusted to any person in the United Kingdom, or

(ii) the stocks, funds, shares or securities in respect of which those dividends are paid are held in a recognised clearing system,**]** or

(b) any banker in the United Kingdom sells or otherwise realises coupons for foreign dividends, and pays over the proceeds to any person or carries them to his account, or

(c) any dealer in coupons in the United Kingdom purchases any such coupons otherwise than from a banker or another dealer in coupons,

tax under Schedule D shall extend, in the cases mentioned in paragraph (a) above, to the dividends, and, in the cases mentioned in paragraphs (b) and (c) above, to the proceeds of the sale or other realisation, [F153]. . ..

[[F154](3A) Parts III and IV of Schedule 3 shall have effect in relation to tax chargeable by virtue of subsection (2) or (3) above.**]**

(4) In the cases mentioned in subsections (2) and (3) above, no tax shall be chargeable if it is proved, on a claim in that behalf made to the Board, that the person owning the stocks, funds, shares or securities and entitled to the dividends or proceeds is not resident in the United Kingdom.

(5) Where stocks, funds, shares or securities are held under a trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or the exercise of any power under the trust, call upon the trustees at any time to transfer the stocks, funds, shares or securities to him absolutely free from the trust, that person shall, for the purposes of subsection (4) above, be deemed to be the person owning the stocks, funds, shares or securities.

(6) Where any income of any person is by virtue of any provision of the Tax Acts (and in particular, but without prejudice to the generality of the preceding words, Chapter III of Part XVII) to be deemed to be income of any other person, that income is not exempt from tax by virtue of subsection (4) above by reason of the first mentioned person not being resident in the United Kingdom.

[[F155](7) In a case where—

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(a) relevant foreign dividends referred to in subsection (2) above are dividends (as opposed to interest or other annual payments),
(b) they are entrusted by a company which at the time they are entrusted (the relevant time) is not resident in the United Kingdom,
(c) they are entrusted for payment to a company which at the relevant time is resident in the United Kingdom,
(d) at the relevant time the company mentioned in paragraph (c) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (b) above, and
(e) the relevant time falls on or after 1st January 1992,

subsection (2) above shall not apply.

F155(8) In a case where—
(a) foreign dividends referred to in subsection (3)(a) above are dividends (as opposed to interest or other annual payments),
(b) they are paid by a company which at the time of the payment (the relevant time) is not resident in the United Kingdom,
(c) payment is obtained on behalf of a company which at the relevant time is resident in the United Kingdom,
(d) at the relevant time the company mentioned in paragraph (c) above directly or indirectly controls not less than 10 per cent. of the voting power in the company mentioned in paragraph (b) above, and
(e) the relevant time falls on or after 1st January 1992,

subsection (3) above shall not apply.**]**

Textual Amendments

F151 Words in s. 123(2) substituted (16.7.1992 with effect in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 1(2), **6**.

F152 1988(F) s.76(3)*in respect of payments obtained on or after* 29*July* 1988.*Previously* "elsewhere than in the United Kingdom".

F153 Words in s. 123(3) repealed (16.7.1992 with effect in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 1(3), 6, **Sch. 18 Pt.VII**.

F154 S. 123(3A) inserted (16.7.1992 with effect in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 1(4), **6**.

F155 S. 123(7)(8) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s.30**.

Modifications etc. (not altering text)

C136 *See* 1989 s.94*and* Sch.11 para.18—*deep gain securities.*

C137 S. 123(2)(3) applied (1.10.1993) by S.I. 1993/2004, **regs. 12(2)(a)**, 13(2)(a)

Marginal Citations

M319 Source—1970 s.159; 1986 s.48(2)-(5)

124 Interest on quoted Eurobonds.

M320(1) Section 349(2) shall not apply to interest paid on any quoted Eurobond where—
(a) the person by or through whom the payment is made is not in the United Kingdom; or

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(b) the payment is made by or through a person who is in the United Kingdom but either of the conditions mentioned in subsection (2) below is satisfied.

(2) The conditions are—

(a) that it is proved, on a claim in that behalf made to the Board, that the person who is the beneficial owner of the quoted Eurobond and is entitled to the interest is not resident in the United Kingdom;

(b) that the quoted Eurobond is held in a recognised clearing system.

(3) In a case falling within subsection (1)(b) above the person by or through whom the payment is made shall deliver to the Board—

(a) on demand by the Board an account of the amount of any such payment; and

(b) not later than 12 months after making any such payment, and unless within that time he delivers an account with respect to the payment under paragraph (a) above, a written statement specifying his name and address and describing the payment.

(4) Where by virtue of any provision of the Tax Acts interest paid on any quoted Eurobond is deemed to be income of a person other than the person who is the beneficial owner of the quoted Eurobond, subsection (2)(a) above shall apply as if it referred to that other person.

(5) Subsections (3) to (6) of section 123 shall apply in relation to interest on quoted Eurobonds as they apply to foreign dividends but with the following modifications—

[[F156](za) subsection (3)(a)(i) shall have effect in relation to quoted Eurobonds not held in a recognised clearing system as if the words " made by or " were inserted immediately before the words "entrusted to any person in the United Kingdom".**]**

(a) subsection (4) shall apply as if it required a claim to have been made on or before the event by virtue of which tax would otherwise be chargeable; and

(b) paragraph 6(1) of Schedule 3 shall apply with the omission of paragraphs (a) and (b).

(6) In this section—

"quoted Eurobond" means a security which—

(a) is issued by a company;

(b) is quoted on a recognised stock exchange;

(c) is in bearer form; and

(d) carries a right to interest; and

"recognised clearing system" means any system for clearing quoted Eurobonds **[**[F157]or relevant foreign securities**]** which is for the time being designated for the purposes of this section by order made by the Board, as a recognised clearing system.

[[F157]"relevant foreign securities" means any of the following, that is to say—

(a) any such stocks, funds, shares or securities as give rise to foreign dividends, within the meaning of section 123; and

(b) any such securities as give rise to overseas public revenue dividends, within the meaning of Part III.**]**

(7) An order under subsection (6) above—

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(a) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient; and
(b) may be varied or revoked by a subsequent order so made.

Textual Amendments
F156 1988(F) s.76(4)*in respect of payments obtained on or after* 29*July* 1988.
F157 1988(F) s.76(5).

Marginal Citations
M320 Source—1984 s.35 (1)-(3), (5)-(8)

125 Annual payments for non-taxable consideration.

M321(1) Any payment to which this subsection applies shall be made without deduction of income tax, shall not be allowed as a deduction in computing the income or total income of the person by whom it is made and shall not be a charge on income for the purposes of corporation tax.

(2) Subject to the following provisions of this section, subsection (1) above applies to any payment which—
(a) is an annuity or other annual payment charged with tax under Case III of Schedule D, not being interest; and
(b) is made under a liability incurred for consideration in money or money's worth all or any of which is not required to be brought into account in computing for the purposes of income tax or corporation tax the income of the person making the payment.

(3) Subsection (1) above does not apply to—
(a) any payment which in the hands of the recipient is income falling within **[**F158subsection (1)(a) or (c) of section 674A or 683 or subsection (6) of section 683 (including that subsection as it applies in relation to section 674A(1))**]**;
(b) any payment made to an individual under a liability incurred in consideration of his surrendering, assigning or releasing an interest in settled property to or in favour of a person having a subsequent interest;
(c) any annuity granted in the ordinary course of a business of granting annuities; or
(d) any annuity charged on an interest in settled property and granted at any time before 30th March 1977 by an individual to a company whose business at that time consisted wholly or mainly in the acquisition of interests in settled property or which was at that time carrying on life assurance business in the United Kingdom.

(4) In the application of this section to Scotland the references in subsection (3) above to settled property shall be construed as references to property held in trust.

(5) Subsection (1) above applies to a payment made after 5th April 1988 irrespective of when the liability to make it was incurred.

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Textual Amendments

F158 1989 s.109(2).*Previously*
"section 683(1)(a) or (c) or (6)".

Modifications etc. (not altering text)

C138 *See* 1989 s.59—*rights of admission disregarded in the case of certain covenanted subscriptions.*

Marginal Citations

M321 Source—1977 s.48

126 Treasury securities issued at a discount.

M322(1) Where a security to which this section applies is issued at a discount, tax shall not be charged in respect of the discount under Case III of Schedule D; but the discount shall not for that reason be regarded as annual profits or gains chargeable to tax under Case VI of Schedule D.

(2) This section applies to all securities issued by the Treasury after 6th March 1973 **[**F159except—

(a) Treasury bills,

(b) relevant deep discount securities, and

(c) deep gain securities.**]**

[F159(3) For the purposes of subsection (2) above—

(a) a relevant deep discount security is a security falling within paragraph 1(1)(dd) of Schedule 4 to this Act, and

(b) a deep gain security is a security which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.**]**

Textual Amendments

F159 1989 s.95(2)(3)*on or after* 14*March* 1989*in relation to transfers or disposals of certain deep discount securities or deep gain securities. Previously*
"except Treasury bills"
in subs.(2).

Modifications etc. (not altering text)

C139 *See* 1989 s.95(5)(6)(7)*for cases where* s.126*does not apply.*

Marginal Citations

M322 Source—1973 s.27

[F160126A Charge to tax on appropriation of securities and bonds.

(1) In any case where—

(a) any specified securities were held by a company in such circumstances that any gain or loss on their disposal would, apart from section 115 of the 1992 Act, have been taken into account in determining the company's liability to corporation tax on chargeable gains, and

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(b) those securities are subsequently appropriated by the company in such circumstances that if they were disposed of after the appropriation, any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax,

then for the purposes of corporation tax any loss incurred by the company on the disposal of those securities shall not exceed the loss which would have been incurred on that disposal if the amount or value of the consideration for the acquisition of the securities had been equal to their market value at the time of the appropriation.

(2) In any case where—

(a) any specified securities were held by a company in such circumstances that any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax, and

(b) those securities are subsequently appropriated by the company in such circumstances that any gain accruing on their disposal would, by virtue of section 115 of the 1992 Act, be exempt from corporation tax on chargeable gains,

then for the purposes of corporation tax the company shall be treated as if, immediately before the appropriation, it had sold and repurchased the specified securities at their market value at the time of the appropriation.

(3) In this section "specified securities" means gilt-edged securities or qualifying corporate bonds.**]**

Textual Amendments

F160 S. 126A inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(6)** (with ss. 60, 101(1), 171, 201(3)).

127 Enterprise allowance.

[M323](1) This section applies to—

(a) payments known as enterprise allowance and made **[**[F161](whether before or after the coming into force of Section 25 of the [M324]Employment Act 1988)**]** in pursuance of arrangements under section 2(2)(d) of the [M325]Employment and Training Act 1973; and

(b) corresponding payments made in Northern Ireland by the Department of Economic Development.

(2) Any such payment which would (apart from this section) be charged to tax under Case I or II of Schedule D shall be charged to tax under Case VI of that Schedule.

(3) Nothing in subsection (2) above shall prevent such a payment—

(a) being treated for the purposes of section 623(2)(c) or 833(4)(c) as immediately derived from the carrying on or exercise of a trade, profession or vocation; or

(b) *being treated for the purposes of paragraph* 1*of Schedule* 19*as trading income*[F162].

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F161 Para.15 Sch.3 Employment Act 1988.*Previously*
"by the Manpower Services Commission".

F162 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Marginal Citations

M323 Source—1986 s.41

M324 1988 c.19

M325 1973 c. 50.

VALID FROM 19/03/1997

[F163 127A Futures and options: transactions with guaranteed returns.

Schedule 5AA (which makes provision for the taxation of the profits and gains arising from transactions in futures and options that are designed to produce guaranteed returns) shall have effect.**]**

Textual Amendments

F163 S. 127A inserted (with effect in accordance with s. 80(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(1)**

128 Commodity and financial futures etc.: losses and gains.

M326 Any gain arising to any person in the course of dealing in commodity or financial futures or in qualifying options, which apart from this section would constitute profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, shall not be chargeable to tax under that Schedule.

In this section "commodity or financial futures" and "qualifying options" have the same meaning as in section **[**F164 143 of the 1992 Act**]**, and the reference to a gain arising in the course of dealing in commodity or financial futures includes any gain which is regarded as arising in the course of such dealing by virtue of subsection **[**F164 (3)**]** of that section.

Textual Amendments

F164 Words in s. 128 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(7)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M326 Source—1985 s.72(1), (2); 1987 (No.2) s.81(1)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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129 Stock lending.

[M327](1) Subject to subsection (4) below, this section applies where a person ("A") has contracted to sell securities and, to enable him to fulfil the contract, he enters into an arrangement under which—

(a) another person ("B") is to transfer securities to A or his nominee; and

(b) in return securities of the same kind and amount are to be transferred (whether or not by A or his nominee) to B or his nominee.

(2) Subject to subsection (4) below, this section also applies where, to enable B to make the transfer to A or his nominee, B enters into an arrangement under which—

(a) another person ("C") is to transfer securities to B or his nominee; and

(b) in return securities of the same kind and amount are to be transferred (whether or not by B or his nominee) to C or his nominee.

[[F165](2A) Subject to subsection (4) below—

(a) this section also applies where an arrangement in addition to those mentioned in subsections (1) and (2) above, and similar to that mentioned in subsection (2) above, is entered into as part of a chain of arrangements all having the effect of enabling A to fulfil his contract, and

(b) it is immaterial how many separate arrangements there are in the chain.**]**

(3) Any transfer made in pursuance of an arrangement mentioned in subsection (1) or (2) **[**[F166]or (2A)**]** above shall not be taken into account for the purposes of the Tax Acts in computing the profits or losses of any trade carried on by the transferor or transferee.

(4) The Treasury may provide by regulations that this section or any provision of it or section **[**[F167]271(9) of the 1992 Act**]** does not apply unless such conditions as are specified in the regulations are fulfilled; and the conditions may relate to the capacity in which any person involved in any arrangement is acting, the Board's approval of any such person or of the arrangement, the nature of the securities or otherwise.

(5) In this section "securities" includes stocks and shares.

(6) This section applies to transfers made after such date as is specified for this purpose by regulations made under section 61 of the Finance Act 1986 or, if no such regulations have been made before 6th April 1988, under this section.

Textual Amendments

F165 S. 129(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 57(2)(5)**

F166 Words in s. 129(3) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 57(3)(5)**

F167 Words in s. 129(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(8)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C140 *See* 1990 s.56*and* Sch.10 para.23—*convertible securities.*

C141 *For regulations see* S.I. 1989 No.1299*in* Part III Vol.5*in relation to transfers after* 17*August* 1989.

Marginal Citations

M327 Source—1986 s.61

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VALID FROM 01/05/1995

[F168 129A Stock lending: interest on cash collateral.

The provisions of Schedule 5A have effect with respect to the tax treatment of interest earned on cash collateral provided in connection with certain stock lending arrangements.**]**

Textual Amendments

F168 S. 129A inserted (with application in accordance with s. 85(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 85(1)**

VALID FROM 29/04/1996

[F169 129B Stock lending fees.

(1) The income which, as income deriving from investments of a description specified in any of the relevant provisions, is eligible for relief from tax by virtue of that provision shall be taken to include any relevant stock lending fee.

(2) For the purposes of this section the relevant provisions are sections 592(2), 608(2)(a), 613(4), 614(3), 620(6) and 643(2).

(3) In this section "relevant stock lending fee", in relation to investments of any description, means any amount, in the nature of a fee, which is payable in connection with an approved stock lending arrangement relating to investments which, but for any transfer under the arrangement, would be investments of that description.

(4) In this section "approved stock lending arrangement" has the same meaning as in Schedule 5A.**]**

Textual Amendments

F169 S. 129B inserted (with effect in accordance with s. 157(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 157(1)**

130 Meaning of "investment company" for purposes of Part IV.

[M328]In this Part of this Act "investment company", means any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom, but includes any savings bank or other bank for savings except any which, for the purposes of the [M329]Trustee Savings Bank Act 1985, is a successor or a further successor to a trustee savings bank.

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Modifications etc. (not altering text)

C142 *See*—1988 s.338(6)—*definition applied for purposes of* s.338(3) (*charges*).1988 s.576(5)—*definition applied for purposes of* ss.573 to 576 (*losses on unquoted shares in trading companies*).Trustee Savings Banks Act 1985 (c.58) s.5*and* Sch.2 para.6(6).

Marginal Citations

M328 Source—1970 s.304(5); 1980 Sch.11

M329 1985 c. 58.

PART V

PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION

Miscellaneous provisions

131 Chargeable emoluments.

[M330](1) Tax under Case I, II or III of Schedule E shall, except as provided to the contrary by any provision of the Tax Acts, be chargeable on the full amount of the emoluments falling under that Case, subject to such deductions only as may be authorised by the Tax Acts, and the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever.

(2) Tax under Case III of Schedule E shall be chargeable whether or not tax is chargeable in respect of the same office or employment under Case I or II of that Schedule, but shall not be chargeable on any emoluments falling under Case I or II*for the same or another chargeable period*[F170].

Textual Amendments

F170 *Words omitted by* 1989 ss.42*and* 187*and* Sch.17 Part IV*for* 1989-90*and subsequent years of assessment.*

Marginal Citations

M330 Source—1970 s.183

132 Place of performance, and meaning of emoluments received in the U.K.

(1) [M331]Where a person ordinarily performs the whole or part of the duties of his office or employment in the United Kingdom, then, for the purposes of Cases I and II of Schedule E, his emoluments for any period of absence from the office or employment shall be treated as emoluments for duties performed in the United Kingdom, except

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in so far as it is shown that, but for that absence, they would have been emoluments for duties performed outside the United Kingdom.

(2) Where an office or employment is in substance one the duties of which fall in the chargeable period to be performed outside the United Kingdom, then, for the purposes of Cases I and II of Schedule E, there shall be treated as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.

(3) [M332]Subsection (2) above shall not be construed as affecting any question under section 193(1) or paragraph 3 of Schedule 12 as to where any duties are performed or whether a person is absent from the United Kingdom.

(4) [M333]For the purposes of Cases I and II of Schedule E, but subject to section 194(7) and paragraph 5 of Schedule 12, the following duties shall be treated as performed in the United Kingdom, namely—

(a) the duties of any office or employment under the Crown which is of a public nature and the emoluments of which are payable out of the public revenue of the United Kingdom or of Northern Ireland; and

(b) any duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom, or which a person resident in the United Kingdom performs on a vessel or aircraft engaged on a voyage or journey beginning or ending in the United Kingdom or on a part beginning or ending in the United Kingdom of any other voyage or journey.

(5) [M334]For the purposes of Case III of Schedule E, emoluments shall be treated as received in the United Kingdom if they are paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and subsections (6) to (9) of section 65 shall apply for the purposes of this subsection as they apply for the purposes of subsection (5) of that section.

Modifications etc. (not altering text)

C143 *See* S.I. 1989 No.2387, regns.3*and* 4 (*in* Part III vol.5)*private medical insurance.*

Marginal Citations

M331 Source—1970 s.184(1), (2)
M332 Source—1970 Sch.7 9
M333 Source—1970 s.184(3); 1977 s.31(3); 1986 s.34(7)
M334 Source—1970 s.184(4)

133 Voluntary pensions.

[M335](1) Where—

(a) a person has ceased to hold any office or employment, and

(b) a pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and

(c) that pension or annual payment is paid otherwise than by or on behalf of a person outside the United Kingdom,

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then, notwithstanding that the pension or payment is paid voluntarily or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax, and shall be assessed and charged under Schedule E.

(2) For the avoidance of doubt, it is hereby declared that the expressions "annuity" and "pension" in Schedule E include respectively an annuity and a pension which is paid voluntarily or is capable of being discontinued.

Modifications etc. (not altering text)
C144 *See* 1989 s.41—*tax charged on amount accruing* (1989-90*and subsequent years of assessment*).

Marginal Citations
M335 Source—1970 s.182

134 Workers supplied by agencies.

[M336](1) Subject to the provisions of this section, where—

(a) an individual ("the worker") renders or is under an obligation to render personal services to another person ("the client") and is subject to, or to the right of, supervision, direction or control as to the manner in which he renders those services; and

(b) the worker is supplied to the client by or through a third person ("the agency") and renders or is under an obligation to render those services under the terms of a contract between the worker and the agency ("the relevant contract"); and

(c) remuneration receivable under or in consequence of that contract would not, apart from this section, be chargeable to income tax under Schedule E,

then, for all the purposes of the Income Tax Acts, the services which the workers renders or is under an obligation to render to the client under that contract shall be treated as if they were the duties of an office or employment held by the worker, and all remuneration receivable under or in consequence of that contract shall be treated as emoluments of that office or employment and shall be assessable to income tax under Schedule E accordingly.

(2) Subsection (1)(b) above includes cases in which the third person is an unincorporated body of which the worker is a member.

(3) Subsection (1) above shall apply whether or not the worker renders or is under an obligation to render the services in question as a partner in a firm or a member of an unincorporated body; and where, in any case in which that subsection applies, the worker is a partner in a firm or a member of such a body, remuneration receivable under or in consequence of the relevant contract shall be treated for all the purposes of the Income Tax Acts as income of the worker and not as income of the firm or body.

(4) For the purposes of this section, any remuneration which the client pays or provides by reason of the worker being a person who renders or is under an obligation to render the services in question shall be treated as receivable in consequence of the relevant contract.

(5) Subsection (1) above shall not apply—

(a) if the services in question are services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or

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(b) if the services in question are rendered wholly in the worker's own home or at other premises which are neither under the control or management of the client nor premises at which the worker is required, by reason of the nature of the services, to render them; or

(c) if in rendering the services the worker is or would be a subcontractor within the meaning of section 560.

(6) Where an individual enters into arrangements with another person with a view to the rendering of personal services by the individual, being arrangements such that, if and when he renders any such services as a result of the arrangements, those services will be treated under subsection (1) above as if they were the duties of an office or employment held by him, then for all purposes of the Income Tax Acts any remuneration receivable under or in consequence of the arrangements shall be treated as emoluments of an office or employment held by the individual and shall be assessable to income tax under Schedule E accordingly.

(7) In this section "remuneration", in relation to an individual, does not include anything in respect of which he would not have been chargeable to tax under Schedule E if it had been receivable in connection with an office or employment held by him but, subject to that, includes every form of payment and all perquisites, benefits and profits whatsoever.

Marginal Citations
M336 Source—1975 (No.2) s.38(1)-(6), (8)

Shareholdings, loans etc.

135 Gains by directors and employees from share options.

(1) [M337]Subject to section 185, where a person realises a gain by the exercise, or by the assignment or release, of a right to acquirbe shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, he shall be chargeable to tax under Schedule E on an amount equal to the amount of his gain, as computed in accordance with this section.

(2) [M338]Without prejudice to section 185, where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right which is not capable of being exercised more than seven years after it is obtained, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.

(3) [M339]Subject to section 136(4)—

(a) the gain realised by the exercise of any such right at any time shall be taken to be the difference between the amount that a person might reasonably expect to obtain from a sale in the open market at that time of the shares acquired and the amount or value of the consideration given whether for them or for the grant of the right; and

(b) the gain realised by the assignment or release of any such right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right;

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(a just apportionment being made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something besides).

(4) For the purposes of subsection (3) above, neither the consideration given for the grant of the right nor any such entire consideration as is mentioned in that subsection shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under that subsection.

(5) [M340]Where such a right as is mentioned in subsection (1) above is obtained as mentioned therein and is capable of being exercised later than seven years after it is obtained, and the receipt of the right is chargeable to tax under any other provision of the Tax Acts, then—

(a) the tax so charged shall be deducted from any tax which is chargeable under subsection (1) above by reference to the gain realised by the exercise, assignment or release of that right; and

(b) for the purpose of any such charge to tax in relation to the receipt of the right, the value of the right shall be taken to be not less than the market value at the time the right is obtained—

(i) of the shares which may be acquired by the exercise of the right, or

(ii) of shares for which shares so acquired may be exchanged,

reduced by the amount or value (or, if variable, the least amount or value) of the consideration for which the shares may be so acquired.

(6) [M341]subject to subsection (7) below, a person shall, in the case of a right granted by reason of his office or employment, be chargeable to tax under this section in respect of a gain realised by another person—

(a) if the right was granted to that other person, or

(b) if the other person acquired the right otherwise than by or under an assignment made by way of a bargain at arm's length, or if the two are connected persons at the time when the gain is realised,

but in a case within paragraph (b) above the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.

(7) A person shall not be chargeable to tax by virtue of subsection (6)(b) above in respect of any gain realised by another person if the first-mentioned person was divested of the right by operation of law on his bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case VI of Schedule D.

(8) [M342]In any case where—

(a) a person has obtained any such right to acquire shares as is mentioned in subsection (1) above ("the first right"); and

(b) as to any of the shares to which the first right relates, he omits or undertakes to omit to exercise the right or grants or undertakes to grant to another a right to acquire the shares or any interest in them; and

(c) in consideration for or otherwise in connection with that omission, grant or undertaking, he receives any benefit in money or money's worth;

he shall be treated for the purposes of this section and section 136 as realising a gain by the assignment or release of the first right, so far as it relates to the shares in

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question, for a consideration equal to the amount or value of the benefit referred to in paragraph (c) above.

(9) Where subsection (8) above has had effect on any occasion, nothing in that subsection affects the application of this section in relation to a gain realised on a subsequent occasion, except that on that subsequent occasion so much of the consideration given for the grant of the first right as was deducted on the first occasion shall not be deducted again.

Modifications etc. (not altering text)

C145 S. 135 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M337 Source—1970 s.186(1); 1984 s.38
M338 Source—1970 s.186(2); 1972 s.77(1); 1984 s.38
M339 Source—1970 s.186(3)
M340 Source—1972 s.77(1)-(3)
M341 Source—1970 s.186(4), (5)
M342 Source—1970 s.186(5A), (5B); 1986 s.26(1)

136 Provisions supplementary to section 135.

(1) [M343]If a right to acquire shares in a body corporate is assigned or released in whole or in part for a consideration which consists of or comprises another right to acquire shares in that or any other body corporate, that other right shall not be treated as consideration for the assignment or release, but section 135 and this section shall apply in relation to it as they apply in relation to the right assigned or released and as if the consideration for its acquisition—

(a) did not include the value of the right assigned or released, but

(b) did include the amount or value of the consideration given for the grant of the right assigned or released so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.

(2) [M344]If—

(a) as a result of two or more transactions a person ceases to hold a right to acquire shares in a body corporate and he or a connected person comes to hold another right to acquire shares in that or any other body corporate (whether or not acquired from the person to whom the other right was assigned), and

(b) any of those transactions was effected under arrangements to which two or more persons holding rights in respect of which tax may be chargeable under this section were parties,

those transactions shall be treated for the purposes of subsection (1) above as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

(3) Subsection (2) above applies in relation to two or more transactions whether they involve an assignment preceding, coinciding with or subsequent to an acquisition.

(4) In the case of a right to acquire shares granted before 3rd May 1966—

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(a) the amount of the gain realised at any time by the exercise, or by the assignment or release, of the right shall not exceed the difference between the market value of those shares at that time and their market value on 3rd May 1966 (and no gain shall be treated as so realised unless the later value exceeds the earlier value); and

(b) subsection (2) of section 135 shall not affect tax chargeable under Case I of Schedule E in respect of the receipt of the right, but the amount, if any, on which tax is so chargeable shall be taken into account under subsection (3)(a) and (b) of that section in relation to the gain realised by the exercise or by the assignment or release, of the right as if that amount formed part (in addition to any other amount) of the consideration for the grant of the right.

(5) For the purposes of this section and section 135—

(a) references to the release of a right include references to agreeing to the restriction of the exercise of the right;

(b) "director" means—

(i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;

(ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;

(iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate;

and includes any person who is to be or has been a director;

(c) [M345] "employee", in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee; and

(d) [M346]in so far as the context permits, "shares" includes stock;

and this section and section 135 shall apply in relation to any securities issued by a body corporate as they apply to shares in that body corporate.

(6) [M347]Where in any year of assessment a body corporate grants a right in respect of which tax may become chargeable under section 135, or allots or transfers any shares in pursuance of such a right, or receives notice of the assignment of such a right or provides any benefit in money or money's worth—

(a) for the assignment or for the release in whole or in part of such a right; or

(b) for or in connection with an omission or undertaking to omit to exercise such a right; or

(c) for or in connection with the grant or undertaking to grant a right to acquire shares or an interest in shares to which such a right relates;

it shall deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

Marginal Citations

M343 Source—1970 s.186(6)
M344 Source—1970 s.186(7)
M345 Source—1970 ss.186(10)(c), 224(1)
M346 Source—1970 s.186(10)(d)
M347 Source—1970 s.186(11); 1986 s.26(2)

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137 Payment of tax under section 135 by instalments.

M348(1) In any case where—

(a) for any year of assessment a person is chargeable to tax under Schedule E, by virtue of section 135, on an amount equal to a gain realised by the exercise of a right to acquire shares which was obtained before 6th April 1984; and

(b) the shares acquired in the exercise of that right were acquired for a consideration which, subject to subsection (2) below, was not less than the market value (determined as for the purposes of the **[**F171 1992**]** Act) of shares of the same class at the time the right was granted or, if the right was granted before 6th April 1982, 90 per cent. of that market value; and

(c) following an assessment for the year in which that right was exercised ("the relevant year") an amount of tax chargeable by virtue of section 135 in respect of the amount referred to in paragraph (a) above and exceeding £250 is payable to the collector pursuant to regulations under section 203; and

(d) the person concerned makes an election in accordance with subsection (3) below, he shall be entitled to pay tax by instalments in accordance with subsection (4) below.

(2) Shares which are acquired for a consideration less than that required by paragraph (b) of subsection (1) above by reason only of a diminution in the market value of shares of that class (determined as for the purposes of the **[**F171 1992**]** Act) which is attributable solely to the share capital of the company issuing the shares being varied after the right to acquire the shares was granted, shall for the purposes of that paragraph be regarded as having been acquired for a consideration not less than that required by that paragraph.

(3) An election under this section shall be made by notice to the inspector before the expiry of the period of 60 days beginning immediately after the end of the relevant year.

(4) Where an election has been made under this section the tax referred to in subsection (1) (c) above shall, subject to subsection (5) and (6) below, be paid in five equal instalments as follows—

(a) the first shall be due and payable at the expiry of the period of 14 days beginning on the date on which application for the tax is made pursuant to regulations under section 203;

(b) the fifth shall be due and payable on the last day of the fifth year following the end of the relevant year; and

(c) the second, third and fourth instalments shall be due on such dates as will secure, so far as may be, that the interval between any two consecutive dates is the same.

(5) In any case where the date which, apart from this subsection, would be the due date for the fifth instalment of tax under subsection (4) above is earlier than the due date referred to in paragraph (a) of that subsection, all five instalments shall be due on the later date.

(6) Tax which, by virtue of an election under this section, is not yet due and payable in accordance with subsection (4) above may nevertheless be paid at any time and shall become due and payable forthwith if the person who made the election becomes bankrupt under the law of any part of the United Kingdom.

(7) Subject to any other provision of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's income, for the purposes

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of paragraph (c) of subsection (1) above in determining what tax is chargeable on a person by virtue of section 135 in respect of the amount referred to in paragraph (a) of that subsection, that amount shall be treated as the highest part of his income for the relevant year.

Textual Amendments

F171 Words in s. 137(1)(b)(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(9)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M348 Source—1982 s.40; 1984 s.39(7), (8)

138 Share acquisitions by directors and employees.

(1) *Subject to section* 185*and the following provisions of this section, where a person has acquired or acquires shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a director or employee of that or any other body corporate, and not in pursuance of an offer to the public—*

(a) [M349]*if the market value of the shares at the end of the period mentioned in subsection* (9)*below exceeds their market value at the time of the acquisition, he shall be chargeable to tax under Schedule E for the year of assessment in which that period ends on an amount equal, except as provided by subsection* (8)*below, to the excess* (*or, if his interest is less than the full beneficial ownership, such part of that amount as corresponds to his interest*);

(b) [M350]*if he receives, by virtue of his ownership of or interest in the shares, any benefit not received by the majority of persons who—*

(i) *hold shares forming part of the ordinary share capital of the same body corporate; and*

(ii) *have acquired the shares otherwise than as mentioned above*;

and the benefit is not otherwise chargeable to income tax, he shall be chargeable to tax under Schedule E for the year of assessment in which he receives the benefit on an amount equal to the value of the benefit;and any amount chargeable under this subsection shall be treated as earned income, whether or not it would otherwise fall to be so treated.

(2) *Subsection* (1)*above does not apply if the acquisition—*

(a) [M351]*was made in pursuance of arrangements under which employees of a body corporate receive as part of their emoluments shares or interests in shares in that body or in a body controlling it to an extent determined in advance by reference to the profits of either body; and*

(b) [M352]*where the arrangements were made or modified after* 22*nd March* 1973,*was of shares or an interest in shares which satisfy the conditions set out in subsection* (4)(a)*below and the arrangements satisfy the condition set out in subsection* (4)(b)*below.*

(3) *Subsection* (1)(a)*above does not apply if—*

(a) [M353]*the acquisition was an acquisition of shares in a body and either of the following conditions was satisfied immediately after the acquisition, namely—*

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(i) *that the shares were not subject to such restrictions as are specified in subsection* (6)*below, and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired otherwise than as mentioned in subsection* (1)*above; or*

(ii) *that the shares were not subject to such restrictions as are specified in paragraph* (a)*or* (b)*of subsection* (6)*below and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired by persons who were or had been employees or directors of, or of a body controlled by, that body and who were together able as holders of the shares to control that body; or*

(b) [M354]*the acquisition was an acquisition after* 5*th April* 1984*of an interest in shares which consists of units in an authorised unit trust and—*

(i) *prior to the acquisition the unit trust was approved by the Board for the purposes of this section and, at the time of the acquisition, continues to be so approved, and*

(ii) *the condition set out in subsection* (7)*below is fulfilled with respect to the body corporate* (*in that subsection referred to as "the relevant company"*)*directorship of or employment by which gave rise to the right or opportunity by virtue of which the acquisition was made; or*

(c) [M355]*the acquisition took place before* 6*th April* 1981.

(4) *The conditions referred to in subsection* (2)(b)*above are as follows—*

(a) [M356]*that the shares—*

(i) *are not subject to such restrictions as will or may result in the person acquiring the shares or an interest in the shares obtaining a benefit through an increase, subsequent to the acquisition, of the value or the value to him of the shares or interest; and*

(ii) *cannot* (*whether by one transaction or a series of transactions*)*be exchanged for or converted into shares which are subject to such restrictions; and*

(iii) *are either shares of a class quoted on a recognised stock exchange or are shares in a company which is not under the control of another company;*

(b) [M357]*that the arrangements allow every full-time employee of the company concerned who—*

(i) *has been a full-time employee of that company for a continuous period of not less than five years, and*

(ii) *is chargeable to tax in respect of his employment under Case I of Schedule E, and*

(iii) *is not less than* 25*years old,*

to acquire shares or interests in shares of the same class on similar terms.

(5) [M358]*For the purposes of subsection* (3)(a)*above—*

(a) *shares in a body are available shares if they are not held by or for the benefit of an associated company of that body; and*

(b) *shares are exchangeable for other shares if* (*whether by one transaction or a series of transactions*)*they can be exchanged for or converted into the other shares.*

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(6) [M359]*The restrictions referred to in subsection* (3)(a)*above are—*

(a) *restrictions not attaching to all shares of the same class; or*

(b) *restrictions ceasing or liable to cease at some time after the acquisition; or*

(c) *restrictions depending on the shares being or ceasing to be held by directors or employees of any body corporate* (*other than such restrictions imposed by a company's articles of association as require shares to be disposed of on ceasing to be so held*).

(7) [M360]*The condition referred to in subsection* (3)(b)*above is fulfilled with respect to the relevant company if, for no continuous period of one month or more, throughout which any director or employee of the relevant company either—*

(a) *has, by virtue of his office or employment, any such right or opportunity as is referred to in subsection* (1)*above to acquire units in the unit trust, or*

(b) *retains any beneficial interest in any units in the unit trust which he acquired in pursuance of such a right or opportunity,*

do investments in the relevant company and in any other company in relation to which the relevant company is an associated company make up more than 10*per cent. by value of the investments subject to the trusts of the unit trust.*

(8) [M361]*The amount on which or on part of which the person making the acquisition is chargeable to tax under subsection* (1)(a)*above* (*"the chargeable amount"*)*shall, in the following cases, be reduced as follows, that is to say—*

(a) *where, in accordance with the terms on which the acquisition of the shares was made, the consideration for the acquisition is subsequently increased, the chargeable amount shall be reduced by an amount equal to the increase; and*

(b) *where, in accordance with those terms, the shares are subsequently disposed of for a consideration which is less than their market value at the time of the disposal, the chargeable amount shall be reduced so as to be equal to the excess of that consideration over the market value of the shares at the time of the acquisition*;

and similarly where the interest acquired is less than the full beneficial ownership, and such assessments, alterations of assessments or repayments of tax shall be made as may be necessary to give effect to the reduction.

(9) *The period referred to in subsection* (1)(a)*above is a period ending at the earliest of the following times—*

(a) *the expiration of seven years from the acquisition of the shares or interest in the shares*;

(b) *the time when the person making the acquisition ceases to have any beneficial interest in the shares*;

(c) *in relation only to a person who acquires shares, the time when by reason of their ceasing to be subject to such restrictions as are specified in subsection* (6)*above either of the conditions in subsection* (3)(a)*above would be satisfied in relation to the shares if they had been acquired at that time*;

and for the purposes of subsection (1)(a)*and paragraph* (b)*above a person whose beneficial interest in shares is reduced shall be treated as ceasing to have an interest in such part of the shares as is proportionate to the reduction.*

(10) [M362]*Subsection* (11)*below applies where—*

(a) *a person has acquired shares or an interest in shares as mentioned in subsection* (1)*above* (*and the shares which he acquires or in which he acquires*

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an interest are in sub-paragraphs (b)*and* (c)*and subsection* (11)*below referred to as "the original shares"*);*and*

(b) *the circumstances of his acquisition of the original shares are such that the application of subsection* (1)(a)*above is not excluded; and*

(c) *after* 18*th March* 1986*by virtue of his holding of the original shares or the interest in them he acquires* (*whether or not for consideration*)*additional shares or an interest in additional shares* (*and the shares which he so acquires or in which he so acquires an interest are in subsection* (11)*below referred to as "the additional shares"*).

(11) *Where this subsection applies—*

(a) *the additional shares or, as the case may be, the interest in them shall be treated as having been acquired as mentioned in subsection* (1)*above and in circumstances falling within subsection* (10)(b)*above and, for the purposes of subsection* (9)(a)*above, as having been acquired at the same time as the original shares or the interest in them;*

(b) *for the purposes of subsections* (1)(a)*and* (8)*above, the additional shares and the original shares shall be treated as one holding of shares and the market value of the shares comprised in that holding at any time shall be determined accordingly (the market value of the original shares at the time of acquisition being attributed proportionately to all the shares in the holding); and*

(c) *for the purposes of those subsections, any consideration given for the acquisition of the additional shares or the interest in them shall be taken to be an increase falling within subsection* (8)(a)*above in the consideration for the original shares or the interest in them.*

(12) [M363]*Subsection* (1)(b)*above does not apply where the benefit is received by virtue of a person's ownership of or of an interest in shares which were acquired before* 6*th April* 1972 [F172].

Textual Amendments

F172 Ss. 138, 139 repealed by Finance Act 1988 (c. 39) ss. 88, 148, Sch.14 Part VI in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.

Modifications etc. (not altering text)

C146 S. 138 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M349 Source—1972 s.79(1), (4)
M350 Source—1972 c.79(1), (7)
M351 Source—1972 s.79(2)(b), (3)(b), (8)
M352 Source—1973 Sch.8 1
M353 Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
M354 Source—1972 s.79(2)(bb); 1984 s.40(1)
M355 Source—1972 s.79(6)
M356 Source—1973 Sch.8 1(b), 3; 1974 s.20(2)
M357 Source—1973 Sch.8 2
M358 Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
M359 Source—1972 s.79(2A); 1973 Sch.8 4(1)(b)
M360 Source—1972 s.79(2B); 1984 s.40(2)

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M361 Source—1972 s.79(5), (6); 1973 Sch.8 4(1)(c); 1986 s.26(4)
M362 Source—1972 s.79(5A), (5B); 1986 s.26(3), (6)
M363 Source—1972 s.79(3)(a); 1974 s.20(1)(b)

[F173]139 Provisions supplementary to section 138.

(1) [M364]*Where—*

(a) *a director or employee of a body corporate acquires shares in pursuance of an opportunity to acquire shares of that class offered to directors and employees of the body in their capacity as such* (*"the discount offer"*)*;and*

(b) *the discount offer is made in conjunction with an offer to the public* (*"the main offer"*)*under which shares of the same class may be acquired on the same terms, except that a discount in price is offered to directors and employees; and*

(c) *the director or employee is chargeable to tax under Schedule E on an amount equal to the discount in the price of the shares acquired by him; and*

(d) *at least* 75*per cent. of the aggregate number of shares of the class in question which are acquired in pursuance of the discount offer and the main offer taken together are shares acquired in pursuance of the main offer,*

he shall be treated for the purposes of section 138(1)*as acquiring the shares in pursuance of an offer to the public.*

(2) *Where a director or employee acquires an interest in shares, subsection* (1)*above shall apply as if the references in that subsection to the acquisition of shares were references to the acquisition of an interest in shares.*

(3) [M365]*For the purposes of section* 138*and this section, where a person acquires any shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a person connected with a director or employee of that or any other body corporate, the shares or interest shall be deemed to be acquired by the director or employee, and section* 32A(4)*of the* 1979*Act shall apply with the necessary modifications; and where that person receives a benefit as mentioned in section* 138(1)(b)*the benefit shall be deemed to be received by the director or employee.*

(4) *For the purposes of section* 138*,a person who disposes of shares or an interest in shares otherwise than by a bargain at arm's length with a person who is not connected with him shall be deemed not to cease to have a beneficial interest in the shares.*

(5) [M366]*Where in any year of assessment a person acquires shares or an interest in shares as mentioned in section* 138(1) (*disregarding subsections* (1)*and* (2)*above*)*,the body from which the shares are or the interest is acquired shall deliver to the inspector within* 30*days of the end of that year particulars in writing of the shares and the acquisition.*

(6) [M367]*The Board may by notice require the managers or trustees of any unit trust scheme which is an authorised unit trust approved by the Board for the purposes of section* 138*to furnish to the Board within such time as they may direct* (*but not being less than* 30*days*)*such information as the Board think necessary for the purposes of enabling them to determine—*

(a) *whether the condition in subsection* (7)*of that section is being or has at any time been fulfilled; and*

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(b) *the liability to tax of any unit holder whose rights were acquired as mentioned in subsection* (1)*of that section.*

(7) [M368]*Subject to subsection* (9)*below, in determining for the purposes of section* 138 (*including any valuation made for those purposes*)*whether shares which, or interests in which, have been acquired or are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or any interest in them or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantages to him or a person connected with him, except where the restriction is imposed as a condition of a loan which is not a related loan as defined by subsection* (8)*below.*

This subsection does not apply where the person acquired the shares before 19*th October* 1972.

(8) *A loan made to any person is a related loan for the purposes of subsection* (7)*above if—*

(a) *it is made, arranged, guaranteed or in any way facilitated by—*

(i) *the body corporate of which he is a director or employee, or*

(ii) *an associated company of that body, or*

(iii) *if that body or an associated company of it is a close company, any person having a material interest in the close company; or*

(b) *it is made to a person connected with another person and would have been such a loan if it had been made to that other person;*

but a loan made by the body corporate, associated company or person mentioned in paragraph (a)*above is not a related loan if that body, company or person carries on a business of making personal loans and the loan is made in the ordinary course of that business.*

(9) *For the purposes of section* 138(3)(a),*shares acquired by any person shall not, by virtue of subsection* (7)*above, be regarded as subject to any restriction by reason only of any contract, agreement, arrangement or condition providing for the disposal of the shares, when that person ceases to hold the office or employment by virtue of which he acquired the shares, to a person nominated in accordance with the contract, agreement, arrangement or condition if he is required to dispose of them at a price not exceeding their market value.*

(10) [M369]*Any reference in subsection* (7)*above to a contract, agreement, arrangement or condition does not include a reference to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November* 1984.

(11) *In section* 138*and this section—* [M370]

"associated company" has the meaning given by section 416;

"control" has the meaning given by section 840;

"director" includes a person who is to be a director;

"employee" includes a person who is to be an employee;

"full-time", in relation to an employee, means required to devote substantially the whole of his time to service as an employee;

"shares" includes stock and securities and references to an interest in any shares include references to the proceeds of sale of part of the shares; and

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"units", in relation to an authorised unit trust, means an entitlement to a share in the investments subject to that trust.

(12) *For the purposes of section* 138*and this section, section* 168(11)*shall apply for determining whether a person has a material interest in a company, but with the omission of the words following*" 417(3) ".

(13) [M371]*If, on a person ceasing to have a beneficial interest in any shares, he acquires, after* 18*th March* 1986,*other shares or an interest in other shares and the circumstances are such that, for the purposes of sections* 78*to* 81*of the* 1979*Act* (*reorganisations etc.*)*the shares in which he ceases to have a beneficial interest constitute original shares and the other shares constitute a new holding—*

(a) *section* 78*of that Act* (*which equates the original shares with the new holding*)*shall apply for the purposes of this section and section* 138;

(b) *if any such consideration is given for the new holding as is mentioned in section* 79(1)*of that Act, it shall be treated for the purposes of this section and section* 138*as an increase falling within section* 138(8)(a)*in the consideration for the shares; and*

(c) *if any such consideration is received for the disposal of the original shares as is mentioned in section* 79(2)*of the* 1979*Act—*

(i) *the consideration shall be apportioned among the shares comprised in the new holding, and*

(ii) *the amount which, apart from this paragraph, would at any subsequent time be the market value of any of those shares shall be taken to be increased by the amount of the consideration apportioned to them*;

and in paragraphs (a)*to* (c)*above "the original shares" shall be construed in accordance with sections* 78*to* 81*of the* 1979*Act.*

(14) [M372]*In any case where section* 138(1)*applies and the acquisition was an acquisition of units in an authorised unit trust—*

(a) *any reference in section* 138(1)(a), (8)*or* (9)*or subsection* (4)*above or section*[F174]120(4) *of the* 1992 *Act*] *to shares shall be construed as references to units; and*

(b) *any reference in those provisions to an interest in shares shall be omitted* .

Textual Amendments

F173 Ss. 138, 139 repealed by Finance Act 1988 (c. 39), ss. 88, 148, **Sch. 14 Part VI** in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.

F174 Words in s. 139(14) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(10)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C147 Ss. 138-140 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(4)** (and as that affecting section 418 is substituted (with effect in accordance with Sch. 22 para 2(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para. 2(1)**)

Marginal Citations

M364 Source—1972 s.79(1A), (1B); 1984 s.41(1)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M365 Source—1972 s.79(10), (11)
M366 Source—1972 Sch.12 3; 1984 s.41(2)
M367 Source—1972 Sch.12 3A; 1984 s.40(4)
M368 Source—1973 Sch.8 5-7; 1982 s.41
M369 Source—11982 s.41; 1986 s.23(4)
M370 Source—1973 Sch.8 35; 1972 Sch.12 6, 8
M371 Source—1972 s.79(6A); 1986 s.26(5)
M372 Source—1972 s.79(4A); 1984 s.40(3)

140 Further interpretation of sections 135 to 139.

[M373](1) For the purposes of section 135, 136, 138 or 139, a right to acquire shares is obtained by a person as a director or employee (within the meaning of the section in question) of a body corporate—

(a) if it is granted to him by reason of his office or employment as such a director or employee who is chargeable to tax in respect of that office or employment under Case I of Schedule E; or

(b) if the right is assigned to him and was granted by reason of any such office or employment of his to some other person;

and paragraph (a) above shall apply to a right granted by reason of a person's office or employment after he has ceased to hold it if it would apply to a right so granted in the last chargeable period in which he did hold it.

(2) [M374]For those purposes any question whether a person is connected with another shall be determined in accordance with section 839.

(3) [M375]For those purposes—

"market value" has the same meaning as, for the purposes of the **[**[F175]1992**]** Act, it has by virtue of section **[**[F175]272**]** of that Act; and

"securities" has the meaning given by section 254(1).

Textual Amendments

F175 Words in s. 140(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(11)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M373 Source—1970 s.186(9); 1972 Sch.12 7
M374 Source—1970 s.186(10)(b); 1972 Sch.12 9
M375 Source—1972 s.77(3), 79(12), Sch.12 6; 1970 s.186(10)

VALID FROM 31/07/1998

[[F176]140A Conditional acquisition of shares.

(1) This section applies where—

(a) a beneficial interest in any shares in a company ("the employee's interest') is acquired by any person ("the employee") as a director or employee of that or another company; and

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(b) the employee acquires that interest on terms that make his interest in the shares only conditional.

(2) If the terms on which the employee acquires the employee's interest are such that his interest in the shares in question will or might continue to be only conditional until a time more than five years after his acquisition of the interest, tax shall be chargeable under Schedule E in respect of that interest on the basis that it is emoluments of the office or employment concerned.

(3) In any other case, there shall (subject to the following provisions of this section) be no tax chargeable on the employee under Schedule E in respect of his acquisition of the interest except any tax which is so chargeable by virtue only of section 135 or 162.

(4) If, in a case falling within subsection (2) or (3) above—

(a) the shares cease, without the employee ceasing to have a beneficial interest in them, to be shares in which the employee's interest is only conditional, or

(b) the employee, not having become chargeable by virtue of this subsection in relation to the shares, sells or otherwise disposes of the employee's interest or any other beneficial interest in them,

he shall, for the year of assessment in which they so cease, or in which the sale or other disposal takes place, be chargeable to tax under Schedule E on the amount specified in subsection (5) below.

(5) That amount is the amount (if any) by which the sum of the deductible amounts is exceeded by the market value of the employee's interest immediately after that interest ceases to be only conditional or, as the case may be, at the time of the sale or other disposal.

(6) For the purposes of subsection (5) above the market value of the employee's interest at any time is the amount that might reasonably be expected to be obtained from a sale of that interest in the open market at that time.

(7) For those purposes the deductible amounts are—

(a) the amount or value of the consideration given for the employee's interest;

(b) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of the employee's interest;

(c) any amounts on which the employee has, by reference to an event occurring not later than the time of the event by virtue of which a charge arises under this section, become chargeable to tax in respect of the shares under section 78 or 79 of the [M376]Finance Act 1988 (unapproved employee share schemes).

(8) Where the employee dies holding the employee's interest this section shall have effect—

(a) as if he had disposed of that interest immediately before his death; and

(b) as if the market value of the interest at the time of that disposal were to be determined for the purposes of subsection (5) above on the basis-

(i) that it is known that the disposal is being made immediately before the employee's death; and

(ii) that any restriction on disposal subject to which the employee holds the shares is to be disregarded in so far as it is a restriction terminating on his death.

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(9) Any reference in this section or section 140B or 140C to shares in a company includes a reference to securities issued by a company; and the references in subsection (7)(c) above to an event include references to the expiry of a period.**]**

Textual Amendments

F176 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

Marginal Citations

M376 1988 c. 39.

VALID FROM 31/07/1998

[F176 140B Consideration for shares conditionally acquired.

(1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140A(7)(a).

(2) Subject to the following provisions of this section, that consideration is any given by—
  (a) the employee; or
  (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,

  in respect of the acquisition of an interest in the shares.

(3) The amount or value of the consideration given by any person for an interest in the shares shall include—
  (a) the amount or value of any consideration given for a right to acquire those shares; and
  (b) the amount or value of any consideration given for anything by virtue of which the employee's interest in the shares ceases to be only conditional.

(4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.

(5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the interest in the shares in question has been acquired by a person as a director or employee of a company.

(6) No amount shall be counted more than once in the computation of the amount or value of any consideration.

(7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3)(a) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.**]**

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Textual Amendments

F176 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

VALID FROM 31/07/1998

[F176 140C Cases where interest to be treated as only conditional.

(1) For the purposes of sections 140A and 140B (but subject to the following provisions of this section) a beneficial interest in shares is only conditional for so long as the terms on which the person with that interest is entitled to it—

(a) provide that, if certain circumstances arise, or do not arise, there will be a transfer, reversion or forfeiture as a result of which that person will cease to be entitled to any beneficial interest in the shares; and

(b) are not such that, on the transfer, reversion or forfeiture, that person will be entitled in respect of his interest to receive an amount equal to or more than the amount that might reasonably be expected (if there were no provision for transfer, reversion or forfeiture) to be obtained from a sale of that interest in the open market at that time.

F177 **[** (1A) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any shares in a company or any security, to have an interest which is only conditional by reason only that one or more of subsections (2) to (4) below applies in relation to him.**]**

(2) **[F178** This subsection applies in relation to a person if**]**, in a case where there is no restriction on the meeting of calls by that person, the shares—

(a) are unpaid or partly paid; and

(b) may be forfeited for non-payment of calls.

(3) **[F179** This subsection applies in relation to a person if**]** the articles of association of the company require him to offer the shares for sale **[F180** or transfer them**][F181** if he ceases to be an officer or employee of the company or of one or more group companies or of any group company.**]**

F182 **[** (3A) This subsection applies in relation to a person if he may be required to offer the shares for sale or transfer them, if, as a result of misconduct, he ceases to be an officer or employee of the company or of one or more group companies or of any group company.**]**

(4) **[F183** This subsection applies in relation to a person if**]** the security may be redeemed on payment of any amount.

(5) In subsection (1) above the references, in relation to the terms of a person's entitlement, to circumstances arising include references—

(a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and

(b) to the exercise by any person of any power conferred on him by or under those terms.

[For the purposes of this section—

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[F184](6) (a) a company is a "group company" in relation to another company if they are members of the same group, and

(b) companies are taken to be members of the same group if, and only if, one is a 51 per cent. subsidiary of the other or both are 51 per cent. subsidiaries of a third company.**]]**

Textual Amendments

F176 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

F177 S. 140C(1A) inserted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(2)(7)**

F178 Words in s. 140C(2) substituted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(3)(7)**

F179 Words in s. 140C(3) substituted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(3)(7)**

F180 Words in s. 140C(3) inserted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(4)(a)(7)**

F181 Words in s. 140C(3) substituted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(4)(b)(7)**

F182 S. 140C(3A) inserted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(5)(7)**

F183 Words in s. 140C(4) substituted (retrospectively) by Finance Act 1999 (c. 16), **s. 43(3)(7)**

F184 S. 140C(6) added (retrospectively) by Finance Act 1999 (c. 16), **s. 43(6)(7)**

VALID FROM 31/07/1998

[F185 140D Convertible shares.

(1) This section applies where a person ("the employee") has acquired convertible shares in a company as a director or employee of that or another company.

(2) For the purposes of this section shares are convertible wherever they—

(a) confer on the holder an immediate or conditional entitlement to convert them into shares of a different class; or

(b) are held on terms that authorise or require the grant of such an entitlement to the holder if certain circumstances arise, or do not arise.

(3) The employee shall be chargeable to tax under Schedule E if, at a time when he has a beneficial interest in them, the shares are converted into shares of a different class in pursuance of any entitlement to convert them that has been conferred on the holder.

(4) A charge by virtue of this section shall be a charge for the year of assessment in which the conversion occurs on the amount of the gain from the conversion.

(5) The amount of the gain from the conversion is the amount (if any) by which the market value at the time of the conversion of the shares into which the convertible shares are converted exceeds the sum of the deductible amounts.

(6) The deductible amounts are—

(a) the amount or value of any consideration given for the convertible shares;

(b) the amount or value of any consideration given for the conversion in question;

(c) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of those shares;

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(d) any amounts on which the employee has, by reference to an event occurring not later than the time of the conversion, become chargeable to tax in respect of the shares under section 78 or 79 of the [M377]Finance Act 1988 (unapproved employee share schemes);

(e) if the convertible shares were acquired through a series of conversions each of which was a taxable conversion, the amount of the gain from each conversion, so far as not falling within paragraph (c) above.

(7) In subsection (6) above the reference to a taxable conversion is a reference to any conversion which—

(a) gave rise to a gain on which the employee was chargeable to tax by virtue of this section, or

(b) would have given rise to such a gain but for the fact that the market value of the shares at the time of the conversion did not exceed the sum of the deductible amounts.

(8) Tax shall not be chargeable by virtue of this section if—

(a) the conversion is a conversion of shares of one class only ("the original class") into shares of one other class only ("the new class");

(b) all shares of the original class are converted into shares of the new class; and

(c) one of the conditions in subsection (9) below is fulfilled.

(9) The conditions referred to in subsection (8) above are—

(a) that immediately before the conversion the majority of the company's shares of the original class are held otherwise than by or for the benefit of—

(i) directors or employees of the company;

(ii) an associated company of the company; or

(iii) directors or employees of such an associated company;

and

(b) that immediately before the conversion the company is employee-controlled by virtue of holdings of shares of the original class.

(10) Tax shall not be chargeable by virtue of this section where the interest which the employee acquires in the shares into which the convertible shares are converted is an interest which (within the meaning given for the purposes of section 140A by section 140C) is only conditional.**]**

Textual Amendments

F185 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

Marginal Citations

M377 1988 c. 39.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 31/07/1998

[F185 140E Consideration for convertible shares.

(1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140D(6)(a) or (b).

(2) Subject to the following provisions of this section, the consideration referred to in section 140D(6)(a) is any consideration given by—
  (a) the employee; or
  (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,
  in respect of the acquisition of the shares.

(3) The amount or value of the consideration given by any person for any shares shall include the amount or value of any consideration given for a right to acquire those shares.

(4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.

(5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the shares in question have been acquired by a person as a director or employee of a company.

(6) No amount shall be counted more than once in the computation of the amount or value of any consideration.

(7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.**]**

Textual Amendments

F185 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

VALID FROM 31/07/1998

[F185 140F Supplemental provision with respect to convertible shares.

(1) Where—
  (a) a person has an interest in any convertible shares at the time of his death,
  (b) those shares are converted into shares of a different class either on his death or within the following twelve months, and
  (c) the conversion takes place wholly or partly as a consequence of his death,

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section 140D shall have effect as if the conversion had taken place immediately before his death and had been in pursuance of an entitlement to convert conferred on the deceased.

(2) In section 140D(2) the references, in relation to the terms of a person's entitlement, to circumstances arising include references—

(a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and

(b) to the exercise by any person of any power conferred on him by or under those terms.

(3) For the purposes of section 140D, the market value of any shares at any time is the amount that might reasonably be expected to be obtained from a sale of the shares in the open market at that time.

(4) In this section and section 140D "associated company" has the same meaning as it has for the purposes of Part XI by virtue of section 416.

(5) For the purposes of section 140D a company is employee-controlled by virtue of holdings of shares of a class if—

(a) the majority of the company's shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees or directors of the company or a company controlled by the company; and

(b) those directors and employees are together able as holders of the shares to control the company.

(6) The provisions of sections 140D and 140E and this section apply in relation to an interest in shares as they apply in relation to shares.

(7) Section 840 (control) applies for the purposes of this section.**]**

Textual Amendments

F185 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

VALID FROM 31/07/1998

[F186 140G Information for the purposes of sections 140A to 140F.

(1) Where—

(a) any person provides any individual with an interest in shares which is only conditional, and

(b) the circumstances are such that—

(i) the acquisition of that interest by that individual,

(ii) its subsequently ceasing to be only conditional,

(iii) its subsequent disposal, or

(iv) the death of the individual,

gives rise or may give rise to a charge under section 140A on that individual,

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each of the relevant persons shall deliver to an officer of the Board particulars in writing of the interest and its provision.

(2) Where—
- (a) a person has an interest in any shares which is only conditional,
- (b) those shares cease to be shares in which that person's interest is only conditional or are disposed of or that person dies, and
- (c) that event gives rise to a charge under section 140A(4),

each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and the event.

(3) Where—
- (a) any person has provided any individual with any convertible shares in a company,
- (b) those shares are subsequently converted into shares of a different class, and
- (c) the circumstances are such that the conversion gives rise or may give rise to a charge under section 140D on that individual,

each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and their conversion.

(4) For the purposes of this section the relevant persons are—
- (a) the person who is providing, or who provided, the shares in question; and
- (b) the person under or with whom the office or employment is or was held by reference to which the charge may arise or has arisen.

(5) Particulars required to be delivered under this section must be delivered no later than thirty days after the end of the year of assessment in which the interest is provided, the event occurs or the conversion takes place.

(6) Expressions used in this section and in section 140A or 140D above have the same meanings in this section as in section 140A or, as the case may be, section 140D.**]**

Textual Amendments

F186 S. 140G inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 52(1)**

VALID FROM 31/07/1998

[F187 140H Construction of sections 140A to 140G.

(1) For the purposes of sections 140A to 140G and this section, a person acquires any shares or securities as a director or employee of a company if—
- (a) he acquires them in pursuance of a right conferred on him, or an opportunity offered to him, by reason of his office or employment as a director or employee of the company; or
- (b) the shares or securities are, or a right or opportunity in pursuance of which he acquires them is, assigned to him after being acquired by, conferred on or, as the case may be, offered to some other person by reason of the assignee's office or employment as a director or employee of the company.

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(2) Subject to subsection (3) below, the references in subsection (1) above to a right or opportunity conferred or offered by reason of a person's office or employment shall be taken to include—

(a) a reference to one so conferred or offered after he has ceased to hold it; and

(b) a reference to one that arises from the fact that any shares which a person acquires as a director or employee (or is treated as so acquiring by virtue of this paragraph) are convertible for the purposes of section 140D.

(3) For the purposes of this section—

(a) the references in subsections (1) and (2) above to a person's office or employment are references only to an office or employment in respect of which he is chargeable to tax under Case I of Schedule E; but

(b) subsection (2)(a) above shall not apply where a right or opportunity conferred or offered in the last chargeable period in which the office or employment was held by the person in question would not have fallen to be taken into account for the purposes of subsection (1)(a) above.

(4) Without prejudice to subsection (2)(b) above where—

(a) a person has acquired an interest in any shares or securities which is only conditional or has acquired any convertible shares,

(b) he acquired that interest or those shares as a director or employee of a company, or is treated by virtue of this subsection as having done so, and

(c) as a result of any two or more transactions—

(i) he ceases to be entitled to that interest or those shares, and

(ii) he or a connected person becomes entitled to any interest in any shares or securities which is only conditional or to any convertible shares,

he shall be treated for the purposes of sections 140A to 140G as if the interest or shares to which he becomes entitled were also acquired by him as a director or employee of the company in question.

(5) Sections 140C and 140D(2) have effect for the purposes of subsection (4) above as they have effect for the purposes of sections 140A and 140B and section 140D respectively.

(6) References in sections 140A to 140G or this section to the terms on which a person is entitled to an interest in shares or securities include references to any terms imposed by any contract or arrangement or in any other way.

(7) References in this section to shares or to securities include references to an interest in shares or, as the case may be, securities.

(8) Subsection (5) of section 136 applies for the purposes of sections 140A to 140G and this section as it applies for the purposes of that section but as if—

(a) references to a body corporate were references to a company;

(b) at the end of paragraph (d) there were inserted "or any other interest of a member of a company"; and

(c) the words after paragraph (d) were omitted.

(9) Section 839 applies for the purposes of this section.**]**

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Textual Amendments

F187 S. 140H inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 53**

Vouchers etc.

141 Non-cash vouchers.

(1) [M378]Subject to the following provisions of this section and section 157(3), where a non-cash voucher provided for an employee by reason of his employment is received by the employee, then, for the purposes of the Income Tax Acts—

(a) he shall be treated as having received in the relevant year of assessment an emolument from his employment of an amount equal to the expense incurred by the person providing the voucher in or in connection with the provision of the voucher and the money, goods or services for which it is capable of being exchanged; and

(b) any money, goods or services obtained by the employee or any other person in exchange for the voucher shall be disregarded;

and the expense incurred as mentioned in paragraph (a) above by the person providing the voucher is referred to below as "the chargeable expense".

(2) In subsection (1)(a) above "the relevant year of assessment" means—

(a) in relation to a cheque voucher, the year of assessment in which the voucher is handed over in exchange for money, goods or services (a voucher which is posted being treated as handed over at the time of posting); and

(b) in relation to any other non-cash voucher, the year of assessment in which the chargeable expense is incurred or, if later, the year of assessment in which the voucher is received by the employee.

(3) [M379]There shall be deductible under section 198, 201 or 332(3) from the amount taxable under subsection (1) above such amounts, if any, as would have been so deductible if the cost of the goods or services in question had been incurred by the employee out of his emoluments.

(4) [M380]The chargeable expense shall be treated as reduced by any part of that expense made good to the person incurring it by the employee.

(5) [M381]Where a non-cash voucher provided for an employee by reason of his employment is appropriated to him (whether by attaching it to a card held for him or in any other way), subsections (1) and (2) above shall have effect as if the employee had received the voucher at the time when it was so appropriated.

(6) **[**[M382]Subsection (1)**]** above shall not apply in relation to a transport voucher provided for an employee of a passenger transport undertaking under arrangements in operation on 25th March 1982 and intended to enable that employee or a relation of his to obtain passenger transport services provided by—

(a) his employer;

(b) a subsidiary of his employer;

(c) a body corporate of which his employer is a subsidiary; or

(d) another passenger transport undertaking.

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[[F188](6A) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.**]**

[[F189](6B) Subsection (1) above shall not apply in relation to any non-cash voucher to the extent that it is used to obtain entertainment (includinxg hospitality of any kind) for the employee or a relation of his, if—

(a) the person providing the non-cash voucher is neither his employer nor a person connected with his employer;

(b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and

(c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.**]**

(7) [M383]In this section—

"cheque voucher" means a cheque provided for an employee and intended for use by him wholly or mainly for payment for particular goods or services or for goods or services of one or more particular classes; and, in relation to a cheque voucher, references to a voucher being exchanged for goods or services shall be construed accordingly;

"passenger transport undertaking" means an undertaking whose business consists wholly or mainly in the carriage of passengers and includes a subsidiary of such an undertaking;

"subsidiary" means a wholly owned subsidiary within the meaning of section **[**[F190]736**]** of the [M384]Companies Act 1985;

"transport voucher" means any ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it) and, in relation to a transport voucher, references to a voucher being exchanged for services shall be construed as references to it being exchanged for, or otherwise being used to procure, services; and

"non-cash voucher" does not include a cash voucher within the meaning of section 143 but, subject to that, means any voucher, stamp or similar document or token capable of being exchanged (whether singly or together with other such vouchers, stamps, documents or tokens and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things) and includes a transport voucher and a cheque voucher.

Textual Amendments

F188 1988(F) s.46(1)*for* 1988-89*and subsequent years. Previously*
"subsections (1) and 2"
in subs. (6).

F189 1988(F) s.47(1)*for* 1988-89*and subsequent years. For* 1987-88*see* 1988(F) s.47.

F190 Companies Act 1989 (c.40) s.144(4)*and* Sch.18 para.46*on and after* 1*November* 1990*by virtue of* S.I. 1990 No.1392 (c.41) (art.2(d)) (*not reproduced*).*Previously*
"736(5)(b)".

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Modifications etc. (not altering text)

C148 *See* S.I. 1973 No.334, regn.31(d) (*in* Part III Vol.5)—*returns by employers.*

C149 S. 141(6) modified (with effect in accordance with Sch. 24 para. 27(14) of the modifying Act) by Finance Act 1994 (c. 9), **Sch. 24 para. 27(3)(4)**

C150 *See* 1990 s.56*and* Sch.10 para.23—*convertible securities.*

Marginal Citations

M378 Source—1975 (No.2) s.36(1); 1982 s.44(2)

M379 Source—1975 (No.2) s.36(2); 1982 s.44(3)

M380 Source—1975 (No.2) s.36(2A); 1981 s.70(2)

M381 Source—1975(2) s.36(3)

M382 Source—1975 (No.2) s.36(3A); 1982 s.44(4)

M383 Source—1975 (No.2) s.36(4); 1982 s.44(5)

M384 1985 c. 6.

142 Credit-tokens.

(1) [M385]Subject to the provisions of this section and section 157(3), where a credit-token is provided for an employee by reason of his employment, then, for the purposes of the Income Tax Acts—

(a) on each occasion on which the employee uses the credit-token to obtain money, goods or services he shall be treated as having received an emolument from his employment of an amount equal to the expense incurred by the person providing the credit-token in or in connection with the provision of the money, goods or services obtained; and

(b) any money, goods or services obtained by the employee by use of the credit-token shall be disregarded.

(2) [M386]There shall be deductible under section 198, 201 or 332(3) from the amount taxable under subsection (1) above such amounts, if any, as would have been so deductible if the cost of the goods or services in question had been incurred by the employee out of his emoluments.

(3) [M387]The expense incurred by the person providing the credit-token as mentioned in subsection (1)(a) above shall be treated as reduced by any part of that expense made good to that person by the employee.

[[F191](3A) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.**]**

[[F192](3B) Subsection (1) above shall not apply in relation to any credit-token to the extent that it is used to obtain entertainment (including hospitality of any kind) for the employee or a relation of his, if—

(a) the person providing the credit-token is neither his employer nor a person connected with his employer;

(b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and

(c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his employment or in anticipation of particular services which are to be so performed by him;

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and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.**]**

(4) [M388]In this section "credit-token" means a card, token, document or other thing given to a person by another person who undertakes—

(a) that on the production of it (whether or not some other action is also required) he will supply money, goods and services (or any of them) on credit; or

(b) that where, on the production of it to a third party (whether or not some other action is also required) the third party supplies money, goods and services (or any of them), he will pay the third party for them (whether or not taking any discount or commission);

but does not include a non-cash voucher or a cash voucher.

(5) [M389]For the purposes of subsection (4) above, the use of an object to operate a machine provided by the person giving the object, or by a third party, shall be treated as production of the object to that person or, as the case may be, third party.

Textual Amendments

F191 1988(F) s.46(2)*for* 1988-89*and subsequent years.*

F192 1988(F) s.48(1)*for* 1988-89*and subsequent years. For* 1987-88*see* 1988(F) s.48.

Modifications etc. (not altering text)

C151 *See* S.I. 1973 No.334, regn.31 (da) (*in* Part III Vol.5)*—returns by employers.*

Marginal Citations

M385 Source—1975 (No.2) s.36A(1)(b), (c); 1981 s.71(1); 1982 s.45(2)

M386 Source—1975 (No.2) s.36A(2); 1981 s.71(1)

M387 Source—1975 (No.2) s.36A(3); 1981 s.71(1); 1982 s.45(2)

M388 Source—1975 (No.2) s.36A(4), (4B); 1981 s.71(1); 1982 s.45(3)

M389 Source—1975 (No.2) s.36A(4A); 1981 s.71(1); 1982 s.45(3)

143 Cash vouchers taxable under P.A.Y.E.

(1) [M390]Where a cash voucher provided for an employee by reason of his employment is received by the employee, then, subject to subsection (5) below, for the purposes of the Income Tax Acts (and in particular section 203)—

(a) he shall be treated as being paid by his employer, at the time when he receives the voucher, an emolument of his employment equal to the sum of money for which the voucher is capable of being exchanged as mentioned in subsection (3) below; and

(b) any money obtained by the employee or any other person in exchange for the voucher shall be disregarded.

(2) Where a cash voucher provided for an employee by reason of his employment is appropriated to him (whether by attaching it to a card held for him or in any other way), subsections (1) and (5) of this section shall have effect as if the employee had received the voucher at the time when it was so appropriated.

(3) In this section "cash voucher" (subject to subsection (4) below) means any voucher, stamp or similar document capable of being exchanged (whether singly or together with such other vouchers, stamps or documents, and whether immediately or only

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after a time) for a sum of money greater than, equal to or not substantially less than the expense incurred in providing the voucher by the person who provides it (whether or not it is also capable of being exchanged for goods or services), except that it does not include—

(a) any document intended to enable a person to obtain payment of the sum mentioned in the document, being a sum which if paid to him directly would not have been chargeable to income tax under Schedule E; or

(b) a savings certificate the accumulated interest payable in respect of which is exempt from tax (or would be so exempt if certain conditions were satisfied).

(4) Where—

(a) a voucher, stamp or similar document is capable of being exchanged (as mentioned above) for a sum of money substantially less than the expense incurred in providing the voucher by the person who provides it, and

(b) the difference or part of the difference represents the cost to that person of providing benefits in connection with sickness, personal injury or death,

then, in determining whether the voucher, stamp or document is a cash voucher within the meaning of this section, the expense incurred by him in providing it shall be treated as reduced by that difference or part.

(5) [M391]Subsection (1) above shall not apply to a cash voucher received by an employee if, at the time when the voucher is received, the scheme under which it was issued is a scheme approved by the Board for the purposes of this subsection; and the Board shall not approve a scheme for those purposes unless satisfied that it is practicable for income tax in respect of all payments made in exchange for vouchers issued under the scheme to be deducted in accordance with regulations under section 203.

Marginal Citations

M390 Source—1975 (No.2) s.37(1)-(4)

M391 Source—1975 (No.2) s.37(5); 1976 s.71(2)

144 Supplementary provisions.

(1) [M392]If a person furnishes to the inspector a statement of the cases and circumstances in which non-cash vouchers or credit-tokens are provided for any employees (whether his own or those of anyone else) and the inspector is satisfied that no additional tax is payable under section 141 or 142 by reference to the vouchers or tokens mentioned in the statement, the inspector shall notify the person accordingly and nothing in those sections shall apply to the provision of those vouchers or tokens or their use.

(2) The inspector may, if in his opinion there is reason to do so, by notice served on the person to whom the notification under subsection (1) above was given, revoke the notification, either as from the date of its making or as from such later date as may be specified in the notice under this subsection; and all such income tax becomes chargeable, and all such returns are to be made by that person and by the employees in question, as would have been chargeable or would have had to be made in the first instance if the notification under subsection (1) above had never been given or, as the case may be, it had ceased to have effect on the specified date.

(3) [M393]For the purposes of sections 141 and 142 where a person incurs expense in or in connection with the provision by him of non-cash vouchers or credit-tokens for two

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or more employees as members of a group or class, the expense incurred in respect of any one of them shall be taken to be such part of that expense as is just and reasonable.

(4) [M394]For the purposes of sections 141, 142 and 143 and this section—

(a) a non-cash voucher, cash voucher or credit-token provided for an employee by his employer shall be deemed to be provided for him by reason of his employment; and

(b) any reference to a non-cash voucher, cash voucher or credit-token being provided for or received by an employee includes a reference to it being provided for or received by a relation of his.

(5) [M395]In sections 141, 142, 143 and this section—

"cash voucher" has the meaning given by section 143(3);

"credit-token" has the meaning given by section 142(4);

"employee" means the holder of any office or employment the emoluments in respect of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly;

"non-cash voucher" has the meaning given by section 141(7); and

"relation", with respect to an employee, means his spouse, parent or child, the spouse of his child and any dependant of that employee.

Marginal Citations

M392 Source—1975 (No.2) ss.36A(6), (7), 36(5A); 1981 s.71(1); 1982 s.44(6)
M393 Source—1975 (No.2) ss.36(5)(b), 36(A)(5)
M394 Source—1975 (No.2) ss.36(5)(c), (d), 36A(5), 37(6); 1981 s.70(5)(b)
M395 Source—1975 (No.2) ss.37(3), (6), 36(4), 36A(4B); 1982 ss.44(5), 45(3)

VALID FROM 03/05/1994

[[F193]144A Payments etc. received free of tax.

(1) In any case where—

(a) an employer is treated, by virtue of any of sections 203B to 203I, as having made a payment of income of an employee which is assessable to income tax under Schedule E,

(b) the employer is required, by virtue of section 203J(3), to account for an amount of income tax ("the due amount") in respect of that payment, and

(c) the employee does not, before the end of the period of thirty days from the date on which the employer is treated as making that payment, make good the due amount to the employer,

the due amount shall be treated as income of the employee which arises on the date mentioned in paragraph (c) above and is assessable to income tax under Schedule E.

(2) In this section any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).**]**

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Textual Amendments

F193 S. 144A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 132**

Living accommodation

145 Living accommodation provided for employee.

M396(1) Subject to the provisions of this section, where living accommodation is provided for a person in any period by reason of his employment, and is not otherwise made the subject of any charge to him by way of income tax, he is to be treated for the purposes of Schedule E as being in receipt of emoluments of an amount equal to the value to him of the accommodation for the period, less so much as is properly attributable to that provision of any sum made good by him to those at whose cost the accommodation is provided.

(2) The value of the accommodation to the employee in any period is the rent which would have been payable for the period if the premises had been let to him at an annual rent equal to their annual value as ascertained under section 837; but for a period in which those at whose cost the accommodation is provided pay rent at an annual rate greater than the annual value as so ascertained, the value of the accommodation to the employee is an amount equal to the rent payable by them for the period.

(3) From any amount to be treated as emoluments under subsection (1) above there are deductible under section 198 or 332(3) such amounts (if any) as would have been so deductible if the accommodation had been paid for by the employee out of his emoluments.

(4) Subject to subsection (5) below, subsection (1) above does not apply to accommodation provided for the employee in any of the following cases—

(a) where it is necessary for the proper performance of the employee's duties that he should reside in the accommodation;

(b) where the accommodation is provided for the better performance of the duties of his employment, and his is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

(c) where there is a special threat to his security, special security arrangements are in force and he resides in the accommodation as part of those arrangements;

and in any such case there is no charge to tax under Schedule E (either by virtue of this section or under section 131 or otherwise) in respect of a liability for rates on the premises being discharged for or on behalf of the employee or the employee being reimbursed for the discharge of that liability.

(5) If the accommodation is provided by a company and the employee is a director of the company or of an associated company, then, except in a case where paragraph (c) of subsection (4) above applies, no exemption is given by virtue of that subsection unless, for each employment of his which is employment as director of the company or an associated company, the following conditions are fulfilled, that is—

(a) he has no material interest in the company, and

(b) either his employment is as a full-time working director or the company is non-profit-making (meaning that neither does it carry on a trade nor do its

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functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.

(6) If by reason of a person's employment accommodation is provided for others being members of his family or household, he is to be treated under subsections (1) to (3) above as if it were accommodation provided for him.

(7) For the purposes of this section, living accommodation provided for an employee, or for members of his family or household, by his employer is deemed to be provided by reason of his employment unless—

(a) the employer is an individual, and it can be shown that he makes the provision in the normal course of his domestic, family or personal relationships; or

(b) the accommodation is provided by a local authority for an employee of theirs, and it can be shown that the terms on which it is provided are no more favourable than those on which similar accommodation is provided by the authority for persons who are not their employees but are otherwise similarly circumstanced.

(8) For the purposes of this section—

(a) a company is associated with another if one has control of the other or both are under the control of the same person; and

(b) the expressions "employment", "family or household", "director", "full-time working director", "material interest" and (in relation to a body corporate) "control" shall be construed in accordance with subsections (2), (4) and (8) to (12) of section 168 as if this section were included in Chapter II of this Part.

Modifications etc. (not altering text)

C152 *See* S.I. 1973 No.334, regn.31 (db) (*in* Part III Vol.5)—*returns by employers.*

C153 S. 145 modified (retrospectively) by Finance Act 2008 (c. 9), **s. 45(3)**

Marginal Citations

M396 Source—1977 s.33(1)-(8)

146 Additional charge in respect of certain living accommodation.

M397(1) This section applies where—

(a) living accommodation is provided for a person in any period, by reason of his employment;

(b) by virtue of section 145 he is treated for the purposes of Schedule E as being in receipt of emoluments of an amount calculated by reference to the value to him of that accommodation, or would be so treated if there were disregarded any sum made good by him to those at whose cost the accommodation is provided; and

(c) the cost of providing the accommodation exceeds £75,000.

(2) Where this section applies, the employee shall be treated for the purposes of Schedule E as being in receipt of emoluments (in addition to those which he is treated as receiving by virtue of section 145) of an amount equal to the additional value to him of the accommodation for the period, less so much of any rent paid by the employee, in respect of the accommodation, to the person providing it as exceeds the value to the employee of the accommodation for the period (as determined under section 145).

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(3) The additional value of the accommodation to the employee in any period is the rent which would have been payable for that period if the premises had been let to him at an annual rent equal to the appropriate percentage of the amount by which the cost of providing the accommodation exceeds £75,000.

(4) For the purposes of this section, the cost of providing any living accommodation shall be taken to be the aggregate of—
  (a) the amount of any expenditure incurred in acquiring the estate or interest in the property held by a relevant person; and
  (b) the amount of any expenditure incurred by a relevant person before the year of assessment in question on improvements to the property.

(5) The aggregate amount mentioned in subsection (4) above shall be reduced by the amount of any payment made by the employee to a relevant person, so far as that amount represents a reimbursement of any such expenditure as is mentioned in paragraph (a) or (b) of that subsection or represents consideration for the grant to the employee of a tenancy of the property.

(6) Subject to subsection (8) below, where throughout the period of six years ending with the date when the employee first occupied the property, any estate or interest in the property was held by a relevant person (whether or not it was the same estate, interest or person throughout), the additional value shall be calculated as if in subsection (4) above—
  (a) the amount referred to in paragraph (a) were the market value of that property as at that date; and
  (b) the amount referred to in paragraph (b) did not include expenditure on improvements made before that date.

(7) In this section, "relevant person" means any of the following—
  (a) the person providing the accommodation;
  (b) where the person providing the accommodation is not the employee's employer, that employer;
  (c) any person, other than the employee, who is connected with a person falling within paragraph (a) or (b) above.

(8) Subsection (6) above does not apply where the employee first occupied the property before 31st March 1983.

(9) Any amount which is deductible, by virtue of section 145(3), from an amount to be treated as emoluments under that section may, to the extent to which it exceeds the amount of those emoluments, be deductible from the amount to be treated as emoluments under this section.

(10) For the purposes of this section, living accommodation shall be treated as provided for a person by reason of his employment if it is so treated for the purposes of section 145; and "employment" has the same meaning in this section as in that.

(11) In this section—

"the appropriate percentage" means the rate **[**[F194]applicable for the purposes of section 160**]** as at the beginning of the year of assessment in question;

"property", in relation to any living accommodation, means the property consisting of that accommodation;

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"market value", in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market with vacant possession, no reduction being made, in estimating the market value, on account of any option in respect of the property held by the employee, or a person connected with him, or by any of the persons mentioned in subsection (7) above; and

"tenancy" includes a sub-tenancy;

and section 839 shall apply for the purposes of this section.

Textual Amendments

F194 1989 s.179(5)*and* S.I. 1989 No.1298 (in Part III Vol.5)*in relation to years of assessment beginning after* 18*August* 1989.*Previously*
"prescribed by the Treasury under section 160(5)".*And see* S.I. 1989 No.1297*for regulations made, and interest rate set, under* 1989 s.178.

Modifications etc. (not altering text)

C154 *See* S.I. 1973 No.334, regn.31 (db) (*in* Part III Vol.5)*—returns by employers.*

Marginal Citations

M397 Source—1977 s.33A; 1983 s.21(1)

VALID FROM 29/04/1996

[F195 146A Priority of rules applying to living accommodation.

(1) This section applies where, within the meaning of section 145, living accommodation is provided in any period for any person by reason of his employment.

(2) The question whether the employee is to be treated under section 145 or 146 as in receipt of emoluments in respect of the provision of the accommodation shall be determined before any other question whether there is an amount falling to be treated in respect of the provision of that accommodation as emoluments.

(3) Tax under Schedule E in respect of the provision of the accommodation shall be chargeable on the employee otherwise than in pursuance of sections 145 and 146 to the extent only that the amount on which it is chargeable by virtue of those sections is exceeded by the amount on which it would be chargeable apart from those sections.**]**

Textual Amendments

F195 S. 146A inserted (with application in accordance with s. 106(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 106(2)**

147 Occupation of Chevening House.

M398 Section 145 shall not apply in relation to the occupation of Chevening House or any other premises held on the trusts of the trust instrument set out in the Schedule to

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the [M399]Chevening Estate Act 1959 by a person nominated in accordance with those trusts.

Marginal Citations

M398 Source—1973 s.43; 1977 Sch.8 4

M399 1959 c. 49.

Payments on retirement, sick pay etc.

148 Payments on retirement or removal from office or employment.

[M400](1) Subject to the provisions of this section and section 188, tax shall be charged under Schedule E in respect of any payment to which this section applies which is made to the holder or past holder of any office or employment, or to his executors or administrators, whether made by the person under whom he holds or held the office or employment or by any other person.

(2) This section applies to any payment (not otherwise chargeable to tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of the office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.

(3) For the purposes of this section and section 188, any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.

(4) Any payment which is chargeable to tax by virtue of this section shall be treated as income received on the following date, that is to say—

(a) in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected; and

(b) in the case of any other payment, the date of the termination or change in respect of which the payment is made;

and shall be treated as emoluments of the holder or past holder of the office or employment assessable to tax under Schedule E; and any such payment shall be treated for all the purposes of the Income Tax Acts as earned income.

(5) In the case of the death of any person who, if he had not died, would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

(6) This section shall not apply to any payment made in pursuance of an obligation incurred before 6th April 1960.

(7) Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom it is made to deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

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Modifications etc. (not altering text)

C155 S. 148 restricted (with application in accordance with s. 92(11) of the restricting Act) by Finance Act 1995 (c. 4), **s. 92(10)**

C156 *See* 1970(M) s.35(2)(b)—*time limit for assessment to run from year of actual receipt.*

Marginal Citations

M400 Source—1970 s.187

149 Sick pay.

[M401](1) Where a person holding an employment is absent from work for any period by reason of sickness or disability, any sums which—

(a) are paid to, or to the order or for the benefit of, that person (or a member of his family or household) in respect of any such absence from work; and

(b) are, by reason of his employment, paid as a result of any arrangements entered into by his employer,

shall be chargeable to income tax under Schedule E as emoluments of the employment*for that period*[F196] if, apart from this section, they would not be so chargeable*for that or any other period*[F196].

(2) Where the funds for making payments under any arrangements are attributable partly to contributions made by the employer and partly to contributions made by the persons employed by him, subsection (1) above shall apply only to such part of the sums paid as a result of the arrangements as it is just and reasonable to regard as attributable to the employer's contributions.

(3) In this section "employment" means an office or employment the emoluments of which fall to be assessed under Schedule E and related expressions shall be construed accordingly; and the reference to a person's family or household is to his spouse, his sons and daughters and their spouses, his parents and his dependants.

Textual Amendments

F196 *Words repealed by* 1989 ss.42(3), 187*and* Sch.17 Part IV*for* 1989-90*and subsequent years.*

Marginal Citations

M401 Source—1981 s.30(1), (2), (4)

150 Job release scheme allowances, maternity pay and statutory sick pay.

The following payments shall be charged to income tax under Schedule E by virtue of this section if they would not otherwise be, that is to say—

(a) [M402]allowances paid under a scheme of the kind described in the [M403]Job Release Act 1977, being a scheme which provides for the payment of allowances for periods beginning earlier than one year before the date on which the recipient attains pensionable age, as defined in that Act;

(b) maternity pay (whether paid during the subsistence of a contract of employment or not) within the meaning of section 33 of the [M404]Employment

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Protection (Consolidation) Act 1978 or, in [M405]Northern Ireland, Article 15 of the Industrial Relations (No.2) (Northern Ireland) Order 1976;

(c) payments of statutory sick pay within the meaning of section 1 of the [M406]Social Security and Housing Benefits Act 1982 or, in Northern Ireland, Article 3 of the [M407]Social Security (Northern Ireland) Order 1982; and

[[F197](d) payments of statutory maternity pay under Part V of the [M408]Social Security Act 1986 or, in Northern Ireland, under Part VI of the [M409]Social Security (Northern Ireland) Order 1986**]**.

Textual Amendments

F197 Social Security Act 1986 (c.50) s.86*and* Sch.10 para.71.

Marginal Citations

M402 Source—1970 s.219A; 1982 s.31(1)
M403 1977 c. 8.
M404 1978 c. 44.
M405 S.I. 1976/2147 (N.I. 28).
M406 1982 c. 24.
M407 S.I. 1982/1084 (N.I. 16).
M408 1986 c. 50.
M409 S.I. 1986/1888 (N.I. 18).

151 Income support etc.

[M410](1) Subject to the following provisions of this section, payments to any person of income support under the Social Security Act 1986 in respect of any period shall be charged to income tax under Schedule E if during that period—

(a) his right to income support is subject to the condition specified in section 20(3)(d)(i) of that Act (availability for employment); or

(b) he is one of a married or unmarried couple and section 23 of that Act (trade disputes) applies to him but not to the other person;

(2) [M411]In this section "married couple" and "unmarried couple" have the same meaning as in Part II of the Social Security Act 1986.

(3) [M412]Where the amount of income support paid to any person in respect of any week or part of a week exceeds the taxable maximum for that period as defined below, the excess shall not be taxable.

(4) Where payments of unemployment benefit and payments of income support are made to any person in respect of the same week or part of a week, the amount taxable in respect of that period in respect of those payments shall not exceed the taxable maximum for that period within the meaning of subsection (3) above.

(5) [M413]For the purposes of subsections (3) and (4) above, the taxable maximum in respect of a week shall be determined in accordance with subsections (6) to (8) below and the taxable maximum in respect of part of a week shall be equal to one-sixth of the taxable maximum in respect of a week multiplied by the number of days in the part.

(6) Where the income support is paid to one of a married or unmarried couple in a case not falling within subsection (1)(b) above, the taxable maximum in respect of a week shall be equal to the aggregate of—

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(a) the weekly rate specified for the week in question in relation to unemployment benefit in paragraph 1 of Part I of Schedule 4 to the [M414]Social Security Act 1975; and

(b) the increase for an adult dependant specified for that week in paragraph 1(a) of Part IV of that Schedule.

(7) Where the income support is paid to one of a married or unmarried couple in a case falling within subsection (1)(b) above, the taxable maximum in respect of a week shall—

(a) if the applicable amount (within the meaning of Part II of the Social Security Act 1986) consists only of an amount in respect of them, be equal to one half of that amount; and

(b) if the applicable amount includes other amounts, be equal to one half of the portion of it which is included in respect of them.

(8) Where the income support is paid to a person who is not one of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the weekly rate referred to in subsection (6)(a) above.

(9) In its application to Northern Ireland this section shall have effect as if—

(a) for the references to the Social Security Act 1986, to Part II of that Act and to sections 20(3)(d)(i) and 23 of that Act there were substituted respectively references to the Social Security (Northern Ireland) Order 1986, Part III of that Order and Articles 21(3)(d)(i) and 24 of that Order; and

(b) for the references to paragraph 1 of Part 1 of Schedule 4 to the Social Security Act 1975 and paragraph 1(a) of Part IV of that Schedule there were substituted respectively references to paragraph 1 of Part I of Schedule 4 to the Social Security (Northern Ireland) Act 1975 and paragraph 1(a) of Part IV of that Schedule.

Modifications etc. (not altering text)

C157 *See* 1989 s.41—*tax charged on amount accruing* (1989-90*and subsequent years of assessment*).

Marginal Citations

M410 Source—1987 s.29(2)
M411 Source—1987 s.29(2), Sch.3 1(2)
M412 Source—1987 s.29(3), (4)
M413 Source—1987 Sch.3 1(1), 2-4
M414 1975 c. 14.

VALID FROM 02/09/1996

[[F198]151A Jobseeker's allowance.

(1) Subject to the following provisions of this section, payments to any person of a jobseeker's allowance in respect of any period shall be charged to income tax under Schedule E.

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(2) Where the amount of a jobseeker's allowance paid to any person in respect of any week or part of a week exceeds the taxable maximum for that period as defined below, the excess shall not be taxable.

(3) For the purposes of subsection (2) above, the taxable maximum in respect of a week shall be determined in accordance with subsections (4) to (8) below and the taxable maximum in respect of part of a week shall be equal to one-seventh of the taxable maximum in respect of a week multiplied by the number of days in the part.

(4) Where an income-based jobseeker's allowance is paid to one of a married or unmarried couple, in a case which does not fall within subsection (8) below, the taxable maximum in respect of a week shall be equal to the portion of the applicable amount which is included in respect of them for that week.

(5) Where a contribution-based jobseeker's allowance is paid to a person ("the claimant") who is a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the portion of the applicable amount which would be included in respect of them if an income-based jobseeker's allowance was payable to the claimant for that week.

(6) Where an income-based jobseeker's allowance is paid to a person who is not a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the age-related amount which would be applicable to him if a contribution-based jobseeker's allowance was payable to him for that week.

(7) Where a contribution-based jobseeker's allowance is paid to a person who is not a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the age-related amount which is applicable to him for that week.

(8) Where an income-based jobseeker's allowance is paid to a person ("the claimant") who is a member of a married or unmarried couple, the other member of which is prevented by section 14 of the Jobseekers Act 1995 (trade disputes) or any corresponding enactment in Northern Ireland from being entitled to a jobseeker's allowance, the taxable maximum in respect of a week shall be equal to half the portion of the applicable amount which is included in respect of them for that week.

(9) In this section—

"age-related amount" and "applicable amount" mean the amounts determined as such in accordance with regulations made under section 4 of the Jobseekers Act 1995 or, for Northern Ireland, regulations made under any corresponding enactment in Northern Ireland; and

"contribution-based jobseeker's allowance", "income-based jobseeker's allowance", "married couple" and "unmarried couple" have the same meanings as in the Jobseekers Act 1995 or, for Northern Ireland, the same meanings as in any corresponding enactment in Northern Ireland.**]**

Textual Amendments

F198 S. 151A inserted (2.9.1996) by Jobseekers Act 1995 (c. 18), s. 41(2)(4), **Sch. 2 para. 12**; S.I. 1996/2208, **art. 2(a)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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152 Notification of amount taxable under section 151.

M415(1) A benefit officer may by notice notify a person who is taxable in respect of any unemployment benefit or income support of the amount on which he is taxable and any such notification shall state the date on which it is issued and shall inform the person to whom it is given that he may object to the notification by notice given within 60 days after the date of issue of the notification.

(2) Where—

(a) no objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below); or

(b) an objection is made but is withdrawn by the objector by notice,

that amount shall not be questioned in any appeal against any assessment in respect of income including that amount.

(3) Where—

(a) an objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below), and

(b) the benefit officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and

(c) the officer confirms the agreement to vary in writing,

then, subject to subsection (4) below, that amount as so varied shall not be questioned in any appeal against any assessment in respect of income including that amount.

(4) Subsection (3) above shall not apply if, within 60 days from the date when the agreement was come to, the objector gives notice to the benefit officer that he wishes to repudiate or resile from the agreement.

(5) An objection to a notification may be made later than 60 days after the date of the issue of the notification if, on an application for the purpose—

(a) a benefit officer is satisfied that there was a reasonable excuse for not objecting within that time, and

(b) the objection was made thereafter without unreasonable delay, and

(c) the officer gives consent in writing;

and if the officer is not so satisfied he shall refer the application for determination—

(i) by the General Commissioners for the division in which the objector ordinarily resides or,

(ii) in a case where an appeal has been made against an assessment in respect of income including the amount in question, the General Commissioners or the Special Commissioners having jurisdiction in that appeal.

(6) Where a benefit officer has notified an amount to a person under subsection (1) above, he may by another notice notify the person of an alteration in the amount previously notified and, if he does so, the original notification shall be cancelled and this section shall apply to such a subsequent notification as it applies to the original notification.

(7) In this section "benefit officer" means the appropriate officer, in Great Britain, of the Department of Employment or of the Department of Health and Social Security, as the case may be, or, in Northern Ireland, of the Department of Health and Social Services.

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Marginal Citations
M415 Source—1981 s.28; 1987 Sch.3 6

CHAPTER II

[F199EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS]

Textual Amendments
F199 Pt. 5 Ch. 2 heading substituted by Finance Act 1989 (c. 26), **s. 53(2)(a)**

Expenses

153 Payments in respect of expenses.

M416(1) Subject to the provisions of this Chapter, where in any year a person is employed in [F200employment to which this Chapter applies] and by reason of his employment there are paid to him in respect of expenses any sums which, apart from this section, are not chargeable to tax as his income, those sums are to be treated as emoluments of the employment and accordingly chargeable to income tax under Schedule E.

(2) Subsection (1) above is without prejudice to any claim for deductions under section 198, 201 or 332(3).

(3) The reference in subsection (1) above to sums paid in respect of expenses includes any sums put at the employee's disposal by reason of his employment and paid away by him.

Textual Amendments
F200 1989 s.53(2)(b).*Previously*
"director's or higher-paid employment".

Marginal Citations
M416 Source—1976 s.60

Benefits in kind

154 General charging provision.

M417(1) Subject to section 163, where in any year a person is employed in [F201employment to which this Chapter applies] and—

(a) by reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and

(b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income,

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there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit.

(2) The benefits to which this section applies are accommodation (other than living accommodation), entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection), excluding however—

(a) any benefit consisting of the right to receive, or the prospect of receiving, any sums which would be chargeable to tax under section 149; and

(b) any benefit chargeable under section 157, 158, **[**[F202]159AA,**][**[F203]159A,**]**160 or 162;

and subject to the exceptions provided for by **[**[F204]sections 155 and 155A**]**.

(3) For the purposes of this section and sections 155 and 156, the persons providing a benefit are those at whose cost the provision is made.

Textual Amendments

F201 1989 s.53(2)(b).*Previously*
"director's or higher-paid employment".

F202 Words in s. 154(2)(b) inserted (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.2, **8**

F203 Word in s. 154(2)(b) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 30(1)(3)**

F204 1990 s.21(2)*for the year* 1990-91*and subsequent years. Previously*
"section 155".

Modifications etc. (not altering text)

C158 S. 154 excluded (N.I.) (in operation 30.12.1991 with effect from 1.9.1991) by S.R. 1991/508, regs. 1(2), 13(1)(b)(3), 15(2), **Sch. 8 para. 5(6)**(with Sch. 10)
S. 154 excluded (N.I.) (1.9.1992) by S.R. 1992/363, regs. 13(1)(b)(3), 15(2), **Sch. 8 Pt. II para. 5(6)**.

Marginal Citations

M417 Source—1976 s.61; 1977 Sch.8 5; 1981 s.30(3)

155 Exceptions from the general charge.

(1) [M418]Where the benefit of a car **[**[F205]or van**]** is taxable under section 157 **[**[F206]or 159AA**]**, section 154 does not apply to any benefit in connection with the car **[**[F205]or van**]** other than a benefit in connection with the provision of a driver for the car **[**[F205]or van**]**.

[[F207](1A) Section 154 does not apply to a benefit consisting in the provision for the employee of a car parking space at or near his place of work.**]**

(2) [M419]Section 154 does not apply where the benefit consists in provision for the employee, in premises occupied by the employer or others providing it, of accommodation, supplies or services used by the employee solely in performing the duties of his employment.

(3) [M420]Where living accommodation is provided by reason of a person's employment—

(a) alterations and additions to the premises concerned which are of a structural nature, and

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(b) repairs to the premises of a kind which, if the premises were let under a lease to which section 11 of the [M421]Landlord and Tenant Act 1985 (repairing obligations) applies, would be the obligation of the lessor under the covenants implied by subsection (1) of that section,

are not benefits to which section 154 applies.

(4) [M422]Section 154 does not apply to a benefit consisting in the provision by the employee's employer for the employee himself, or for the spouse, children or dependants of the employee, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the employee's death or retirement.

(5) [M423]Section 154 does not apply to a benefit consisting in the provision by the employee's employer of meals in any canteen in which meals are provided for the staff generally.

(6) [M424]Section 154 does not apply where the benefit consists—

(a) in providing the employee with medical treatment outside the United Kingdom (including providing for him to be an in-patient) in a case where the need for the treatment arises while the employee is outside the United Kingdom for the purpose of performing the duties of his employment; or

(b) in providing insurance for the employee against the cost of such treatment in such a case;

and for the purpose of this subsection, medical treatment includes all forms of treatment for, and all procedures for diagnosing, any physical or mental ailment, infirmity or defect.

[[F208](7) Section 154 does not apply to a benefit consisting in the provision of entertainment (including hospitality of any kind) for the employee, or for members of his family or household, if—

(a) the person providing the benefit is neither his employer nor a person connected with his employer;

(b) neither his employer nor a person connected with his employer has directly or indirectly procured its provision; and

(c) it is not provided either in recognition of particular services which have been performed by the employee in the course of his employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.**]**

Textual Amendments

F205 Words in s. 155(1) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 3(a), **8**

F206 Words in s. 155(1) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 3(b), **8**

F207 1988(F) s.46(3) for 1988-89*and subsequent years.*

F208 1988(F) s.49(1)*for* 1988-89*and subsequent years. For* 1987-88*see* 1988(F) s.49.

Marginal Citations

M418 Source—1976 s.62(1); 1980 s.48(1)

M419 Source—1976 s.62(3)

M420 Source—1976 s.62(4); 1977 Sch.8 6

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M421 1985 c. 70.
M422 Source—1976 s.62(6)
M423 Source—1976 s.62(7)
M424 Source—1976 s.62(8); 1981 s.72(1)

VALID FROM 28/07/2000

[F209 155ZA Accommodation, supplies or services used in performing duties of employment.

(1) Section 154 does not apply to a benefit consisting in the provision of accommodation, supplies or services used by the employee in performing the duties of his employment if the following conditions are met.

(2) Where the benefit is provided on premises occupied by the employer or other person providing it, the only condition is that any use of it for private purposes by the employee or members of his family or household is not significant.

(3) Where the benefit is provided otherwise than on premises occupied by the employer or other person providing it, the conditions are—
  (a) that the sole purpose of providing the benefit is to enable the employee to perform the duties of his employment,
  (b) that any use of it for private purposes is not significant, and
  (c) that it is not an excluded benefit.

(4) The Treasury may make provision by regulations as to what is an excluded benefit for the purposes of subsection (3)(c) above.

  The regulations may provide that a benefit is an excluded benefit only if such conditions as may be prescribed are met as to the terms on which, and persons to whom, it is provided.

(5) Subject to any such regulations, the provision of any of the following is an excluded benefit (whatever the terms and whoever it is provided to)—
  (a) a motor vehicle, boat or aircraft;
  (b) a benefit that involves—
    (i) the extension, conversion or alteration of any living accommodation, or
    (ii) the construction, extension, conversion or alteration of a building or other structure on land adjacent to and enjoyed with such accommodation.

(6) For the purposes of this section—
  (a) use "for private purposes" means any use that is not use in performing the duties of the employee's employment; and
  (b) use that is at the same time use in performing the duties of an employee's employment and use for private purposes counts as use for private purposes.**]**

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Textual Amendments

F209 S. 155ZA inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 2(1)**

VALID FROM 28/07/2000

[F210 155ZB Power to provide for exemption of minor benefits.

(1) The Treasury may make provision by regulations for exempting from section 154 such minor benefits as may be specified in the regulations.

(2) Any exemption conferred by regulations under this section is conditional on the benefit being made available to the employer's employees generally on similar terms.**]**

Textual Amendments

F210 S. 155ZB inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 3(1)**

VALID FROM 27/07/1999

[F211 155AA Mobile telephones.

(1) Section 154 does not apply where the benefit consists in a mobile telephone being made available (without any transfer of the property in it) to the employee or to a member of his family or household.

(2) In this section "mobile telephone" means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a telephone which—

(a) is connected to a public telecommunication system (within the meaning of the M425 Telecommunications Act 1984); and

(b) is not physically connected to a land-line;

but does not include any cordless telephone or any telepoint telephone.

(3) The mobile telephones to which the exemption provided by this section applies include any mobile telephone provided in connection with a car, van or heavier commercial vehicle, notwithstanding that the vehicle is made available as mentioned in section 157, section 159AA or, as the case may be, section 159AC.

(4) In this section "cordless telephone" means wireless telegraphy apparatus which (whether or not provided in connection with a car, van or heavier commercial vehicle) —

(a) is designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a wireless extension to a telephone, and

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(b) is used only as such an extension to a telephone that is physically connected to a land-line.

(5) In this section "telepoint telephone" means wireless telegraphy apparatus which (whether or not provided in connection with a car, van or heavier commercial vehicle) is used for the purpose of a short-range radio communications service utilising frequencies between 864 and 868 megahertz (inclusive).

(6) In this section "heavier commercial vehicle" has the same meaning as in section 159AC.**]**

Textual Amendments

F211 S. 155AA inserted (with effect in accordance with s. 44(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 44(1)**

Marginal Citations

M425 1984 c.12.

[F212 155A Care for children.

(1) Where a benefit consists in the provision for the employee of care for a child, section 154 does not apply to the benefit to the extent that it is provided in qualifying circumstances.

(2) For the purposes of subsection (1) above the benefit is provided in qualifying circumstances if—
- (a) the child falls within subsection (3) below,
- (b) the care is provided on premises which are not domestic premises,
- (c) the condition set out in subsection (4) below or the condition set out in subsection (5) below (or each of them) is fulfilled, and
- (d) in a case where the registration requirement applies, it is met.

(3) The child falls within this subsection if—
- (a) he is a child for whom the employee has parental responsibility,
- (b) he is resident with the employee, or
- (c) he is a child of the employee and maintained at his expense.

(4) The condition is that the care is provided on premises which are made available by the employer alone.

(5) The condition is that—
- (a) the care is provided under arrangements made by persons who include the employer,
- (b) the care is provided on premises which are made available by one or more of those persons, and
- (c) under the arrangements the employer is wholly or partly responsible for financing and managing the provision of the care.

(6) The registration requirement applies where—

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(a) the premises on which the care is provided are required to be registered under section 1 of the [M426]Nurseries and Child-Minders Regulation Act 1948 or section 11 of the [M427]Children and Young Persons Act (Northern Ireland) 1968, or

(b) any person providing the care is required to be registered under section 71 of the [M428]Children Act 1989 with respect to the premises on which it is provided;

and the requirement is met if the premises are so registered or (as the case may be) the person is so registered.

(7) In subsection (3)(c) above the reference to a child of the employee includes a reference to a stepchild of his.

(8) In this section—

"care" means any form of care or supervised activity, whether or not provided on a regular basis, but excluding supervised activity provided primarily for educational purposes;

"child" means a person under the age of eighteen;

"domestic premises" means any premises wholly or mainly used as a private dwelling;

"parental responsibility" has the meaning given in section 3(1) of the Children Act 1989.**]**

Textual Amendments

F212 S. 155A inserted (1990-91 and subsequent years of assessment) by Finance Act 1990 (c. 29), **s. 21(1)(3)**

Marginal Citations

M426 1948 c.53.
M427 1968 c.34 (N.I.)
M428 1989 c.41.

156 Cash equivalent of benefits charged under section 154.

(1) [M429]The cash equivalent of any benefit chargeable to tax under section 154 is an amount equal to the cost of the benefit, less so much (if any) of it as is made good by the employee to those providing the benefit.

(2) Subject to the following subsections, the cost of a benefit is the amount of any expense incurred in or in connection with its provision, and (here and in those subsections) includes a proper proportion of any expense relating partly to the benefit and partly to other matters.

(3) Where the benefit consists in the transfer of an asset by any person, and since that person acquired or produced the asset it has been used or has depreciated, the cost of the benefit is deemed to be the market value of the asset at the time of transfer.

(4) [M430]Where the asset referred to in subsection (3) above is not a car and before the transfer a person (whether or not the transferee) has been chargeable to tax in respect of the asset in accordance with subsection (5) below, the amount which under subsection (3) above is deemed to be the cost of the benefit shall (if apart from this subsection it would be less) be deemed to be—

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(a) the market value of the asset at the time when it was first applied (by those providing the benefit in question) for the provision of any benefit for a person, or for members of his family or household, by reason of his employment, less

(b) the aggregate of the amounts taken into account as the cost of the benefit in charging tax in accordance with subsection (5) below in the year or years up to and including that in which the transfer takes place.

(5) [M431]Where the benefit consists in an asset being placed at the employee's disposal, or at the disposal of others being members of his family or household, for his or their use (without any transfer of the property in the asset), or of its being used wholly or partly for his or their purposes, then the cost of the benefit in any year is deemed to be—

(a) the annual value of the use of the asset ascertained under subsection (6) below; plus

(b) the total of any expense incurred in or in connection with the provision of the benefit excluding—

(i) the expense of acquiring or producing it incurred by the person to whom the asset belongs; and

(ii) any rent or hire charge payable for the asset by those providing the benefit.

(6) [M432]Subject to subsection (7) below, the annual value of the use of the asset, for the purposes of subsection (5) above—

(a) in the case of land, is its annual value determined in accordance with section 837; and

(b) in any other case is 20 per cent. of its market value at the time when it was first applied (by those providing the benefit in question) in the provision of any benefit for a person, or for members of his family or household, by reason of his employment.

(7) [M433]Where there is payable, by those providing the benefit, any sum by way of rent or hire-charge for the asset, the annual amount of which is equal to, or greater than, the annual value of the use of the asset as ascertained under subsection (6) above, that amount shall be substituted for the annual value in subsection (5)(a) above.

(8) [M434]From the cash equivalent there are deductible in each case under section 198, 201 or 332(3) such amounts (if any) as would have been so deductible if the cost of the benefit had been incurred by the employee out of his emoluments.

(9) [M435]In the case of assets first applied before 6th April 1980 by those providing the benefit in question in the provision of any benefit for a person, or for members of his family or household, by reason of his employment—

(a) subsection (4) above shall not have effect; and

(b) in subsection (6)(b) above for the words "20 per cent." there shall be substituted the words " 10 per cent. ".

Marginal Citations

M429 Source—1976 s.63(1)-(3)
M430 Source—1976 s.63(3A); 1980 s.49(2)
M431 Source—1976 s.63(4); 1980 s.51(1)(a)
M432 Source—1976 s.63(5)(a), (c); 1980 s.49(3)
M433 Source—1976 s.63(6); 1980 s.51(1)(b)
M434 Source—1976 s.63(8)

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M435 Source—1980 s.49(4)

VALID FROM 27/07/1999

[F213 156A Limited exemption for computer equipment.

(1) This section applies to a benefit consisting in the provision of computer equipment if, in the case of a person ("the employee") who is in employment to which this Chapter applies—
   (a) that equipment is provided by being made available to the employee or to a member of his family or household;
   (b) it is so made available without any transfer of property in the equipment to the employee or to a member of his family or household; and
   (c) it is so made available in a case in which the arrangements for providing employees of the employer with the benefit of computer equipment comply with subsection (2) below.

(2) The arrangements for providing the employees of the employer with the benefit of computer equipment comply with this subsection unless—
   (a) the only arrangements for making computer equipment available to such employees, or to members of their families or households, are arrangements that are confined to cases where the employee in question is a director of a company; or
   (b) the arrangements (taking them all together) for making computer equipment available to employees of the employer, or to members of their families or households, are such that it is made available on terms that are more favourable in some or all of the cases where the employee in question is a director of a company than in one or more cases where he is not.

(3) Section 154 applies for any year of assessment to—
   (a) the benefits to which this section applies that are provided in that year and consist in the making available to the employee of any equipment, and
   (b) the benefits to which this section applies that are provided in that year and consist in the making available to members of his family or household of any equipment,

   to the extent only that the amount which (disregarding this section) would be taken to be the aggregate cash equivalent of the benefits falling within paragraphs (a) and (b) above exceeds £500.

(4) For the purposes of this section "computer equipment" includes printers, scanners, modems, discs and other peripheral devices designed to be used by being connected to or inserted in a computer.

(5) In this section references to making computer equipment available—
   (a) include references to the provision, together with any computer equipment made available, of a right to use computer software; but
   (b) do not include references to the provision of a benefit consisting in access to, or the use of, any public telecommunication system (within the meaning of the [M436] Telecommunications Act 1984).**]**

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Textual Amendments

F213 S. 156A inserted (with application in accordance with s. 45(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 45(1)**

Marginal Citations

M436 1984 c.12.

157 Cars available for private use.

(1) [M437]Where in any year in the case of a person employed in **[**[F214]employment to which this Chapter applies**]**, a car is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—

(a) it is so made available by reason of his employment and it is in that year available for his or their private use; and

(b) the benefit of the car is not (apart from this section) chargeable to tax as the employee's income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.

[[F215](2) The cash equivalent of the benefit in the year concerned shall be ascertained in accordance with Schedule 6.**]**

(3) [M438]Where in any year the benefit of a car is chargeable to tax under this section as the employee's income he shall not be taxable—

(a) under Schedule E in respect of the discharge of any liability of his in connection with the car;

(b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—

(i) for obtaining money which is spent on goods or services in connection with the car; or

(ii) for obtaining such goods or services;

(c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the car.

[F216](4) . . . . . .

[F216](5) . . . . . .

Textual Amendments

F214 1989 s.53(2)(b).*Previously*
"director's or higher paid employment".

F215 S. 157(2) substituted (with effect for the year 1995-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 2(1), **7**

F216 S. 157(4)(5) repealed (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 72, 213, Sch. 3 paras. 2(2), 7, **Sch. 23 Pt.III**

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Modifications etc. (not altering text)

C159 *See*—1988 ss.197A, 197B to F—*car parking and mileage profit.*1988 s.327—*disabled persons' vehicle maintenance grant.*

C160 S. 157 applied (E.W.S.)(25.7.1991 for tax year beginning 6.4.1991 and subsequent years) by Social Security Act 1975 (c. 14, SIF 113:1), **s. 4A(4)-(6)** (as inserted by Social Security (Contributions) Act 1991 (c. 42, SIF 113:1), **ss. 1(5)**, 6(5))

C161 S. 157 applied (N.I.)(16.10.1991 for tax year beginning 6.4.1991 and subsequent years) by Social Security (Northern Ireland) Act 1975 (c. 15, SIF 113:1), **s. 4A(4)-(6)** (as inserted by S.I. 1991/2294 (N.I. 22), **arts. 1(4)**, 3(5))
S. 157 applied (E.W.S.) (1.7.1992) by Social Security Contributions and Benefits Act 1992 (c. 4), **ss. 10(4)**, 177(4) (with s. 108(5)).

Marginal Citations

M437 Source—1976 s.64(1)

M438 Source—1976 s.64(2A); 1981 s.68(3); 1982 s.46(2)

VALID FROM 01/05/1995

[F217 157A Cars available for private use: cash alternative, etc.

Where, in any year in the case of a person employed in employment to which this Chapter applies—

(a) a car is made available as mentioned in section 157, and

(b) an alternative to the benefit of the car is offered,

the mere fact that the alternative is offered shall not make the benefit chargeable to tax under section 19(1).**]**

Textual Amendments

F217 S. 157A inserted (with effect in accordance with s. 43(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 43(1)**

158 Car fuel.

(1) M439 Where in any year in the case of a person employed in **[**F218 employment to which this Chapter applies**]** fuel is provided by reason of his employment for a car which is made available as mentioned in section 157, an amount equal to whatever is the cash equivalent of that benefit in that year shall be treated as emoluments of the employment and, accordingly, shall be chargeable to income tax under Schedule E.

[F219 (2) Subject to the provisions of this section, the cash equivalent of that benefit shall be ascertained from—

(a) Table A below where the car has an internal combustion engine with one or more reciprocating pistons and is not a diesel car;

(b) Table AB below where the car has an internal combustion engine with one or more reciprocating pistons and is a diesel car;

(c) Table B below where the car does not have an internal combustion engine with one or more reciprocating pistons.

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[[F220] TABLE A

Cylinder capacity of car in cubic centimetres	***Cash equivalent***
1,400 or less	£600
More than 1,400 but not more than 2,000	£760
More than 2,000	£1,130

TABLE AB

Cylinder capacity of car in cubic centimetres	***Cash equivalent***
2,000 or less	£550
More than 2,000	£710

TABLE B

Description of car	***Cash equivalent***
Any car	£1,130**]**

(2A) For the purposes of subsection (2) above a diesel car is a car which uses heavy oil as fuel; and "heavy oil" here means heavy oil as defined by section 1(4) of the Hydrocarbon Oil Duties Act 1979.

(2B) For the purposes of Tables A and AB in subsection (2) above a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicles (Excise) Act 1971.**]**

(3) [M440]Without prejudice to the generality of subsection (1) above, fuel is provided for a car if—

(a) any liability in respect of the provision of fuel for the car is discharged;

(b) a non-cash voucher or a credit-token is used to obtain fuel for the car or money which is spent on such fuel;

(c) any sum is paid in respect of expenses incurred in providing fuel for the car.

In this subsection "non-cash voucher" and "credit-token" have the meanings given by section 141(7) and 142(4) respectively.

(4) The Treasury may by order taking effect from the beginning of any year beginning after it is made substitute a different Table for **[**[F221]any**]** of the Tables in subsection (2) above.

(5) Where **[**[F222]paragraph 6**]** of Schedule 6 applies to reduce the cash equivalent of the benefit of the car for which the fuel is provided, the same reduction shall be made to the cash equivalent of the benefit of the fuel ascertained under subsection (2) above.

(6) If in the relevant year—

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(a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by him in or in connection with the provision of fuel for his private use and he does so; or

(b) the fuel is made available only for business travel;

the cash equivalent is nil.

Textual Amendments

F218 1989 s.53(2)(b). Previously "director's or higher-paid employment".

F219 S. 158(2)(2A)(2B) substituted for s. 158(2) (with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 53(2)(4)**.

F220 Tables in s. 158(2) substituted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 6(1), **7**

F221 Word in s. 158(4) substituted (with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 53(3)(4)**.

F222 Words in s. 158(5) substituted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 6(2), **7**

Modifications etc. (not altering text)

C162 *See*—1988 ss.197A, 197B—*car parking and mileage profit.*1988 s.327—*disabled persons' vehicle maintenance grant.*

C163 S. 158 applied (E.W.S.) (25.7.1991 for tax year beginning 6.4.1991 and subsequent years) by Social Security Act 1975 (c. 14, SIF 113:1), **s. 4A(4)-(6)** (as inserted by Social Security Act 1991 (c. 42, SIF 113:1), **ss. 1(5)**, 6(5))

C164 applied (N.I.) (16.10.1991 for tax year beginning 6.4.1991 and subsequent years) by Social Security (Northern Ireland) Act 1975 (c. 15, SIF 113:1), **s. 4A(4)-(6)** (as inserted by S.I. 1991/2294 (N.I. 22), **arts. 1(4)**, 3(5))
S. 158 applied (E.W.S.) (1.7.1992) by Social Security Contributions and Benefits Act 1992 (c. 4), **ss. 10(4)**, 177(4) (with s. 108(5)).

Marginal Citations

M439 Source—1976 s.64A(1); 1981 s.69(1); 1982 s.46(4)

M440 Source—1976 s.64A(3)-(6); 1981 s.69(1)

159 Pooled cars.

M441(1) This section applies to any car in the case of which the inspector is satisfied (whether on a claim under this section or otherwise) that it has for any year been included in a car pool for the use of the employees of one or more employers.

(2) A car is to be treated as having been so included for a year if—

(a) in that year it was made available to, and actually used by, more than one of those employees and, in the case of each of them, it was made available to him by reason of his employment but it was not in that year ordinarily used by one of them to the exclusion of the others; and

(b) in the case of each of them any private use of the car made by him in that year was merely incidental to his other use of it in the year; and

(c) it was in that year not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

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(3) Where this section applies to a car, then for the year in question the car is to be treated under sections 154 and 157 as not having been available for the private use of any of the employees.

(4) A claim under this section in respect of a car for any year may be made by any one of the employees mentioned in subsection (2)(a) above (referred to below as "the employees concerned") or by the employer on behalf of all of them.

(5) On an appeal against the decision of the inspector on a claim under this section all the employees concerned may take part in the proceedings, and the determination of the body of Commissioners or county court appealed to shall be binding on all those employees, whether or not they have taken part in the proceedings.

(6) Where an appeal against the decision of the inspector on a claim under this section has been determined, no appeal against the inspector's decision on any other such claim in respect of the same car and the same year shall be entertained.

Modifications etc. (not altering text)

C165 *See*—1988 ss.197A, 197B—*car parking and mileage profit.*1988 s.327—*disabled persons' vehicle maintenance grant.*

Marginal Citations

M441 Source—1976 s.65

[F223 159A Vans available for private use.

(1) Where in any year, in the case of a person employed in employment to which this Chapter applies, a van is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—

(a) it is so made available by reason of his employment and it is in that year available for his or their private use, and

(b) the benefit of the van is not (apart from this section) chargeable to tax as the employee's income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.

(2) The cash equivalent of the benefit in the year concerned shall be ascertained in accordance with Schedule 6A.

(3) Where in any year the benefit of a van is chargeable to tax under this section as the employee's income, he shall not be taxable—

(a) under Schedule E in respect of the discharge of any liability of his in connection with the van;

(b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—

(i) for obtaining money which is spent on goods or services in connection with the van, or

(ii) for obtaining such goods or services;

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(c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the van.**]**

Textual Amendments

F223 Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, **8**

[F224]159AB Pooled vans.

Section 159 shall apply in relation to vans as it applies in relation to cars, and for the purposes of the application of that section to vans—

(a) any reference in that section to a car shall be construed as a reference to a van,

(b) the reference in subsection (1) of that section to a car pool shall be construed as a reference to a van pool, and

(c) the reference in subsection (3) of that section to section 157 shall be construed as a reference to section 159AA.

Textual Amendments

F224 Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, **8**

[[F225]159AC Heavier commercial vehicles available for private use.

(1) This section applies where in any year—

(a) a heavier commercial vehicle is made available to an employee in circumstances such that, had that vehicle been a van, the benefit so provided would have been chargeable to tax under section 159AA, and

(b) the employee's use of the vehicle is not wholly or mainly private use.

(2) Section 154 shall not apply to—

(a) the benefit so provided, or

(b) any benefit in connection with the vehicle other than a benefit in connection with the provision of a driver for the vehicle.

(3) The employee shall not be taxable—

(a) under Schedule E in respect of the discharge of any liability of his in connection with the vehicle;

(b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—

(i) for obtaining money which is spent on goods or services in connection with the vehicle, or

(ii) for obtaining such goods or services;

(c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the vehicle.

(4) In this section "heavier commercial vehicle" means a mechanically propelled road vehicle which is—

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(a) of a construction primarily suited for the conveyance of goods or burden of any description, and

(b) of a design weight exceeding 3,500 kilograms;

and "design weight" here means the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden.

(5) In this section—

(a) "private use", in relation to a vehicle made available to an employee, means any use other than for his business travel, and

(b) "business travel" means travelling which the employee is necessarily obliged to do in the performance of the duties of his employment.**]**

Textual Amendments

F225 S. 159AC inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 74(1)(3)**

[[F226]159A Mobile telephones.

(1) Where in any year in the case of a person employed in employment to which this Chapter applies a mobile telephone is made available (without any transfer of the property in it) either to that person or to others who are members of his family or household, and—

(a) it is so made available by reason of his employment and it is in that year available for his or their private use, and

(b) the benefit of the mobile telephone is not (apart from this section) chargeable to tax as the employee's income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.

(2) The cash equivalent of a benefit taxable under this section in any year shall be £200 for each mobile telephone made available in that year, but subject to the following provisions of this section.

(3) If for any year—

(a) there is no private use of the mobile telephone, or

(b) the employee is required to, and does, make good to the person providing the benefit the full cost of any private use of the mobile telephone,

then the cash equivalent of the benefit for that year is nil.

(4) If the mobile telephone is unavailable for any part of a year, the cash equivalent of the benefit for that year shall be reduced by an amount which bears to that specified in subsection (2) above for that year the proportion which the number of days in the year on which the mobile telephone is unavailable bears to 365.

(5) For the purposes of subsection (4) above, a mobile telephone is to be regarded as "unavailable" on any day if, and only if—

(a) it is not made available as mentioned in subsection (1) above until after that day, or

(b) it ceases to be so available before that day, or

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(c) it is incapable of being used at all throughout a period of not less than 30 consecutive days of which that day is one.

(6) Where different mobile telephones are made available on different days in a year, the employee shall be treated for the purposes of this section as if the same mobile telephone (or, in a case where two or more mobile telephones are made available concurrently, the same mobile telephones) had been made available on each of those days.

(7) The Treasury may by order taking effect from the beginning of any year commencing after the making of the order increase or further increase the amount specified in subsection (2) above.

(8) For the purposes of this section—

(a) "mobile telephone" means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a telephone which is connected to a public telecommunication system (within the meaning of the Telecommunications Act 1984) but which is not physically connected to a land-line and—

(i) includes any such apparatus provided in connection with a car **[**[F227]or van**]**, notwithstanding that the car **[**[F227]or van**]** is made available as mentioned in section 157 **[**[F228]or 159AA**]**, [F229]. . .

[F230]**[** (ia) includes any such apparatus provided in connection with a heavier commercial vehicle (within the meaning given by section 159AC) notwithstanding that the vehicle is made available as mentioned in that section;**]**

(ii) does not include a cordless telephone or a telepoint telephone, whether or not provided in connection with a car **[**[F227]or van**][**[F231]or heavier commercial vehicle**]**;

(b) "cordless telephone" means wireless telegraphy apparatus—

(i) designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a wireless extension to a telephone, and

(ii) used only as such an extension to a telephone that is physically connected to a land-line;

(c) "telepoint telephone" means wireless telegraphy apparatus used for the purpose of a short-range radio communications service utilising frequencies between 864 and 868 megahertz (inclusive);

(d) "private use", in relation to a mobile telephone, means any use of the telephone to make calls, other than calls made wholly, exclusively and necessarily in the performance of the duties of the employment;

(e) "full cost", in relation to any private use of a mobile telephone, means the aggregate of—

(i) the cost of any telephone calls which constitute private use of the mobile telephone; and

(ii) any other cost of the benefit provided, determined in accordance with the provisions of section 156(2) and (5) to (7) as they would apply if the benefit were chargeable to tax under section 154;

(f) an employee who accepts a call on the footing that the cost of the call will be charged to the person providing the benefit shall be treated as if the employee had made the call.**]**

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Textual Amendments

F226 S. 159A inserted (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), **s. 30(2)(3)**

F227 Words in s. 159A(8)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 5(a), **8**

F228 Words in s. 159A(8)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 5(b), **8**

F229 Word in s. 159A(8)(a)(i) repealed (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, ss. 74(2)(a)(3), 213, **Sch. 23 Pt.III**

F230 S. 159A(8)(a)(ia) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 74(2)(b)(3)**

F231 Words in s. 159A(8)(a)(ii) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 74(2)(c)(3)**

160 Beneficial loan arrangements.

(1) [M442]Where in the case of a person employed in **[**[F232]employment to which this Chapter applies**]** there is outstanding for the whole or part of a year a loan (whether to the employee himself or a relative of his) of which the benefit is obtained by reason of his employment and—

(a) no interest is paid on the loan for that year; or

(b) the amount of interest paid on it for the year is less than interest at the official rate,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit of the loan for that year.

(2) [M443]Where in the case of a person employed in **[**[F232]employment to which this chapter applies**]**—

(a) there is in any year released or written off the whole or part of a loan (whether to the employee himself or a relative of his, and whether or not such a loan as is mentioned in subsection (1) above), and

(b) the benefit of that loan was obtained by reason of his employment,

then there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to that which is released or written off.

[[F233](3) Where—

(a) there was outstanding, at any time when a person was in employment to which this Chapter applies, the whole or part of a loan to him (or a relative of his) the benefit of which was obtained by reason of his employment, and

(b) that employment has terminated or ceased to be employment to which this Chapter applies,

subsection (2) above applies as if the employment had not terminated or, as the case may be, had not ceased to be employment to which this Chapter applies.**]**

(4) [M444]Part I of Schedule 7 has effect as to what is meant by the benefit of a loan obtained by reason of a person's employment; the cash equivalent of the benefit is to be ascertained in accordance with Part II of that Schedule; and Part III of that Schedule has effect for excluding from the operation of subsection (1) above loans on which

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interest is eligible for relief under subsection (1) of section 353 or which would be so eligible apart from subsection (2) of that section **[**[F234]but that Part of that Schedule is subject to Part IV of that Schedule, which makes provision in connection with the restriction to tax at the basic rate of certain reliefs in respect of loans to which Part III of that Schedule has effect; and Part V of that Schedule has effect for the interpretation of the Schedule.**]**.

[[F235](4A) Where an assessment for any year in respect of a loan has been made or determined on the footing that the whole or part of the interest payable on the loan for that year was not in fact paid, but it is subsequently paid, then, on a claim in that behalf, the cash equivalent for that year shall be recalculated so as to take that payment into account and the assessment shall be adjusted accordingly.**]**

(5) [M445]In this section, sections 161 and 162 and Schedule 7—

(a) "loan" includes any form of credit;

(b) references to a loan include references to any other loan applied directly or indirectly towards the replacement of the first-mentioned loan;

(c) references to making a loan include arranging, guaranteeing or in any way facilitating a loan (related expressions being construed accordingly); and

(d) references to the official rate of interest are to the **[**[F236]rate applicable under section 178 of the Finance Act 1989.**]**

(6) For the purposes of this section and section 161, a person is a relative of another person if he or she is—

(a) the spouse of that other; or

(b) a parent or remoter forebear, child or remoter issue, or brother or sister of that other or of the spouse of that other; or

(c) the spouse of a person falling within paragraph (b) above.

(7) Subject to section 161, this section applies to loans whether made before or after this Act is passed.

Textual Amendments

F232 1989 s.53(2)(b).*Previously*
"director's or higher-paid employment".

F233 1989 s.53(2)(c).*Previously*
"(3) Where there was outstanding at any time when a person was in director's or higher-paid employment the whole or part of a loan to him (or to a relative of his) the benefit of which was obtained by reason of his employment, and that director's or higher-paid employment has terminated, whether on the employee ceasing to be employed or ceasing to be employed in director's or higher-paid employment, subsection (2) above applies as if it had not terminated.".

F234 Words in s. 160(4) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para. 1(1)**(for year 1991-92 and subsequent years of assessment)

F235 S. 160(4A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para. 1(2)**(for year 1991-92 and subsequent years of assessment)

F236 1989 s.179(1)*and* (4)*and* S.I. 1989 No.1298 (*not reproduced*)*on and after* 18*August* 1989.*Previously*
"rate prescribed from time to time by the Treasury by order".*And see* S.I. 1989 No.1297 (*in* Part III Vol.5)*for regulations made, and interest rates set, under* 1989 s.178.*See also* Table O Vol.1*for rates of interest.*

Marginal Citations

M442 Source—1976 s.66(1)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M443 Source—1976 s.66(3)
M444 Source—1976 s.66(8); 1982 s.26(9)(a)
M445 Source—1976 s.66(9)-(11)

161 Exceptions from section 160.

(1) [M446]There is no charge to tax under section 160(1) if the cash equivalent does not exceed **[**[F237]£300**]** or (for a year in which there are two or more loans outstanding) the total of all the cash equivalents does not exceed that amount.

(2) [M447]Where the amount of interest paid on a loan for the year in which it is made is not less than interest at the official rate applying for that year for the purposes of section 160 and the loan is made—

(a) for a fixed and unvariable period; and

(b) at a fixed and unvariable rate of interest,

subsection (1) of that section shall not apply to the loan in any subsequent year by reason only of an increase in the official rate since the year in which the loan was made.

(3) Where a loan was made at any time before 6th April 1978—

(a) for a fixed and unvariable period; and

(b) at a fixed and unvariable rate of interest,

section 160(1) shall not apply to the loan if it is shown that the rate of interest is not less than such rate as could have been expected to apply to a loan on the same terms (other than as to the rate of interest) made at that time between persons not connected with each other (within the meaning of section 839) dealing at arm's length.

(4) [M448]If the employee shows that he derived no benefit from a loan made to a relative of his, section 160(1) and (2) above shall not apply to that loan.

(5) Section 160(2) does not apply where the amount released or written off is chargeable to income tax as income of the employee apart from that section, except—

(a) where it is chargeable only by virtue of section 148; or

(b) to the extent that the amount exceeds the sums previously falling to be treated as the employee's income under section 677.

(6) [M449]On the employee's death—

(a) a loan within subsection (1) of section 160 ceases to be outstanding for the purposes of the operation of that subsection; and

(b) no charge arises under subsection (2) of that section by reference to any release or writing-off which takes effect on or after the death.

(7) [M450]Section 160(2) does not apply to benefits received in pursuance of arrangements made at any time with a view to protecting the holder of shares acquired before 6th April 1976 from a fall in their market value.

Textual Amendments

F237 Words in s. 161(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 31(1)(2)** (for year 1991-92 and subsequent years of assessment)

Marginal Citations

M446 Source—1976 s.66(2); 1980 s.50(1)

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M447 Source—1980 s.50(2), (3)
M448 Source—1976 s.66(4), (5)
M449 Source—1976 s.66(7)
M450 Source—1976 s.66(11)(b)

VALID FROM 28/07/2000

[F238 161A Treatment of qualifying loans.

(1) In this Chapter a "qualifying loan" means a loan made to a person where, assuming interest is paid on the loan (whether or not it is in fact paid), the whole or part of the interest paid on it for the year—
  (a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section, or
  (b) is deductible in computing the amount of the profits to be charged—
    (i) under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him, or
    (ii) under Schedule A in respect of a Schedule A business carried on by him.

(2) Section 160(1) does not apply to a loan in any year in which, on the assumption mentioned in subsection (1) above, the whole of the interest paid on it is eligible for relief or deductible as mentioned in that subsection.]

Textual Amendments
F238 S. 161A inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 4(1)**

VALID FROM 28/07/2000

[F239 161B Beneficial loans: loans on ordinary commercial terms.

(1) Section 160(1) does not apply to a loan on ordinary commercial terms.

(2) Schedule 7A to this Act has effect as to what is meant by a loan on ordinary commercial terms.]

Textual Amendments
F239 S. 161B inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 5(1)**

162 Employee shareholdings.

(1) M451 Where [F240 after 6th April 1976—]

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(a) a person employed or about to be employed in **[**[F241]employment to which this Chapter applies**]** ("the employee"), or a person connected with him, acquires shares in a company (whether the employing company or not); and

(b) the shares are acquired at an under-value in pursuance of a right or opportunity available by reason of his employment,

section 160(1) and Schedule 7 apply as if the employee had the benefit of an interest-free loan obtained by reason of his employment ("the notional loan").

(2) The provisions of this section have effect subject to sections 185 and 186; and in this section—

(a) [M452]references to shares being acquired at an under-value are references to shares being acquired either without payment for them at the time or being acquired for an amount then paid which is less than the market value of fully paid up shares of that class (in either case with or without obligation to make payment or further payment at some later time); and

(b) [M453]any reference, in relation to any shares, to the under-value on acquisition is a reference to the market value of fully paid up shares of that class less any payment then made for the shares.

(3) [M454]The amount initially outstanding of the notional loan is so much of the under-value on acquisition as is not chargeable to tax as an emolument of the employee; and—

(a) the loan remains outstanding until terminated under subsection (4) below; and

(b) payments or further payments made for the shares after the initial acquisition go to reduce the amount outstanding of the notional loan.

(4) [M455]The notional loan terminates on the occurrence of any of the following events—

(a) the whole amount of it outstanding is made good by means of payments or further payments made for the shares; or

(b) the case being one in which the shares were not at the time of acquisition fully paid up, any outstanding or contingent obligation to pay for them is released, transferred or adjusted so as no longer to bind the employee or any person connected with him; or

(c) the shares are so disposed of by surrender or otherwise that neither he nor any such person any longer has a beneficial interest in the shares; or

(d) the employee dies.

(5) If the notional loan terminates as mentioned in subsection (4)(b) or (c) above, there is then for the year in which the event in question occurs the same charge to income tax on the employee, under section 160(2) **[**[F242](and where appropriate section 160(3))**]**, as if an amount equal to the then outstanding amount of the notional loan had been released or written off from a loan within that section.

(6) Where after 6th April 1976 shares are acquired, whether or not at an under-value but otherwise as mentioned in subsection (1) above, and—

(a) the shares are subsequently disposed of by surrender or otherwise so that neither the employee nor any person connected with him any longer has a beneficial interest in them; and

(b) the disposal is for a consideration which exceeds the then market value of the shares,

then for the year in which the disposal is effected the amount of the excess is treated as emoluments of the employee's employment and accordingly chargeable to income tax under Schedule E.

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[[F243](7) If at the time of the event giving rise to a charge by virtue of subsection (6) above the employment in question has terminated, that subsection shall apply as if it had not**]**.

(8) No charge arises under subsection (6) above by reference to any disposal effected after the death of the employee, whether by his personal representatives or otherwise.

(9) This section applies in relation to acquisition and disposal of an interest in shares less than full beneficial ownership (including an interest in the proceeds of sale of part of the shares but not including a share option) as it applies in relation to the acquisition and disposal of shares, subject to the following modifications—

(a) for references to the shares acquired there shall be substituted references to the interest in shares acquired;

(b) for the reference to the market value of the shares acquired there shall be substituted a reference to the proportion corresponding to the size of the interest of the market value of the shares in which the interest subsists;

(c) for the reference to shares of the same class as those acquired there shall be substituted a reference to shares of the same class as those in which the interest subsists; and

(d) for the reference to the market value of fully paid up shares of that class there shall be substituted a reference to the proportion of that value corresponding to the size of the interest.

(10) In this section—

(a) "shares" includes stock and also includes securities as defined in section 254(1);

(b) "acquisition" in relation to shares includes receipt by way of allotment or assignment or otherwise howsoever;

(c) any reference to payment for shares includes giving any consideration in money or money's worth or making any subscription, whether in pursuance of a legal liability or not;

(d) "market value" has the same meaning as, for the purposes of the **[**[F244]1992**]** Act, it has by virtue of section **[**[F244]272**]** of that Act;

and section 839 applies for the purposes of this section.

(11) [M456]This section, in respect of any shares or any interest in shares, operates only to include an amount in emoluments so far as any amount corresponding to it, and representing the same benefit, does not otherwise fall to be so included under the Tax Acts.

Textual Amendments

F240 1988(F) s.146*and* Sch.13 para.3 (*deemed always to have had effect*).

F241 1989 s.53(2)(b).*Previously*
"director's or higher-paid employment".

F242 1989 s.53(2)(d).

F243 1989 s.53(2)(e).*Previously*
"(7) If at the time of the event giving rise to a charge in relation to any shares by virtue of subsection (5) or (6) above the employee has ceased to be in the director's or higher-paid employment by virtue of which he is the employee for the purposes of this section in relation to those shares, those subsections shall apply as if he had not so ceased.".

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F244 Words in s. 162(10)(d) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(11)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C166 S. 162 applied (with effect as mentioned in s. 289(1)(2) of the affecting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).

C167 S. 162(1) excluded in part (28.7.2000) by Finance Act 2000 (c. 17), s. 62, **Sch. 14 para. 54(1)** (with Sch. 14 para. 54(2), 55)

C168 S. 162(5) modified (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), ss. 448, 458(1), **Sch. 10 para. 32**; S.I. 2003/120, **art. 2** Sch. (with arts. 3-5, as amended by S.I. 2003/333, art. 14)

Marginal Citations

M451 Source—1976 s.67(1), (3)
M452 Source—1976 s.67(2)
M453 Source—1976 s.67(4)
M454 Source—1976 s.67(4)
M455 Source—1976 s.67(5)-(11); 1979(C) Sch.7
M456 Source—1976 s.67(12)

163 Expenses connected with living accommodation.

M457(1) This section applies where, in the case of a person employed in **[**F245employment to which this Chapter applies**]**, living accommodation is provided by reason of the employment and, accordingly, a charge to tax would arise in his case under section 145 but for the case being one of those specified in subsection (4) of that section.

(2) Where, by reason of expenditure incurred in one or more of the following, that is to say,—

(a) heating, lighting or cleaning the premises concerned;

(b) repairs to the premises, their maintenance or decoration;

(c) the provision in the premises of furniture or other appurtenances or effects which are normal for domestic occupation;

or by reason of such expenditure being reimbursed to the employee, an amount falls to be included in the emoluments of his employment, that amount shall not exceed the limit specified in subsection (3) below.

(3) That limit is—

(a) 10 per cent. of the net amount of the emoluments of the employment or, if the accommodation is provided for a period of less than a year, so much of that percentage of the net amount as is attributable to the period; less

(b) where the expenditure is incurred by a person other than the employee, so much as is properly attributable to the expenditure of any sum made good by the employee to that other.

(4) The net amount of the emoluments of a person's employment for the purposes of subsection (3) above is the amount of those emoluments (leaving out of account the expenditure in question) after—

(a) any capital allowance; and

(b) any deductions allowable under section 198, 199, 201, 332(3), 592(7), 594 or 619(1)(a);

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and, for the purposes of this subsection, in the case of employment by a company there shall be taken into account, as emoluments of the employment, the emoluments of any employment by an associated company.

(5) For the purposes of subsection (4) above, a company is an associated company of another if one of them has control of the other or both are under the control of the same person.

Textual Amendments

F245 1989 s.53(2)(b).*Previously*
"director's or higher-paid employment".

Marginal Citations

M457 Source—1976 s.63A; 1977 s.34

164 Director's tax paid by employer.

(1) [M458]Subject to the provisions of this Chapter, where in any year a person ("the recipient") is employed as a director of a company and—

(a) a payment of, or on account of, income assessable to income tax under Schedule E as emoluments of that employment is made to him in circumstances in which the person making the payment is required, by regulations made under section 203, to deduct an amount of income tax on making the payment; and

(b) the whole of that amount is not so deducted but is, or any part of it is, accounted for to the Board by someone other than the recipient;

the amount so accounted for the Board, less so much (if any) as is made good by the recipient to that other person or so deducted, shall be treated as emoluments of the employment and accordingly chargeable to income tax under Schedule E.

(2) A person shall not be treated, for the purposes of subsection (1) above, as employed as a director of a company if he has no material interest in the company and either paragraph (a) or paragraph (b) of section 167(5) is satisfied.

(3) Where an amount treated as emoluments of a person's employment, by subsection (1) above, is accounted for to the Board at a time when the employment has come to an end, those emoluments shall be treated, for the purposes of the Income Tax Acts, as having arisen in the year in which the employment ended; but that subsection shall not apply in relation to any amount accounted for to the Board after the death of the director in question.

Marginal Citations

M458 Source—1976 s.66A; 1983 s.22

165 Scholarships.

(1) [M459]Nothing in section 331 shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from the charge to tax under section 154.

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(2) [M460]For the purposes of this Chapter, any scholarship provided for a member of a person's family or household shall, without prejudice to any other provision of this Chapter, be taken to have been provided by reason of that person's employment if it is provided under arrangements entered into by, or by any person connected with, his employer (whether or not those arrangements require the employer or connected person to contribute directly or indirectly to the cost of providing the scholarship).

(3) [M461]Section 154 does not apply to a benefit consisting in a payment in respect of a scholarship—

(a) provided from a trust fund or under a scheme; and

(b) held by a person receiving full-time instruction at a university, college, school or other educational establishment; and

(c) which would not be regarded, for the purposes of this Chapter, as provided by reason of a person's employment were subsection (2) above and section 168(3) to be disregarded;

if, in the year in which the payment is made, not more than 25 per cent. of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in paragraph (b) above is attributable to relevant scholarships.

(4) [M462]This section does not have effect in relation to any payment if—

(a) it is made in respect of a scholarship awarded before 15th March 1983, and

(b) the first payment in respect of the scholarship was made before 6th April 1984; and

(c) in relation to payments made after 5th April 1989, the person holding the scholarship is receiving full-time instruction at the university, college, school or other educational establishment at which he was receiving such instruction on—

(i) 15th March 1983, in a case where the first payment in respect of the scholarship was made before that date; or

(ii) the date on which the first such payment was made, in any other case.

(5) [M463]For the purposes of subsection (4)(c) above, a payment made before 6th April 1989 in respect of any period beginning on or after that date shall be treated as made at the beginning of that period.

(6) [M464]In this section—

(a) "scholarship" includes an exhibition, bursary or other similar educational endowment;

(b) "relevant scholarship" means a scholarship which is provided by reason of a person's employment (whether or not that employment is **[**[F246]employment to which this Chapter applies**]**); and for the purposes of this definition "employment" includes an office or employment whose emoluments do not fall to be assessed under Schedule E but would fall to be so assessed if the employee were resident, and ordinarily resident, and all the duties of the employment were performed wholly, in the United Kingdom;

and section 839 applies for the purposes of this section.

Textual Amendments

F246 1989 s.53(2)(b).*Previously*

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"director's or higher-paid employment".

Marginal Citations
M459 Source—1976 s.62A(1); 1983 s.20(1)
M460 Source—1976 s.62A(2); 1983 s.20(1)
M461 Source—1976 s.62A(3); 1983 s.20(1); 1984 s.31(1)
M462 Source—1983 s.20(2), (3); 1984 s.31(3)
M463 Source—1983 s.20(3A); 1984 s.31(3)
M464 Source—1976 s.62A(4); 1983 s.20(1); 1984 s.31(2)

General supplementary provisions

166 Notice of nil liability under this Chapter.

M465(1) If a person furnishes to the inspector a statement of the cases and circumstances in which payments of a particular character are made, or benefits or facilities of a particular kind are provided, for any employees (whether his own or those of anyone else), and the inspector is satisfied that no additional tax is payable under this Chapter by reference to the payments, benefits or facilities mentioned in the statement, the inspector shall notify the person accordingly; and then nothing in this Chapter applies to those payments, or to the provision of those benefits or facilities, or otherwise for imposing any additional charge to income tax.

(2) The inspector may, if in his opinion there is reason to do so, by notice served on the person to whom notification under subsection (1) above was given, revoke the notification, either as from the date of its making or from such later date as may be specified in the notice under this subsection; and then all such income tax becomes chargeable, and all such returns are to be made by that person and by the employees in question as would have been chargeable or would have had to be made in the first instance if the notification under subsection (1) had never been given or, as the case may be, it had ceased to have effect on the specified date.

(3) In relation to a notification given before 6th April 1988, the reference in subsection (2) above to income tax includes a reference to income tax chargeable under the corresponding enactments in force before that date, and accordingly, where the notification is revoked for any period before that date, that subsection has effect in relation to years of assessment before the year 1988-89.

(4) The validity of any notification given under section 199 of the 1970 Act which was continued in force by paragraph 14 of Schedule 9 to the Finance Act 1976 shall not be affected by the repeal of that paragraph by this Act but shall continue in force as if made under subsection (1) above in relation to tax liability under sections 153 to 156; and subsection (2) above shall apply accordingly.

Marginal Citations
M465 Source—1976 s.70, Sch.9 14(2)-(4)

[F247167 Employment to which this Chapter applies.

(1) This Chapter applies—

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(a) to employment as a director of a company (but subject to subsection (5) below), and

(b) to employment with emoluments at the rate of £8,500 a year or more.

(2) For this purpose emoluments are to be calculated—

(a) on the basis that they include all such amounts as come, or would but for section 157(3) come, into charge under this Chapter or section 141, 142, 143 or 145, and

(b) without any deduction under section 198, 201 or 332(3).

F248 **[** (2A) Where, by virtue of paragraph 15 of Schedule 7, the amount, or the total of the amounts, treated under section 160 as emoluments of a person exceeds what it would have been apart from that paragraph, then, for the purposes of subsection (2)(a) above there shall, instead of that excess, be brought into account an amount equal to the difference between—

(a) the amount by which his total income for the purposes of excess liability exceeds the basic rate limit; and

(b) what the amount referred to in paragraph (a) above would have been, apart from paragraph 15 of Schedule 7;

and in this subsection "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**F249not chargeable at the lower rate**]][**F250by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

(3) Where a person is employed in two or more employments by the same employer and either—

(a) the total of the emoluments of those employments (applying this section) is at the rate of £8,500 a year or more, or

(b) this Chapter applies (apart from this subsection) to one or more of those employments,

this Chapter shall apply to all the employments.

(4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be.

(5) This Chapter shall not apply to a person's employment by reason only of its being employment as a director of a company (without prejudice to its application by virtue of subsection (1)(b) or (3) above) if he has no material interest in the company and either—

(a) his employment is as a full-time working director; or

(b) the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.**]**

Textual Amendments

F247 S. 167 substituted by Finance Act 1989 (c. 26), **s. 53(1)**.*Previously*
"Meaning of "director's or higher-paid employment".**167.**—(1) In this Chapter "director's or higher-paid employment" means—(a) subject to subsection (5) below, employment as a director of a company; or (b) employment with emoluments at the rate of £8,500 a year or more. (2) For this

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purpose emoluments are to be calculated—(a) on the basis that they include all such amounts as come or would but for section 157(3) come into charge under this Chapter or section 141, 142, 143 or, in the case of those in director's or higher-paid employment, 145; and (b) without any deduction under section 198, 201 or 332(3). (3) Where a person is employed in two or more employments by the same employer and either—(a) the total of the emoluments of those employments (applying this section) is at the rate of £8,500 a year or more; or (b) one or more of those employments is (apart from this subsection) director's or higher-paid, all the employments are to be treated as director's or higher-paid. (4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be. (5) A person's employment is not director's or higher-paid by reason only of its being employment as a director of a company (without prejudice to its being so under subsection (1)(b) or (3) above) if he has no material interest in the company and either—(a) his employment is as a full-time working director; or (b) the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.”.

F248 S. 167(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para. 2** (for year 1991-92 and subsequent years of assessment)

F249 Words in s. 167(2A) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**.

F250 Words in s. 167(2A) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

168 Other interpretative provisions.

M466(1) The following provisions of this section apply for the interpretation of expressions used in this Chapter.

(2) Subject to section 165(6)(b), “employment” means an office or employment the emoluments of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly.

(3) For the purposes of this Chapter—

(a) all sums paid to an employee by his employer in respect of expenses, and

(b) all such provision as is mentioned in this Chapter which is made for an employee, or for members of his family or household, by his employer,

are deemed to be paid to or made for him or them by reason of his employment, except any such payment or provision made by the employer, being an individual, as can be shown to have been made in the normal course of his domestic, family or personal relationships.

(4) References to members of a person’s family or household are to his spouse, his sons and daughters and their spouses, his parents and his servants, dependents and guests.

(5) As respects cars, the following definitions apply—

(a) “car” means any mechanically propelled road vehicle except—

(i) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description,

(ii) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used,

(iii) a motor cycle as defined in section 190(4) of the M467Road Traffic Act 1972, and

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(iv) an invalid carriage as defined in section 190(5) of that Act;

(b) the age of a car at any time is the interval between the date of its first registration and that time;

(c) "business travel" means travelling which a person is necessarily obliged to do in the performance of the duties of his employment;

[[F251](d) the date of a car's first registration is the date on which it was first registered under the [M468]Vehicles (Excise) Act 1971 or under corresponding legislation of any country or territory;**]**

[[F252](e) the price of a car as regards a year shall be determined in accordance with the provisions contained in or made under sections 168A to 168G; and**]**

(f) "private use", in relation to a car made available to any person, or to others being members of his family or household, means any use otherwise than for his business travel.

[[F253](5A) As respects vans, the following definitions apply—

(a) "van" means a mechanically propelled road vehicle which is—

(i) of a construction primarily suited for the conveyance of goods or burden of any description, and

(ii) of a design weight not exceeding 3,500 kilograms,

and which is not a motor cycle as defined in section 185(1) of the [M469]Road Traffic Act 1988;

(b) the age of a van at any time is the interval between the date of its first registration and that time;

(c) "business travel" means travelling which a person is necessarily obliged to do in the performance of the duties of his employment;

(d) the date of a van's first registration is the date on which it was first registered under the [M470]Vehicles (Excise) Act 1971 or under corresponding legislation of any country or territory;

(e) "design weight" means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden; and

(f) "private use", in relation to a van made available to any person, or to others being members of his family or household, means any use otherwise than for his business travel.**]**

(6) For the purposes of this Chapter—

(a) a car made available in any year to an employee, or to others being members of his family or household, by reason of his employment is deemed to be available in that year for his or their private use unless the terms on which the car is made available prohibit such use and no such use is made of the car in that year;

(b) a car made available to an employee, or to others being members of his family or household, by his employer is deemed to be made available to him or them by reason of his employment (unless the employer is an individual and it can be shown that the car was made so available in the normal course of his domestic, family or personal relationships).

[[F254](c) a van made available in any year to an employee, or to others being members of his family or household, by reason of his employment is deemed to be available in that year for his or their private use unless the terms on which the van is made available prohibit such use and no such use is made of the van in that year;

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(d) a van made available to an employee, or to others being members of his family or household, by his employer is deemed to be made available to him or them by reason of his employment (unless the employer is an individual and it can be shown that the van was made so available in the normal course of his domestic, family or personal relationships).**]**

(7) For the purposes of section 156, the market value of an asset at any time is the price which it might reasonably have been expected to fetch on a sale in the open market at that time.

(8) Subject to subsection (9) below, "director" means—

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body;

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person; and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.

(9) A person is not under subsection (8) above to be deemed to be a person in accordance with whose directions or instructions the directors of the company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(10) "Full-time working director" means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity.

(11) A person shall be treated as having a material interest **[**[F255]in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or

(b) in the case of a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.**]**

In this subsection "associate" has the same meaning as in section 417(3), except that for this purpose "relative" in that subsection has the meaning given by section 160(6) **[**[F256]and "participator" has the meaning given by section 417(1)**]**.

(12) "Control", in relation to a body corporate or partnership, has the meaning given to it by section 840; and the definition of "control" in that section applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

(13) "Year" means year of assessment (except where the expression is used with reference to the age of a car).

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Textual Amendments

F251 S. 168(5)(d) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 3(1), **7**

F252 S. 168(5)(e) substituted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 3(2), **7**

F253 S. 168(5A) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 6(1), **8**

F254 S. 168(6)(c)(d) added (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 6(2), **8**

F255 1989 s.107*and* Sch.12 para 8*in relation to accounting periods beginning after* 31*March* 1989.*Previously*
"in a company—(a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without such other associates, is the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent. of the ordinary share capital of the company; or (b) if, in the case of a close company, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.".

F256 1989 s.107*and* Sch.12 para 8*for accounting periods beginning after* 31*March* 1989.

Modifications etc. (not altering text)

C169 *Definition applied for purposes of* 1988(F) s.131—*penalties; and* 1989 s.134—*non-payment of tax by non-residents.*

Marginal Citations

M466 Source—1976 s.72(1)-(12); 1980 s.51(3)
M467 1972 c. 20.
M468 1971 c. 10.
M469 1988 c. 52.
M470 1971 c. 10.

[F257 168A Price of a car as regards a year.

(1) Subject to the provisions contained in or made under sections 168B to 168G, for the purposes of this Chapter the price of a car as regards a year is—
   (a) its list price, if it has one, or
   (b) its notional price, if it has no list price;

   and in this section any reference to the relevant car is to the particular car whose price as regards a year is being determined.

(2) The relevant car has a list price if a price was published by the car's manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for a car of that kind if sold in the United Kingdom singly in a retail sale in the open market on the relevant day.

(3) In a case where—
   (a) subsection (2) above applies, and
   (b) at the time when the relevant car was first made available to the employee the only qualifying accessories available with it were standard accessories,

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the list price of the car is the price published as mentioned in subsection (2) above.

(4) In a case where—

(a) subsection (2) above applies,

(b) at the time when the relevant car was first made available to the employee a qualifying accessory which was an optional accessory was available with it, and

(c) in relation to each such accessory then available with the car a price was published by the car's manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for an equivalent accessory if sold with a car of the same kind as the relevant car in the United Kingdom singly in a retail sale in the open market on the relevant day,

the list price of the car is the price found under subsection (5) below.

(5) The price referred to in subsection (4) above is the total of—

(a) the price published as mentioned in subsection (2) above, and

(b) the price, or the sum of the prices, published as mentioned in subsection (4) above in relation to the optional accessory or (as the case may be) the optional accessories.

(6) In a case where—

(a) subsection (2) above applies, and

(b) at the time when the relevant car was first made available to the employee a qualifying accessory falling within subsection (7) below was available with the car,

the list price of the car is the price which would have been its list price under subsection (3) or (4) above (as the case may be) if no such accessory had been available with it at that time.

(7) An accessory falls within this subsection if—

(a) it is an optional accessory, and

(b) no price was published by the relevant car's manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for an equivalent accessory if sold with a car of the same kind as the relevant car in the United Kingdom singly in a retail sale in the open market on the relevant day.

(8) The notional price of a car is the price which might reasonably have been expected to be its list price if its manufacturer, importer or distributor (as the case may be) had published a price as the inclusive price appropriate for an equivalent car if sold in the United Kingdom singly in a retail sale in the open market on the relevant day; and "equivalent car" here means a car—

(a) of the same kind as the relevant car, and

(b) with accessories equivalent to the qualifying accessories available with the relevant car at the time when it was first made available to the employee.

(9) For the purposes of this section—

(a) the inclusive price is the price inclusive of any charge for delivery by the manufacturer, importer or distributor to the seller's place of business and of any relevant tax and, in the case of an accessory, of any charge for fitting it,

(b) the relevant day is the day immediately before the date of the relevant car's first registration,

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(c) a standard accessory is an accessory equivalent to an accessory which, in arriving at the price published as mentioned in subsection (2) above, is assumed to be available with cars of the same kind as the relevant car, and

(d) an optional accessory is an accessory other than a standard accessory;

and "relevant tax" here means any customs or excise duty, any tax chargeable as if it were a duty of customs, any value added tax and any car tax.

(10) For the purposes of this section a qualifying accessory is an accessory which—

(a) is made available for use with the car without any transfer of the property in it,

(b) is made available by reason of the employee's employment,

(c) is attached to the car (whether or not permanently), and

(d) is not an accessory necessarily provided for use in the performance of the duties of the employee's employment.

(11) For the purposes of this section "accessory" includes any kind of equipment, but does not include a mobile telephone within the meaning given by section 159A(8)(a).

(12) For the purposes of this section the time when a car is first made available to an employee is the earliest time when the car is made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.**]**

Textual Amendments

F257 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

VALID FROM 01/05/1995

[F258 168AE Equipment to enable disabled person to use car.

(1) Equipment falls within this section if it is designed solely for use by a chronically sick or disabled person.

(2) Equipment also falls within this section if—

(a) at the time when the car is first made available to the employee, the employee holds a disabled person's badge, and

(b) the equipment is made available for use with the car because the equipment enables him to use the car in spite of the disability entitling him to hold the badge.

(3) In subsection (2) above "disabled person's badge" means a badge—

(a) which is issued to a disabled person under section 21 of the Chronically Sick and Disabled Persons Act 1970 or section 14 of the [M471][M472]Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (or which has effect as if so issued), and

(b) which is not required to be returned to the issuing authority under or by virtue of the section in question.

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(4) Subsection (12) of section 168A applies for the purposes of this section as it applies for the purposes of that.**]**

Textual Amendments

F258 S. 168AA inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 44(2)**

Marginal Citations

M471 1978 c. 53.

M472 1970 c. 44.

VALID FROM 31/07/1998

[F259 168AB Equipment etc. to enable car to run on road fuel gas.

(1) Equipment by means of which the car is capable of running on road fuel gas shall not be regarded as an accessory for the purposes of section 168A.

(2) Where the car is manufactured in such way as to be capable of running on road fuel gas, the price of the car as regards each relevant year shall be treated as the price given by section 168A, reduced by so much of that price as it is reasonable to attribute to the car's being manufactured in that way rather than in such a way as to be capable of running only on petrol.

(3) In this section "road fuel gas" means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles.**]**

Textual Amendments

F259 S. 168AB inserted (with effect in accordance with s. 60(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 60(3)**

F260 168B Price of a car: accessories not included in list price.

(1) This section applies where a car has a list price and in any year there are available with the car qualifying accessories which—
   (a) fall within section 168A(7), and
   (b) were available with the car at the time when it was first made available to the employee.

(2) As regards that year the price of the car shall be treated as the price found under section 168A, increased by the price of the accessories.

(3) For the purposes of this section the price of an accessory is—
   (a) its list price, if it has one, or
   (b) its notional price, if it has no list price.

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(4) The list price of an accessory is the price published by or on behalf of its manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for such an accessory if sold in the United Kingdom singly in a retail sale in the open market at the relevant time; and the relevant time is the time immediately before the accessory concerned is first made available for use with the car (which may be before the car is first made available to the employee).

(5) The notional price of an accessory is the inclusive price which it might reasonably have been expected to fetch if sold in the United Kingdom singly in a retail sale in the open market immediately before it is first made available for use with the car (which may be before the car is first made available to the employee).

(6) Where the accessory is permanently attached to the car the sale assumed by subsection (4) or (5) above is one under which the seller is to attach it.

(7) For the purposes of this section the inclusive price is the price inclusive of—
   (a) any charge for delivery by the manufacturer, importer or distributor to the seller's place of business, and
   (b) any customs or excise duty, any tax chargeable as if it were a duty of customs and any value added tax.

(8) Subsections (10) to (12) of section 168A apply for the purposes of this section as they apply for the purposes of that.

Textual Amendments

F260 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

[F261]168C Price of a car: accessories available after car first made available.

(1) This section applies where in any year there are available with a car qualifying accessories which—
   (a) were not available with the car at the time when it was first made available to the employee, and
   (b) were not made available with the car before 1st August 1993,

   but any accessory whose price is less than £100 shall be ignored for the purposes of this section.

(2) As regards that year the price of the car shall be treated as the price found under sections 168A and 168B, increased by the price of the accessories.

(3) Subsections (10) to (12) of section 168A apply for the purposes of this section as they apply for the purposes of that.

(4) Subsections (3) to (6) of section 168B apply for the purposes of this section as they apply for the purposes of that, but ignoring for the purposes of this section the words "(which may be before the car is first made available to the employee)".

(5) The Treasury may by order substitute for the sum for the time being specified in subsection (1) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

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Textual Amendments

F261 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

[F262]168D Price of a car: capital contributions.

(1) This section applies where the employee contributes a capital sum to expenditure on the provision of—
  (a) the car, or
  (b) any qualifying accessories which are taken into account under sections 168A to 168C in determining the price of the car as regards a year.

(2) As regards each relevant year the price of the car shall be treated as the price found under sections 168A to 168C, reduced by the appropriate amount; and relevant years are the year in which the capital sum is contributed and all subsequent years in which section 157 applies in the case of the car and the employee.

(3) As regards a relevant year the appropriate amount is whichever is the smaller of—
  (a) the amount found under subsection (4) below as regards the year, and
  (b) £5,000.

(4) As regards a relevant year the amount referred to in subsection (3) above is the amount of the capital sum, or the total amount of all the capital sums, which the employee has contributed (whether in the year in question or earlier) to expenditure on the provision of—
  (a) the car, or
  (b) any qualifying accessories which are taken into account under sections 168A to 168C in determining the price of the car as regards the year in question.

(5) Subsections (10) and (11) of section 168A apply for the purposes of this section as they apply for the purposes of that.

(6) The Treasury may by order substitute for the sum for the time being specified in subsection (3)(b) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

Textual Amendments

F262 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

[F263]168E Price of a car: replacement accessories.

(1) The Treasury may make regulations under this section as regards any case where—
  (a) a qualifying accessory is available with a car in any year, and
  (b) the accessory (the replacing accessory) replaces another accessory (the replaced accessory).

(2) Regulations under this section may provide that as regards the year—

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(a) the price of the car shall be found as if the replacement had not been made and the replacing accessory were a continuation of the replaced accessory, or

(b) sections 168A to 168D shall apply to the car with such modifications to take account of the fact that the replacement has been made as are prescribed by the regulations.

(3) The regulations may—

(a) provide as mentioned in subsection (2)(a) above as regards some cases and as mentioned in subsection (2)(b) above as regards others;

(b) provide under subsection (2)(b) above that sections 168A to 168D shall apply with different modifications in different cases.

Textual Amendments

F263 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

[F264]168F Price of a car: classic cars.

(1) This section applies where—

(a) the price of a car as regards a year, found under the provisions contained in or made under sections 168A to 168E, is less than the market value of the car for the year,

(b) the age of the car at the end of the year is 15 years or more, and

(c) the market value of the car for the year is £15,000 or more.

(2) In such a case—

(a) the price of the car as regards the year is not the amount found under the provisions contained in or made under sections 168A to 168E;

(b) the price of the car as regards the year is the market value of the car for the year;

but paragraph (b) above is subject to subsection (5) below.

(3) The market value of a car for a year is the price which the car might reasonably have been expected to fetch on a sale in the open market on the material day, on the assumption that any qualifying accessories available with the car on the material day are included in the sale.

(4) For the purposes of subsection (3) above the material day is—

(a) the last day of the year concerned, or

(b) if earlier, the last day in the year on which the car is available to the employee.

(5) Where the employee contributes a capital sum to expenditure on the provision of—

(a) the car, or

(b) any qualifying accessories which are taken into account under subsection (3) above in determining the price of the car as regards a year,

as regards each relevant year the price of the car shall be treated as the market value of the car for the year, reduced by the appropriate amount.

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(6) For the purposes of subsection (5) above relevant years are the year in which the capital sum is contributed and all subsequent years in which section 157 applies in the case of the car and the employee.

(7) For the purposes of subsection (5) above the appropriate amount, in relation to a relevant year, is whichever is the smaller of—
  (a) the amount found under subsection (8) below as regards the year, and
  (b) £5,000.

(8) As regards a particular year the amount referred to in subsection (7) above is the amount of the capital sum, or the total amounts of all the capital sums, which the employee has contributed (whether in the year or earlier) to expenditure—
  (a) on the provision of the car, or
  (b) on the provision of any qualifying accessories which are taken into account in determining the price of the car as regards the year.

(9) Subsections (10) and (11) of section 168A apply for the purposes of this section as they apply for the purposes of that.

(10) For the purposes of this section the last day in a year on which a car is available to an employee is the last day in the year on which the car is made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.

(11) The Treasury may by order—
  (a) substitute for the sum for the time being specified in subsection (1)(c) above a sum of a greater amount;
  (b) substitute for the sum for the time being specified in subsection (7)(b) above a sum of a greater amount;

and any such substitution shall have effect as regards such years as are specified in the order.

Textual Amendments

F264 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

[F265]168G Price of a car: cap for expensive car.

(1) Where the price of a car as regards a year (as found under the provisions contained in or made under sections 168A to 168F) exceeds £80,000, the price of the car as regards the year is £80,000 and not the price as so found.

(2) The Treasury may by order substitute for the sum for the time being specified in subsection (1) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

Textual Amendments

F265 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

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CHAPTER III

PROFIT-RELATED PAY

Preliminary

169 Interpretation.

[M473](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 203, reduced by any amounts included in them by virtue of Chapter II of Part V;

"profit period" means an accounting period by reference to which any profit-related pay is calcuated;

"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-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.

Marginal Citations

M473 Source—1987 (No.2) s.1

170 Taxation of profit-related pay.

[M474]*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)*[F266].

Textual Amendments

F266 *Repealed by* 1989 ss.42(4), 187*and* Sch.17 Part IV*for* 1989-90*and subsequent years.*

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Marginal Citations
M474 Source—1987 (No.2) s.2

The relief

171 Relief from tax.

M475(1) **[**F267The whole**]** 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 **[**F268£4,000**]** (or, if the profit period is less than 12 months, or the employee is eligible to receive profit-related pay by reference to part only of the profit period, a proportionately reduced amount).

Textual Amendments
F267 Words in s. 171(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 37(1)(2)**
F268 1989 s.61*and* Sch.4 para 2*in relation to profit periods beginning on or after* 1*April* 1989.*Previously* "£3,000".

Marginal Citations
M475 Source—1987 (No.2) s.3

172 Exceptions from tax.

M476(1) Profit-related pay shall not be exempt from income tax by virtue of section 171 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 that other employment during that time profit-related pay which is exempt from income tax by virtue of that section.

(2) Subject to subsection (3) below, profit-related pay in respect of which no secondary Class 1 contributions under Part I of the M477Social Security Act 1975 or Part I of the M478Social Security (Northern Ireland) Act 1975 are payable shall not be exempt from income tax by virtue of section 171.

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(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.

Marginal Citations
M476 Source—1987 (No.2) s.4
M477 1975 c. 14.
M478 1975 c. 15.

Registration

173 Persons who may apply for registration.

M479(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 838, any share capital of a registered industrial and provident society (within the meaning of section 486) shall be treated as ordinary share capital.

Marginal Citations
M479 Source—1987 (No.2) s.5

174 Excluded employments.

M480(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;

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(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;

(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 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.

Marginal Citations

M480 Source—1987 (No.2) s.6

175 Applications for registration.

M481(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 8;

(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 8;

(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 180(1) to be produced.

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(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*[F269].

(4) In subsection (1) above "minimum wage legislation" means the provisions relating to remuneration in [F270]. . . [F271]. . .the [M482]Agricultural Wages Act 1948, the [M483]Agricultural Wages (Scotland) Act 1949 and the [M484]Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

Textual Amendments

F269 *Repealed by* 1989 ss.61*and* 187*and* Schs.4 para.10(2)(a), and 17 Part IV.

F270 Words in s. 175(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 1**

F271 Words in s. 175(4) repealed (7.2.1994 except in so far as they relate to maternity rights or to the application of the No. 1 and No. 2 Orders to armed forces) by 1993/2668 (N.I. 11), art. 18(4), Sch.8; S.R. 1993/476, **art. 2**,Sch

Marginal Citations

M481 Source—1987 (No.2) s.7

M482 1948 c. 47.

M483 1949 c. 30.

M484 S.I. 1977/2151 (N.I. 22).

176 Registration.

[M485](1) If an application for registration of a profit-related pay scheme under this Chapter is made more than three months (*but not more than six months*) [F272] before the beginning of the profit period, or the first of the profit periods, to which the scheme relates, 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 30 days after the day on which they receive the application—

(a) refuse the application; or

(b) by 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 30 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

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of the period; but if they do not do so, the application shall be regarded as having been refused.

(6) If an application for 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 notice inform the applicant that they have done so.

(8) The Board shall give 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 8.

Textual Amendments
F272 *Repealed by* 1989 ss.61*and* 187*and* Schs.4 para.10(2)(a), and 17 Part IV.

Marginal Citations
M485 Source—1987 (No.2) s.8

177 Change of scheme employer.

M486(1) Where—
  (a) a scheme employer ceases to fulfil the conditions which section 173 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 to the scheme; and
  (c) there is otherwise no other material change in the employment unit or in the circumstances relating to the scheme;

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.

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(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 notice to the applicants if they refuse an application under this section.

Marginal Citations
M486 Source—1987 (No.2) s.9

[[F273]177A Death of scheme employer.

(1) Where a scheme employer has died, his personal representatives may make a 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 that, apart from the death of the 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 personal representatives for the deceased 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 grant of probate or letters of administration or, in Scotland, confirmation of executors.

(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 personal representatives had been the scheme employer throughout.

(5) The Board shall give notice to the personal representatives if they refuse an application under this section.**]**

Textual Amendments
F273 Ss. 177A, 177B inserted by Finance Act 1989 (c. 26), **Sch. 4 para. 3**

177B Alteration of scheme's terms.

(1) The alteration of the terms of a registered scheme shall not of itself invalidate the registration of the scheme.

(2) Subsection (1) above is without prejudice to the power of cancellation conferred on the Board by section 178(3A); but the power conferred by section 178(3A) shall not be exercisable by virtue of an alteration registered in accordance with this section.

(3) Where the terms of a registered scheme have been altered, the scheme employer may apply to the Board for the registration of the alteration.

(4) An application under subsection (3) above—
   (a) shall be in such form as the Board may prescribe;

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(b) shall be made within the period of one month beginning with the day on which the alteration is made;

(c) shall contain a declaration by the applicant that the alteration is within subsection (8) below and that the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had effect but subject to one or more subsequent amendments specified in the declaration);

(d) shall be accompanied by a report by an independent accountant, in a form prescribed by the Board, to the effect that in his opinion the alteration is within subsection (8) below and the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had effect but subject to one or more subsequent amendments specified in the report).

(5) The Board shall not more than three months after the day on which they receive an application under subsection (3) above either register the alteration or refuse the application; and in either case they shall give notice of their decision to the applicant.

(6) Subject to subsection (7) below, the Board shall register an alteration on an application under subsection (3) above.

(7) The Board may refuse an application under subsection (3) above if they are not satisfied—

(a) that the application complies with the requirements of subsection (4) above, or

(b) that the declaration referred to in subsection (4)(c) above is true.

(8) An alteration is within this subsection if—

(a) it relates to a term which is not relevant to the question whether the scheme complies with the requirements of Schedule 8; or

(b) it relates to a term identifying any person (other than the scheme employer) who pays the emoluments of employees to whom the scheme relates; or

(c) it consists of the addition of a term making provision for an abbreviated profit period of the kind referred to in paragraph 10(3) of Schedule 8; or

(d) it amends the provisions by reference to which the employees to whom the scheme relates may be identified, and does so only for the purposes of profit periods which begin after the date on which the alteration is made; or

(e) it relates to a provision of a kind referred to in paragraph 13(4) or (5) or 14(3), (4) or (5) of Schedule 8 (as those provisions have effect at the time of the application for registration of the alteration), and has effect only for the purposes of profit periods beginning after the date on which the alteration is made; or

(f) it amends the provisions as to when payments will be made to employees, and does so only for the purposes of profit periods beginning after the date on which the alteration is made; or

(g) the scheme did not comply with the requirements of Schedule 8 when it was registered, and the alteration—

(i) is made in order to bring the scheme into compliance with the requirements of that Schedule (either as it had effect when the scheme was registered or as it has effect at the time of the application for registration of the alteration), and

(ii) is made for the purposes of the first and any subsequent profit period to which the scheme relates, and

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(iii) is made within two years of the beginning of the first profit period, and

(iv) does not invalidate (in whole or in part) any payment of profit-related pay already made under the scheme.

Modifications etc. (not altering text)
C170 S. 177B(8) extended (1.5.1995) by Finance Act 1995 (c. 4), **s. 136(10)**

178 Cancellation of registration.

[M487](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 **[**[F274]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 174; 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 8, that losses were incurred in a profit period or in the preceding period of 12 months; or

(d) that the undertaking given in compliance with section 175(1)(c) 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 **[**[F275]subsections (5) and (5A)**]** 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 8 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* 8,*that losses were incurred in the base year specified in the scheme*[F276];

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 180 in relation to a profit period, the Board may cancel the registration with effect from the beginning of that profit period.

[[F277](3A) Where the terms of a registered scheme have been altered, then, subject to section 177B(2), the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.

(3B) If after an alteration of the terms of a scheme has been registered under section 177B it appears to the Board—

(a) that the application for registration of the alteration did not comply with the requirements of subsection (4) of that section, or

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(b) that the declaration referred to in subsection (4)(c) of that section was false,

the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.**]**

(4) If the scheme employer by 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 181(3) 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 day, the Board shall comply with the request.

[[F277](5A) Where—

(a) the scheme employer has died, and

(b) his personal representatives by notice request the Board to cancel the registration of the scheme with effect from the date of death,

then, if the notice is given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors, the Board shall comply with the request.**]**

(6) The Board shall give notice to the scheme employer of the cancellation of a scheme's registration.

Textual Amendments

F274 1988(F) s.146*and* Sch.13 para.4 (*deemed always to have had effect*).

F275 1989 s.61*and* Sch.4 para.4(2).*Previously* "subsection (5)".

F276 *Repealed by* 1989 ss.61*and* 187*and* Schs.4 para.10(2)(a)*and* 17 Part IV.

F277 1989 s.61*and* Sch.4 paras.4(3), 4(4).

Marginal Citations

M487 Source—1987 (No.2) s.10

Administration

179 Recovery of tax from scheme employer.

[M488](1) This section applies where—

(a) payments of profit-related pay are made to an employee in accordance with a registered scheme; and

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(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 203 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 203 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.

[[F278](3) Where—

(a) the scheme employer has died, but

(b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,

the reference in subsection (2) above to the scheme employer shall be construed as a reference to the personal representatives.

(4) Where—

(a) a payment to which this section applies was made by a person other than the scheme employer, and

(b) the scheme employer is not resident in the United Kingdom,

then in relation to that payment the reference in subsection (2) above to the scheme employer shall include a reference to the person by whom the payment was made.**]**

Textual Amendments

F278 1989 s.61*and* Sch.4 para.5.

Marginal Citations

M488 Source—1987 (No.2) s.11

180 Annual returns etc.

[M489](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—

(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.

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(3) If before the end of the period allowed by subsection (2) above the scheme employer gives the Board notice that an extension of three months has been allowed under **[**[F279]section 244(3)**]** of the [M490]Companies Act 1985, or under Article 250(3) of the [M491]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.

[[F280](5) Where—

(a) the scheme employer has died, but

(b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,

the reference in subsection (1) above to the scheme employer shall be construed as a reference to the personal representatives.**]**

Textual Amendments

F279 Companies Act 1989 (c.40) s.23*and* Sch.10 para.38(2)*in force on* 1*April* 1990*by virtue of* S.I. 1990 No.355 (c.13), art.3 (*not reproduced*).*Previously*
"section 242(3)".

F280 1989 s.61*and* Sch.4 para.6.

Marginal Citations

M489 Source—1987 (No.2) s.12

M490 1985 c. 6.

M491 S.I. 1986/1032 (N.I. 6).

181 Other information.

[M492](1) The Board may by notice require any person to give them, within a period of 30 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.

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(3) The scheme employer of a registered scheme shall by 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.

[[F281](4) Where the scheme employer has died, his personal representatives shall inform the Board of his death by notice given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors.**]**

Textual Amendments
F281 1989 s.61*and* Sch.4 paras.7, 8(2), 8(3).

Marginal Citations
M492 Source—1987 (No.2) s.13

182 Appeals.

[M493](1) An appeal to the Special Commissioners may be made by a scheme employer—

(a) against a refusal by the Board under section 176(2) or (4) of an application for registration of the scheme;

(b) against a refusal by the Board of an application under section 177;

[[F282](bb) against a refusal by the Board of an application under section 177B(3).**]**

(c) against the cancellation by the Board of the registration of the scheme.

[[F282](1A) An appeal to the Special Commissioners may be made by the personal representatives of a scheme employer against a refusal by the Board of an application under section 177A.**]**

(2) An appeal under this section shall be made by notice given to the Board within 30 days of the day on which the **[**[F283]appellant**]** was notified of the refusal or, as the case may be, the cancellation.

Textual Amendments
F282 1989 s.61*and* Sch.4 paras.7, 8(2), 8(3).
F283 1989 s.61*and* Sch.4 para.8(4).*Previously* "scheme employer".

Marginal Citations
M493 Source—1987 (No.2) s.15

Supplementary

183 Partnerships.

[M494]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.

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Marginal Citations

M494 Source—1987 (No.2) s.16

184 Independent accountants.

M495(1) For the purposes of this Chapter, "independent accountant", in relation to a profit-related pay scheme, means a person who—

(a) **[**F284is eligible for appointment as a company auditor under section 25 of the Companies Act 1989**][**F285or Article 28 of the Companies (Northern Ireland) Order 1990**]**; and

(b) is not excluded by subsections (2) to **[**F286(4)**]** 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 **[**F287, or an officer**]** or an employee of, or partner of an employee of, a person within subsection (3) below; or

(c) he is **[**F288a partner or**]**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 **[**F289officer or**]**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 F290 . . . . . .

(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.

Textual Amendments

F284 Words in s. 184(1)(a) substituted by S.I. 1991/1997, **reg. 68(a)** (with reg. 4)
F285 Words in s. 184(1)(a) substituted (29.3.1993) by S.R. 1993/67, reg. 2, **Sch. para.18**
F286 Word in s. 184(1)(b) substituted by S.I. 1991/1997, **reg. 68(b)** (with reg. 4)
F287 Words in s. 184(2)(b) inserted by S.I. 1991/1997, **reg. 68(c)** (with reg. 4)
F288 Words in s. 184(2)(c) inserted by S.I. 1991/1997, **reg. 68(d)** (with reg. 4)
F289 Words in s. 184(4)(a) inserted by S.I. 1991/1997, **reg. 68(e)** (with reg. 4)
F290 S. 184(5) omitted by virtue of S.I. 1991/1997, **reg. 68(f)** (with reg. 4)

Marginal Citations

M495 Source—1987 (No.2) s.17

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CHAPTER IV

OTHER EXEMPTIONS AND RELIEFS

Share option and profit sharing schemes

185 Approved share option schemes.

(1) [M496]The provisions of this section shall apply where, in accordance with the provisions of an approved share option scheme, an individual obtains a right to acquire shares in a body corporate by reason of his office or employment as a director or employee of that or any other body corporate and he obtains that right—

(a) in the case of a savings-related share option scheme, on or after 15th November 1980; or

(b) in the case of any other share option scheme, on or after 6th April 1984.

(2) **[**[F291M497]Subject to subsections (6) to (6B) below**]**, tax shall not be chargeable under any provision of the Tax Acts in respect of the receipt of the right.

(3) [M498]Subject to subsections (4) and, except where paragraph 27(3) of Schedule 9 applies, (5) below, if he exercises the right in accordance with the provisions of the scheme at a time when it is approved—

(a) tax shall not be chargeable under any provision of the Tax Acts in respect of the exercise nor under **[**[F292]section 78 or 79 of the Finance Act 1988 in respect of the shares**]**;

(b) section **[**[F293]17(1) of the 1992 Act**]** (assets deemed to be acquired at market value) shall not apply in calculating the consideration for the acquisition of the shares by him or for any corresponding disposal of them to him.

(4) **[**[F294M499]Subsection (3) above**]** shall not apply in respect of a right, obtained by a person under a scheme which is a savings-related share option scheme, which is exercised within three years of its being obtained by virtue of a provision included in a scheme pursuant to paragraph 21 of Schedule 9.

(5) [M500]Subsection (3) above shall not apply in relation to the exercise by any person of a right in accordance with the provisions of a scheme which is not a savings-related share option scheme if—

(a) the period beginning with his obtaining the right and ending with his exercising it is less than three, or greater than ten, years; or

(b) the right is exercised within three years of the date on which he last exercised (in circumstances in which subsection (3) above applied) any right obtained under the scheme or under any other approved share option scheme which is not a savings-related share option scheme (any such right exercised on the same day being disregarded).

[[F295](6) Subsection (6A) below applies where—

(a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and

(b) the price at which he may acquire shares by exercising the right is not applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9.

(6A) Where the aggregate of—

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(a) the amount or value of any consideration given by him for obtaining the right, and

(b) the price at which he may acquire the shares by exercising the right,

is less than the market value, at the time he obtains the right, of the same quantity of issued shares of the same class, he shall be chargeable to tax under Schedule E for the year of assessment in which he obtains the right on the amount of the difference; and the amount so chargeable shall be treated as earned income, whether or not it would otherwise fall to be so treated.

(6B) Subsection (6A) above shall also apply where—

(a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and

(b) the price at which he may acquire shares by exercising the right is applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9;

but with the substitution for "the market value" of "85 per cent. of the market value".**]**

(7) [M501]For the purposes of section **[**[F293]38(1)(a) of the 1992 Act**]** (computation of chargeable gains: allowable expenditure) the consideration given for shares acquired in the exercise of the right shall be taken to have included that part of any amount on which income tax is payable in accordance with subsection **[**[F296](6A)**]** above which is attributable to the shares disposed of.

This subsection applies whether or not the exercise is in accordance with the provisions of the scheme and whether or not the scheme is approved at the time of the exercise.

(8) Where a person is chargeable to tax under subsection **[**[F296](6A)**]**above on any amount (the "amount of the discount") and subsequently, in circumstances in which subsection (3) above does not apply—

(a) [M502]he is chargeable to tax under section 135, the amount of the gain on which he is chargeable to tax under that section shall be reduced by that part of the amount of the discount which is attributable to the shares in question; or

(b) [M503]he is treated by virtue of section 162 as having had the benefit of a notional interest-free loan, the amount of the notional loan initially outstanding shall be reduced by that part of the amount of the discount which is attributable to the shares in question.

(9) Where the provisions of a scheme which is not a savings-related share option scheme are approved in pursuance of an application made under paragraph 1 of Schedule 10 to the [M504]Finance Act 1984 before 1st January 1985 (and the approval has not been withdrawn), this section shall apply in relation to any right obtained before 1st July 1985 as if the scheme containing those provisions had been approved under that Schedule during the period beginning with the date on which that right was obtained and ending with the date on which those provisions were actually so approved.

(10) In this section "savings-related share option scheme" has the meaning given by Schedule 9.

Textual Amendments

F291 Words in s. 185(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 39(3)(8)**(in relation to rights obtained on or after 1.1.1992)

F292 1988(F) s.89*in respect of acquisitions on or after* 26*October* 1987.*Previously*

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"section 138(1)(a) in respect of an increase in the market value of the shares".

F293 Words in s. 185(3)(b)(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(12)** (with ss. 60, 101(1), 171, 201(3)).

F294 Words in s. 185(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 39(4)(8)**(in relation to rights obtained on or after 1.1.1992)

F295 S. 185(6)(6A)(6B) substituted (1.1.1992) for s. 185(6) by Finance Act 1991 (c. 31, SIF 63:1), **s. 39(5)(7)**

F296 Words in s. 185(7)(8) substituted (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), **s. 39(6)**((7)

Modifications etc. (not altering text)

C171 *See* 1988(F) s.68*—benefits derived by director etc. from public offers not treated as emolument.*

C172 S. 185 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M496 Source—1980 s.47(1); 1984 s.38(1)
M497 Source—1980 s.47(1)(a); 1984 s.38(2)
M498 Source—1980 s.47(1)(b); 1981 s.90(3)(a); 1984 s.38(3)(a)
M499 Source—1980 s.47(2)
M500 Source—1984 s.38(4)
M501 Source—1984 s.38(6)
M502 Source—1984 s.38(7)(a), (8)
M503 Source—1984 s.38(7)(b), (9)
M504 1984 Sch.10 1(5)

186 Approved profit sharing schemes.

(1) [M505]The provisions of this section apply where, after 5th April 1979, the trustees of an approved profit sharing scheme appropriate shares—

(a) which have previously been acquired by the trustees, and

(b) as to which the conditions in Part II of Schedule 9 are fulfilled,

to an individual who participates in the scheme ("the participant").

(2) [M506]Notwithstanding that, by virtue of such an appropriation of shares as is mentioned in subsection (1) above, the beneficial interest in the shares passes to the participant to whom they are appropriated—

(a) the value of the shares at the time of the appropriation shall be treated as not being income of his chargeable to tax under Schedule E; and

(b) he shall not be chargeable to income tax under that Schedule by virtue of **[**[F297]section 78 or 79 of the Finance Act 1988 in respect of the shares**]** or by virtue of section 162 in any case where the shares are appropriated to him at an undervalue within the meaning of that section.

(3) [M507]Subject to the provisions of this section and paragraph 4 of Schedule 10, if, in respect of or by reference to any of a participant's shares, the trustees become or the participant becomes entitled, before the release date, to receive any money or money's worth ("a capital receipt"), the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on the appropriate percentage (determined as at the time the trustees become or the participant becomes so entitled) of so much of the amount or value of the receipt as

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exceeds the appropriate allowance for that year, as determined under subsection (12) below.

(4) [M508]If the trustees dispose of any of a participant's shares at any time before the release date or, if it is earlier, the date of the participant's death, then, subject to subsections (6) and (7) below, the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on the appropriate percentage of the locked-in value of the shares at the time of the disposal.

(5) [M509]Subject to paragraphs 5 and 6(6) of Schedule 10, the locked-in value of a participant's shares at any time is—

(a) if prior to that time he has become chargeable to income tax by virtue of subsection (3) above on a percentage of the amount or value of any capital receipt which is referable to those shares, the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has been more than one such receipt, the aggregate of them; and

(b) in any other case, their initial market value.

(6) Subject to subsection (7) below, if, on a disposal of shares falling within subsection (4) above, the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, subsection (4) above shall have effect as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.

(7) If, at any time prior to the disposal of any of a participant's shares, a payment was made to the trustees to enable them to exercise rights arising under a rights issue, then, subject to subsection (8) below, subsections (4) and (6) above shall have effect as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.

(8) [M510]For the purposes of subsection (7) above—

(a) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue; and

(b) in relation to a particular disposal the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals;

and any reference in subsection (7) or paragraph (a) above to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being rights to be allotted, on payment, other shares or securities or rights of any description in the same company.

(9) [M511]If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the relevant provisions as having been disposed of at that time by the trustees for (subject to subsection (10) below) the like consideration as was obtained for the disposal of the beneficial interest; and for the purposes of this subsection there is no disposal of the participant's beneficial interest if and at the time when—

(a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or

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(b) in Scotland, that interest becomes vested in a judicial factor, in a trustee on the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.

(10) If—

(a) a disposal of shares falling within subsection (4) above is a transfer to which paragraph 2(2)(c) of Schedule 9 applies, or

(b) the Board is of opinion that any other disposal falling within that sub-paragraph is not at arm's length and accordingly direct that this subsection shall apply, or

(c) a disposal of shares falling within that sub-paragraph is one which is treated as taking place by virtue of subsection (9) above and takes place within the period of retention,

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

(11) [M512]Where the trustees of an approved scheme acquire any shares as to which the requirements of Part II of Schedule 9 are fulfilled and, within the period of 18 months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme, section 686 shall not apply to income consisting of dividends on those shares received by the trustees; and, for the purpose of determining whether any shares are appropriated within that period, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.

(12) [M513]For the purposes of subsection (3) above, "the appropriate allowance", in relation to any year of assessment, means a sum which, subject to a maximum of £100, is the product of multiplying £20 by 1 plus the number of years which fall within the period of five years immediately preceding the year in question and in which shares were appropriated to the participant under the scheme; and if in any year (and before the release date) the trustees become or the participant becomes entitled, in respect of or by reference to any of his shares, to more than one capital receipt, the receipts shall be set against the appropriate allowance for that year in the order in which they are received.

(13) Schedule 10 shall have effect with respect to profit sharing schemes.

Textual Amendments

F297 Words in s. 186(2)(b) substituted (in respect of acquisitions of shares on or after 26.10.1987) by Finance Act 1988 (c. 39), **s. 89**

Modifications etc. (not altering text)

C173 S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), **ss. 115(1)**, 116(3)

C174 S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)**

Marginal Citations

M505 Source—1978 s.53(1)

M506 Source—1978 s.53(3)

M507 Source—1978 s.56(1); 1982 s.42(1)

M508 Source—1978 s.55(1)

M509 Source—1978 s.55(2)-(4)

M510 Source—1978 s.55(5), (9)

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M511 Source—1978 s.55(7), (8)
M512 Source—1978 s.53(6)
M513 Source—1978 s.56(6); 1980 s.46(6); 1982 s.42(2); 1985 s.45(4)

187 Interpretation of sections 185 and 186 and Schedules 9 and 10.

(1) [M514]In sections 185 and 186, this section and Schedules 9 and 10 "the relevant provisions" means those sections (including this section) and Schedules.

(2) For the purposes of the relevant provisions, except where the context otherwise requires—

"appropriate percentage" shall be construed in accordance with paragraph 3 of Schedule 10;

"approved", in relation to a scheme, means approved under Schedule 9;

"associated company" has the same meaning as in section 416, except that, for the purposes of paragraph 23 of Schedule 9, subsection (1) of that section shall have effect with the omission of the words " or at any time within one year previously ";

"bonus date" has the meaning given by paragraph 17 of Schedule 9;

"capital receipt" means money or money's worth to which the trustees of or a participant in a profit sharing scheme become or becomes entitled as mentioned in section 186(3), but subject to paragraph 4 of Schedule 10;

"certified contractual savings scheme" has the meaning given by section 326;

"control" has the same meaning as in section 840;

"grantor", in relation to any scheme, means the company which has established the scheme;

"group scheme" and, in relation to such a scheme, "participating company" have the meanings given by paragraph 1(3) and (4) of Schedule 9;

"initial market value", in relation to shares in a profit sharing scheme, has the meaning given by paragraph 30(4) of Schedule 9;

"locked-in value", in relation to any shares, shall be construed in accordance with section 186(5);

"market value" has the same meaning as in Part VIII of the **[**[F298]1992 Act**]**;

"new holding" has the meaning given by section **[**[F298]126(1)(b) of the 1992 Act**]**;

"participant", in relation to a profit sharing scheme, means an individual to whom the trustees of the scheme have appropriated shares;

"participant's shares", in relation to a participant in a profit sharing scheme, means, subject to paragraph 5(4) of Schedule 10, shares which have been appropriated to the participant by the trustees;

"pensionable age" has the meaning given by Schedule 20 to the [M515]Social Security Act 1975;

"period of retention" has the meaning given by paragraph 2 of Schedule 10;

"release date", in relation to any of the shares of a participant in a profit sharing scheme, means the fifth anniversary of the date on which they were appropriated to him;

"relevant amount", in relation to a participant in a profit sharing scheme, means an amount which is **[**[F299]not less than £3,000 and not more than £8,000**]**

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but which, subject to that, is 10 per cent. of his salary (determined under subsection (5) below) for the year of assessment in question or the preceding year of assessment, whichever is the greater;

"relevant requirements" has the meaning given by paragraph 1 of Schedule 9;

"savings-related share option scheme" has the meaning given by paragraph 1 of Schedule 9;

"scheme" means a savings-related share option scheme, a share option scheme which is not a savings-related share option scheme or a profit sharing scheme, as the context may require;

"shares" includes stock;

[[F300]"specified age", in relation to a scheme, means the age specified in pursuance of paragraph 8A of Schedule 9 as the specified age for the purposes of the scheme;**]**

"the trustees", in relation to an approved profit sharing scheme or the shares of a participant in such a scheme, means the body of persons for the establishment of which the scheme must provide as mentioned in paragraph 30 of Schedule 9; and

"just instrument", in relation to an approved profit sharing scheme, means the instrument referred to in paragraph 30(1)(c) of Schedule 9.

(3) [M516]For the purposes of the application of the relevant provisions in relation to any share option scheme or profit sharing scheme, a person has a material interest **[**[F301]in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company, or

(b) where the company is a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the assets which would then be available for distribution among the participators.**]**

In this subsection "associate" has the meaning given by section 417(3) and (4) **[**[F301]and "participator" has the meaning given by section 417(1)**]**.

(4) [M517]Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.

(5) [M518]For the purposes of subsection (2) above, a participant's salary for a year of assessment means such of the emoluments of the office or employment by virtue of which he is entitled to participate in a profit sharing scheme as are liable to be paid in that year under deduction of tax pursuant to section 203 after deducting therefrom amounts included by virtue of Chapter II of this Part.

(6) [M519]Section 839 shall apply for the purposes of the relevant provisions.

(7) [M520]For the purposes of the relevant provisions a company is a member of a consortium owning another company if it is one of a number of companies which between them

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beneficially own not less than three-quarters of the other company's ordinary share capital and each of which beneficially owns not less than one-twentieth of that capital.

(8) [M521]Where the disposal referred to in section 186(4) is made from a holding of shares which were appropriated to the participant at different times, then, in determining for the purposes of the relevant provisions—

(a) the initial market value and the locked-in value of each of those shares, and

(b) the percentage which is the appropriate percentage in relation to each of those shares,

the disposal shall be treated as being of shares which were appropriated earlier before those which were appropriated later.

(9) [M522]Any of the relevant provisions with respect to—

(a) the order in which any of a participant's shares are to be treated as disposed of for the purposes of those provisions, or

(b) the shares in relation to which an event is to be treated as occurring for any such purpose,

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

(10) [M523]In the relevant provisions "workers' cooperative" means a registered industrial and provident society, within the meaning of section 486, which is a cooperative society and the rules of which include provisions which secure—

(a) that the only persons who may be members of it are those who are employed by, or by a subsidiary of, the society and those who are the trustees of its profit sharing scheme; and

(b) that, subject to any provision about qualifications for membership which is from time to time made by the members of the society by reference to age, length of service or other factors of any description, all such persons may be members of the society;

and in this subsection "cooperative society" has the same meaning as in section 1 of the [M524]Industrial and Provident Societies Act 1965 or, as the case may be, the [M525]Industrial and Provident Societies Act (Northern Ireland) 1969.

Textual Amendments

F298 Words in s. 187(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(13)** (with ss. 60, 101(1), 171, 201(3)).

F299 Words in s. 187(2) substituted (for the year 1991-92 and subsequent years of assessment) by virtue of Finance Act 1991 (c. 31), **s. 41(1)(2)**

F300 S. 187(2): definition of "specified age" inserted by Finance Act 1991 (c. 31), **s. 38(4)**

F301 Words in s. 187(3) substituted (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), **Sch. 12 para. 9**

Marginal Citations

M514 Source—1978 ss.53(2), 54(2), (4)(b), 6, 56(1), 57(1), (4), 61(1), Sch.9 1, 16; 1980 s.46(4), Sch.10 5(b), 8, 26(1); 1982 s.40(8); 1983 s.25(1); 1984 Sch.10 15(1), (2); 1985 s.45(2)

M515 1975 c. 14.

M516 Source—1970 s.285(6); 1978 Sch.9 11(3)(b); 1980 Sch.10 26(2); 1984 Sch.10 4(4)

M517 Source—1987 s.33(2)

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M518 Source—1978 s.61(4); 1983 s.25(2)
M519 Source—1978 Sch.9 16; 1980 Sch.10 26(4); 1984 Sch.10 15(3)
M520 Source—1978 Sch.9 17; 1980 Sch.10 26(5); 1984 Sch.10 15(4); 1986 s.23(5)
M521 Source—1978 s.55(6)
M522 Source—1978 s.61(2)
M523 Source—1978 Sch.9 18; 1986 s.24(1)
M524 1965 c. 12.
M525 1969 c. 24. (N.I.).

VALID FROM 28/07/2000

[F302 Contributions in respect of share option gains

Textual Amendments

F302 S. 187A and preceding cross-heading inserted (with application in accordance with s. 56(1) of the amending Act) by Finance Act 2000 (c. 17), **s. 56(1)**

187A Relief for contributions in respect of share option gains.

(1) Where a person ("the earner") is chargeable to tax under section 135 on a gain, relief is available under this section if—

(a) an agreement has been entered into allowing the secondary contributor to recover from the earner the whole or part of any secondary Class 1 contributions in respect of the gain, or

(b) an election is in force which has the effect of transferring to the earner the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.

(2) The amount of the relief is the total of—

(a) any amount that, in pursuance of any such agreement as is mentioned in subsection (1)(a), is recovered in respect of the gain by the secondary contributor not later than 60 days after the end of the year of assessment in which occurred the event giving rise to the charge to tax under section 135; and

(b) the amount of any liability in respect of that gain that, by virtue of any such election as is mentioned in subsection (1)(b), has become the earner's liability.

(3) Where notice of withdrawal of approval of any such election is given, relief under subsection (2)(b) is limited to so much of the earner's liability in respect of the gain as is met before the end of the 60th day after the end of the year of assessment in which occurred the event giving rise to the charge under section 135.

(4) Relief under this section shall be given by way of deduction from the amount of the gain on which the earner is chargeable to tax under section 135.

(5) Any such deduction does not affect the amount of the gain for the purposes of—

(a) section 120(4) of the [M526]Taxation of Chargeable Gains Act 1992 (amount treated as consideration for acquisition of shares), or

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(b) section 4(4)(a) of the Contributions and Benefits Act (amount treated as remuneration for contributions purposes).

(6) The agreements and elections referred to in this section are those having effect under paragraph 3A or 3B of Schedule 1 to the Contributions and Benefits Act.

References to approval in relation to an election are to approval by the Inland Revenue under paragraph 3B of that Schedule.

(7) In this section—

"the Contributions and Benefits Act" means the [M527]Social Security Contributions and Benefits Act 1992 or the [M528]Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

"secondary Class 1 contributions" and "secondary contributor" have the same meaning as in that Act.**]**

Modifications etc. (not altering text)

C175 S. 187A modified (retrospectively) by Social Security Contributions (Share Options) Act 2001 (c. 20), **s. 4(2)(3)**

Marginal Citations

M526 1992 c. 12.
M527 1992 c. 4.
M528 1992 c. 7.

Retirement benefits etc.

188 Exemptions from section 148.

(1) [M529]Tax shall not be charged by virtue of section 148 in respect of the following payments, that is to say—

(a) any payment made in connection with the termination of the holding of an office or employment by the death of the holder, or made on account of injury to or disability of the holder of an office or employment;

(b) any sum chargeable to tax under section 313;

(c) a benefit provided in pursuance of a retirement benefits scheme within the meaning of Chapter II of Part IX of the 1970 Act or Chapter I of Part XIV of this Act or of an agreement as described in section 220(2) of the 1970 Act, where under section 220 of that Act or section 595 of this Act the holder of the office or employment was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit;

(d) a benefit paid in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or as is described in section 596(1);

(e) any terminal grant, gratuity or other lump sum paid under any Royal Warrant, Queen's Order, or Order in Council relating to members of Her Majesty's forces, and any payment made in commutation of annual or other periodical payments authorised by any such Warrant or Order;

(f) a payment of benefit under any superannuation scheme administered by the government of an overseas territory within the Commonwealth, or of

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compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to persons who, before the change, were employed in the public services of that territory;

and references in paragraph (f) above to an overseas territory, to the government of such a territory, and to employment in the public service of such a territory shall be construed as if they occurred in the [M530]Overseas Development and Cooperation Act 1980, and sections 10(2) and 13(1) and (2) of that Act (which relate to the construction of such references) shall apply accordingly.

(2) [M531]Subsection (1)(d) above shall not apply to any compensation paid for loss of office or employment or for loss or diminution of emoluments unless the loss or diminution is due to ill-health; but this subsection shall not be taken to apply to any payment properly regarded as a benefit earned by past service.

(3) [M532]Tax shall not be charged by virtue of section 148 in respect of any payment in the case of which the following conditions are satisfied—

(a) that the payment is in respect of an office or employment in which the holder's service included foreign service; and

(b) that the foreign service comprised either—

(i) in any case, three-quarters of the whole period of service down to the relevant date, or

(ii) where the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or

(iii) where the period of service down to the relevant date exceeded 20 years, one-half of that period, including any ten of the last 20 years.

(4) [M533]Tax shall not be charged by virtue of section 148 in respect of a payment of an amount not exceeding **[**[F303]£30,000**]** ("the exempt sum") and, subject to subsection (5) below, in the case of a payment which exceeds that amount shall be charged only in respect of the excess.

(5) Where two or more payments in respect of which tax is chargeable by virtue of section 148, or would be so chargeable apart from subsection (4) above, are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments held under the same employer or under associated employers, subsection (4) above shall apply as if those payments were a single payment of an amount equal to that aggregate amount; and the amount of any one payment chargeable to tax shall be ascertained as follows, that is to say—

(a) where the payments are treated as income of different chargeable periods, the exempt sum shall be deducted from a payment treated as income of an earlier period before any payment treated as income of a later period; and

(b) subject to that, the exempt sum shall be deducted rateably from the payments according to their respective amounts.

(6) [M534]The person chargeable to tax by virtue of section 148 in respect of any payment may make a claim for such relief in respect of the payment as is applicable thereto under Schedule 11.

(7) For the purposes of this section and Schedule 11 offices or employments in respect of which payments to which section 148 applies are made shall be treated as held under associated employers if, on the date which is the relevant date in relation to any of

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those payments, one of those employers is under the control of the other or of a third person who controls or is under the control of the other on that or any other such date.

In this subsection "control" has the meaning given by section 840.

(8) In this section—

(a) "the relevant date" and "foreign service" have the same meaning as in Schedule 11; and

(b) references to an employer or to a person controlling or controlled by an employer include references to his successors.

Textual Amendments

F303 1988(F) s.74*in respect of payments received on or after* 6*April* 1988—*see* s.74(3)*for application. Previously*
"£25,000".

Marginal Citations

M529 Source—1970 s.188(1); 1971 Sch.6 24; 1970(F) Sch.5 Pt.III 12(1)
M530 1980 c. 63.
M531 Source—1972 s.73
M532 Source—1970 s.188(2)(b); 1974 s.21(3)
M533 Source—1970 s.188(3); 1981 s.31(1)
M534 Source—1970 s.188(4)-(6)

189 Lump sum benefits on retirement.

[M535]A lump sum paid to a person **[**[F304](whether on his retirement from an office or employment or otherwise)**]** shall not be chargeable to income tax under Schedule E if—

(a) it is paid in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or as is described in section 596(1) and is neither a payment of compensation to which section 188(2) applies nor a payment chargeable to tax under section 600; or

(b) it is a benefit paid in pursuance of any such scheme or arrangement as was referred to in section 220 of the 1970 Act or a retirement benefits scheme within the meaning of section 611 of this Act and the person to whom it is paid was chargeable to tax under section 220 of the 1970 Act or section 595 of this Act in respect of sums paid, or treated as paid, with a view to the provision of the benefit; or

(c) it is paid under approved personal pension arrangements (within the meaning of Chapter IV of Part XIV).

Textual Amendments

F304 1988(F) s.57 (*which also amends* 1973 s.14).*Previously*
"on his retirement from an office or employment".

Marginal Citations

M535 Source—1973 s.14; 1987 Sch.2 3

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190 Payments to Members of Parliament, Representatives to the European Parliament and others.

[M536]Grants and other payments made—

(a) in pursuance of a resolution of the House of Commons to a person ceasing to be a Member of that House on a dissolution of Parliament, or

(b) under section 13 of the [M537]Parliamentary Pensions etc. Act 1984 **[**[F305]or section 4 of the Ministerial and other Pensions and Salaries Act 1991**]**(grants to persons ceasing to hold certain Ministerial and other offices), or

(c) under section 3 of the [M538]European Parliament (Pay and Pensions) Act 1979 (resettlement grants to persons ceasing to be Representatives),

shall be exempt from income tax under Schedule E as emoluments, but without prejudice to their being taken into account, to the extent permitted by section 188(4), under section 148.

Textual Amendments

F305 Words in s. 190(b) inserted by Ministerial and other Pensions Act 1991 (c. 5, SIF 89), **s. 4(10)**

Marginal Citations

M536 Source—1972 s.72; 1984 s.29

M537 1984 c. 52.

M538 1979 c. 50.

191 Job release scheme allowances not to be treated as income.

[M539](1) A payment on account of an allowance to which this section applies shall not be treated as income for any purposes of the Income Tax Acts.

(2) This section applies to any allowance paid since the beginning of 1977 by the Secretary of State or the Department of Economic Development under any scheme of the kind described in the [M540]Job Release Act 1977, being a scheme which provides for the payment of allowances for periods beginning not earlier than one year before the date on which the recipient attains pensionable age as defined in that Act.

Marginal Citations

M539 Source—1977 s.30

M540 1977 c. 8.

[[F306] *Removal expenses and benefits]*

Textual Amendments

F306 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

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[F306 F307 191A Removal expenses and benefits.

Schedule 11A to this Act (which relates to the payment of expenses, and the provision of benefits, in respect of removals) shall have effect.]

Textual Amendments

F307 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

[F306 F308 191B Removal benefits: beneficial loan arrangements.

(1) This section applies where—
- (a) there is a change in the residence of an employee,
- (b) the conditions mentioned in paragraph 5(1) to (3) of Schedule 11A are fulfilled in relation to the change (construing the reference in paragraph 5(1) to paragraphs 3(2) and 4(2) of that Schedule as a reference to this subsection),
- (c) a qualifying loan is raised by the employee in connection with the change and is made before the relevant day, and
- (d) section 160(1) applies (or would apply apart from this section) in respect of the employee and the loan.

(2) For the purposes of this section a loan is a qualifying loan if (and only if)—
- (a) the employee has an interest in his former residence,
- (b) he disposes of that interest in consequence of the change of residence,
- (c) he acquires an interest in his new residence, and
- (d) the reason, or one of the reasons, for the loan being raised is that a period elapses between the date when expenditure is incurred in connection with the acquisition of the employee's interest in his new residence and the date when the proceeds of the disposal of the employee's interest in his former residence are available.

(3) The reference in subsection (1) above to a loan raised by the employee includes a reference to a loan raised by one or more members of the employee's family or household or by the employee and one or more members of his family or household.

(4) References in subsection (2) above to the employee having, disposing of or acquiring an interest in a residence include references to—
- (a) one or more members of the employee's family or household having, disposing of or acquiring such an interest;
- (b) the employee and one or more members of his family or household having, disposing of or acquiring such an interest;

and references to the employee's interest shall be construed accordingly.

(5) This section does not apply unless the total of the amounts mentioned in subsection (6) below is less than the qualifying limit for the time being specified in paragraph 24(9) of Schedule 11A.

(6) The amounts referred to in subsection (5) above are—
- (a) the aggregate of the amounts of any sums which, by reason of the employee's employment and in connection with the change of residence, are paid to him,

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or to another person on his behalf, in respect of qualifying removal expenses, and

(b) the aggregate of any amounts represented by qualifying removal benefits which, by reason of the employee's employment and in connection with the change of residence, are provided for him or for others being members of his family or household.

(7) For the purposes of subsection (6) above—

(a) references to qualifying removal expenses and qualifying removal benefits shall be construed in accordance with Schedule 11A, and

(b) the reference to any amounts represented by qualifying removal benefits shall be construed in accordance with paragraph 24 of that Schedule.

(8) Where this section applies, for the purposes of section 160 and Schedule 7 the loan mentioned in subsection (1)(c) above shall be treated as if it had been made on the day after the day on which the relevant period expires; and the relevant period is a period, of the appropriate number of days, beginning with the day on which the loan is actually made.

(9) Where the loan is discharged on or before the day on which the relevant period expires subsection (8) above shall not apply; and in such a case the loan shall be ignored for the purposes of section 160 and Schedule 7.

(10) For the purposes of subsection (8) above the appropriate number is the number given by the following formula—

$$\frac{\mathrm{Ay}B}{\mathrm{Cy}D}$$

(11) For the purposes of subsection (10) above—

A is the amount by which the qualifying limit for the time being specified in paragraph 24(9) of Schedule 11A exceeds the total mentioned in subsection (5) above;

B is 365;

C is the maximum amount of the loan outstanding in the period beginning with the time when the loan is actually made and ending with the end of the relevant day;

D is the official rate of interest, within the meaning given by section 160(5), in force at the time when the loan is actually made.

(12) Where the number given by the formula set out in subsection (10) above is not a whole number, it shall be rounded up to the nearest whole number.

(13) An assessment in respect of the loan for a year of assessment ending before the relevant day may be made or determined on the assumption that the condition mentioned in subsection (5) above will not be fulfilled in relation to the change of residence; but where an assessment has been made or determined on that assumption and that condition is fulfilled in relation to the change, on a claim in that behalf the assessment shall be adjusted accordingly.

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(14) Nothing in subsection (8) above shall affect the operation of paragraph 10 of Schedule 7 in relation to the priority given by that paragraph to a loan falling within sub-paragraph (1)(b) of that paragraph.

(15) Any reference in this section to the relevant day is to the day which, by virtue of paragraph 6 of Schedule 11A, is the relevant day in relation to the change of residence concerned.

(16) Paragraphs 25 to 27 of Schedule 11A apply for the purposes of this section as they apply for the purposes of that Schedule.**]**

Textual Amendments

F308 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

Foreign emoluments and earnings, pensions and certain travel facilities

192 Relief from tax for foreign emoluments.

(1) [M541]In this Part "foreign emoluments" means the emoluments of a person not domiciled in the United Kingdom from an office or employment under or with any person, body of persons or partnership resident outside, and not resident in, the United Kingdom, but shall be taken not to include the emoluments of a person resident in the United Kingdom from an office or employment under or with a person, body of persons or partnership resident in the Republic of Ireland.

(2) [M542]Where the duties of an office or employment are performed wholly outside the United Kingdom and the emoluments from the office or employment are foreign emoluments, the emoluments shall be excepted from Case I of Schedule E.

(3) [M543]If it appears to the Board on a claim made by the holder of an office or employment that out of any foreign emoluments from the office or employment he has made payments in circumstances corresponding to those in which the payments would have reduced his liability to income tax, the Board may allow those payments as a deduction in computing the amount of the emoluments.

(4) [M544]Subject to subsection (2) above, there shall be allowed in charging tax on foreign emoluments from an office or employment under Case I or II of Schedule E for the year of assessment 1988-89 a deduction equal to one-quarter of the emoluments in any case where—

(a) the holder of the office or employment was in that year of assessment not resident in the United Kingdom or was not resident in the United Kingdom for at least two of the preceding ten years of assessment; and

(b) he—

(i) held an office or employment the emoluments of which were foreign emoluments chargeable under Case I or II of Schedule E at any time in the period beginning with 6th April 1983 and ending with 13th March 1984, or

(ii) in fulfilment of an obligation incurred before 14th March 1984, performed duties of such an office or employment in the United Kingdom before 1st August 1984, and he held such an office or

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employment in the year 1984-85 and in each subsequent year of assessment.

(5) [M545]Paragraph 2(2) and (3) of Schedule 12 shall have effect with the necessary modifications in relation to the amount of emoluments to be excepted under subsection (2) above as they have effect in relation to the amount of emoluments in respect of which a deduction is allowed under section 193(1), and, subject to that, for the purposes of subsections (2) and (4) above the amount of any emoluments shall be taken to be the amount remaining after any capital allowance and after any deductions under subsection (3) above or section 193(4), 194(1), 195(7), 198, 199, 201, 332, 592 or 594.

Marginal Citations

M541 1970 s.181(1), Sch.12 Pt. III 3(3); 1974 s.21(1), (6)
M542 Source—1974 Sch.2 4
M543 Source—1974 Sch.2 6
M544 Source—1974 Sch.2 3(1), (2); 1984 s.30(9)-(12)
M545 Source—1974 Sch.2 5; 1977 s.31(2), 32(8)

VALID FROM 31/07/1998

[[F309]192A Foreign earnings deduction for seafarers.

(1) Where in any year of assessment—

(a) the duties of an employment as a seafarer are performed wholly or partly outside the United Kingdom, and

(b) any of those duties are performed in the course of a qualifying period (within the meaning of Schedule 12) which falls wholly or partly in that year and consists of at least 365 days,

then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.

(2) In subsection (1) employment "as a seafarer" means an employment consisting of the performance of duties on a ship (or of such duties and others incidental to them).

(3) For the purposes of this section a "ship" does not include—

(a) any offshore installation within the meaning of the [M546]Mineral Workings (Offshore Installations) Act 1971, or

(b) what would be such an installation if the references in that Act to controlled waters were to any waters.

(4) Schedule 12 has effect for the purpose of supplementing this section.**]**

Textual Amendments

F309 S. 192A inserted (with effect in accordance with s. 63(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 63(2)** (with s. 63(6)(7))

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Marginal Citations
M546 1971 c. 61.

193 Foreign earnings and travel expenses.

(1) [M547]Where in any year of assessment—

(a) the duties of an office or employment are performed wholly or partly outside the United Kingdom; and

(b) any of those duties are performed in the course of a qualifying period (within the meaning of Schedule 12) which falls wholly or partly in that year and consists of at least 365 days;

then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.

Schedule 12 shall have effect for the purpose of supplementing this subsection.

(2) [M548]Subsections (3) and (4) below apply where a person ("the employee") who is resident and ordinarily resident in the United Kingdom holds an office or employment ("the overseas employment") the duties of which are performed wholly outside the United Kingdom and the emoluments from which are not foreign emoluments.

(3) [M549]For the purposes of section 198(1) there shall be treated as having been necessarily incurred in the performance of the duties of the overseas employment expenses of the employee in travelling from any place in the United Kingdom to take up the overseas employment and in travelling to any place in the United Kingdom on its termination; and if travel is partly for a purpose mentioned in this subsection and partly for another purpose this subsection applies only to such part of the expenses as is properly attributable to the former purpose.

(4) [M550]Where, for the purpose of enabling the employee to perform the duties of the overseas employment—

(a) board and lodging outside the United Kingdom is provided for him and the cost of it is borne by or on behalf of his employer; or

(b) he incurs expenses out of the emoluments of the employment on such board and lodging for himself and those expenses are reimbursed by or on behalf of his employer,

there shall be allowed, in charging tax under Case I of Schedule E on the emoluments from that employment, a deduction of an amount equal to so much of that cost, or, as the case may be, those expenses as falls to be included in those emoluments.

Where board and lodging is partly for the purpose mentioned in this subsection and partly for another purpose, this subsection applies only to such part of the cost or expenses as is properly attributable to the former purpose.

(5) Subsection (6) below applies where a person resident and ordinarily resident in the United Kingdom—

(a) holds two or more offices or employments the duties of one or more of which are performed wholly or partly outside the United Kingdom; and

(b) travels from one place having performed there duties of one office or employment to another place for the purpose of performing duties of

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another office or employment (the emoluments from which are not foreign emoluments);

and either or both of those places is outside the United Kingdom.

(6) For the purposes of section 198(1) expenses incurred by such a person on such travel shall be treated as having been necessarily incurred in the performance of the duties which he is to perform at his destination; and if travel is partly for the purpose of performing those duties and partly for another purpose this subsection applies only to such part of the expenses as is properly attributable to the former purpose.

(7) [M551]References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (3) above) to section 198 and to deductions allowable under sections 198, 199, 201 or 332 shall be construed as including a reference to subsection (3) above and to deductions allowable under that subsection.

Marginal Citations

M547 Source—1977 Sch.1 1, 11
M548 Source—1977 s.32(1)
M549 Source—1977 s.32(2); 1986 s.34(2)
M550 Source—1977 s.32(3)-(5)
M551 Source—1977 s.32(8)

194 Other foreign travel expenses.

(1) [M552]Where—

(a) travel facilities are provided for any journey to which this subsection applies and the cost of them is borne by or on behalf of the employer; or

(b) expenses are incurred out of the emoluments of any office or employment mentioned in subsection (2), (3) or (5) below on any such journey and those expenses are reimbursed by or on behalf of the employer,

there shall be allowed, in charging tax under Case I of Schedule E on the emoluments from that office or employment, a deduction of an amount equal to so much of that cost or, as the case may be, those expenses as falls to be included in those emoluments.

(2) [M553]Subsection (1) above applies where a person is absent from the United Kingdom for a continuous period of 60 days or more for the purpose of performing the duties of one or more offices or employments and applies to travel of the following descriptions between any place in the United Kingdom and the place of performance of any of those duties outside the United Kingdom, that is to say—

(a) any journey by his spouse or any child of his—

(i) accompanying him at the beginning of the period of absence; or

(ii) to visit him during that period;

(b) any return journey following a journey of a kind described in paragraph (a) above;

but that subsection does not extend to more than two outward and two return journeys by the same person in any year of assessment.

For the purposes of this subsection "child" includes a stepchild and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the outward journey.

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(3) [M554]Where a person holds an office or employment the duties of which are performed partly outside the United Kingdom, subsection (1) above applies, subject to subsection (4) below, to any journey by him—

(a) from any place in the United Kingdom to the place of performance of any of those duties outside the United Kingdom;

(b) from the place of performance of any of those duties outside the United Kingdom to any place in the United Kingdom.

(4) Subsection (1) does not apply by virtue of subsection (3) unless the duties concerned can only be performed outside the United Kingdom and the journey is made wholly and exclusively for the purpose—

(a) where the journey falls within subsection (3)(a), of performing the duties concerned; or

(b) where the journey falls within subsection (3)(b), of returning after performing the duties concerned.

(5) Where a person is absent from the United Kingdom for the purposes of performing the duties of one or more offices or employments, subsection (1) above applies, subject to subsection (6) below, to—

(a) any journey by him from the place of performance of any of those duties outside the United Kingdom to any place in the United Kingdom;

(b) any return journey following a journey of a kind described in paragraph (a) above.

(6) Subsection (1) does not apply by virtue of subsection (5) unless the duties concerned can only be performed outside the United Kingdom and the absence mentioned in subsection (5) was occasioned wholly and exclusively for the purpose of performing the duties concerned.

(7) [M555]For the purpose of applying this section in a case where the duties of the office or employment or (as the case may be) any of the offices or employments are performed on a vessel, in section 132(4)(b) the words from " or which " to the end shall be ignored.

(8) In such a case as is mentioned in subsection (7) above, subsection (4) above shall have effect as if "the duties concerned" in paragraphs (a) and (b) read " the duties concerned, or those duties and other duties of the office or employment ".

(9) Where apart from this subsection a deduction in respect of any cost or expenses is allowable under a provision of this section or section 193 and a deduction in respect of the same cost or expenses is also allowable under another provision of this section or section 193 or of any other enactment, a deduction in respect of the cost or expenses may be made under either, but not both, of those provisions.

(10) [M556]References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (1) above) to section 198 and to deductions allowable under sections 198, 199, 201 or 332 shall be construed as including a reference to subsection (1) above and to deductions allowable under that subsection.

Marginal Citations

M552 Source—1977 s.32(7); 1986 s.34(5)

M553 Source—1977 s.32(6); 1986 s.34(3)

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M554 Source—1977 s.32(6A)-(6D); 1986 s.34(4)
M555 Source—1977 s.32(7A)-(7C); 1986 s.34(6)
M556 Source—1977 s.32(8)

195 Travel expenses of employees not domiciled in the United Kingdom.

M557(1) Subject to subsection (2) below, this section applies in the case of an office or employment in respect of which a person ("the employee") who is not domiciled in the United Kingdom is in receipt of emoluments for duties performed in the United Kingdom.

(2) This section does not apply unless subsection (3) below is satisfied in respect of a date on which the employee arrives in the United Kingdom to perform duties of the office or employment; and where subsection (3) is so satisfied, this section applies only for a period of five years beginning with that date.

(3) This subsection is satisfied in respect of a date if the employee—
- (a) was not resident in the United Kingdom in either of the two years of assessment immediately preceding the year of assessment in which the date falls; or
- (b) was not in the United Kingdom for any purpose at any time during the period of two years ending with the day immediately preceding the date.

(4) Where subsection (3) above is satisfied (by virtue of paragraph (a) of that subsection) in respect of more than one date in any year of assessment, only the first of those dates is relevant for the purposes of this section.

(5) Subsection (7) below applies to any journey by the employee—
- (a) from his usual place of abode to any place in the United Kingdom in order to perform any duties of the office or employment there; or
- (b) to his usual place of abode from any place in the United Kingdom after performing such duties there.

(6) Where the employee is in the United Kingdom for a continuous period of 60 days or more for the purpose of performing the duties of one or more offices or employments in the case of which this section applies, subsection (7) below applies to any journey by his spouse, or any child of his, between his usual place of abode and the place of performance of any of those duties in the United Kingdom, if the journey—
- (a) is made to accompany him at the beginning of that period or to visit him during it; or
- (b) is a return journey following a journey falling within paragraph (a) above;

but subsection (7) as it applies by virtue of this subsection does not extend to more than two journeys to the United Kingdom and two return journeys by the same person in any year of assessment.

(7) Subject to subsection (8) below, where—
- (a) travel facilities are provided for any journey to which this subsection applies and the cost of them is borne by or on behalf of a person who is an employer in respect of any office or employment in the case of which this section applies; or
- (b) expenses are incurred out of the emoluments of any office or employment in the case of which this section applies on such a journey and those expenses are reimbursed by or on behalf of the employer;

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there shall be allowed, in charging tax under Case I or II of Schedule E on the emoluments from the office or employment concerned, a deduction of an amount equal to so much of that cost or, as the case may be, those expenses as falls to be included in those emoluments.

(8) If a journey is partly for a purpose mentioned in subsection (5) or (6) above and partly for another purpose, only so much of the cost or expenses referred to in subsection (7) as is properly attributable to the former purpose shall be taken into account in calculating any deduction made under subsection (7) as it applies by virtue of subsection (5) or, as the case may be, (6).

(9) For the purposes of this section a person's usual place of abode is the country (outside the United Kingdom) in which he normally lives.

(10) In subsection (6) above "child" includes a step-child and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the journey to the United Kingdom.

(11) References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (7) above) to section 198 and to deductions allowable under section 198, 199, 201 or 332 shall be construed as including a reference to subsection (7) above and to deductions allowable under it.

(12) Where apart from this subsection a deduction in respect of any cost or expenses is allowable under a provision of this section and a deduction in respect of the same cost or expenses is also allowable under another provision of this section or of any other enactment, a deduction in respect of the cost or expenses may be made under either, but not both, of those provisions.

(13) Where by virtue of subsection (3) of section 38 of the [M558]Finance Act 1986 any provision of section 37 of that Act applied in the case of any employee at any time during the year 1984-85 or 1985-86 (and that section applied to him immediately before 6th April 1988), this section shall apply in his case for the years 1988-89 to 1990-91 as if the following were substituted for subsections (2) to (4)—

"(2) This section does not apply after 5th April 1991.".

Marginal Citations
M557 Source—1986 s.37
M558 1986 s.38(4)

196 Foreign pensions.

[M559]A deduction of one-tenth of its amount shall be allowed in charging any pension or annuity to tax under paragraph 4 of Schedule E.

Marginal Citations
M559 Source—1974 s.22(3)

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197 Leave travel facilities for the armed forces.

[M560](1) No charge to tax under Schedule E shall arise in respect of travel facilities provided for members of the naval, military or air forces of the Crown going on, or returning from, leave.

(2) Subsection (1) above applies whether the charge would otherwise have arisen under section 131, 141 or 154 and applies not only to travel vouchers and warrants for particular journeys but also to allowances and other payments for and in respect of leave travel, whether or not a warrant was available.

Marginal Citations

M560 Source—1977 s.37(1), (2)

[F310 197A Car parking facilities

Any expenditure incurred in paying or reimbursing expenses in connection with the provision for, or use by, a person holding an office or employment of a car parking space at or near his place of work shall not be regarded as an emolument of the office or employment for any purpose of Schedule E.**]**

Textual Amendments

F310 S. 197A inserted (1988-89 and subsequent years of assessment) by Finance Act 1988 (c. 39), **s. 46(4)**

Modifications etc. (not altering text)

C176 *See*—1988 ss.157, 158, 159—*cars available for private use, car fuel and pooled cars.*1988 s.327—*disabled persons' vehicle maintenance grant.*

C177 S. 197A extended (with effect in accordance with s. 49(4) of the extending Act) by Finance Act 1999 (c. 16), **s. 49(1)(2)**

VALID FROM 27/07/1999

[F311 197AA Works bus services.

(1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of the provision for employees of a works bus service.

(2) A "works bus service" means a service provided by means of a bus for conveying employees of one or more employers on qualifying journeys.

(3) For the purposes of this section—

"bus" means a road passenger vehicle with a seating capacity of 12 or more; and

"qualifying journey", in relation to an employee, means a journey—

(a) between his home and workplace, or

(b) between one workplace and another,

in connection with the performance of the duties of the employment.

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(4) The exemption conferred by this section is subject to the following conditions—

(a) the service must be available generally to employees of the employer (or each employer) concerned;

(b) the main use of the service must be for qualifying journeys by those employees.

(5) The exemption is also subject to substantial compliance with the condition that the service must be used only by the employees for whom it is provided or their children.

For this purpose "children" includes stepchildren and illegitimate children but does not include children aged 18 or over.

(6) If under this section there is no charge to tax under section 154 (or would be no charge if the employee were in employment to which Chapter II of Part V applies), there is no charge to tax under section 141 (non-cash vouchers) in respect of a voucher evidencing the employee's entitlement to use the service.

(7) In this section—

"employment" includes an office and related expressions have a corresponding meaning; and

"workplace" means a place at which the employee's attendance is necessary in the performance of the duties of the employment.

(8) For the purposes of this section the seating capacity of a vehicle is determined in the same way as for the purposes of Part III of Schedule 1 to the [M561]Vehicle Excise and Registration Act 1994 (vehicle excise duty on buses), whether or not the vehicle is a bus within the meaning of that Part.**]**

Textual Amendments

F311 Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 48(1)**

Marginal Citations

M561 1994 c.22.

VALID FROM 27/07/1999

[[F311]197AB Support for public transport road services.

(1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of financial or other support for a public transport road service used by employees of one or more employers for qualifying journeys.

(2) For this purpose—

"public transport road service" means a public passenger transport service provided by means of a road vehicle; and

"qualifying journey", in relation to an employee, means a journey—

(a) between his home and workplace, or

(b) between one workplace and another,

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in connection with the performance of the duties of the employment.

(3) The exemption conferred by this section is subject to the following conditions—

(a) the terms on which the service is available to the employees referred to in subsection (1) above must not be more favourable than those available to other passengers;

(b) the service must be available generally to employees of the employer (or each employer) concerned.

(4) In this section—

"employment" includes an office and related expressions have a corresponding meaning; and

"workplace" means a place at which the employee's attendance is necessary in the performance of the duties of the employment.**]**

Textual Amendments

F311 Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 48(1)**

VALID FROM 27/07/1999

[F312 197AB Provision of cycle or cyclist's safety equipment.

(1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of the provision for an employee of—

(a) a cycle, or

(b) cyclist's safety equipment,

without any transfer of the property in the cycle or equipment.

(2) In this section "cycle" has the meaning given by section 192(1) of the Road Traffic Act 1988, and "cyclist" has a corresponding meaning.

(3) The exemption conferred by subsection (1) above is subject to the condition that the benefit or facility in question must be available generally to employees of the employer concerned.

(4) The exemption is also subject to the condition that the employee must use the cycle or safety equipment mainly for qualifying journeys.

For this purpose "qualifying journey", in relation to an employee, means a journey—

(a) between his home and workplace, or

(b) between one workplace and another,

in connection with the performance of the duties of the employment.

(5) If under this section there is no charge to tax under section 154 (or would be no charge if the employee were in employment to which Chapter II of Part V applies), there is no charge to tax under section 141 (non-cash vouchers) in respect of a

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voucher evidencing the employee's entitlement to use the cycle or safety equipment in question.

(6) In this section—

"employment" includes an office and related expressions shall be construed accordingly; and

"workplace" means a place at which the employee's attendance is necessary in the performance of the duties of the employment.]

Textual Amendments

F312 S. 197AC inserted (with effect in accordance with s. 50(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 50(1)**

VALID FROM 11/05/2001

[F313 *Mileage allowances*

Textual Amendments

F313 Ss. 197AD-197AH and preceding cross-heading inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 57(1)**

197AD Mileage allowance payments

(1) There is no charge to tax under Schedule E in respect of approved mileage allowance payments for a qualifying vehicle.

(2) Mileage allowance payments are amounts (other than passenger payments within the meaning of section 197AE(2)) paid to an employee in respect of expenses in connection with the use by him for business travel of a qualifying vehicle.

(3) Mileage allowance payments are approved only if, or to the extent that, for a tax year, the total amount of all the mileage allowance payments made to the employee for the kind of vehicle in question does not exceed the approved amount for mileage allowance payments applicable to that kind of vehicle.

(4) Subsection (1) above does not apply if—

(a) the employee is a passenger in the vehicle, or

(b) the vehicle is a company vehicle.

197AE Passenger payments

(1) There is no charge to tax under Schedule E in respect of approved passenger payments made to an employee for a car or van (whether or not it is a company vehicle) if—

(a) mileage allowance payments (within the meaning of section 197AD(2)) are made to the employee for the car or van, and

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(b) if the car or van is made available to the employee by reason of his employment, he is chargeable to tax in respect of it under section 157 or 159AA (cars and vans made available for private use).

(2) Passenger payments are amounts paid to an employee because, while using a car or van for business travel, he carries one or more qualifying passengers in it.

"Qualifying passenger" means a passenger who is also an employee for whom the travel is business travel.

(3) Passenger payments are approved only if, or to the extent that, for a tax year, the total amount of all the passenger payments made to the employee does not exceed the approved amount for passenger payments.

(4) Section 168(6) (when cars and vans are made available by reason of employment) applies for the purposes of subsection (1)(b) above.

197AF Mileage allowance relief

(1) An employee is entitled to mileage allowance relief for a tax year if the employee uses a qualifying vehicle for business travel and—

(a) no mileage allowance payments are made to him for the kind of vehicle in question for the tax year, or

(b) the total amount of all the mileage allowance payments made to him for the kind of vehicle in question for the tax year is less than the approved amount for mileage allowance payments applicable to that kind of vehicle.

(2) Subsection (1) above does not apply if—

(a) the employee is a passenger in the vehicle, or

(b) the vehicle is a company vehicle.

(3) The amount of mileage allowance relief to which an employee is entitled for a tax year is—

(a) if subsection (1)(a) above applies, the approved amount for mileage allowance payments applicable to the kind of vehicle in question;

(b) if subsection (1)(b) above applies, the difference between the total amount of all the mileage allowance payments made to the employee for the kind of vehicle in question and the approved amount for mileage allowance payments applicable to that kind of vehicle.

(4) In this section "mileage allowance payments" has the meaning given by section 197AD(2).

197AG Giving effect to mileage allowance relief

(1) Mileage allowance relief to which an employee is entitled for a tax year is given effect as follows.

(2) Where any emoluments of the employment fall within Case I or IIof Schedule E, the relief is allowed as a deduction from those emoluments in calculating the amount chargeable to tax for that tax year.

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(3) In the case of emoluments chargeable under Case III of Schedule E for a tax year there may be deducted from those emoluments the amount of any mileage allowance relief—

(a) for that tax year, and

(b) for any earlier tax year in which the employee was resident in the United Kingdom,

which might have been deducted from the emoluments of the employment for the tax year for which the employee is entitled to the relief if those emoluments had been chargeable under Case I of Schedule E.

(4) Subsection (3) above applies only to the extent that the mileage allowance relief cannot be deducted under subsection (2) above.

(5) A deduction shall not be made twice, whether under subsection (2) or (3) above, in respect of the same mileage allowance relief.

197AH Interpretation of sections 197AD to 197AG

Schedule 12AA to this Act defines terms used in sections 197AD to 197AG.**]**

[F314 Mileage allowances]

Textual Amendments

F314 Ss. 197B-197F and preceding cross-heading inserted by Finance Act 1990 (c. 29), s. 23, **Sch. 4**

[F315[197B Limit on chargeable mileage profit.

(1) In a case where—

(a) in the year 1989-90 (the base year) sums paid to a person by reason of an employment held by him are paid in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him,

(b) in a subsequent year of assessment (the year concerned) he makes a mileage profit as respects an employment,

(c) the amount of the mileage profit he makes in the year concerned or, where he makes a mileage profit in that year as respects more than one employment, the aggregate of the mileage profits he makes in that year would (apart from this section) be greater than the maximum amount for the year,

(d) section 197E does not prevent this section from applying, and

(e) a claim is made for relief under this section,

the amount of the mileage profit he makes in the year concerned or, as the case may be, the aggregate of the mileage profits he makes in that year shall be treated as being equal to the maximum amount for the year.

(2) In a case where the employee's relevant mileage for the year concerned is more than his relevant mileage for the base year, the maximum amount for the year concerned shall be found by applying the formula—

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$$\left(A \times \frac{B}{C}\right) + D$$

(3) In any other case, the maximum amount for the year concerned shall be found by applying the formula—

$$A + D$$

(4) A is the taxed mileage profit for the base year.

(5) B is the employee's relevant mileage for the year concerned.

(6) C is the employee's relevant mileage for the base year.

(7) D is—
- (a) nil if the year concerned is 1990-91;
- (b) an amount found by multiplying £1,000 by E if the year concerned is 1991-92 or a subsequent year of assessment.

(8) E is 1 if the year concerned is 1991-92, 2 if it is 1992-93, 3 if it is 1993-94, and so on (adding 1 for each succeeding year of assessment).**]]**

Textual Amendments
F315 1990 s.23*and* Sch.4.

[197C Definition of mileage profit.

(1) This section applies for the purposes of section 197B.

(2) The employee makes a mileage profit in the year concerned as respects an employment if—
- (a) by reason of the employment sums are paid to him in the year in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him, and
- (b) subsection (3), (4) or (6) below applies.

(3) This subsection applies if all or part of the sums mentioned in subsection (2)(a) above fall to be treated as emoluments of the employment for the year in accordance with an administrative scheme (such as a fixed profit car scheme).

(4) This subsection applies if—
- (a) subsection (3) above does not apply,
- (b) the employment is employment to which Chapter II of this Part applies, and
- (c) the amount of the sums mentioned in subsection (2)(a) above exceeds the aggregate deductible amount for the year concerned in relation to the employment.

(5) For the purposes of subsection (4) above the aggregate deductible amount for the year concerned in relation to the employment is the aggregate of the following—

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(a) any expenses of travelling in a vehicle provided by the employee which fall to be deducted from the emoluments of the employment for the year under section 198(1), and

(b) the amount of any allowance which, by virtue of Part II of the 1990 Act, falls to be made to the employee for the year in respect of expenditure incurred on the provision of a vehicle for use in the performance of the duties of the employment.

(6) This subsection applies if—

(a) neither subsection (3) nor subsection (4) above applies, and

(b) all or part of the sums mentioned in subsection (2)(a) above fall to be treated as emoluments of the employment for the year.

(7) If subsection (3) or (6) above applies, the amount of the mileage profit made by the employee in the year concerned as respects the employment is the amount of the sums mentioned in subsection (2)(a) above which fall to be treated as emoluments of the employment for the year.

(8) If subsection (4) above applies, the amount of the mileage profit made by the employee in the year concerned as respects the employment is the amount of the excess mentioned in subsection (4)(c).**]**

[197D Definition of taxed mileage profit.

(1) This section applies for the purposes of section 197B.

(2) Where in the base year the employee holds one employment to which this section applies, the taxed mileage profit for the year is the relevant amount for that employment determined in accordance with subsection (5) or (6) below.

(3) Where in the base year the employee holds more than one employment to which this section applies, the taxed mileage profit for the year shall be determined by—

(a) finding the relevant amount for each of those employments in accordance with subsection (5) or (6) below, and

(b) aggregating the amounts so found.

(4) In subsections (2) and (3) above the references to employment to which this section applies are to employment by reason of which in the base year the employee is paid sums (relevant sums) in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him.

(5) If—

(a) the employment is not employment to which Chapter II of this Part applies, or

(b) the relevant sums paid to the employee in the base year by reason of the employment are sums in respect of which his liability to tax is determined by reference to an administrative scheme (such as a fixed profit car scheme),

the relevant amount for the employment is the amount of such (if any) of the relevant sums paid to him in the base year by reason of the employment as are in fact treated as emoluments of the employment for that year.

(6) If—

(a) the employment is employment to which Chapter II of this Part applies, and

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(b) the relevant sums paid to the employee in the base year by reason of the employment are not sums in respect of which his liability to tax is determined by reference to an administrative scheme (such as a fixed profit car scheme),

the relevant amount for the employment is an amount found by deducting G from F, except that it can never by less than nil.

(7) For the purposes of subsection (6) above F is the amount of such (if any) of the relevant sums paid to the employee in the base year by reason of the employment as are by virtue of section 153 in fact treated as emoluments of the employment for that year.

(8) For the purposes of subsection (6) above G is the aggregate of the following—

(a) any expenses of travelling in a vehicle provided by the employee in fact deducted from the emoluments of the employment for the base year under section 198(1), and

(b) the amount of any allowance in fact made to the employee for the year, by virtue of Chapter I of Part III of the Finance Act 1971 in respect of expenditure incurred on the provision of a vehicle for use in the performance of the duties of the employment.**]**

Modifications etc. (not altering text)
C178 *See* 1989*edition,* Vol.3.

[197E Exception from section 197B.

(1) If the sums paid to the employee in the year concerned in respect of expenses incurred by him in travelling, in the course of the duties of his employment or employments, in any motor vehicle provided by him exceed the sums paid to him in the base year in respect of expenses so incurred by him, section 197B shall not apply for the year concerned unless the whole of the excess can be justified by reference to allowable factors.

(2) For the purpose of this section the following are allowable factors—

(a) an increase in motoring costs,

(b) a change by any employer of his practices so as more fully to reimburse motoring costs;

(c) any change of vehicle;

(d) a change in the employee's relevant mileage.**]**

[197F Other interpretative provisions.

(1) This section applies for the purposes of sections 197B to 197E.

(2) The employee's relevant mileage for a year of assessment is the number of miles by reference to which in that year he is paid sums in respect of expenses incurred by him in travelling, in the course of the duties of his employment or employments, in any motor vehicle provided by him.

(3) "Employment" means an office or employment the emoluments of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly.**]**

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[F316 Sporting and recreational facilities]

Textual Amendments

F316 S. 197G and preceding cross-heading inserted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 75(1)(2)**

[F316197GF317Sporting and recreational facilities.

(1) No charge to tax under Schedule E shall arise in respect of the provision to any person in employment with any employer, or to any member of the family or household of such a person, of—
- (a) any benefit to which this section applies; or
- (b) any non-cash voucher which is capable of being exchanged only for a benefit to which this section applies.

(2) This section applies, subject to subsections (3) to (5) below, to any benefit consisting in, or in a right or opportunity to make use of, any sporting or other recreational facilities provided so as to be available generally to, or for use by, the employees of the employer in question.

(3) Except in such cases as may be prescribed, this section does not apply to any benefit consisting in—
- (a) an interest in, or the use of, any mechanically propelled vehicle;
- (b) an interest in, or the use of, any holiday or other overnight accommodation or any facilities which include, or are provided in association with, a right or opportunity to make use of any such accommodation;
- (c) a facility provided on domestic premises;
- (d) a facility provided so as to be available to, or for use by, members of the public generally;
- (e) a facility which is used neither wholly nor mainly by persons whose right or opportunity to use it derives from employment (whether with the same employer or with different employers); or
- (f) a right or opportunity to make use of any facility falling within any of the preceding paragraphs.

(4) For the purposes of subsection (3)(e) above a person's right or opportunity to use any facility shall be taken to derive from employment if, and only if—
- (a) it derives from his being or having been an employee of a particular employer or a member of the family or household of a person who is or has been such an employee; and
- (b) the facility is one which is provided so as to be available generally to the employees of that employer.

(5) The Treasury may by regulations provide—
- (a) that such benefits as may be prescribed shall not be benefits to which this section applies; and
- (b) that such other benefits as may be prescribed shall be benefits to which this section applies only where such conditions as may be prescribed are satisfied in relation to the terms on which, and the persons to whom, they are provided.

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(6) In this section—

"domestic premises" means any premises used wholly or mainly as a private dwelling or any land or other premises belonging to, or enjoyed with, any premises so used;

"non-cash voucher" has the same meaning as in section 141;

"prescribed" means prescribed by regulations made by the Treasury;

"vehicle" includes any ship, boat or other vessel, any aircraft and any hovercraft;

and section 168(2) and (4) shall apply for the purposes of this section as it applies for the purposes of Chapter II of this Part.**]**

Textual Amendments

F317 S. 197G and crossheading inserted (with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 75(1)(2)**

Other expenses, subscriptions etc.

198 Relief for necessary expenses.

(1) [M562]If the holder of an office or employment is necessarily obliged to incur and defray out of the emoluments of that office or employment the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform those duties, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

(2) Subject to subsection (3) below, where the emoluments for any duties do not fall within Case I or II of Schedule E, then in relation to those or any other emoluments of the office or employment, subsection (1) above and **[**[F318]Part II of the 1990 Act**]** (capital allowances in respect of machinery and plant) shall apply as if the performance of those duties did not belong to that office or employment.

(3) There may be deducted from any emoluments chargeable under Case III of Schedule E the amount of—

(a) any expenses defrayed out of those emoluments, and

(b) any other expenses defrayed in the United Kingdom in the chargeable period or in an earlier chargeable period in which the holder of the office or employment has been resident in the United Kingdom,

being in either case expenses for which a deduction might have been made under subsection (1) above from emoluments of the office or employment if they had been chargeable under Case I of Schedule E for the chargeable period in which the expenses were incurred; but a deduction shall not be made twice, whether under this subsection or otherwise, in respect of the same expenses from emoluments of the office or employment.

(4) No deduction shall be made under this section in respect of expenditure incurred by a Member of the House of Commons in, or in connection with, the provision or use of residential or overnight accommodation to enable him to perform his duties as such a Member in or about the Palace of Westminster or his constituency.

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Textual Amendments

F318 1990(C) s.164*and* Sch.1 para.8(10).*Previously*
"Chapter II of Part I of the 1968 Act and Chapter I of Part III of the Finance Act 1971".

Marginal Citations

M562 Source—1970 s.189; 1984 s.28(2)(a); 1971 s.47(1)(ii)

VALID FROM 19/03/1997

[F319 198A Interpretation of section 198.

(1) For the purposes of section 198 and this section ordinary commuting, in relation to the holder of an office or employment, is—
  (a) travelling, in either direction, between a permanent workplace of his and a place mentioned in subsection (4) below (including any travel via another place so mentioned); or
  (b) travelling between two places in a case where, because of the proximity of one place to another, the journey in question is, for practical purposes, the same as a journey which would constitute ordinary commuting by virtue of paragraph (a) above.

(2) For the purposes of section 198 and this section a permanent workplace, in relation to the holder of an office or employment, is any place which—
  (a) he regularly attends in the performance of the duties of the office or employment and otherwise than for the purpose of performing a task of limited duration or for some other temporary purpose; and
  (b) is not a place falling within subsection (4)(a) below.

(3) The holder of an office or employment who does not have a permanent workplace apart from this subsection but is a person who—
  (a) in the performance of the duties of the office or employment, attends different places within a particular area, and
  (b) performs his duties at places in that area because his duties (except so far as requiring his attendance at places outside that area for the purpose of carrying out tasks of limited duration or for other temporary purposes) are defined by reference to that area,

  shall be deemed for the purposes of section 198 and this section to have a permanent workplace comprising the whole area.

(4) The places referred to in subsection (1) above, in relation to the holder of an office or employment, are—
  (a) his home or any other place which he uses, otherwise than in the performance of the duties of that office or employment, as a permanent or temporary place of residence,
  (b) any place that he is visiting for social or personal reasons and otherwise than in the performance of the duties of that office or employment,
  (c) any place that he attends, otherwise than in the performance of the duties of that office or employment, for the purposes of any trade, profession or vocation carried on by him, and

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(d) any place that he attends in the performance of the duties of another office or employment held by him.

(5) For the purposes of this section attendance for limited purposes at—

(a) a place which forms the base from which a person works in the performance of the duties of his office or employment, or

(b) the place at which he is allocated the tasks that he is to carry out in the performance of those duties,

shall not be taken to involve attendance at that place to perform a task of limited duration or for a temporary purpose.

(6) For the purposes of this section, where on any occasion a person attends any place in the performance of the duties of any office or employment or performs those duties within a particular area—

(a) the tasks which he carries out on that occasion at that place, or within that area, shall not be taken to be tasks of limited duration, and

(b) the purposes for which, on that occasion, he attends that place or performs duties within that area shall not be taken to be temporary purposes,

if subsection (7) below applies to the place or area as respects that occasion.

(7) This subsection applies to a place or area as respects any occasion on which a task is carried out, or duties are performed, by a person holding an office or employment if—

(a) the task is carried out, or the duties are performed—

(i) in the course of a period of continuous work at that place or within that area; or

(ii) at a time which it would be reasonable, on that occasion, to assume will be included in such a period;

and

(b) the period of continuous work is one of which more than twenty-four months has expired before that occasion or is one which it would be reasonable, on that occasion, to assume will in due course be either—

(i) a period of more than twenty-four months; or

(ii) a period comprising all or almost all of the period for which the person holding the office or employment is likely to continue to hold it after that occasion.

(8) The reference in subsection (7) above to a period of continuous work at a place or within an area is (subject to subsection (9) below) a reference to any continuous period throughout which the duties of the office or employment in question fall to be performed wholly or mainly at that place or, as the case may be, within that area.

(9) For the purposes of subsection (8) above any actual or contemplated modification of the place at which, or of the area within which, the duties of any office or employment fall to be performed shall be disregarded unless it is such that it has had, or would have, a significant effect on the expenses of any travel by the person holding the office or employment to or from the place or area where those duties fall wholly or mainly to be performed.

(10) For the purposes of this section, where a person holds any office or employment with a company, the reference in subsection (4)(d) above to another office or employment

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does not, in relation to that office or employment, include a reference to an office or employment with another company in the same group of companies.

(11) For the purposes of subsection (10) above two companies shall be taken to be members of the same group if, and only if, one of them is a 51 per cent. subsidiary of the other or they are both 51 per cent. subsidiaries of a third company.**]**

Textual Amendments

F319 S. 198A inserted (with effect in accordance with s. 62(5) of the amending Act) by Finance Act 1997 (c. 16), **s. 62(2)**

199 Expenses necessarily incurred and defrayed from official emoluments.

M563(1) Subject to the provisions of subsection (2) below, where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money wholly, exclusively and necessarily in the performance of the duties in respect of which such salary, fees or emoluments are payable, the Treasury may fix such sum as in the opinion of the Treasury represents a fair equivalent of the average annual amount laid out and so expended by persons of that class, and in charging income tax on that salary or those fees or emoluments there shall be deducted from the amount thereof the sums so fixed by the Treasury.

(2) If any such person would, but for the provisions of subsection (1) above, be entitled to deduct a larger amount than the sum so fixed, that amount may be deducted instead of the sum so fixed.

Marginal Citations

M563 Source—1970 s.191

M564200 Expenses of Members of Parliament.

[F320(1)**]** An allowance—

(a) which is paid to a Member of the House of Commons; and

(b) for which provision is made by resolution of that House, and

(c) which is expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties, either in the London area, as defined in such a resolution, or in his constituency,

shall not be regarded as income for any purpose of the Income Tax Acts.

[F321(2) A sum which is paid to a Member of the House of Commons in accordance with any resolution of that House providing for Members of that House to be reimbursed in respect of the cost of, and any additional expenses incurred in, travelling between the United Kingdom and any European Community institution in Brussels, Luxembourg or Strasbourg shall not be regarded as income for any purpose of the Income Tax Acts.**]**

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Textual Amendments

F320 S. 200 re-numbered as s. 200(1) (with application in relation to sums paid on or after 1.1.1992) by virtue of 1993 c. 34, **s.124**

F321 S. 200(2) inserted (with application in relation to sums paid on or after 1.1.1992) by 1993 c. 34, **s.124**

Marginal Citations

M564 Source—1984 s.28(1)

VALID FROM 27/07/1999

[F322 200ZA Expenses of members of Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.

(1) This section applies to payments made—

(a) to members of the Scottish Parliament under section 81(2) of the M565 Scotland Act 1998,

(b) to members of the National Assembly for Wales under section 16(2) of the M566 Government of Wales Act 1998, or

(c) to members of the Northern Ireland Assembly under section 47(2) of the M567 Northern Ireland Act 1998.

(2) If a payment to which this section applies is expressed to be made in respect of necessary overnight expenses or EU travel expenses, the payment shall not be regarded as income for any purpose of the Income Tax Acts.

(3) For the purposes of subsection (2) above—

"necessary overnight expenses" are additional expenses necessarily incurred by the member for the purpose of performing duties as a member in staying overnight away from the member's only or main residence, either in the area in which the body of which he is a member sits or in the constituency or region for which he has been returned, and

"EU travel expenses" are the cost of, and any additional expenses incurred in, travelling between the United Kingdom and—

(a) any European Union institution in Brussels, Luxembourg or Strasbourg, or

(b) the national parliament of another member State.**]**

Textual Amendments

F322 S. 200ZA inserted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), s. 52(1), **Sch. 5 para. 2(1)**

Marginal Citations

M565 1998 c.46.

M566 1998 c.38.

M567 1998 c.47.

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VALID FROM 29/04/1996

[F323 200AA Incidental benefits for holders of certain offices etc.

(1) A person holding any of the offices mentioned in subsection (2) below shall not be charged to tax under Schedule E in respect of—
  (a) any transport or subsistence provided or made available by or on behalf of the Crown to the office-holder or any member of his family or household; or
  (b) the payment or reimbursement by or on behalf of the Crown of any expenses incurred in connection with the provision of transport or subsistence to the office-holder or any member of his family or household.

(2) Those offices are—
  (a) any office in Her Majesty's Government in the United Kingdom, and
  (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the [M568]Ministerial and other Salaries Act 1975 (whether or not the person holding it is a person to whom a salary is paid or payable under the Act).

(3) Nothing in this section shall prevent a person from being chargeable to tax under Schedule E in respect of the benefit of a mobile telephone (within the meaning of section 159A).

(4) References in this section to a member of the family or household of an office-holder shall be construed in accordance with section 168(4).

(5) References in this section to the provision of transport to any person include references to the following—
  (a) the provision or making available to that person of any car (whether with or without a driver);
  (b) the provision of any fuel for a car provided or made available to that person;
  (c) the provision of any other benefit in connection with a car provided or made available to that person.

(6) In this section—
  "car" means any mechanically propelled road vehicle; and
  "subsistence" includes food and drink and temporary living accommodation.**]**

Textual Amendments

F323 S. 200AA inserted (with effect in accordance with s. 108(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 108(1)**

Marginal Citations

M568 1975 c. 27.

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VALID FROM 01/05/1995

[F324 200A Incidental overnight expenses.

(1) Subject to subsection (2) below, sums paid to or on behalf of any person holding an office or employment, to the extent that they are paid wholly and exclusively for the purpose of defraying, or of being used for defraying, any expenses which—
   (a) are incidental to that person's being away from his usual place of abode during a qualifying absence from home, but
   (b) would not be deductible under section 193, 194, 195, 198 or 332 if incurred out of that person's emoluments,

   shall not be regarded as emoluments of the office or employment for any purpose of Schedule E.

(2) Subsection (1) above shall not apply in the case of any qualifying absence in relation to which the authorised maximum is exceeded.

(3) For the purposes of this section a qualifying absence from home, in relation to a person holding an office or employment, is any continuous period throughout which that person is obliged to stay away from his usual place of abode and during which he—
   (a) has at least one overnight stay away from that place; but
   (b) does not on any occasion stay overnight at a place other than a place the expenses of travelling to which are either—
      (i) expenses incurred out of his emoluments and deductible, otherwise than by virtue of section 193(4), 194(2) or 195(6), under any of the provisions mentioned in subsection (1)(b) above, or
      (ii) expenses which would be so deductible if so incurred.

(4) In this section "the authorised maximum", in relation to each qualifying absence from home by any person, means the aggregate amount equal to the sum of the following amounts—
   (a) £5 for every night (if any) during that absence which is a night the whole of which is spent by that person in the United Kingdom; and
   (b) £10 for every night (if any) during that absence which is a night the whole or any part of which is spent by that person outside the United Kingdom.

(5) For the purposes of this section the authorised maximum is exceeded in relation to a qualifying absence from home by any person if that maximum is exceeded by the amount which, in the absence of subsection (2) above and of the other requirements of this Act that that maximum is not exceeded, would fall by virtue of this section and sections 141(6C), 142(3C) and 155(1B) to be disregarded, in relation to that qualifying absence, in determining the amount of that person's emoluments.

(6) The Treasury may by order increase either or both of the sums for the time being specified in subsection (4)(a) and (b) above; and such an order shall have effect for determining what emoluments are received by any person on or after the date when the order comes into force.**]**

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Textual Amendments

F324 S. 200A inserted (with effect in accordance with s. 93(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 93(4)**

VALID FROM 19/03/1997

[F325 200B Work-related training provided by employers.

(1) This section applies for the purposes of Schedule E where any person ("the employer") incurs expenditure on providing work-related training for a person ("the employee") who holds an office or employment under him.

(2) Subject to section 200C, the emoluments of the employee from the office or employment shall not be taken to include—
  (a) any amount in respect of that expenditure; or
  (b) any amount in respect of the benefit of the work-related training provided by means of that expenditure.

(3) For the purposes of this section the employer shall be taken to incur expenditure on the provision of work-related training in so far only as he incurs expenditure in paying or reimbursing—
  (a) the cost of providing any such training to the employee; or
  (b) any related costs.

(4) In subsection (3) above "related costs", in relation to any work-related training provided to the employee, means—
  (a) any costs which are incidental to the employee's undertaking the training and are incurred wholly and exclusively as a result of his doing so;
  (b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the training; and
  (c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the training or of undergoing such an assessment.

(5) In this section "work-related training" means any training course or other activity which is designed to impart, instill, improve or reinforce any knowledge, skills or personal qualities which—
  (a) is or, as the case may be, are likely to prove useful to the employee when performing the duties of any relevant employment; or
  (b) will qualify him, or better qualify him—
    (i) to undertake any relevant employment; or
    (ii) to participate in any charitable or voluntary activities that are available to be undertaken in association with any relevant employment.

(6) In this section "relevant employment", in relation to the employee, means—
  (a) any office or employment which he holds under the employer or which he is to hold under the employer or a person connected with the employer;

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(b) any office or employment under the employer or such a person to which he has a serious opportunity of being appointed; or

(c) any office or employment under the employer or such a person as respects which he can realistically expect to have such an opportunity in due course.

(7) Section 839 (meaning of "connected person") applies for the purposes of this section.**]**

Textual Amendments

F325 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

VALID FROM 19/03/1997

[F325 200C Expenditure excluded from section 200B.

(1) Section 200B shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for one or more of the following purposes, that is to say—

(a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b);

(b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them;

(c) providing the employee with an employment inducement which is unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b).

(2) Section 200B shall not apply in the case of any expenditure incurred in paying or reimbursing any expenses of travelling or subsistence, except to the extent that those expenses would be deductible under section 198 if the employee—

(a) undertook the training in question in the performance of the duties of his office or employment under the employer; and

(b) incurred those expenses out of the emoluments of that office or employment.

(3) Section 200B shall not apply in the case of any expenditure incurred in paying or reimbursing the cost of providing the employee with, or with the use of, any asset except where—

(a) the asset is provided or made available for use only in the course of the training;

(b) the asset is provided or made available for use in the course of the training and in the performance of the duties of the employee's office or employment but not for any other use;

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(c) the asset consists in training materials provided in the course of the training; or

(d) the asset consists in something made by the employee in the course of the training or incorporated into something so made.

(4) Section 200B shall apply in the case of expenditure in connection with anything that is a qualifying course of training for the purposes of section 588 to the extent only that section 588(1) does not have effect.

(5) Section 200B shall not apply in the case of any expenditure incurred in enabling the employee to meet, or in reimbursing him for, any payment in respect of which there is an entitlement to relief under section 32 of the [M569]Finance Act 1991 (vocational training).

(6) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.

(7) In this section—

"employment inducement", in relation to the employee, means an inducement to remain in, or to accept, any office or employment with the employer or a person connected with the employer;

"subsistence" includes food and drink and temporary living accommodation; and

"training materials" means stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

(8) Section 839 (meaning of "connected person") applies for the purposes of this section.**]**

Textual Amendments

F325 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

Marginal Citations

M569 1991 c. 31.

VALID FROM 19/03/1997

[[F325]200D Other work-related training.

(1) For the purposes of Schedule E, where—

(a) any person ("the employee") who holds an office or employment under another ("the employer") is provided by reason of that office or employment with any benefit,

(b) that benefit consists in any work-related training or is provided in connection with any such training, and

(c) the amount which (apart from this section and sections 200B and 200C) would be included in respect of that benefit in the emoluments of the

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employee ("the chargeable amount") is or includes an amount that does not represent expenditure incurred by the employer,

the questions whether and to what extent those emoluments shall in fact be taken to include an amount in respect of that benefit shall be determined in accordance with those sections as if the benefit had been provided by means of a payment by the employer of an amount equal to the whole of the chargeable amount.

(2) In this section "work-related training" has the same meaning as in section 200B.**]**

Textual Amendments

F325 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

VALID FROM 28/07/2000

[F326 200E Education and training funded by employers.

(1) This section applies for the purposes of Schedule E where any person (in this section, and sections 200F and 200G, called "the employer") incurs expenditure—

(a) by making a payment to a person ("the provider") in respect of the costs of any qualifying education or training provided by the provider to a fundable employee of the employer (in this section, and sections 200F and 200G, called "the employee"), or

(b) in paying or reimbursing any related costs.

(2) Subject to sections 200F to 200H, the emoluments of the employee from the office or employment shall not be taken to include—

(a) any amount in respect of that expenditure, or

(b) any amount in respect of the benefit of the education or training provided by means of that expenditure.

(3) In subsection (1) above "related costs", in relation to any qualifying education or training provided to the employee, means—

(a) any costs that are incidental to the employee's undertaking the education or training and are incurred wholly and exclusively as a result of his doing so;

(b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the education or training; and

(c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the education or training or of undergoing such an assessment.

(4) In this section "qualifying education or training" means education or training of a kind that qualifies for grants whose payment is authorised by—

(a) regulations under section 108 or 109 of the M570 Learning and Skills Act 2000, or

(b) regulations under section 1 of the M571 Education and Training (Scotland) Act 2000.

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(5) For the purposes of this section, a person is a fundable employee of the employer if—
  (a) he holds, or has at any time held, an office or employment under the employer, and
  (b) he holds an account that qualifies under section 104 of the Learning and Skills Act 2000 or he is a party to qualifying arrangements.

(6) In subsection (5) above "qualifying arrangements" means arrangements which qualify under—
  (a) section 105 or 106 of the Learning and Skills Act 2000, or
  (b) section 2 of the Education and Training (Scotland) Act 2000.**]**

Textual Amendments

F326 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

Marginal Citations

M570 2000 c. 21.
M571 2000 asp 8.

VALID FROM 28/07/2000

[F326 200F Section 200E: exclusion of expenditure not directly related to training.

(1) Section 200E shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for either or both of the following purposes, that is to say—
  (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes;
  (b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them.

(2) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing any expenses of travelling or subsistence, except to the extent that those expenses would be deductible under section 198 if the employee—
  (a) undertook the education or training in question in the performance of the duties of—
    (i) his office or employment under the employer, or
    (ii) where the employee no longer holds an office or employment under the employer, the last office or employment that he did hold under the employer; and
  (b) incurred those expenses out of the emoluments of that office or employment.

(3) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing the cost of providing the employee with, or with the use of, any asset except where—

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(a) the asset is provided or made available for use only in the course of the education or training;

(b) the asset is provided or made available for use in the course of the education or training and in the performance of the duties of the employee's office or employment but not to any significant extent for any other use;

(c) the asset consists in training materials provided in the course of the education or training; or

(d) the asset consists in something made by the employee in the course of the education or training or incorporated into something so made.

(4) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.

(5) In this section—

"subsistence" includes food and drink and temporary living accommodation; and

"training materials" means stationery, books or other written material, audio or video tapes, compact disks or floppy disks.**]**

Textual Amendments

F326 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

VALID FROM 28/07/2000

[F326 200C Section 200E: exclusion of expenditure if contributions not generally available to staff.

(1) Section 200E shall not apply to any expenditure incurred in respect of—

(a) the costs of any education or training provided to the employee, or

(b) any related costs,

unless the expenditure is incurred in giving effect to fair-opportunity arrangements that were in place at the time when the employer agreed to incur the expenditure.

In this subsection "related costs", in relation to any education or training provided to the employee, has the meaning given by section 200E(3).

(2) For the purposes of subsection (1) above "fair-opportunity arrangements" are in place at any time if at that time arrangements are in place that provide—

(a) for the making of contributions by the employer to costs arising from qualifying education or training being undertaken by persons who hold, or have held, an office or employment under the employer, and

(b) for such contributions to be generally available, on similar terms, to the persons who at that time hold an office or employment under the employer.

In this subsection "qualifying education or training" has the same meaning as in section 200E.

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(3) The Treasury may by regulations make provision specifying the persons or other entities under whom Crown servants are to be treated for the purposes of this section as holding office or employment; and such regulations may—

(a) deem a description of Crown servants (or two or more such descriptions taken together) to be an entity for the purposes of the regulations;

(b) make different provision for different descriptions of Crown servants.

In this subsection "Crown servant" means a person holding an office or employment under the Crown.**]**

Textual Amendments

F326 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

VALID FROM 28/07/2000

[F326 200H Section 200E: exclusion of expenditure otherwise relieved.

Section 200E does not apply to expenditure to the extent that—

(a) section 200B (expenditure on work-related training) applies to it, or

(b) section 588(1) (expenditure on retraining courses) has effect in respect of it.**]**

Textual Amendments

F326 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

VALID FROM 28/07/2000

[F326 200J Education or training funded by third parties.

(1) This section applies where—

(a) any person ("the employee") who holds, or has at any time held, an office or employment under another ("the employer") is provided by reason of that office or employment with any benefit,

(b) that benefit consists in any qualifying education or training or is provided in connection with any such education or training, and

(c) the amount which (apart from this section and sections 200E to 200H) would be included in respect of that benefit in the emoluments of the employee ("the chargeable amount") is or includes an amount that does not represent expenditure incurred by the employer.

(2) For the purposes of Schedule E, the questions whether and to what extent those emoluments shall be taken to include an amount in respect of that benefit shall be

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determined in accordance with sections 200E to 200H as if the benefit had been provided by means of a payment by the employer of an amount equal to the whole of the chargeable amount.

(3) In this section "qualifying education or training" has the same meaning as in section 200E.**]**

Textual Amendments

F326 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

201 Fees and subscriptions to professional bodies, learned societies etc.

M572 (1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—

(a) any fee or contribution mentioned in subsection (2) below, and

(b) any annual subscription paid to a body of persons approved for the purposes of this section by the Board.

(2) The fees and contributions referred to in subsection (1)(a) above are—

(a) the fee payable in respect of the retention of a name in the Register of Architects;

(b) the fee payable in respect of the retention of a name in the dentists register or in a roll or record kept for a class of ancillary dental workers;

(c) the fee payable in respect of the retention of a name in either of the registers of ophthalmic opticians or in the register of dispensing opticians;

(d) the annual fee payable by a registered patent agent;

(e) the fee payable in respect of the retention of a name in the register of pharmaceutical chemists;

(f) the fee and contribution to the Compensation Fund or Guarantee Fund payable on the issue of a solicitor's practising certificate; and

(g) the annual fee payable by a registered veterinary surgeon or by a person registered in the Supplementary Veterinary Register.

(3) The Board may, on the application of the body, approve for the purposes of this section any body of persons not of a mainly local character whose activities are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—

(a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions);

(b) the maintenance or improvement of standards of conduct and competence among the members of any profession;

(c) the indemnification or protection of members of any profession against claims in respect of liabilities incurred by them in the exercise of their profession.

(4) If the activities of a body approved for the purposes of this section are to a significant extent directed to objects other than those mentioned in subsection (3) above, the Board may determine that such specified part only of any annual subscription paid to

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the body may be deducted under this section as corresponds to the extent to which its activities are directed to objects mentioned in that subsection; and in doing so the Board shall have regard to all relevant circumstances and, in particular, to the proportions of the body's expenditure attributable to the furtherance of objects so mentioned and other objects respectively.

(5) A fee, contribution or subscription shall not be deducted under this section from the emoluments of any office or employment unless—

(a) the fee is payable in respect of a registration (or retention of a name in a roll or record) or certificate which is a condition, or one of alternative conditions, of the performance of the duties of the office or employment or, as the case may be, the contribution is payable on the issue of such a certificate; or

(b) the subscription is paid to a body the activities of which, so far as they are directed to the objects mentioned in subsection (3) above, are relevant to the office or employment, that is to say, the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

(6) Any approval given and any determination made under this section may be withdrawn, and any such determination varied, so as to take account of any change of circumstances; and where a body is approved for the purposes of this section in pursuance of an application made before the end of any year of assessment, a deduction may be made under this section in respect of a subscription paid to the body in that year, whether the approval is given before or after the end of the year.

(7) Any body aggrieved by the failure of the Board to approve the body for the purposes of this section, or by their withdrawal of the approval, or by any determination made by them under this section or the variation of or refusal to withdraw or vary such a determination may, by notice given to the Board within 30 days from the date on which the body is notified of their decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.

Marginal Citations

M572 Source—1970 s.192

VALID FROM 01/05/1995

[F327 201AA Employee liabilities and indemnity insurance.

(1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—

(a) any amount paid in or towards the discharge of a qualifying liability of the person who is the holder of the office or employment;

(b) costs or expenses incurred in connection with any claim that that person is subject to such a liability or with any proceedings relating to or arising out of such a claim; and

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(c) so much (if any) of any premium paid under a qualifying contract of insurance as relates to the indemnification of that person against a qualifying liability or to the payment of any such costs or expenses.

(2) For the purposes of this section a liability is a qualifying liability, in relation to any office or employment, if it is imposed either—

(a) in respect of any acts or omissions of a person in his capacity as the holder of that office or employment or in any other capacity in which he acts in the performance of the duties of that office or employment; or

(b) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability imposed in respect of any such acts or omissions.

(3) For the purposes of this section a qualifying contract of insurance is a contract of insurance which—

(a) so far as the risks insured against are concerned, relates exclusively to one or more of the matters mentioned in subsection (4) below;

(b) is not connected with any other contract;

(c) does not contain provision entitling the insured, in addition to cover for the risks insured against and any right to renew the policy, to receive any payment or other benefit the entitlement to which is something to which a significant part of the premium under the contract is reasonably attributable; and

(d) is a contract the period of insurance under which does not exceed two years (except by virtue of one or more renewals each for a period of two years or less) and is not a contract which the insured is required to renew for any period.

(4) The matters referred to in subsection (3)(a) above in relation to any contract of insurance are the following, that is to say—

(a) the indemnification of any person holding any office or employment against any qualifying liability;

(b) the indemnification of any person against any vicarious liability in respect of acts or omissions giving rise, in the case of another, to such a qualifying liability;

(c) the payment of some or all of the costs or expenses incurred by or on behalf of that or any other person in connection with any claim that a person is subject to a liability to which the insurance relates or with any proceedings relating to or arising out of such a claim; and

(d) the indemnification of any person against any loss from the payment by him (whether or not in discharge of any liability) to a person holding an office or employment under him of any amount in respect of a qualifying liability or of any such costs or expenses.

(5) For the purposes of this section a contract of insurance is connected with another contract at any time at or after the time when they have both been entered into if—

(a) either of them was entered into by reference to the other or with a view to enabling the other to be entered into on particular terms or to facilitating the other being entered into on particular terms; and

(b) the terms on which either of them was entered into would have been significantly different if it had not been entered into in anticipation of the other being entered into or if the other had not also been entered into.

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(6) Two or more contracts of insurance shall not be prevented by virtue of paragraph (b) of subsection (3) above from being qualifying contracts if—

(a) they each satisfy the requirements of paragraphs (a), (c) and (d) of that subsection; and

(b) the only respects in which there is a significant difference between the terms on which any of those contracts is entered into and what would have been those terms if the other contract or contracts had not been entered into consist in such reductions of premium as are reasonably attributable to—

(i) the fact that, where different contracts have been entered into as part of a single transaction, the premium under each of the contracts has been fixed by reference to the appropriate proportion of what would have been the premium under a single contract relating to all the risks covered by the different contracts; or

(ii) the fact that the contract in question contains a right to renew or is entered into by way of renewal or in pursuance of such a right.

(7) For the purpose of determining the different parts of any premium under any contract of insurance which are to be treated for the purposes of this section as paid in respect of the different risks, different persons and different offices and employments to which the contract relates, such apportionment of that premium shall be made as may be reasonable.

(8) Where it would be unlawful for a person under whom any other person holds any office or employment to enter into a contract of insurance in respect of liabilities of any description or in respect of costs or expenses of any description, no deduction may be made under this section in respect of—

(a) the discharge of any liability of that other person which is a liability of that description; or

(b) any costs or expenses incurred by or on behalf of that other person which are costs or expenses of that description.

(9) References in this section to a premium, in relation to a contract of insurance, are references to any amount payable under the contract to the insurer.**]**

Textual Amendments

F327 S. 201AA inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 91(1)**

[[F328]201A Expense of entertainers.

(1) Where emoluments of an employment to which this section applies fall to be charged to tax for a year of assessment for which this section applies, there may be deducted from the emoluments of the employment to be charged to tax for the year—

(a) fees falling within subsection (2) **[**[F329]or (2A)**]**below, and

(b) any additional amount paid by the employee in respect of value added tax charged by reference to those fees.

(2) Fees fall within this subsection if—

(a) they are paid by the employee to another person,

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(b) they are paid under a contract made between the employee and the other person, who agrees under the contract to act as an agent of the employee in connection with the employment,

(c) at each time any of the fees are paid the other person carries on an employment agency with a view to profit and holds a current licence for the agency,

(d) they are calculated as a percentage of the emoluments of the employment or as a percentage of part of those emoluments, and

(e) they are defrayed out of the emoluments of the employment falling to be charged to tax for the year concerned.

F330 **[** Fees fall within this subsection if—

(2A) (a) they are paid by the employee in pursuance of an arrangement under which a bona fide co-operative society agrees, or the members of such a society agree, to act as agent of the employee in connection with the employment,

(b) they are calculated as a percentage of the emoluments of the employment or as a percentage of part of those emoluments, and

(c) they are defrayed out of the emoluments of the employment falling to be charged to tax for the year concerned.**]**

(3) For the purposes of subsection (2) above—

(a) "employment agency" means an employment agency within the meaning given by section 13(2) of the Employment Agencies Act 1973, and

(b) a person holds a current licence for an employment agency if he holds a current licence under that Act authorising him to carry on the agency.

F331 **[** Subsection (3) of section 1 of the Industrial and Provident Societies Act 1965 (co-

(3A) operative society does not include profit-making society) shall apply for the purposes of subsection (2A)(a) above as it applies for the purposes of that section.**]**

(4) The amount which may be deducted by virtue of this section shall not exceed 17.5 per cent. of the emoluments of the employment falling to be charged to tax for the year concerned.

F332 **[** Subsection (4) above, a deduction by virtue of this section as regards a

(4A) particular employment and a particular year of assessment may be based on fees falling within subsection (2) above or fees falling within subsection (2A) above, or both.**]**

(5) This section applies to employment as an actor, singer, musician dancer or theatrical artist.

(6) This section applies for the year 1990-91 and subsequent years of assessment.**]**

Textual Amendments

F328 S. 201A inserted by Finance Act 1990 (c. 29), **s. 77**

F329 Words in s. 201A(1)(a) inserted (for the year 1990-91 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), **s. 69(2)(6)**

F330 S. 201A(2A) inserted (for the year 1990-91 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), **s. 69(3)(6)**

F331 S. 201A(3A) inserted (for the year 1990-91 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), **s. 69(4)(6)**

F332 S. 201A(4A) inserted (for the year 1990-91 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), **s. 69(5)(6)**

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202 Donations to charity: payroll deduction scheme.

(1) [M573]This section applies where an individual ("the employee") is entitled to receive payments from which income tax falls to be deducted by virtue of section 203 and regulations under that section, and the person liable to make the payments ("the employer") withholds sums from them.

(2) If the conditions mentioned in subsections (3) to (7) below are fulfilled the sums shall, in assessing tax under Schedule E, be allowed to be deducted as expenses incurred in the year of assessment in which they are withheld.

(3) The sums must be withheld in accordance with a scheme which is (or is of a kind) approved by the Board at the time they are withheld and which either contains provisions falling within subsection (4)(a) below, or contains provisions falling within subsection (4)(a) below and provisions falling within subsection (4)(b) below.

(4) The provisions are that—

(a) the employer is to pay sums withheld to a person ("the agent") who is approved by the Board at the time they are withheld, and the agent is to pay them to a charity or charities;

(b) the employer is to pay sums withheld directly to a charity which (or charities each of which) is at the time the sums are withheld approved by the Board as an agent for the purpose of paying sums to other charities.

(5) The sums must be withheld in accordance with a request by the employee that they be paid to a charity or charities in accordance with a scheme approved (or of a kind approved) by the Board.

(6) The sums must constitute gifts by the employee to the charity or charities concerned, must not be paid by the employee under a covenant, and must fulfil any conditions set out in the terms of the scheme concerned.

(7) The sums must not in any year of assessment exceed **[**[F333]£900**]** in the case of any employee (however many offices or employments he holds or has held).

(8) [M574]The circumstances in which the Board may grant or withdraw approval of schemes (or kinds of schemes) or of agents shall be such as are prescribed by the Treasury by regulations; and the circumstances so prescribed (whether relating to the terms of schemes or the qualifications of agents or otherwise) shall be such as the Treasury think fit.

(9) The Treasury may by regulations make provision—

(a) that a participating employer or agent shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board's inspection documents of a prescribed kind or records of a prescribed kind;

(b) that a participating employer or agent shall in prescribed circumstances furnish to the Board information of a prescribed kind;

(c) for, and with respect to, appeals to the Special Commissioners against the Board's refusal to grant, or their withdrawal of, approval of any scheme (or any kind of scheme) or agent;

(d) generally for giving effect to subsections (1) to (7) above.

In this subsection "prescribed" means prescribed by the regulations.

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(10) For the purposes of subsection (9) above a person is a participating employer or agent if he is an employer or agent who participates, or has at any time participated, in a scheme under this section.

(11) [M575]In this section "charity" has the same meaning as in section 506.

Textual Amendments

F333 Word in s. 202(7) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 68(1)(2)**

Modifications etc. (not altering text)

C179 *See* 1990 s.25—*donations to charity by individuals in respect of gifts made on or after* 1*October* 1990.

C180 *For regulations see* Part III Vol.5 ("Charitable deductions: approved schemes").

Marginal Citations

M573 Source—1986 s.27(1)-(7); 1987 s.32

M574 Source—1986 s.28(1)-(5)

M575 Source—1986 s.27(8)

CHAPTER V

ASSESSMENT, COLLECTION, RECOVERY AND APPEALS

[[F334]202A Assessment on receipts basis.

(1) As regards any particular year of assessment—

(a) income tax shall be charged under Cases I and II of Schedule E on the full amount of the emoluments received in the year in respect of the office or employment concerned;

(b) income tax shall be charged under Case III of Schedule E on the full amount of the emoluments received in the United Kingdom in the year in respect of the office or employment concerned.

(2) Subsection (1) above applies—

(a) whether the emoluments are for that year or for some other year of assessment;

(b) whether or not the office or employment concerned is held at the time the emoluments are received or (as the case may be) received in the United Kingdom.

(3) Where subsection (1) above applies in the case of emoluments received, or (as the case may be) received in the United Kingdom, after the death of the person who held the office or employment concerned, the charge shall be a charge on his executors or administrators; and accordingly income tax—

(a) shall be assessed and charged on the executors or administrators, and

(b) shall be a debt due from and payable out of the deceased's estate.

(4) Section 202B shall have effect for the purposes of subsection (1)(a) above.]

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Textual Amendments

F334 Ss. 202A, 202B inserted by Finance Act 1989 (c. 26), **s. 37**

202B Receipts basis: meaning of receipt.

(1) For the purposes of section 202A(1)(a) emoluments shall be treated as received at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—

(a) the time when payment is made of or on account of the emoluments;

(b) the time when a person becomes entitled to payment of or on account of the emoluments;

(c) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the emoluments are credited in the company's accounts or records, the time when sums on account of the emoluments are so credited;

(d) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is determined before the period ends, the time when the period ends;

(e) in a case where the emoluments are from an office or employment with a company; the holder of the office or employment is a director of the company and the amount of the emoluments for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.

(2) Subsection 1(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.

(3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

(4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.

(5) In subsection (1) above "director" means—

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company.

(6) In subsection (1) above "director", in relation to a company, also includes any person in accordance with whose directions or instructions the company's directors (as defined in subsection (5) above) are accustomed to act; and for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company's directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

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(7) Subsections (1) to (6) above shall have effect subject to subsections (8) to (11) below.

(8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6) above shall not apply.

(9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.

(10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or 164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the year referred to in section 154(1) or the other provision concerned; and in such a case subsections (1) to (6) above shall not apply.

(11) In a case where—

(a) emoluments take the form of a benefit not consisting of money, and

(b) subsection (8), (9) or (10) above does not apply,

for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply .

Modifications etc. (not altering text)

C181 *See also* 1989 ss.43(12), 44(11)—*application of* s.202B*in connection with certain Sch.D etc. computations.*

203 Pay as you earn.

M576(1) On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made.

(2) The Board shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of all income assessable thereto under Schedule E, and those regulations may, in particular, include provision—

(a) for requiring any person making any payment of, or on account of, any such income, when he makes the payment, to make a deduction or repayment of income tax calculated by reference to tax tables prepared by the Board, and for rendering persons who are required to make any such deduction or repayment accountable to, or, as the case may be, entitled to repayment from, the Board;

(b) for the production to and inspection by persons authorised by the Board of wages sheets and other documents and records for the purpose of satisfying themselves that income tax has been and is being deducted, repaid and accounted for in accordance with the regulations;

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(c) for the collection and recovery, whether by deduction from any such income paid in any later year or otherwise, of income tax in respect of any such income which has not been deducted or otherwise recovered during the year;

[[F335](d) for requiring the payment of interest on sums due to the Board which are not paid by the due date, 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 and for enabling the repayment or remission of such interest;

(dd) for requiring the payment of interest on sums due from the Board and for determining the date (being not less than one year after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated;**]**

(e) for the assessment and charge of income tax by the inspector in respect of income to which this section applies; and

(f) for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal;

and any such regulations shall have effect notwithstanding anything in the Income Tax Acts.

(3) The deductions of income tax required to be made by regulations under subsection (2)(a) above may be required to be made at the basic rate or other rates in such cases or classes of cases as may be provided for by the regulations.

[[F336](3A) Regulations under this section may include provision for income tax in respect of any of a person's income for the year 1989-90 or any earlier year of assessment to be collected and recovered (whether by deduction from income assessable under Schedule E or otherwise) from the person's spouse if—

(a) the income was income to which section 279 applied, and

(b) the tax has not been deducted or otherwise recovered before 6th April 1990.**]**

(4) *Any reference in 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*[F337].

(5) Regulations under this section shall not affect any right of appeal to the General or Special Commissioners which a person would have apart from the regulations.

(6) The tax tables referred to in subsection (2)(a) above shall be constructed with a view to securing that so far as possible—

(a) the total income tax payable in respect of any income assessable under Schedule E for any year of assessment is deducted from such income paid during that year; and

(b) the income tax deductible or repayable on the occasion of any payment of, or on account of, any such income is such that the total net income tax deducted since the beginning of the year of assessment bears to the total income tax payable for the year the same proportion that the part of the year which ends with the date of the payment bears to the whole year.

(7) In subsection (6) above references to the total income tax payable for the year shall be construed as references to the total income tax estimated to be payable for the year in respect of the income in question, subject to a provisional deduction for allowances and reliefs, and subject also, if necessary, to an adjustment for amounts overpaid or

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remaining unpaid on account of income tax in respect of income assessable under Schedule E for any previous year.

(8) For the purpose of estimating the total income tax payable as mentioned in subsection (6)(a) above, it may be assumed in relation to any payment of, or on account of, income assessable under Schedule E that the income paid in the part of the year of assessment which ends with the making of the payment will bear to the income for the whole of that year the same proportion as that part of the year bears to the whole year.

[[F338](9) Interest required to be paid by regulations under subsection (2) above shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.**]**

Textual Amendments

F335 1988(F) s.128(1).*Previously*
"(d) 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;".

F336 1988(F) s.35*and* Sch.3 para.4.

F337 *Repealed by* 1989 ss.45(3), 187*and* Sch.17 Part IV.

F338 1988(F) s.128(2).

Modifications etc. (not altering text)

C182 See—1970(M) s.35—*assessment of emoluments received after year for which they are assessable.*1970(M) s.62(1A)—*priority of claim for tax.*1970(M) s.63(3)—*recovery of tax in Scotland.*1970(M) s.64(1A)—*priority in cases of poinding in Scotland.*1970(M) s.93(3)—*treatment of tax deducted from emoluments in computing penalties under* s.93(2).

C183 S. 203 extended (3.5.1994) by Finance Act 1994 (c. 9), **s. 139(4)**

C184 *For regulations see* Part III Vol.5 ("Employments"
and
"Repayments to wives").*And see* 1970(M) s.98A—*special penalties in the case of certain returns; and* 1988(F) s.130(7)(a)—*payment of outstanding tax.*

Marginal Citations

M576 Source—1970 s.204; 1971 Sch.6 25; 1987 (No.2) s.92

[[F339]203A P.A.Y.E.: meaning of payment.

(1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—

(a) the time when the payment is actually made;

(b) the time when a person becomes entitled to the payment;

(c) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the income are credited in the company's accounts or records, the time when sums on account of the income are so credited;

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(d) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;

(e) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.

(2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.

(3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

(4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.

(5) Subsections (5) and (6) of section 202B shall apply for the purposes of subsection (1) above as they apply for the purposes of section 202B(1).**]**

Textual Amendments

F339 S. 203A inserted by Finance Act 1989 (c. 26), **s. 37(2)(4)(5)**

VALID FROM 03/05/1994

[F340 203B PAYE: payment by intermediary.

(1) Subject to subsection (2) below, where any payment of, or on account of, assessable income of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount determined in accordance with subsection (3) below.

(2) Subsection (1) above does not apply if the intermediary (whether or not he is a person to whom section 203 and PAYE regulations apply) deducts income tax from the payment he makes and accounts for it in accordance with PAYE regulations.

(3) The amount referred to is—

(a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and

(b) in any other case, the amount of the payment made by the intermediary.

(4) For the purposes of this section, a payment of, or on account of, assessable income of an employee is made by an intermediary of the employer if it is made—

(a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or

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(b) by trustees holding property for any persons who include or class of persons which includes the employee.

(5) Section 839 applies for the purposes of subsection (4) above.**]**

Textual Amendments

F340 S. 203B inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 125**

VALID FROM 03/05/1994

[F341 203C PAYE: employee of non-UK employer.

(1) This subsection applies where—

(a) an employee during any period works for a person ("the relevant person") who is not his employer;

(b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;

(c) PAYE regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and

(d) income tax is not deducted or accounted for in accordance with the regulations by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.

(2) Where subsection (1) above applies, the relevant person shall be treated, for the purposes of PAYE regulations, as making a payment of the assessable income of the employee of an amount equal to the amount determined in accordance with subsection (3) below.

(3) The amount referred to is—

(a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and

(b) in any other case, the amount of the payment actually made.

(4) In this section and sections 203D and 203E "work", in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to his working shall be construed accordingly.

(5) Subsections (4) and (5) of section 203B apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F341 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

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VALID FROM 03/05/1994

[F341 203D PAYE: employee non-resident, etc.

(1) This section applies in relation to an employee in a year of assessment only if—
- (a) he is not resident or, if resident, not ordinarily resident in the United Kingdom; and
- (b) he works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.

(2) Where in relation to any year of assessment it appears to an officer of the Board that—
- (a) some of the income of an employee to whom this section applies is assessable to income tax under Case II of Schedule E, but
- (b) an as yet unascertainable proportion of the income may prove not to be assessable,

the officer may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(3) In this section "the appropriate person" means—
- (a) the person designated by the employer for the purposes of this section; or
- (b) if no person is so designated, the employer.

(4) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.

(5) A direction under subsection (2) above—
- (a) shall specify the employee to whom and the year of assessment to which it relates;
- (b) shall be given by notice to the appropriate person; and
- (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.

(6) The date so specified may not be earlier than thirty days from the date on which the notice of the withdrawal is given.

(7) Where—
- (a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
- (b) a payment of, or on account of, the income of the employee is made in the year of assessment to which the direction relates,

the proportion of the payment determined in accordance with the direction shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(8) Where in any year of assessment—
- (a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
- (b) any payment is made of, or on account of, the income of the employee,

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the entire payment shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.

(9) Subsections (7) and (8) above are without prejudice to—

(a) any assessment in respect of the income of the employee in question; and

(b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.**]**

Textual Amendments

F341 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

VALID FROM 03/05/1994

[F341 203E PAYE: mobile UK workforce.

(1) This subsection applies where it appears to the Board that—

(a) a person ("the relevant person") has entered into or is likely to enter into an agreement that employees of another person ("the contractor") shall in any period work for, but not as employees of, the relevant person;

(b) payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor; and

(c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted or accounted for in accordance with the regulations.

(2) Where subsection (1) above applies, the Board may give a direction that, if—

(a) any employees of the contractor work in any period for, but not as employees of, the relevant person, and

(b) any payment is made by the relevant person in respect of work done by the employees in that period,

income tax shall be deducted in accordance with the provisions of this section by the relevant person on making that payment.

(3) A direction under subsection (2) above—

(a) shall specify the relevant person and the contractor to whom it relates;

(b) shall be given by notice to the relevant person; and

(c) may at any time be withdrawn by notice to the relevant person.

(4) The Board shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given under subsection (3) above which relates to him.

(5) Where—

(a) a direction under subsection (2) above has effect, and

(b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,

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income tax shall, subject to and in accordance with PAYE regulations, be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of assessable income of that employee.**]**

Textual Amendments

F341 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

VALID FROM 03/05/1994

[F342 203F PAYE: tradeable assets.

(1) Where any assessable income of an employee is provided in the form of a tradeable asset, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount specified in subsection (3) below.

(2) For the purposes of subsection (1) above "tradeable asset" means—
- (a) any asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the Financial Services Act 1986) or the London Bullion Market;
- (b) any asset capable of being sold or otherwise realised on any market for the time being specified in PAYE regulations; and
- (c) any other asset for which, at the time when the asset is provided, trading arrangements exist.

(3) The amount referred to is—
- (a) in the case of an asset falling within subsection (2)(a) or (b) above, the amount for which it is capable of being sold or the amount for which it can be realised on the exchange or market in question; and
- (b) in the case of an asset for which trading arrangements exist at the time when the asset is provided, the amount which is obtained under those arrangements.

(4) For the purposes of subsection (2) above, "asset" does not include—
- (a) any payment actually made of, or on account of, assessable income;
- (b) any non-cash voucher, credit-token or cash voucher (as defined in sections 141 to 143); or
- (c) any description of property for the time being excluded from the scope of this section by PAYE regulations.

(5) Subject to subsection (4) above, for the purposes of subsection (2) above "asset" includes any property and in particular any right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986.**]**

Textual Amendments

F342 S. 203F inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 127**

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Modifications etc. (not altering text)

C185 S. 203F modified (retrospective to 2.7.1997) by Finance Act 1998 (c. 36), **s. 64**

VALID FROM 31/07/1998

[F343 203FA PAYE: enhancing the value of an asset.

(1) Where—

(a) any assessable income of an employee is provided in the form of anything enhancing the value of an asset in which the employee or a member of his family or household already has an interest, and

(b) that asset, with its value enhanced, would be treated as a readily convertible asset for the purposes of section 203F if assessable income were provided to the employee in the form of that asset at the time of the enhancement,

that section shall have effect (subject to subsection (2) below) as if the employee had been provided, at that time, with assessable income in the form of the asset (with its value enhanced), instead of with whatever enhanced its value.

(2) Where section 203F has effect in accordance with subsection (1) above, subsection (3) of that section shall apply as if the reference in subsection (3) of that section to the provision of the asset were a reference to the enhancement of its value.

(3) Subject to subsection (4) below, any reference in this section to enhancing the value of an asset is a reference to—

(a) the provision of any services by which that asset or any right or interest in it is improved or otherwise made more valuable,

(b) the provision of any property the addition of which to the asset in question improves it or otherwise increases its value, or

(c) the provision of any other enhancement by the application of money or property to the improvement of the asset in question or to securing an increase in its value or in the value of any right or interest in it.

(4) PAYE regulations may make provision excluding such matters as may be described in the regulations from the scope of what constitutes enhancing the value of an asset for the purposes of this section.

(5) Expressions used in this section and in section 203F have the same meanings in this section as in that section.]

Textual Amendments

F343 S. 203FA inserted (with effect in accordance with s. 66(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 66(1)** (with s. 66(3))

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VALID FROM 31/07/1998

[F344 203FB PAYE: gains from share options etc.

(1) This section applies where an event occurs by virtue of which an amount is assessable on any person ("the relevant person") by virtue of section 135, 140A(4) or 140D.

(2) If that event is the exercise of a right to acquire shares, section 203F shall have effect, subject to subsection (7) below, as if the relevant person were being provided—
  (a) at the time he acquires the shares in exercise of that right, and
  (b) in respect of the office or employment by reason of which he was granted the right,

with assessable income in the form of those shares.

(3) If that event is the assignment or release of a right to acquire shares, sections 203 to 203F shall have effect, subject to subsection (7) below—
  (a) in so far as the consideration for the assignment or release takes the form of a payment, as if so much of that payment as does not exceed the amount assessable by virtue of section 135 were a payment of assessable income of the relevant person; and
  (b) in so far as that consideration consists in the provision of an asset, as if the provision of that asset were the provision—
    (i) to the relevant person, and
    (ii) in respect of the office or employment by reason of which he was granted the right,

  of assessable income in the form of that asset.

(4) If that event is an event falling within subsection (4)(a) or (b) of section 140A, sections 203 to 203F shall have effect, subject to subsection (7) below, as if—
  (a) the provision to the relevant person of the employee's interest in the shares included the provision to him at the time of the event of a further interest in those shares; and
  (b) the further interest were not subject to any terms by virtue of which it would fall for the purposes of section 140A to be treated as only conditional.

(5) If that event is an event falling within subsection (3) of section 140D, sections 203 to 203F shall have effect, subject to subsection (7) below, as if the original provision to the relevant person of the convertible shares or securities included the provision to him at the time of the event of the shares or securities into which they are converted.

(6) Subsection (5) above shall apply in a case where the convertible shares or securities were themselves acquired by means of a taxable conversion (as defined in section 140D(7)), or by a series of such conversions, as if the reference to the original provision of the convertible shares or securities were a reference to the provision of the shares or securities which were converted by the earlier or earliest conversion.

(7) Where section 203F has effect in accordance with any of the preceding provisions of this section, subsection (3) of section 203F shall apply as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable by virtue of section 135, 140A or 140D in respect of the event in question.

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(8) PAYE regulations may make provision for excluding payments from the scope of subsection (3)(a) above in such circumstances as may be specified in the regulations.

(9) In this section "asset" means—
- (a) any asset within the meaning of section 203F; or
- (b) any non-cash voucher, credit-token or cash voucher (as defined for the purposes of section 141, 142 or, as the case may be, 143).

(10) Expressions used in this section and in any of sections 135 and 140A to 140H have the same meanings in this section as in that section, and any reference in this section to—
- (a) an event falling within subsection (4)(a) or (b) of section 140A, or
- (b) an event falling within subsection (3) of section 140D,

includes a reference to an event which is treated for the purposes of that section as such an event by virtue of section 140A(8) or 140F(1).**]**

Textual Amendments

F344 S. 203FB inserted (with effect in accordance with s. 67(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 67(1)** (with s. 67(3))

VALID FROM 03/05/1994

[F345 203C PAYE: non-cash vouchers.

(1) Where a non-cash voucher to which this section applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 141(1)(a).

(2) This section applies to a non-cash voucher to which section 141(1) applies if—
- (a) either of the two conditions set out below is fulfilled with respect to the voucher; and
- (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.

(3) The first condition is fulfilled with respect to a voucher if it is capable of being exchanged for goods—
- (a) which, at the time when the voucher is provided, are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
- (b) for which, at the time when the voucher is provided, trading arrangements exist.

(4) The second condition is fulfilled with respect to a voucher if, at the time when the voucher is provided, the voucher itself—
- (a) is capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
- (b) is a voucher for which trading arrangements exist.**]**

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Textual Amendments

F345 S. 203G inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 128**

VALID FROM 03/05/1994

[F346 203H PAYE: credit-tokens.

(1) Subject to subsection (3) below, on each occasion on which an employee uses a credit-token provided to him by reason of his employment to obtain—

(a) money, or

(b) goods falling within subsection (2) below,

the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 142(1)(a).

(2) Goods fall within this subsection if, at the time when they are obtained, they are goods—

(a) which are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or

(b) for which trading arrangements exist.

(3) PAYE regulations may make provision for excluding from the scope of this section any description of use of a credit-token.

(4) In this section "credit-token" has the same meaning as in section 142.**]**

Textual Amendments

F346 S. 203H inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 129**

VALID FROM 03/05/1994

[F347 203I PAYE: cash vouchers.

(1) Subject to subsection (2) below, where a cash voucher to which section 143(1) applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 143(1)(a).

(2) PAYE regulations may make provision for excluding from the scope of this section the provision of cash vouchers in such description of circumstances as may be specified in the regulations.**]**

Textual Amendments

F347 S. 203I inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 130**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 03/05/1994

[F348 203JS.203B to s.203I: accounting for tax.

(1) Where an employer makes a notional payment of assessable income of an employee, the obligation to deduct income tax shall have effect as an obligation on the employer to deduct income tax at such time as may be prescribed by PAYE regulations from any payment or payments he actually makes of, or on account of, such income of that employee.

(2) For the purposes of this section—

(a) a notional payment is a payment treated as made by virtue of any of sections 203B, 203C and 203F to 203I, other than a payment whose amount is determined in accordance with section 203B(3)(a) or 203C(3)(a); and

(b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).

(3) Where, by reason of an insufficiency of payments actually made, the employer is unable to deduct the amount (or the full amount) of the income tax as required by virtue of subsection (1) above, the obligation to deduct income tax shall have effect as an obligation on the employer to account to the Board at such time as may be prescribed by PAYE regulations for an amount of income tax equal to the amount of income tax he is required, but is unable, to deduct.

(4) PAYE regulations may make provision—

(a) with respect to the time when any notional payment (or description of notional payment) is made;

(b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any notional payments;

(c) with respect to the collection and recovery of amounts accounted for in respect of notional payments.

(5) Any amount which an employer deducts or for which he accounts as mentioned in subsections (1) and (3) above shall be treated as an amount paid by the employee in question in respect of his liability to income tax for such year of assessment as may be specified in PAYE regulations.**]**

Textual Amendments

F348 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

Modifications etc. (not altering text)

C186 S. 203J modified (retrospectively) by Finance Act 1998 (c. 36), **s. 64(6)(a)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 03/05/1994

[F348 203K Trading arrangements.

(1) "Trading arrangements" in sections 203F to 203H shall be construed in accordance with this section.

(2) Trading arrangements—

(a) for an asset, are arrangements for the purpose of enabling the person to whom the asset is provided to obtain an amount similar to the expense incurred in the provision of the asset;

(b) for goods for which a non-cash voucher is capable of being exchanged, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred in the provision of the goods;

(c) for a non-cash voucher, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred as mentioned in section 141(1)(a);

(d) for goods obtained by the use of a credit-token, are arrangements for the purpose of enabling the person to whom the credit-token is provided to obtain an amount similar to the expense incurred in the provision of the goods.

(3) For the purposes of subsection (2) above—

(a) any reference to enabling a person to obtain an amount includes—

(i) a reference to enabling a class or description of persons which includes that person to obtain the amount; and

(ii) a reference to enabling an amount to be obtained by any means, including in particular by using an asset or goods as security for a loan or an advance; and

(b) an amount is similar to an expense incurred if it is greater than, equal to or not substantially less than that expense.

(4) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of sections 203F to 203H.**]**

Textual Amendments

F348 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

VALID FROM 03/05/1994

[F348 203L S.203B to s.203K: interpretation, etc.

(1) In sections 203B to 203J "employee" means a person holding an office or employment under or with any other person, and (subject to section 203J(2)(b)) any reference to the employer is a reference to that other person.

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(2) In sections 203B to 203J "assessable" means assessable to income tax under Schedule E.

(3) In sections 203B to 203K and this section "PAYE regulations" means regulations under section 203.

(4) PAYE regulations made by virtue of any of sections 203B to 203K may—
  (a) make different provision for different classes of case;
  (b) contain such incidental, consequential and supplementary provision as appears to the Board to be expedient.**]**

Textual Amendments

F348 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

204 P.A.Y.E repayments.

[M577]Without prejudice to the generality of section 203, regulations under that section may provide that no repayment of income tax shall be made under that section to any person if at any time—

(a) he has claimed unemployment benefit in respect of a period including that time; or

(b) he has claimed a payment of income support under the [M578]Social Security Act 1986 or the [M579]Social Security (Northern Ireland) Order 1986 in respect of a period including that time and his right to that income support is subject to the condition specified in section 20(3)(d)(i) of that Act or, in Northern Ireland, Article 21(3)(d)(i) of that Order (availability for employment); or

(c) he is disqualified at the time from receiving unemployment benefit by virtue of section 19 of the [M580]Social Security Act 1975 or of section 19 of the [M581]Social Security (Northern Ireland) Act 1975 (loss of employment due to stoppage of work) or would be so disqualified if he otherwise satisfied the conditions for entitlement;

and such regulations may make different provision with respect to persons falling within paragraph (c) above from that made with respect to other persons.

Marginal Citations

M577 Source—1981 s.29; 1987 Sch.3 7
M578 1986 c. 50.
M579 S.I. 1986/1888 (N.I. 18).
M580 1975 c. 14.
M581 1975 c. 15.

205 Assessments unnecessary in certain circumstances.

(1) [M582]Subject to the provisions of this section, no assessment under Schedule E need be made on a person in respect of income of his assessable to income tax under that Schedule for any year of assessment if the total net tax deducted in the year in question from that income is the same as it would have been if all the relevant circumstances

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had been known to all parties throughout the year, and deductions and repayments had throughout the year been made accordingly, and had been so made by reference to cumulative tax tables.

(2) In subsection (1) above—

(a) "cumulative tax tables" means tax tables prepared under section 203 which are so framed as to require the tax which is to be deducted or repaid on the occasion of each payment made in the year to be ascertained by reference to a total of emoluments paid in the year up to the time of making that payment; and

(b) references to the total net tax deducted shall be construed as references to the total income tax deducted during the year by virtue of regulations made under section 203, less any income tax repaid by virtue of any such regulations.

(3) Nothing in this section shall be construed as preventing an assessment being made on a person in respect of his income assessable under Schedule E, and, without prejudice to the generality of the preceding provisions of this subsection, an assessment shall be made in respect of the income of a person so assessable for any year of assessment if the person assessable requires an assessment to be made by notice given to the inspector within five years from the end of the year of assessment.

Marginal Citations

M582 Source—1970 s.205

206 Additional provision for certain assessments.

[M583]Where an assessment to income tax under Schedule E is made as respects income which—

(a) has been taken into account in the making of deductions or repayments of tax under section 203, and

(b) was received not less than 12 months before the beginning of the year of assessment in which the assessment is made,

then, if the assessment is made after the expiration of the period of 12 months immediately following the year of assessment for which it is made, it shall be made in accordance with the practice generally prevailing at the expiration of that period.

Marginal Citations

M583 Source—1970 s.206

VALID FROM 29/04/1996

[[F349]206A PAYE settlement agreements.

(1) PAYE regulations may make provision falling within subsection (2) below about the sums which, as sums in respect of income tax under Schedule E on emoluments of a person's employees, are to be the sums for which the employer is to be accountable to the Board from time to time.

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(2) That provision is provision under which the accountability of the employer, and the sums for which he is to be accountable, are to be determined, to such extent as may be prescribed, in accordance with an agreement between the Board and the employer ("a PAYE settlement agreement"), instead of under PAYE regulations made otherwise than by virtue of this section.

(3) PAYE regulations may provide for a PAYE settlement agreement to allow sums for which an employer is to be accountable to the Board in accordance with the agreement—

(a) to be computed, in cases where there are two or more persons holding employments to which the agreement relates, by reference to a number of those persons all taken together;

(b) to include sums representing income tax on an estimated amount taken, in accordance with the agreement, to be the aggregate of the cash equivalents and other amounts chargeable to tax in respect of—

(i) taxable benefits provided or made available by reason of the employments to which the agreement relates; and

(ii) expenses paid to the persons holding those employments;

and

(c) to be computed in a manner under which the sums for which the employer is accountable do not necessarily represent an amount of income tax payable in respect of income which (apart from the regulations) is assessable under Schedule E on persons holding employments to which the agreement relates.

(4) PAYE regulations may provide—

(a) for an employer who is accountable to the Board under a PAYE settlement agreement for any sum to be so accountable without that sum, or any other sum, being treated for any prescribed purpose as tax deducted from emoluments;

(b) for an employee to have no right to be treated as having paid tax in respect of sums for which his employer is accountable under such an agreement;

(c) for an employee to be treated, except—

(i) for the purposes of the obligations imposed on his employer by such an agreement, and

(ii) to such further extent as may be prescribed,

as relieved from any prescribed obligations of his under the Income Tax Acts in respect of emoluments from an employment to which the agreement relates; and

(d) for such emoluments to be treated as excluded from the employee's income for such further purposes of the Income Tax Acts, and to such extent, as may be prescribed.

(5) For the purposes of any PAYE regulations made by virtue of this section it shall be immaterial that any agreement to which they relate was entered into before the coming into force of the regulations.

(6) PAYE regulations made by virtue of this section may—

(a) make different provision for different cases; and

(b) contain such incidental, supplemental, consequential and transitional provision as the Board may think fit.

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(7) Without prejudice to the generality of subsection (6) above, the transitional provision that may be made by virtue of that subsection includes transitional provision for any year of assessment which—

(a) for the purposes of the regulations, treats sums accounted for in that year before the coming into force of the regulations as accounted for in accordance with an agreement as respects which the regulations have effect after they come into force; and

(b) provides, by reference to any provision made by virtue of paragraph (a) above, for income arising in that year before the coming into force of the regulations to be treated as income in relation to which modifications of the Income Tax Acts contained in the regulations apply.

(8) Without prejudice to the generality of subsection (6) above, any power of the Board to make PAYE regulations with respect to sums falling to be accounted for under such regulations shall include power to make the corresponding provision with respect to sums falling, by virtue of this section, to be accounted for in accordance with a PAYE settlement agreement.

(9) In this section—

"employment" means any office or employment the emoluments from which are (or, apart from any regulations made by virtue of this section, would be) assessable to tax under Schedule E, and cognate expressions shall be construed accordingly;

"PAYE regulations" means regulations under section 203;

"prescribed" means prescribed by PAYE regulations;

"taxable benefit", in relation to an employee, means any benefit provided or made available, otherwise than in the form of a payment of money, to the employee or to a person who is, for the purposes of Chapter II of this Part, a member of his family or household;

and references in this section to a time before the coming into force of any regulations include references to a time before the commencement of section 110 of the Finance Act 1996 (by virtue of which this section was inserted in this Act).**]**

Textual Amendments

F349 S. 206A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 110**

207 Disputes as to domicile or ordinary residence.

[M584]Where a dispute arises under paragraph 1 of Schedule E or under section 192 whether a person is or has been ordinarily resident or domiciled in the United Kingdom, the question shall be referred to and determined by the Board; but any person who is aggrieved by their decision on the question may, by notice to that effect given to them within three months from the date on which notice is given to him, make an application to have the question heard and determined by the Special Commissioners, and where such an application is so made, the Special Commissioners shall hear and determine the question in like manner as an appeal.

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Modifications etc. (not altering text)

C187 S. 207 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 9(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M584 Source—1970 s.207

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

CHAPTER I

TAXATION OF COMPANY DISTRIBUTIONS

Modifications etc. (not altering text)

C188 Pt. 6 Chs. 1-3: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)(d)**

[F350 207A Application of lower rate to company distributions.

(1) Subject to section 686, so much of any person's total income in any year of assessment as—

(a) comprises income which is chargeable under Schedule F; and

(b) in the case of an individual, is not income falling within section 1(2)(b),

shall by virtue of this section be charged for that year at the lower rate, instead of at the rate otherwise applicable to it in accordance with section 1(2)(aa) and (a).

(2) So much of any person's income as comprises income chargeable under Schedule F shall be treated for the purposes of subsection (1)(b) above and any other provisions of the Income Tax Acts as the highest part of his income.

(3) Subsection (2) above shall have effect subject to section 833(3) but shall otherwise have effect notwithstanding any provision requiring income of any description to be treated for the purposes of the Income Tax Acts (other than section 550) as the highest part of a person's income.]

Textual Amendments

F350 S. 207A inserted (27.7.1993 with application in relation to the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(1)(2)(5)**

Modifications etc. (not altering text)

C189 S. 207A(2)(3) excluded (27.7.1993) by 1993 c. 34, **s. 79(3)**

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208 U.K. company distributions not generally chargeable to corporation tax.

[M585]Except as otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the United Kingdom, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

Modifications etc. (not altering text)

C190 S. 208 excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **ss. 219(4)**, 220

C191 S. 208 excluded by Finance Act 1994 (c. 9), **ss. 219(4A)**, 220 (as that s. 219(4A) is inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 22(4))

C192 S. 208 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **6(2)(a)**

C193 s. 208 excluded (with effect in accordance with **s. 22(7)** of the amending Act) by Finance Act1993 (c. 34), s. 171(4A) (as inserted by 1997 c. 58, s. 22(4)),

C194 S. 208 modified (with retrospective effect) by Finance (No. 3) Act 2010 (c. 33), **Sch. 3 para. 6(1)(2)**

Marginal Citations

M585 Source—1970 s.239

CHAPTER II

MATTERS WHICH ARE DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

Modifications etc. (not altering text)

C195 Pt. 6 Ch. 2 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 14(5)**

C196 Pt. 6 Ch. 2 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 13(5)** (with s. 40(7), Sch. 4 para. 14); S.I. 1994/2189, art. 2, **Sch.**

C197 Pt. 6 Ch. 2 modified (8.11.1995) by Gas Act 1995 (c. 45), s. 18(2)(c), Sch. 5 paras. 1, **10(4)**

209 Meaning of "distribution".

(1) [M586]The following provisions of this Chapter, together with section 418, shall, subject to section 339(6) and to any other express exceptions, have effect with respect to the meaning of "distribution" and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.

(2) In the Corporation Tax Acts "distribution", in relation to any company, means—

(a) [M587]any dividend paid by the company, including a capital dividend;

(b) subject to subsections (5) and (6) below, any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents repayment

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of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

(c) subject to section 230, any redeemable share capital or any security issued by the company in respect of shares in or securities of the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration;

(d) [M588]any interest or other distribution out of assets of the company in respect of securities of the company, where they are securities under which the consideration given by the company for the use of the principal thereby secured represents more than a reasonable commercial return for the use of that principal, except so much, if any, of any such distribution as represents that principal and so much as represents a reasonable commercial return for the use of that principal;

(e) [M589]any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured and except so much of any distribution as falls within paragraph (d) above), where the securities are—

(i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 in respect of shares and securities issued before 6th April 1972 in respect of securities; or

(ii) securities convertible directly or indirectly into shares in the company or securities issued after 5th April 1972 and carrying any right to receive shares in or securities of the company, not being (in either case) securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted; or

(iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it; or

(iv) securities issued by the company ("the issuing company") and held by a company not resident in the United Kingdom where the issuing company is a 75 per cent. subsidiary of the other company or both are 75 per cent. subsidiaries of a third company which is not resident in the United Kingdom; or

(v) securities issued by the company ("the issuing company") and held by a company not resident in the United Kingdom ("the non-resident company") where less than 90 per cent. of the share capital of the issuing company is directly owned by a company resident in the United Kingdom and both the issuing company and the non-resident company are 75 per cent. subsidiaries of a third company which is resident in the United Kingdom; or

(vi) securities which are connected with shares in the company, and for this purpose securities are so connected if, in consequence of the nature of the rights attaching to the securities or shares and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares **[**[F351]or;

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(vii) equity notes issued by the company ("the issuing company") and held by a company which is associated with the issuing company or is a funded company;**]**

(f) any such amount as is required to be treated as a distribution by subsection (4) below or section 210.

(3) [M590]Without prejudice to section 254(11), no amount shall be regarded for the purposes of subsection (2)(d) and (e) above as representing the principal secured by a security issued after 5th April 1972 in so far as it exceeds any new consideration which has been received by the company for the issue of the security.

(4) [M591]Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall, subject to subsections (5) and (6) below, be treated as making a distribution to him of an amount equal to the difference.

(5) Subsection (4) above shall not apply where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident; and any amount which would apart from this subsection be a distribution shall not constitute a distribution by virtue of subsection (2)(b) above.

(6) [M592]No transfer of assets (other than cash) or of liabilities between one company and another shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (4) above if they are companies—

(a) both of which are resident in the United Kingdom and neither of which is a 51 per cent. subsidiary of a company not so resident; and

(b) which, neither at the time of the transfer nor as a result of it, are under common control.

For the purposes of this subsection two companies are under common control if they are under the control of the same person or persons, and for this purpose "control" shall be construed in accordance with section 416.

(7) [M593]The question whether one body corporate is a subsidiary of another for the purpose of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate, if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(8) [M594]For the purposes of subsection (2)(c) above—

(a) the value of any redeemable share capital shall be taken to be the amount of the share capital together with any premium payable on redemption, or in a winding up, or in any other circumstances; and

(b) the value of any security shall be taken to be the amount of the principal thereby secured (including any premium payable at maturity or in a winding up, or in any other circumstances);

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and in determining the amount of the distribution constituted by the issue of any redeemable share capital or any security, the capital or security shall be taken at that value.

[[F352](9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—

(a) the security's terms contain no particular date by which it is to be redeemed,

(b) under the security's terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,

(c) under the security's terms redemption is to occur after the expiry of the permitted period if a particular event occurs and the event is one which (judged at the time of the security's issue) is certain or likely to occur, or

(d) the issuing company can secure that there is no particular date by which the security is to be redeemed or that the date for redemption falls after the expiry of the permitted period;

and the permitted period is the period of 50 years beginning with the date of the security's issue.

(10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—

(a) the issuing company is a 75 per cent. subsidiary of the other company,

(b) the other company is a 75 per cent. subsidiary of the issuing company, or

(c) both are 75 per cent. subsidiaries of a third company.

(11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.**]**

Textual Amendments

F351 S. 209(2)(e)(vii) and word "or" immediately preceding inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(1)(4)**.

F352 S. 209(9)-(11) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(2)(4)**.

Marginal Citations

M586 Source—1970 s.233(1); 1980 s.45(2)
M587 Source—1970 s.233(2)(a), (b), (c); 1972 Sch.22 1, 2(1)
M588 Source—1970 s.233(2)(d)(iii); 1972 Sch.22 3(2)
M589 Source—1970 s.233(d), (e); 1970(F) Sch.4 6; 1972 Sch.22 3(1)
M590 Source—1972 Sch.22 3(3)
M591 Source—1970 s.233(3); 1972 Sch.22 4(3)
M592 Source—1972 Sch.22 4(1), (2)
M593 Source—1970 s.233(4)
M594 Source—1972 Sch.22 2(2)

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VALID FROM 24/07/2002

[F353 209A Section 209(3AA): link to shares of company or associated company

(1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the "issuing company") if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—
  (a) the issuing company; or
  (b) an associated company of the issuing company;
but this subsection is subject to the following provisions of this section.

(2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—
  (a) the issuing company is a bank or securities house;
  (b) the security is issued by the issuing company in the ordinary course of its business; and
  (c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.

(3) In subsection (2)(c) above "qualifying index" means an index whose underlying subject matter includes both—
  (a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and
  (b) shares in one or more companies falling within neither of those paragraphs,
and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.

(4) In this section—
  "bank" has the meaning given by section 840A;
  "securities house" means any person—
  (a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and
  (b) whose business consists wholly or mainly of dealing in financial instruments as principal;
  and in paragraph (b) above "financial instrument" has the meaning given by section 349(5) and (6).

(5) For the purposes of this section a company is an "associated company" of another at any time if at that time one has control of the other or both are under the control of the same person or persons.

(6) For the purposes of subsection (5) above, "control", in relation to a company, means the power of a person to secure—
  (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

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(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(7) There shall be left out of account for the purposes of subsection (6) above—

(a) any shares held by a company, and

(b) any voting power or other powers arising from shares held by a company,

if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company's long-term insurance fund (see section 431(2)).**]**

Textual Amendments

F353 Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 102(2)**

VALID FROM 24/07/2002

[F353 209B Section 209(3AA): hedging arrangements

(1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the "issuing company") if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.

(2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—

(a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and

(b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.

(3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.

(4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax or stamp duty.

(5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it, any amounts intended under the hedging arrangements to offset some or all of that deduction arise—

(a) to the issuing company; or

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(b) to a company which is a member of the same group of companies as the issuing company.

(6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—

(a) by a company falling within paragraph (a) or (b) of that subsection, or

(b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.

(7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.

(8) For the purposes of this section "hedging arrangements", in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.

(9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).**]**

Textual Amendments

F353 Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 102(2)**

210 Bonus issue following repayment of share capital.

M595(1) Where a company—

(a) repays any share capital or has done so at any time after 6th April 1965, and

(b) at or after the time of that repayment issues any share capital as paid up otherwise than by the receipt of new consideration,

the amount so paid up shall, except as provided by any provision of the Corporation Tax Acts, be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

(2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—

(a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or

(b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout

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the period from their issue until the repayment those shares continued to be fully paid preference shares.

(3) [M596]Except in relation to a company within paragraph D of section 704, subsection (1) above shall not apply if the issue of share capital mentioned in paragraph (b) of that subsection—

(a) is of share capital other than redeemable share capital; and

(b) takes place after 5th April 1973 and more than ten years after the repayment of share capital mentioned in paragraph (a) of that subsection.

(4) [M597]In this section—

"ordinary shares" means shares other than preference shares;

"preference shares" means shares—

(a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, and

(b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on the Stock Exchange; and

"new consideration not derived from ordinary shares" means new consideration other than consideration—

(a) consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, or

(b) derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

Marginal Citations

M595 Source—1970 s.234(1), (2)

M596 Source—1972 Sch.22 5(2), (3)

M597 Source—1970 s.234(3); 1973 s.54

211 Matters to be treated or not to be treated as repayments of share capital.

(1) [M598]Where—

(a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965; and

(b) any amount so paid up does not fall to be treated as a qualifying distribution or, where the issue took place before 6th April 1973, did not fall to be treated as a distribution;

then, except as otherwise provided by any provision of the Corporation Tax Acts, for the purposes of sections 209 and 210, distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after 6th April 1965 and not falling to be treated as qualifying distributions or, where the share capital was issued before 6th April 1973, as distributions.

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(2) [M599]Except in relation to a company within paragraph D of section 704, subsection (1) above shall not prevent a distribution being treated as a repayment of share capital if it is made—

(a) more than ten years after the issue of share capital mentioned in paragraph (a) of that subsection; and

(b) in respect of share capital other than redeemable share capital.

(3) [M600]In subsection (1) above "relevant distribution" means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.

(4) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

(5) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Chapter whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital.

(6) Subsection (5) above shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.

(7) Subject to subsection (5) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

Marginal Citations

M598 Source—1970 s.235(1); 1972 Sch.22 6(1), (3)

M599 Source—1972 Sch.22 6(2)

M600 Source—1970 s.235 (2)-(5)

CHAPTER III

MATTERS WHICH ARE NOT DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

Payments of interest

212 Interest etc. paid in respect of certain securities.

[M601](1) Any interest or other distribution—

(a) which is paid out of the assets of a company ("the borrower") to another company which is within the charge to corporation tax; and

(b) which is so paid in respect of securities of the borrower which fall within any of sub-paragraphs (i) to (iii) and (vi) **[**[F354]and (vii)**]** of paragraph (e) of section 209(2); and

(c) which does not fall within paragraph (d) of section 209(2),

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shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by subsection (2) or (3) below.

(2) Subsection (1) above does not apply in the case of any interest or other distribution which is paid in respect of a security of the borrower falling within section 209(2)(e)(iii) if—

(a) the principal secured does not exceed £100,000; and

(b) the borrower is under an obligation to repay the principal and interest before the expiry of the period of five years beginning on the date on which the principal was paid to the borrower; and

(c) that obligation either was entered into before 9th March 1982 or was entered into before 1st July 1982 pursuant to negotiations which were in progress on 9th March 1982; and

(d) where the period for repayment of either principal or interest is extended after 8th March 1982 (but paragraph (b) above still applies), the interest or other distribution is paid within the period which was applicable immediately before that date;

and for the purposes of paragraph (c) above negotiations shall not be regarded as having been in progress on 9th March 1982 unless, before that date, the borrower had applied to the lender for a loan and had supplied the lender with any documents required by him to support the application.

(3) Subsection (1) above does not apply in a case where the company to which the interest or other distribution is paid is entitled under any enactment, other than section 208, to an exemption from tax in respect of that interest or distribution.

Textual Amendments

F354 Words in s. 212(1)(b) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(3)(4)**.

Marginal Citations

M601 Source—1982 s.60(1)-(4)

Demergers

213 Exempt distributions.

M602 (1) The provisions of this section and sections 214 to 218 have effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by two or more companies not belonging to the same group or by two or more independent groups.

(2) References in the Corporation Tax Acts to distributions of a company shall not apply to any distribution—

(a) which falls within subsection (3) below, and

(b) in respect of which the conditions specified in subsections (4) to (12) below are satisfied;

and any such distribution is referred to in this section as an "exempt distribution".

(3) The following distributions fall within this subsection—

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(a) a distribution consisting of the transfer to all or any of its members by a company ("the distributing company") of shares in one or more companies which are its 75 per cent. subsidiaries;

(b) a distribution consisting of the transfer by a company ("the distributing company") to one or more other companies ("the transferee company or companies") of—

(i) a trade or trades; or

(ii) shares in one or more companies which are 75 per cent. subsidiaries of the distributing company,

and the issue of shares by the transferee company or companies to all or any of the members of the distributing company;

and in this section and sections 214 to 217 references to a relevant company are to the distributing company, to each subsidiary whose shares are transferred as mentioned in paragraph (a) or (b) (ii) above and to each transferee company mentioned in paragraph (b) above.

(4) Each relevant company must be resident in the United Kingdom at the time of the distribution.

(5) The distributing company must at the time of the distribution be either a trading company or a member of a trading group and each subsidiary whose shares are transferred as mentioned in subsection (3)(a) or (b)(ii) above must at that time be either a trading company or the holding company of a trading group.

(6) In a case within subsection **[**[F355](3)(a)**]** above—

(a) the shares must not be redeemable, must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary; and

(b) subject to subsections (7) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

(7) Subsection (6)(b) above does not apply if the transfer relates to two or more 75 per cent. subsidiaries of the distributing company and that company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.

(8) In a case within subsection (3)(b) above—

(a) if a trade is transferred the distributing company must either not retain any interest or retain only a minor interest in that trade;

(b) if shares in a subsidiary are transferred those shares must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary;

(c) the only or main activity of the transferee company or each transferee company after the distribution must be the carrying on of the trade or the holding of the shares transferred to it;

(d) the shares issued by the transferee company or each transferee company must not be redeemable, must constitute the whole or substantially the whole of its

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issued ordinary share capital and must confer the whole or substantially the whole of the voting rights in that company; and

(e) subject to subsections (9) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

(9) Subsection (8)(e) above does not apply if there are two or more transferee companies each of which has a trade or shares in a separate 75 per cent. subsidiary of the distributing company transferred to it and the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.

(10) The distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which before the distribution are carried on by a single company or group and after the distribution will be carried on by two or more companies or groups.

(11) The distribution must not form part of a scheme or arrangements the main purpose or one of the main purposes of which is—

(a) the avoidance of tax (including stamp duty); or

(b) without prejudice to paragraph (a) above, the making of a chargeable payment, as defined by section 214, or what would be such a payment if any of the companies mentioned in that section were an unquoted company; or

(c) the acquisition by any person or persons other than members of the distributing company of control of that company, of any other relevant company or of any company which belongs to the same group as any such company; or

(d) the cessation of a trade or its sale after the distribution.

In paragraph (c) above "group" means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.

(12) Where the distributing company is a 75 per cent. subsidiary of another company—

(a) the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group;

(b) subsections (6)(b) and (8)(e) above shall not apply; and

(c) the distribution must be followed by one or more other distributions falling within subsection (3)(a) or (b)(ii) above which satisfy the conditions of this section and result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the distribution becoming members of—

(i) the transferee company or each transferee company to which a trade was transferred by the distributing company; or

(ii) the subsidiary or each subsidiary whose shares were transferred by the distributing company; or

(iii) a company (other than that holding company) of which the company or companies mentioned in sub-paragraph (i) or (ii) above are 75 per cent. subsidiaries.

Textual Amendments

F355 1990 s.89*and* Sch.14 para.3 (*correction of errors*)*—deemed always to have had effect. Previously* "(3)(1)(a)".

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Marginal Citations

M602 Source—1980 s.117, Sch.18 1-8, 23

VALID FROM 29/11/2007

[F356 213A Exempt distributions: division of business

(1) A reference in the Corporation Tax Acts to distributions of a company shall not apply to a distribution if—

(a) it is a distribution consisting of—

(i) the transfer of part of a business by a company ("the distributing company") to one or more other companies ("the transferee company or companies"), and

(ii) the issue of shares by the transferee company or companies to the members of the distributing company, and

(b) the requirements of either section 140A(1A) of the 1992 Act (division of UK business) or section 140C(1A) of that Act (division of non-UK business) are satisfied in relation to the distribution.

(2) A distribution to which this section applies is an "exempt distribution" for the purposes of sections 214 to 217.

(3) The expression "relevant company" in sections 214 to 217 includes the distributing company and the transferee company or companies.]

Textual Amendments

F356 S. 213A inserted (29.11.2007 with effect in accordance with reg. 3(1) of the amending S.I. (as retrospectively amended by S.I. 2008/1579, **reg. 4(1)**) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 13**

214 Chargeable payments connected with exempt distributions.

(1) [M603] If within five years after the making of an exempt distribution there is a chargeable payment—

(a) the amount or value of the payment shall be treated as income chargeable to tax under Case VI of Schedule D;

(b) unless the payment is a transfer of money's worth, sections 349(1) and 350 shall apply to the payment as if it were an annual sum payable otherwise than out of profits or gains charged to income tax;

(c) the payment shall be regarded as a distribution for the purposes of sections 337(2), [F357 and 338(2)(a)]; and

(d) the payment shall not (if it otherwise would) be treated as a repayment of capital for the purposes of section 210 or 211.

(2) [M604] In this section "a chargeable payment" means any payment made otherwise than for bona fide commercial reasons or forming part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax (including stamp duty), being a payment which—

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(a) a company concerned in an exempt distribution makes directly or indirectly to a member of that company or of any other company concerned in that distribution; and

(b) is made in connection with, or with any transaction affecting, the shares in that or any such company; and

(c) is not a distribution or exempt distribution or made to another company which belongs to the same group as the company making the payment.

(3) Where a company concerned in an exempt distribution is an unquoted company subsection (2)(a) above shall have effect as if any reference to the making of a payment by, or to a member of, a company concerned in the exempt distribution included a reference to the making of a payment by or to any other person in pursuance of a scheme or arrangements made with the unquoted company or, if the unquoted company is—

(a) under the control of five or fewer persons; and

(b) not under the control of (and only of) a company which is not itself under the control of five or fewer persons,

with any of the persons mentioned in paragraph (a) above.

(4) References in this section to a company concerned in an exempt distribution are to any relevant company and to any other company which was connected with any such company for the whole or any part of the period beginning with the exempt distribution and ending with the making of the payment which is in question under this section.

(5) For the purposes of subsection (4) above and this subsection a company shall be deemed to have been connected in the period referred to in that subsection with each company to which a company connected with it was connected in that period.

(6) References in this section to a payment include references to a transfer of money's worth including the assumption of a liability.

Textual Amendments

F357 1989 s.107*and* Sch.12 para.10—*in relation to accounting periods beginning after* 31*March* 1989*subject to certain exceptions. Previously*
"382(2)(a) and 427(4) and paragraph 3 of Schedule 19".

Marginal Citations

M603 Source—1980 Sch.18 14

M604 Source—1980 Sch.18 13

215 Advance clearance by Board of distributions and payments.

(1) [M605]A distribution shall be treated as an exempt distribution in any case in which, before the distribution is made, the Board have, on the application of the distributing company, notified that company that the Board are satisfied that it will be such a distribution.

(2) A payment shall not be treated as a chargeable payment in any case in which, before the payment is made, the Board have, on the application of the person intending to make it, notified him that they are satisfied that it will be made for bona fide commercial

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reasons and will not form part of any scheme or arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax (including stamp duty).

(3) A company which becomes or ceases to be connected with another company may make an application under subsection (2) above as respects any payments that may be made by it at any time after becoming or ceasing to be so connected (whether or not there is any present intention to make any payments); and where a notification is given by the Board on such an application no payment to which the notification relates shall be treated as a chargeable payment by reason only of the company being or having been connected with the other company.

(4) References in subsections (2) and (3) above to a payment shall be construed as in section 214.

(5) [M606]Any application under this section shall be in writing and shall contain particulars of the relevant transactions and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purposes of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(6) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of the notice being complied with.

(7) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) or (2) above or do not notify their decision to the applicant within the time required by subsection (6) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (5) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of this section as if it were a notification by the Board.

(8) If any particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) or (2) above shall be void.

Marginal Citations

M605 Source—1980 Sch.18 17

M606 Source—1980 Sch.18 18

216 Returns.

(1) [M607]Where a company makes an exempt distribution it shall within 30 days after the distribution make a return to the inspector giving particulars of the distribution and of the circumstances by reason of which it is exempt.

(2) [M608]Where within five years after the making of an exempt distribution a person makes a chargeable payment which consists of a transfer of money's worth, he shall within 30 days after the transfer make a return to the inspector giving particulars—

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(a) of the transaction effecting the transfer;
(b) of the name and address of the recipient or each recipient and the value of what is transferred to him or each of them; and
(c) if the transfer is accompanied by a chargeable payment consisting of a payment of money, of that payment.

(3) Subject to subsection (4) below, where within five years after the making of an exempt distribution a person makes a payment or a transfer of money's worth which would be a chargeable payment but for the fact that it is made for bona fide commercial reasons and does not form part of any such scheme or arrangements as are mentioned in section 214(2), that person shall within 30 days after making the payment or transfer make a return to the inspector giving particulars—
(a) in the case of a transfer, of the transaction by which it is effected;
(b) of the name and address of the recipient or each recipient and the amount of the payment made, or the value of what is transferred, to him or each of them; and
(c) of the circumstances by reason of which the payment or transfer is not a chargeable payment.

(4) Subsection (3) above does not apply where the payment or transfer is one in relation to which a notification under section 215(3) has effect.

Marginal Citations
M607 Source—1980 Sch.18 19
M608 Source—1980 Sch.18 20

217 Information.

(1) [M609]Where a distribution falling within section 213(3) has been made and the inspector has reason to believe that it may form part of any such scheme or arrangements as are mentioned in section 213(11), he may by notice require any relevant company or any person controlling any such company to furnish him within such time, not being less than 30 days, as may be specified in the notice with—
(a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangements exist or have existed;
(b) such other information as the inspector may reasonably require for the purposes of section 213(11) and the company or that person has or can reasonably obtain.

(2) [M610]If the inspector has reason to believe that a person has not delivered an account or made a return which he is required to deliver or make by virtue of section 214(1)(b) or 216(2) or (3) in respect of any payment or transfer, he may by notice require that person to furnish him within such time, not being less than 30 days, as may be specified in the notice with such information relating to the payment or transfer as he may reasonably require for the purposes of section 214.

(3) If the inspector has reason to believe that a payment or transfer has been made within five years after the making of an exempt distribution and that the payment or transfer is a chargeable payment by reason of the existence of any such scheme or arrangements as are mentioned in section 214(3), he may by notice require the person making the payment or transfer or, if that person is a company, any person controlling it to furnish

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him within such time, not being less than 30 days, as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to information which that person has, or can reasonably obtain, any such scheme or arrangements exist or have existed;

(b) such other information as the inspector may reasonably require for the purposes of section 214 and that person has or can reasonably obtain.

(4) Any recipient of a chargeable payment and any person on whose behalf such a payment is received shall, if so required by the inspector, state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations

M609 Source—1980 Sch.18 21

M610 Source—1980 Sch.18 22

218 Interpretation of sections 213 to 217.

M611(1) In sections 213 to 217—

"chargeable payment" has the meaning given by section 214(2);

"control" shall be construed in accordance with section 416(2) to (6);

"distributing company" has the meaning given by section 213(3);

"exempt distribution" has the meaning given by section 213(2);

"group", except in section 213(11)(c), means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"member", where the reference is to a member of a company, does not, except in section 214(2)(a), include a person who is a member otherwise than by virtue of holding shares forming part of the company's ordinary share capital;

"relevant company" has the meaning given by section 213(3);

"shares" includes stock;

"trade", except in subsection (3) below, does not include dealing in shares, securities, land, trades or commodity futures and "trading activities" shall be construed accordingly;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades; and

"unquoted company" means a company which does not satisfy the condition that its shares or some class thereof (disregarding debenture or loan stock, preferred shares or preferred stock) are listed in the Official List of the Stock Exchange and are dealt in on the Stock Exchange regularly or from time to time, so however that this definition does not apply to a company under the control of (and only of) one or more companies to which this definition does not apply.

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(2) In determining for the purposes of section 213(3) to (9) whether a company whose shares are transferred by the distributing company is a 75 per cent. subsidiary of the distributing company there shall be disregarded any share capital of the first-mentioned company which is owned indirectly by the distributing company.

(3) In determining for the purposes of sections 213 to 217 whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

(4) Section 839 applies for the purposes of sections 213 to 217.

Marginal Citations

M611 Source—1980 Sch.18 23

Purchase of own shares

219 Purchase by unquoted trading company of own shares.

[M612](1) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if the company is an unquoted trading company or the unquoted holding company of a trading group and either—

(a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 75 per cent. subsidiaries, and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—

(i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or

(ii) the avoidance of tax; and

the conditions specified in sections 220 to 224, so far as applicable, are satisfied in relation to the owner of the shares; or

(b) the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) is applied by the person to whom it is made in discharging a liability of his for inheritance tax charged on a death and is so applied within the period of two years after the death;

and in sections 220 to 224—

"the purchase" means the redemption, repayment or purchase referred to in subsection (1)(a) above; and

"the vendor" means the owner of the shares at the time it is made.

(2) Where, apart from this subsection, a payment falls within subsection (1)(b) above, subsection (1) above shall not apply to the extent that the liability in question could without undue hardship have been discharged otherwise than through the redemption,

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repayment or purchase of shares in the company or another unquoted company which is a trading company or the holding company of a trading group.

Marginal Citations

M612 Source—1982 s.53(1)-(3); 1986 s.100

220 Conditions as to residence and period of ownership.

M613(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.

(2) The residence and ordinary residence of trustees shall be determined for the purposes of this section as they are determined under section **[**F358**]**69 of the 1992 Act**]** for the purposes of that Act.

(3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this section to be the same as the residence and ordinary residence of the deceased immediately before his death.

(4) The references in this section to a person's ordinary residence shall be disregarded in the case of a company.

(5) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.

(6) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse living with him then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse living with him, any period during which the shares were owned by that person shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor.

(7) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner or is the personal representative of a previous owner—

(a) any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor, and

(b) that subsection shall have effect as if it referred to three years instead of five.

(8) In determining whether the condition in subsection (5) above is satisfied in a case where the vendor acquired shares of the same class at different times—

(a) shares acquired earlier shall be taken into account before shares acquired later, and

(b) any previous disposal by him of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

(9) If for the purposes of capital gains tax the time when shares were acquired would be determined under any provision of Chapter II of Part IV of the **[**F358**]**1992**]** Act (reorganisation of share capital, conversion of securities, etc.) then, unless the shares were allotted for payment or were comprised in share capital to which section 249 applies, it shall be determined in the same way for the purposes of this section.

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Textual Amendments

F358 Words in s. 220(2)(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(14)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M613 Source—1982 Sch.9 1, 2

221 Reduction of vendor's interest as shareholder.

(1) [M614]If immediately after the purchase the vendor owns shares in the company, then, subject to section 224, the vendor's interest as a shareholder must be substantially reduced.

(2) [M615]If immediately after the purchase any associate of the vendor owns shares in the company then, subject to section 224, the combined interests as shareholders of the vendor and his associates must be substantially reduced.

(3) The question whether the combined interests as shareholders of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own.

(4) [M616]Subject to subsection (5) below, the vendor's interest as a shareholder shall be taken to be substantially reduced if and only if the total nominal value of the shares owned by him immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time, does not exceed 75 per cent. of the corresponding fraction immediately before the purchase.

(5) The vendor's interest as a shareholder shall not be taken to be substantially reduced where—
   (a) he would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and
   (b) that share, expressed as a fraction of the total of those profits, exceeds 75 per cent. of the corresponding fraction immediately before the purchase.

(6) In determining for the purposes of subsection (5) above the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which he would be entitled for a year.

(7) [M617]In subsection (5) above "profits available for distribution" has the same meaning as it has for the purposes of Part VIII of the [M618]Companies Act 1985, except that for the purposes of that subsection the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased—
   (a) in the case of every company, by £100, and
   (b) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in subsection (6) above, by a further amount equal to that required to make the distribution to which he is entitled in accordance with that subsection;

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and where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.

(8) [M619]References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

Marginal Citations

M614 Source—1982 Sch.9 3(1)
M615 Source—1982 Sch.9 4
M616 Source—1982 Sch.9 3(2)-(4)
M617 Source—1982 Sch.9 3(5), (6)
M618 1985 c.6
M619 Source—1982 Sch.9 3(7)

222 Conditions applicable where purchasing company is member of group.

(1) [M620]Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and—

(a) immediately after the purchase the vendor owns shares in one or more other members of the group (whether or not he then owns shares in the company making the purchase), or

(b) immediately after the purchase the vendor owns shares in the company making the purchase and immediately before the purchase he owned shares in one or more other members of the group,

the vendor's interest as a shareholder in the group must be substantially reduced.

(2) In subsections (5) to (7) below "relevant company" means the company making the purchase and any other member of the group in which the vendor owns shares immediately before or immediately after the purchase, but subject to subsection (4) below.

(3) [M621]Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and his associates must be substantially reduced.

(4) [M622]The question whether the combined interests as shareholders in the group of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own (and references in subsections (5) to (7) below to a relevant company shall be construed accordingly).

(5) [M623]The vendor's interest as a shareholder in the group shall be ascertained by—

(a) expressing the total nominal value of the shares owned by him in each relevant company as a fraction of the issued share capital of the company,

(b) adding together the fractions so obtained, and

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(c) dividing the result by the number of relevant companies (including any in which he owns no shares).

(6) Subject to subsection (7) below, the vendor's interest as a shareholder in the group shall be taken to be substantially reduced if and only if it does not exceed 75 per cent. of the corresponding interest immediately before the purchase.

(7) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced if—

(a) he would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and

(b) that share, or the aggregate of those shares, expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—

(i) a relevant company, or

(ii) a 51 per cent. subsidiary of a relevant company,

exceeds 75 per cent. of the corresponding fraction immediately before the purchase.

(8) Subsections (6) and (7) of section 221 shall apply for the purposes of subsection (7) above as they apply for the purposes of subsection (5) of that section.

(9) [M624]Subject to the following subsections, in this section "group" means a company which has one or more 51 per cent. subsidiaries, but is not itself a 51 per cent. subsidiary of any other company, together with those subsidiaries.

(10) [M625]Where the whole or a significant part of the business carried on by an unquoted company ("the successor company") was previously carried on by—

(a) the company making the purchase, or

(b) a company which is (apart from this subsection) a member of a group to which the company making the purchase belongs, the successor company and any company of which it is a 51 per cent. subsidiary shall be treated as being a member of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).

(11) Subsection (10) above shall not apply if the successor company first carried on the business there referred to more than three years before the time of the purchase.

(12) For the purposes of this section a company which has ceased to be a 51 per cent. subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

Marginal Citations

M620 Source—1982 Sch.9 5(1), (2)
M621 Source—1982 Sch.9 6(1), (2)
M622 Source—1982 Sch.9 6(3)
M623 Source—1982 Sch.9 5(3)-(6)
M624 Source—1982 Sch.9 5(7), 6(4)

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M625 Source—1982 Sch.9 5(8)-(10)

223 Other conditions.

(1) [M626]Subject to section 224, the vendor must not immediately after the purchase be connected with the company making the purchase or with any company which is a member of the same group as that company.

In this subsection "group" has the same meaning as it has for the purposes of section 222.

(2) [M627]Subject to section 224, the purchase must not be part of a scheme or arrangement which is designed or likely to result in the vendor or any associate of his having interests in any company such that, if he had those interests immediately after the purchase, any of the conditions in sections 221 and 222 and subsection (1) above could not be satisfied.

(3) A transaction occurring within one year after the purchase shall be deemed for the purposes of subsection (2) above to be part of a scheme or arrangement of which the purchase is also part.

Marginal Citations
M626 Source—1982 Sch.9 7
M627 Source—1982 Sch.9 8

224 Relaxation of conditions in certain cases.

[M628]Where—

(a) any of the conditions in sections 221 to 223 which are applicable are not satisfied in relation to the vendor, but

(b) he proposed or agreed to the purchase in order that the condition in section 221(2) or 222(3) could be satisfied in respect of the redemption, repayment or purchase of shares owned by a person of whom he is an associate,

then, to the extent that that result is produced by virtue of the purchase, section 219(1)(a) shall have effect as if the conditions in sections 221 to 223 were satisfied in relation to the vendor.

Marginal Citations
M628 Source—1982 Sch.9 9

225 Advance clearance of payments by Board.

(1) [M629]A payment made by a company on the redemption, repayment or purchase of its own shares shall be deemed—

(a) to be one to which section 219 applies if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will apply; and

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(b) to be one to which section 219 does not apply if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will not apply.

(2) An application under this section shall be in writing and shall contain particulars of the relevant transactions; and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision.

(3) If a notice under subsection (2) above is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(4) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.

(5) If particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board, any resulting notification by the Board shall be void.

Marginal Citations
M629 Source—1982 Sch.9 10

226 Returns and information.

(1) [M630]A company which treats a payment made by it as one to which section 219 applies shall within 60 days after making the payment make a return to the inspector giving particulars of the payment and of the circumstances by reason of which that section is regarded as applying to it.

(2) Where a company treats a payment made by it as one to which section 219(1)(a) applies, any person connected with the company who knows of any such scheme or arrangement affecting the payment as is mentioned in section 223(2) shall, within 60 days after he first knows of both the payment and the scheme or arrangement, give a notice to the inspector containing particulars of the scheme or arrangement.

(3) [M631]Where the inspector has reason to believe that a payment treated by the company making it as one to which section 219(1)(a) applies may form part of a scheme or arrangement of the kind referred to therein or in section 223(2), he may by notice require the company or any person who is connected with the company to furnish him within such time, not being less than 60 days, as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and

(b) such other information as the inspector may reasonably require for the purposes of the provision in question and the company or that person has or can reasonably obtain.

(4) The recipient of a payment treated by the company making it as one to which section 219 applies, and any person on whose behalf such a payment is received, shall if so required by the inspector state whether the payment received by him or on his

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behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations

M630 Source—1982 Sch.9 11

M631 Source—1982 Sch.9 12

227 Associated persons.

M632 (1) Any question whether a person is an associate of another in relation to a company shall be determined for the purposes of sections 219 to 226 and 228 in accordance with the following provisions of this section.

(2) A husband and wife living together are associates of one another, a person under the age of 18 is an associate of his parents, and his parents are his associates.

(3) A person connected with a company is an associate of the company and of any company controlled by it, and the company and any company controlled by it are his associates.

(4) Where a person connected with one company has control of another company, the second company is an associate of the first.

(5) Where shares in a company are held by trustees (other than bare trustees) then in relation to that company, but subject to subsection (8) below, the trustees are associates of—

(a) any person who directly or indirectly provided property to the trustees or has made a reciprocal arrangement for another to do so,

(b) any person who is, by virtue of subsection (2) above, an associate of a person within paragraph (a) above, and

(c) any person who is or may become beneficially entitled to a significant interest in the shares;

and any such person is an associate of the trustees.

(6) Where shares in a company are comprised in the estate of a deceased person, then in relation to that company the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and any such person is an associate of the personal representatives.

(7) Where one person is accustomed to act on the directions of another in relation to the affairs of a company, then in relation to that company the two persons are associates of one another.

(8) Subsection (5) above shall not apply to shares held on trusts which—

(a) relate exclusively to an exempt approved scheme as defined in Chapter I of Part XIV, or

(b) are exclusively for the benefit of the employees, or the employees and directors, of the company referred to in that subsection or of companies in a group to which that company belongs, or their dependants (and are not wholly or mainly for the benefit of directors or their relatives);

and for the purposes of this subsection "group" means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.

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(9) For the purposes of subsections (5) and (6) above a person's interest is significant if its value exceeds 5 per cent. of the value of all the property held on the trusts or, as the case may be, comprised in the estate concerned, excluding any property in which he is not and cannot become beneficially entitled to an interest.

Marginal Citations
M632 Source—1982 Sch.9 14

228 Connected persons.

M633(1) Any question whether a person is connected with a company shall be determined for the purposes of sections 219 to 227 in accordance with the following provisions of this section.

(2) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—
- (a) the issued ordinary share capital of the company, or
- (b) the loan capital and issued share capital of the company, or
- (c) the voting power in the company.

(3) Where a person—
- (a) acquired or became entitled to acquire loan capital of a company in the ordinary course of a business carried on by him, being a business which includes the lending of money, and
- (b) takes no part in the management or conduct of the company,

his interest in that loan capital shall be disregarded for the purposes of subsection (2) above.

(4) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company which would then be available for distribution to equity holders of the company; and for the purposes of this subsection—
- (a) the persons who are equity holders of the company, and
- (b) the percentage of the assets of the company to which a person would be entitled,

shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.

(5) A person is connected with a company if he has control of it.

(6) References in this section to the loan capital of a company are references to any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company, or
- (b) for any right to receive income created in favour of the company, or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).

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(7) For the purposes of this section a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.

(8) For the purposes of this section a person shall be assumed to have the rights or powers of his associates as well as his own.

Marginal Citations
M633 Source—1982 Sch.9 15

229 Other interpretative provisions.

M634(1) In sections 219 to 228—

"control" has the meaning given by section 840;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"personal representatives" means persons responsible for administering the estate of a deceased person;

"quoted company" means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange;

"shares" includes stock;

"trade" does not include dealing in shares, securities, land or futures and "trading activities" shall be construed accordingly;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades, and for this purpose "group" means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

"unquoted company" means a company which is neither a quoted company nor a 51 per cent. subsidiary of a quoted company.

(2) References in sections 219 to 228 to the owner of shares are references to the beneficial owner except where the shares are held on trusts (other than bare trusts) or are comprised in the estate of a deceased person, and in such a case are references to the trustees or, as the case may be, to the deceased's personal representatives.

(3) References in sections 219 to 228 to a payment made by a company include references to anything else that is, or would but for section 219 be, a distribution.

Marginal Citations
M634 Source—1982 Sch.9 16

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Stock dividends

230 Stock dividends: distributions.

[M635]Any share capital to which section 249 applies and which is issued by a company*either*[F359] as mentioned in subsection (4), (5) or (6) of that section*or to a close company as mentioned in paragraph* 12(1)*of Schedule* 19 [F359] (read*in either case*[F359] with subsection (3) of that section)—

(a) shall, notwithstanding section 209(2)(c), not constitute a distribution within the meaning of section 209(2); and

(b) for purposes of sections 210 and 211 shall not be treated as issued "as paid up otherwise than by the receipt of new consideration".

Textual Amendments

F359 Words in s. 230 repealed (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Part V**

Marginal Citations

M635 Source—1975 (No.2) Sch.8 6

VALID FROM 01/04/2009

[[F360]Industrial and provident society dividends etc

Textual Amendments

F360 S. 230A and preceding cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 100** (with Sch. 2 Pts. 1, 2)

230A Dividend or bonus granted by industrial and provident society

(1) This section applies if—

(a) a dividend or bonus is granted by a registered industrial and provident society, and

(b) section 132 (deduction for dividends etc granted by industrial and provident societies) of CTA 2009 allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.

(2) The dividend, or the bonus, is not treated as a distribution for the purposes of the Corporation Tax Acts.**]**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER IV

TAX CREDITS

231 Tax credits for certain recipients of qualifying distributions.

[M636](1) Subject to sections 95(1)(b) **[**[F361], 247 and 441A**]**, where a company resident in the United Kingdom makes a qualifying distribution and the person receiving the distribution is another such company or a person resident in the United Kingdom, not being a company, the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to the rate of advance corporation tax in force for the financial year in which the distribution is made.

(2) Subject to section 241(5), a company resident in the United Kingdom which is entitled to a tax credit in respect of a distribution may claim to have the amount of the credit paid to it if—

(a) the company is wholly exempt from corporation tax or is only not exempt in respect of trading income; or

(b) the distribution is one in relation to which express exemption is given (otherwise than by section 208), whether specifically or by virtue of a more general exemption from tax, under any provision of the Tax Acts.

(3) A person, not being a company resident in the United Kingdom, who is entitled to a tax credit in respect of a distribution may claim to have the credit set against the income tax chargeable on his income under section 3 or on his total income for the year of assessment in which the distribution is made and **[**[F362]subject to subsections (3A) to (3D) below**]** where the credit exceeds that income tax, to have the excess paid to him.

[[F363](3A) Subject to subsection (3B) below, where it appears to the inspector that, in any accounting period of a company at the end of which it is a close investment-holding company—

(a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under subsection (3) above in respect of such an excess as is mentioned in that subsection, and

(b) by virtue of those arrangements, any eligible person—

(i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or

(ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,

the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as appears to the inspector to be just and reasonable.

(3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—

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(a) throughout the period, the company's ordinary share capital consisted of only one class of shares, and

(b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

"arrangements" means arrangements of any kind whether in writing or not,

"close investment-holding company" has the meaning given by section 13A, and

"eligible person", in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.**]**

(4) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether he is entitled to a tax credit in respect of it shall be determined by reference to where he, and not the actual recipient, is resident);*and where any such distribution is income of a United Kingdom trust the trustees shall be entitled to a tax credit in respect of it if no other person falls to be treated for the purposes of this section as receiving the distribution*[F364].

(5) *In subsection* (4)*above "United Kingdom trust" means a trust administered under the law of any part of the United Kingdom, not being a trust the general administration of which is ordinarily carried on outside the United Kingdom and the trustees, or a majority of the trustees, of which are resident or ordinarily resident outside the United Kingdom*[F364].

Textual Amendments

F361 1990 s.42*and* Sch.7 para.2*for accounting periods beginning on or after* 1*January* 1990 (*See* para.10).

F362 1989 s.106*in relation to distributions made by companies in accounting periods beginning after* 31*March* 1989.

F363 1989 s.106*in relation to distributions made by companies in accounting periods beginning after* 31*March* 1989.

F364 *Repealed by* 1989 s.187*and* Sch.17 Part IV*but in accordance with* 1989 ss.110*and* 111.

Modifications etc. (not altering text)

C198 *See* 1989 s.107*and* Sch.12*—close companies.*

C199 *See*—s.94*—taxation of dealer's receipts on purchase by company of own shares.*s.423*et seq—close company income.*s.448*—overseas life assurance companies.*

C200 *See*—s.812*—certain non resident companies connected with unitary states.*s.824*—repayment supplement.*

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Marginal Citations

M636 Source—1972 s.86; 1972 s.110(1)

VALID FROM 31/07/1997

[F365 231A Restrictions on the use of tax credits by pension funds.

[F366 (1) No claim shall be made under section 231(2) for payment of the amount of a tax credit if or to the extent that the qualifying distribution to which the credit relates is income of a pension fund.

(2) In the case of any pension fund, for any year of assessment the aggregate amount of the tax credits in respect of which claims are made under section 231(3) must not exceed the aggregate amount of the tax credits in respect of the qualifying distributions comprised in the income of the pension fund and brought into charge to tax.

(3) Accordingly, no payment shall be made under section 231(3) in respect of so much of the excess there mentioned as is referable to a tax credit in respect of a qualifying distribution if or to the extent that the qualifying distribution is income of a pension fund.

(4) In this section—

"income", in relation to a pension fund, means income derived from investments or deposits held for the purposes of the pension fund;

"pension fund" means any scheme, fund or other arrangements established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits);

"scheme" includes any deed, agreement or series of agreements.

(5) For convenience of identification only, the schemes, funds or other arrangements which are "pension funds" for the purposes of this section by virtue of the definition of that expression in subsection (4) above include, in particular, those whose income is, in whole or in part, exempt, or eligible for exemption, from tax under or by virtue of any of the following provisions—

(a) section 512(2);
(b) section 592(2);
(c) section 608(2)(a);
(d) section 613(4);
(e) section 614(2), (3), (4) or (5);
(f) section 620(6);
(g) section 643(2).

(6) The preceding provisions of this section do not have effect in relation to—

(a) claims made in respect of tax credits to which entitlement arises by virtue of section 232(3); or
(b) claims made by virtue of arrangements having effect under section 788.**]]**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F365 S. 231A inserted (with effect in accordance with s. 19(3) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 19(2)**

F366 S. 231A repealed (with effect in accordance with s. 30(11), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 30(8), **Sch. 8 Pt. 2(9)**

VALID FROM 31/07/1998

[F367 231AA No tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement.

(1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—

(a) he is the borrower under a stock lending arrangement or the interim holder under a repurchase agreement;

(b) the qualifying distribution is, or is a payment representative of, a distribution in respect of securities to which the arrangement or agreement relates; and

(c) a manufactured dividend representative of that distribution is paid by that person in respect of securities to which the arrangement or agreement relates.

(2) In this section "stock lending arrangement" has the same meaning as in section 263B of the 1992 Act and, in relation to any such arrangement, any reference to the borrower, or the securities to which the arrangement relates, shall be construed accordingly.

(3) For the purposes of this section the cases where there is a repurchase agreement are the following—

(a) any case falling within subsection (1) of section 730A; and

(b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(4) For the purposes of this section "manufactured dividend" has the same meaning as in paragraph 2 of Schedule 23A (and any reference to a manufactured dividend being paid accordingly includes a reference to a payment falling by virtue of section 736B(2) or 737A(5) to be treated for the purposes of Schedule 23A as if it were made).**]**

Textual Amendments

F367 S. 231AA inserted (with effect in accordance with s. 102(9) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(1)**

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VALID FROM 31/07/1998

[F368 231AB No tax credit for original owner under repurchase agreement in respect of certain manufactured dividends.

(1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—
- (a) he is the original owner under a repurchase agreement;
- (b) the qualifying distribution is a manufactured dividend paid to that person by the interim holder under the repurchase agreement in respect of securities to which the agreement relates; and
- (c) the repurchase agreement is not such that the actual dividend which the manufactured dividend represents is receivable otherwise than by the original owner.

(2) For the purposes of this section the cases where there is a repurchase agreement are the following—
- (a) any case falling within subsection (1) of section 730A; and
- (b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the original owner, the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(3) Subsection (4) of section 231AA applies for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F368 S. 231AB inserted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(2)**

VALID FROM 31/07/1997

[F369 231B Consequences of certain arrangements to pass on the value of a tax credit.

(1) This section applies in any case where—
- (a) a person ("A") is entitled to a tax credit in respect of a qualifying distribution;
- (b) arrangements subsist such that another person ("B") obtains, whether directly or indirectly, a payment representing any of the value of the tax credit;
- (c) the arrangements (whether or not made directly between A and B) were entered into for an unallowable purpose; and
- (d) the condition in subsection (2) below is satisfied.

(2) The condition is that if B had been the person entitled to the tax credit and the qualifying distribution to which it relates, and had received the distribution when it was made, then—

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(a) B would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and

(b) if B is a company, B could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.

(3) This section does not apply if and to the extent that any other provision of the Tax Acts has the effect of cancelling or reducing the tax advantage which would otherwise be obtained by virtue of the arrangements.

(4) Where this section applies—

(a) no claim shall be made under section 231(2) for payment of the amount of the tax credit;

(b) no claim shall be made under section 231(3) **[**[F370]or 441A(7)**]** in respect of the tax credit;

(c) the income consisting of the distribution in respect of which A is entitled to the tax credit shall not be regarded for the purposes of section 241 as franked investment income; and

(d) no claim shall be made under section 35 of the Finance (No. 2) Act 1997 (transitional relief) for payment of an amount determined by reference to that distribution.

(5) For the purposes of this section, the question whether any arrangements were entered into for an "unallowable purpose" shall be determined in accordance with subsections (6) and (7) below.

(6) Arrangements are entered into for an unallowable purpose if the purposes for which at least one person is a party to the arrangements include a purpose which is not amongst the business or other commercial purposes of that person.

(7) Where one of the purposes for which a person enters into any arrangements is the purpose of securing that that person or another obtains a tax advantage, that purpose shall be regarded as a business or other commercial purpose of the person only if it is neither the main purpose, nor one of the main purposes, for which the person enters into the arrangements.

(8) Any reference in this section to a person obtaining a tax advantage includes a reference to a person obtaining a payment representing any of the value of a tax credit in circumstances where, had the person obtaining the payment been entitled to the tax credit and the qualifying distribution to which it relates, that person—

(a) would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and

(b) if that person is a company, could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.

(9) If an amount representing any of the value of a tax credit to which a person is entitled is applied at the direction of, or otherwise in favour of, some other person (whether by way of set off or otherwise), the case shall be treated for the purposes of this section as one where that other person obtains a payment representing any of the value of the tax credit.

(10) In determining for the purposes of subsections (2)(b) and (8)(b) b above whether a company could have used the income consisting of the distribution in question to

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frank a distribution of the company, the company shall be taken to use its actual franked investment income to frank distributions before using the income consisting of the distribution in question.

(11) References in this section to using franked investment income to frank a distribution of a company have the same meaning as in Chapter V of Part VI.

(12) In this section—

"arrangements" means arrangements of any kind, whether in writing or not (and includes a series of arrangements, whether or not between the same parties);

"business or other commercial purposes" includes the efficient management of investments;

"franked investment income" has the same meaning as in Chapter V of Part VI and references to income consisting of a distribution shall be construed accordingly;

"tax advantage" has the same meaning as in Chapter I of Part XVII.**]**

Textual Amendments

F369 S. 231B inserted (with effect in accordance with s. 28(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 28(1)**

F370 Words in s. 231B(4)(b) repealed (with effect in accordance with Sch. 4 para. 26(2), Sch. 8 Pt. 2(10) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para 26(1), **Sch. 8 Pt. 2(10)**

232 Tax credits for non-U.K. residents.

[M637](1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part VII by virtue of section 278(2) in respect of any year of assessment shall be entitled to a tax credit in respect of any qualifying distribution received by him in that year to the same extent as if he were resident in the United Kingdom.

(2) Where a qualifying distribution is income of a fund to which section 615(2)(b) or (c) applies the persons entitled to receive the income shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 231(1).

(3) Where a qualifying distribution is income of, or of the government of, any sovereign power or of any international organisation, that power, government or organisation shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 231(1).

In this subsection "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

Marginal Citations

M637 Source—1972 s.98(1), (3), (4)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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233 Taxation of certain recipients of distributions and in respect of non-qualifying distributions.

[M638](1) Where in any year of assessment the income of any person, not being a company resident in the United Kingdom, includes a distribution in respect of which that person is not entitled to a tax credit—

(a) no assessment shall be made on that person in respect of income tax at the **[**[F371]lower rate**]** on the amount or value of the distribution;

(b) that person's liability under any assessment made in respect of income tax at a higher rate on the amount or value of the distribution or on any part of the distribution shall be reduced by a sum equal to income tax at the **[**[F371]lower rate**]** on so much of the distribution as is assessed at that higher rate;

(c) the amount or value of the distribution shall be treated [F372]. . . for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

[[F373](1A) Where in any year of assessment the income of any person who is not a company includes a qualifying distribution in respect of which that person, not being resident in the United Kingdom, is not entitled to a tax credit—

(a) the amount or value of the distribution so far as it is comprised in—

(i) income to which an assessment such as is mentioned in paragraph (b) of subsection (1) above relates, or

(ii) income chargeable to tax in accordance with section 686 at the rate applicable to trusts,

shall be deemed for the purposes of that assessment or, as the case may be, that section to be the sum which if reduced by an amount equal to income tax on that sum at the lower rate would be equal to the amount or value of the distribution actually made; and

(b) that person shall be treated for the purposes of section 686 as having paid tax at the lower rate on any amount which under paragraph (a) above is deemed to be the amount or value of the distribution for the purpose of that section;

but no repayment shall be made of any income tax treated by virtue of this subsection as having been paid.

(1B) Where in any year of assessment the income of any trustees which is chargeable to income tax in accordance with section 686 includes any non-qualifying distribution (within the meaning of subsection (2) below), the trustees' liability under any assessment made in respect of income tax at the rate applicable to trusts on the amount or value of the distribution, or on any part of the distribution, shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at the rate applicable to trusts.**]**

(2) Where a person has paid tax ("the tax paid") in respect of excess liability on, or on any part of, a non-qualifying distribution, then if, apart from this subsection, he would be liable to pay an amount of tax in respect of excess liability on, or on any part of, a repayment of the share capital or of the principal of the security which constituted that non-qualifying distribution, he shall be so liable only to the extent (if any) to which that amount exceeds the amount of the tax paid.

In this subsection—

"excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F374]were charged at the lower rate**]** to the exclusion of **[**[F375]the higher rate or, as the case may be, the rate applicable to trusts**]**;

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"non-qualifying distribution" means a distribution which is not a qualifying distribution.

Textual Amendments

F371 Words in s. 233(1) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 2(1)(a), **25(1)**

F372 Words in s. 233(1)(c) repealed (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, ss. 79, 213, Sch. 6 paras. 2(1)(b), 25(1), **Sch. 23 Pt.3**

F373 S. 233(1A)(1B) inserted (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 2(2), **25(1)**

F374 Words in s. 233(2) in the definition of "excess liability" substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 2(3)(a), **25(1)**

F375 Words in s. 233(2) in the definition of "excess liability" substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 2(3)(b), **25(1)**

Marginal Citations

M638 Source—1972 s.87(5), (6)

234 Information relating to distributions.

(1) [M639]Without prejudice to **[**[F376]section 234A**]** but subject to section 95(1)(c), a company which makes a qualifying distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

[F377](3) . . . . . .

[F377](4) . . . . . .

(5) [M640]Where a company makes a distribution which is not a qualifying distribution it shall make a return to the inspector—

(a) within 14 days from the end of the accounting period in which the distribution is made; or

(b) if the distribution is made on a date not falling in an accounting period, within 14 days from that date.

(6) A return under subsection (5) above shall contain—

(a) particulars of the transaction giving rise to the distribution; and

(b) the name and address of the person, or each of the persons, receiving the distribution, and the amount or value of the distribution received by him or by each of them.

(7) Where it is not in the circumstances apparent whether a transaction gives rise to a distribution in respect of which a return is required to be made under subsection (5) above, the company shall—

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(a) within the time within which such a return would be required to be made if the transaction did give rise to such a distribution, make a return to the inspector containing particulars of the transaction in question; and

(b) if required by a notice served on the company by the inspector, furnish him within the time specified in the notice with such further information in relation to the transaction as he may reasonably require.

(8) If it appears to the inspector that particulars of any transaction ought to have been and have not been included in a return under subsection (5) or (7) above, he may by a notice served on the company require the company to furnish him within the time specified in the notice with such information relating thereto as he may reasonably require.

(9) Any power which the inspector may exercise under **[**[F378]paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989 for the purposes of the relevant provisions (as defined in paragraph 1 of that Schedule)**]** may be exercised by him for the purposes of subsections (5) to (8) above.

Textual Amendments

F376 Words in s. 234(1) substituted (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(2)(a)(4)**.

F377 S. 234(3)(4) repealed (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 32(2)(b)(4), 82, **Sch. 18 Pt.VII**.

F378 1989 s.107*and* Sch.12 para.11.*Previously*
"paragraph 17 of Schedule 19 for the purposes of that Schedule".

Modifications etc. (not altering text)

C201 S. 234 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 21(2)**

Marginal Citations

M639 Source—1970 s.232(4); 1972 Sch.24 18

M640 Source—1972 Sch.21

[[F379]**234A Information relating to distributions: further provisions.**

(1) This section applies where dividend or interest is distributed by a company which is—

(a) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, or

(b) a company created by letters patent or by or in pursuance of an Act.

(2) If the company makes a payment of dividend or interest to any person, and subsection (3) below does not apply, within a reasonable period the company shall send an appropriate statement to that person.

(3) If the company makes a payment of dividend or interest into a bank or building society account held by any person, within a reasonable period the company shall send an appropriate statement to either—

(a) the bank or building society concerned, or

(b) the person holding the account.

(4) In a case where—

(a) a statement is received by a person under subsection (2) or (3)(b) above,

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(b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and

(c) the nominee makes a payment of the sum or part to the other person and subsection (5) below does not apply,

within a reasonable period the nominee shall send an appropriate statement to that person.

(5) In a case where—

(a) a statement is received by a person under subsection (2) or (3)(b) above,

(b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and

(c) the nominee makes a payment of the sum or part into a bank or building society account held by the other person,

within a reasonable period the nominee shall send an appropriate statement to either the bank or building society concerned or the other person.

(6) In the case of a payment of interest which is not a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—

(a) the gross amount which, after deduction of the income tax appropriate to the interest, corresponds to the net amount actually paid,

(b) the rate and the amount of income tax appropriate to such gross amount,

(c) the net amount actually paid, and

(d) the date of the payment.

(7) In the case of a payment of dividend or interest which is a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—

(a) the amount of the dividend or interest paid,

(b) the date of the payment, and

(c) the amount of the tax credit to which a person is entitled in respect of the dividend or interest, or to which a person would be so entitled if he had a right to a tax credit in respect of the dividend or interest.

(8) In this section "send" means send by post.

(9) If a person fails to comply with subsection (2), (3), (4) or (5) above, the person shall incur a penalty of £60 in respect of each offence, except that the aggregate amount of any penalties imposed under this subsection on a person in respect of offences connected with any one distribution of dividends or interest shall not exceed £600.

(10) The Board may by regulations provide that where a person is under a duty to comply with subsection (2), (3), (4) or (5) above, the person shall be taken to comply with the subsection if the person either—

(a) acts in accordance with the subsection concerned, or

(b) acts in accordance with rules contained in the regulations;

and subsection (9) above shall be construed accordingly.

(11) Regulations under subsection (10) above may make different provision for different circumstances.**]**

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Textual Amendments

F379 S. 234A inserted (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(1)(4)**.

235 Distributions of exempt funds etc.

M641(1) Where a person entitled to a tax credit in respect of a distribution to which this section applies is, by reason of any exemption from tax, entitled to recover tax and his holding (together with any associated holding) of any one class of the shares, securities or rights by virtue of which he is entitled to the distribution amounts to not less than 10 per cent. thereof, subsection (3) below shall apply to the income represented by any part of the distribution which is not a part—

(a) to which profits arising after the date of acquisition are attributable in accordance with section 236; or

(b) in relation to which the date of acquisition is earlier than 6th April 1965.

(2) For the purposes of this section and section 236, the date of acquisition, in relation to any part of a distribution or profits attributable to it, is the date on which the shares, securities or rights by virtue of which a person is entitled to that part were acquired by him.

(3) Where this subsection applies to any income—

(a) the exemption from tax shall not extend to that income; and

(b) it shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax; and

(c) no amount of interest shall be deducted from or set off against it under section 353.

(4) Where, by virtue of this section, an exemption from tax does not apply to any income represented by a distribution or part of a distribution, the person entitled to the income shall be liable to tax or, as the case may be, additional tax, on it at a rate equal to **[**F380the difference according to the rates in force at the time the distribution is made between the lower rate and the rate applicable to trusts**]** and shall be assessable to income tax or corporation tax accordingly.

(5) This section applies to any qualifying distribution except any amount which is treated as such in accordance with section 209(3) or sections 210 and 211.

Textual Amendments

F380 Words in s. 235(4) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.3, **25(1)**

Marginal Citations

M641 Source—1973 s.22

236 Provisions supplementary to section 235.

M642(1) Section 235 shall be construed in accordance with the following provisions of this section.

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(2) Two or more holdings are associated if they were acquired by persons acting in concert or under arrangements made by any person.

(3) There shall be attributed—

(a) to the distributions made by a company at any time (whether before or after the passing of this Act) in respect of any class of shares, securities or rights such of its relevant profits arising after the date of acquisition and before that time as remain after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights; and

(b) to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, such proportion of the profits attributable under paragraph (a) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.

(4) For the purposes of subsection (3) above profits arising in part of an accounting period shall be taken to be a proportionate part of the profits arising in the whole of the accounting period except where a different method of arriving at the profits arising in that part can be shown to be fair and reasonable.

(5) For the purposes of this section the relevant profits of a company are, subject to subsection (6) below, its profits computed on a commercial basis after allowing for any provision properly made for corporation tax; and the computation shall be made without regard to any capital gains or losses or to any such amount as is mentioned in section 235(5), and—

(a) shall include franked investment income received from any company not related to the first-mentioned company; and

(b) shall exclude group income and franked investment income received from a company related to the first-mentioned company.

(6) There shall be treated as included in the relevant profits of a company the appropriate portion of the relevant profits of any company related to it.

(7) For the purposes of this section a company ("the owned company") is related to another company ("the owning company") if—

(a) the owning company owns not less than 10 per cent. of any one class of shares in the owned company; or

(b) any company related to the owning company owns not less than 10 per cent. of any one class of shares in the owned company;

and the appropriate proportion of the relevant profits of a related company is that proportion of those profits which the owning company would receive by virtue of the shares, securities or rights owned by it, if all the relevant profits of the owned company were distributed and, so far as received directly or indirectly by a company related to the owning company, were distributed by that related company, no account being taken of any profits arising at a time when the owned company was not related to the owning company.

Modifications etc. (not altering text)

C202 S. 236(5) amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

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Marginal Citations
M642 Source—1973 Sch.10

237 Disallowance of reliefs in respect of bonus issues.

M643(1) This section has effect where any person ("the recipient") receives an amount treated as a distribution by virtue of section 209(3) or 210 or 211(1); and in this section—

(a) any such distribution is referred to as a bonus issue; and

(b) "relevant tax credit" in relation to a bonus issue means the tax credit to which the recipient becomes entitled in respect of the bonus issue.

(2) Subject to subsection (6) below, if the recipient is entitled by reason of—

(a) any exemption from tax, or

(b) the setting-off of losses against profits or income,

to recover tax in respect of any distribution received by him, no account shall be taken for the purposes of any such exemption or set-off of any bonus issue or relevant tax credit received by him.

(3) Subject to subsection (6) below, where, by virtue of this section, no account is to be taken for the purposes of any exemption from tax of any bonus issue and the relevant tax credit, the person entitled to that issue and that credit shall be liable to tax or, as the case may be, additional tax, on them at a rate equal to **[**F381the difference according to the rates in force at the time the distribution is made between the lower rate and the rate applicable to trusts**]** and shall be assessable to income tax or corporation tax accordingly.

(4) Subject to subsection (6) below, a bonus issue and the relevant tax credit shall be treated for the purposes of sections 241 and 244 as not being franked investment income.

(5) Subject to subsection (6) below—

(a) the relevant tax credit relating to a bonus issue shall not be available to set against any income tax which the recipient is entitled to deduct under section 348 or with which he is chargeable by virtue of section 349(1), and

(b) no interest may be deducted or set off under section 353 from or against so much of a person's income as consists of bonus issues and relevant tax credits.

(6) Nothing in subsections (2) to (5) above shall affect the proportion (if any) of any bonus issue made in respect of any shares or securities which, if it were declared as a dividend, would represent a normal return to the recipient on the consideration provided by him for the relevant shares or securities, that is to say, those in respect of which the bonus issue was made and, if those securities are derived from shares or securities previously acquired by the recipient, the shares or securities which were previously acquired; nor shall anything in those subsections affect the like proportion of the relevant tax credit relating to that bonus issue.

(7) For the purposes of subsection (6) above—

(a) if the consideration provided by the recipient for any of the relevant shares or securities was in excess of their market value at the time he acquired them, or if no consideration was provided by him for any of the relevant shares or securities, the recipient shall be taken to have provided for those shares or

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securities consideration equal to their market value at the time he acquired them; and

(b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount since the recipient first acquired any of the relevant shares or securities and to any dividends and other distributions made in respect of them during that time.

Textual Amendments

F381 Words in s. 237(3) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.3, **25(1)**

Marginal Citations

M643 Source—1973 s.23

CHAPTER V

ADVANCE CORPORATION TAX AND FRANKED INVESTMENT INCOME

238 Interpretation of terms and collection of ACT.

(1) [M644]In this Chapter—

"franked investment income" means income of a company resident in the United Kingdom which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit), but subject to section 247(2);

"franked payment" means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of advance corporation tax in force for the financial year in which the distribution is made, but subject to section 247(2);

"surplus advance corporation tax" has the meaning given by section 239(3);

"surplus of franked investment income" means any such excess as is mentioned in subsection (3) of section 241 (calculated without regard to franked investment income which by virtue of subsection (5) of that section cannot be used to frank distributions);

"tax credit" means a tax credit under section 231;

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

(2) [M645]References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 241(5).

(4) References in this Chapter to an amount of profits on which corporation tax falls finally to be borne are references to the amount of those profits after making all deductions

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and giving all reliefs that for the purposes of corporation tax are made or given from or against those profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

(5) [M646]Schedule 13 shall have effect for the purpose of regulating the time and manner in which advance corporation tax is to be accounted for and paid.

Modifications etc. (not altering text)
C203 S. 238(4) applied (27.7.1993) by 1993 c. 34, **s. 141(3)**

Marginal Citations
M644 Source—1972 ss.88(1), 84(3), 89(6), 110(1)
M645 Source—1972 s.110(2)-(4)
M646 Source—1972 s.84(5)

239 Set-off of ACT against liability to corporation tax.

[M647](1) Subject to section 497 and subsection (2) below, advance corporation tax paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any profits charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(2) The amount of advance corporation tax to be set against a company's liability for any accounting period under subsection (1) above shall not exceed the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of that period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the company's profits charged to corporation tax for that period.

(3) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax, the company may, within two years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were advance corporation tax paid in respect of distributions made by the company in any of its accounting periods beginning in the six years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be required, be repaid accordingly.

In this subsection "surplus advance corporation tax", in relation to any accounting period of a company, means advance corporation tax which cannot be set against the company's liability to corporation tax for that period because the company has no profits charged to corporation tax for that period or because of subsection (2) above or section 797(4).

(4) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax which has not been dealt with under subsection (3) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were advance corporation tax paid in respect of distributions made by the company in the next accounting period.

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(5) Effect shall be given to subsections (1) and (4) above as if on a claim in that behalf by the company and, for that purpose, a return made by the company under section 11 of the Management Act containing particulars of advance corporation tax or surplus advance corporation tax which falls to be dealt with under those subsections shall be treated as a claim.

(6) For the purposes of this section the profits of a company charged to corporation tax for any period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne.

(7) [M648]This section has effect subject to*subsections* (5)*to* (7)*of section* 430*and*[F382] the following provisions of this Chapter.

Textual Amendments

F382 *Words repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Modifications etc. (not altering text)

C204 *See*—s.116—*partnerships including companies—arrangements for transferring reliefs.*Oil Taxation Acts—*oil industry's limited right to carry back or surrender ACT.*s.813—*recovery of tax credits incorrectly paid.*

C205 *See* s.497—Oil Taxation Acts—*restriction of relief against income from oil extraction activities or oil rights for tax on distributions made to associated resident company.*

C206 *See* s.754(5)*and* Sch.26 para.2—*controlled foreign companies.*

C207 *See*—1988 s.825(4)—*repayment supplement.*1989 s.157—*interest charges in respect of certain claims made on or after* 14*March* 1989.

C208 *See* 1973 s.32(1)—*requirement of further particulars where company is a member of a partnership.*

Marginal Citations

M647 Source—1972 s.85(1)-(6); 1974 Sch.7 3(1); 1984 s.52(1), 53(2); 1987 (No.2) s.74(2)

M648 Source—1972 Sch.16 7

240 Set-off of company's surplus ACT against subsidiary's liability to corporation tax.

(1) [M649]Where a company ("the surrendering company") has paid an amount of advance corporation tax in respect of a dividend or dividends paid by it in an accounting period and the advance corporation tax has not been repaid, it may, on making a claim, surrender the benefit of the whole or any part of that amount—

(a) to any company which was a subsidiary of the surrendering company throughout that accounting period, or

(b) in such proportions as the surrendering company may determine, to any two or more companies which were subsidiaries of the surrendering company throughout that period.

(2) [M650]Subject to subsections (4) and (5) below, where the benefit of any amount of advance corporation tax ("the surrendered amount") is surrendered under this section to a subsidiary, then—

(a) if the advance corporation tax mentioned in subsection (1) above was paid in respect of one dividend only or of dividends all of which were paid on the same date, the subsidiary shall be treated for the purposes of section 239 as having

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paid an amount of advance corporation tax equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid;

(b) if the advance corporation tax mentioned in subsection (1) above was paid in respect of dividends paid on different dates, the subsidiary shall be treated for the purposes of section 239 as having paid an amount of advance corporation tax equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.

(3) [M651]For the purposes of paragraph (b) of subsection (2) above "the appropriate part of the surrendered amount", in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of it the same proportion as the amount of that dividend bears to the total amount of the dividends mentioned in that paragraph.

(4) [M652]No advance corporation tax which a subsidiary is treated as having paid by virtue of subsection (2) above shall be set against the subsidiary's liability to corporation tax under subsection (3) of section 239; but in determining for the purposes of subsections (3) and (4) of that section what (if any) amount of surplus advance corporation tax there is in any accounting period of a subsidiary, an amount so treated as having been paid shall be set against its liability to corporation tax before any advance corporation tax paid in respect of any distribution made by the subsidiary.

(5) [M653]No advance corporation tax which a subsidiary is treated as having paid by virtue of subsection (2) above shall be set against the subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company **[**[F383]unless throughout that period or part both companies were subsidiaries of a third company**]**.

(6) [M654]Any claim under this section shall be made within six years after the end of the accounting period to which it relates and shall require the consent, notified to the inspector in such form as the Board may require, of the subsidiary or subsidiaries concerned.

(7) [M655]No amount of advance corporation tax which has been dealt with under section 239(3) shall be available for the purposes of a claim under this section; and no amount of advance corporation tax the benefit of which has been surrendered under this section shall be treated for the purposes of that section as advance corporation tax paid by the surrendering company.

(8) [M656]A payment made by a subsidiary to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of advance corporation tax, being a payment not exceeding that amount—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income.

(9) References in this section to dividends shall be construed as including references to distributions made on the redemption, repayment or purchase by a company of its own shares, and references to the payment of dividends shall be construed accordingly.

(10) References in this section to a company apply only to bodies corporate resident in the United Kingdom; and, subject to subsection (11) below, for the purposes of this section the question whether one body corporate is the subsidiary of another shall be

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determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(11) Notwithstanding that, apart from this subsection, one company ("the subsidiary company") would at any time, by virtue of subsection (10) above, be a subsidiary of another company ("the parent company") for the purposes of this section, the subsidiary company shall not be treated at that time as a subsidiary for those purposes—

(a) if arrangements are in existence by virtue of which any person has or could obtain, or any persons together have or could obtain, control of the subsidiary company but not of the parent company; and

(b) unless the following conditions are also fulfilled, namely—

(i) that the parent company is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(ii) that the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

In this subsection "control" has the meaning given by section 840 and "arrangements" means arrangements of any kind, whether in writing or not.

(12) [M657]Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting (or as having at any time constituted) an arrangement within the meaning of subsection (11) above.

(13) [M658]Schedule 18 shall have effect for the purposes of subsection (11)(b) above, subject to the following modifications—

(a) for any reference to section 413(7) to (10) there shall be substituted a reference to subsection (11)(b) above; and

(b) paragraph 7(1) shall be omitted and for any reference to the relevant accounting period there shall be substituted a reference to the accounting period current at the time in question.

Textual Amendments

F383 1989 s.97(1)*in relation to accounting periods ending on or before* 14*March* 1989.

Modifications etc. (not altering text)

C209 *See*—ss.498 to 499—Oil Taxation Acts—*petroleum extraction activities.*s.812—*non resident companies.*

C210 *See* s.497—Oil Taxation Acts—*relief not to be given against subsidiary's income from oil extraction activities or oil rights.*

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Marginal Citations

M649 Source—1972 s.92(1); 1973 Sch.13 2
M650 Source—1972 s.92(2); 1973 Sch.13 3, 4
M651 Source—1972 s.92(3)
M652 Source—1972 s.92(3A); 1973 Sch.13 5
M653 Source—1972 s.92(4)
M654 Source—1972 s.92(5); 1973 Sch.13 6
M655 Source—1972 s.92(6)
M656 Source—1972 s.92(7)
M657 Source—1981 s.47
M658 Source—1972 s.92(11); 1973 Sch.13 8

241 Calculation of ACT where company receives franked investment income.

M659(1) Where in any accounting period a company receives franked investment income the company shall not be liable to pay advance corporation tax in respect of qualifying distributions made by it in that period unless the amount of the franked payments made by it in that period exceeds the amount of that income.

(2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount which, when the advance corporation tax payable thereon is added to it, is equal to the excess.

(3) If the amount of franked investment income received by a company in an accounting period exceeds the amount of the franked payments made by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as franked investment income received by the company in that period.

(4) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to subsections (1) to (3) above.

(5) No franked investment income shall be used to frank distributions of a company (that is to say, used in accordance with this section and Schedule 13 so as to relieve the company from, or obtain repayment of, advance corporation tax for which the company would otherwise be liable) if the amount of the tax credit comprised in it has been paid under subsection (2) of section 231; and no payment shall be made under that subsection in respect of the tax credit comprised in franked investment income which has been so used.

Modifications etc. (not altering text)

C211 S. 241(5) amended (27.7.1993) by 1993 c. 34, **s. 78(7)**

Marginal Citations

M659 Source—1972 s.89(1)-(5)

242 Set-off of losses etc. against surplus of franked investment income.

(1) M660Where a company has a surplus of franked investment income for any accounting period—

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(a) the company may, on making a claim for the purpose, require that the amount of the surplus shall for all or any of the purposes mentioned in subsection (2) below be treated as if it were a like amount of profits chargeable to corporation tax; and

(b) subject to subsection (4) below, the provisions mentioned in subsection (2) below shall apply in accordance with this section to reduce the amount of the surplus for purposes of section 241(3); and

(c) the company shall be entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

(2) [M661]The purposes for which a claim may be made under subsection (1) above are those of—

(a) the setting of trading losses against total profits under section **[**[F384]393A(1)**]**;

(b) the deduction of charges on income under section 338 or paragraph 5 of Schedule 4;

(c) the deduction of expenses of management under section 75 or 76;

(d) the setting of certain capital allowances against total profits under **[**[F385]section 145(3) of the 1990 Act**]**;

(e) the setting of losses against income under section 573(2).

[[F386](f) the setting of amounts against profits under section 131(4) of the Finance Act 1993.**]**

(3) [M662]Where a company makes a claim under this section for any accounting period, the reduction falling to be made in profits of that accounting period shall be made, as far as may be, in profits chargeable to corporation tax rather than in the amount treated as profits so chargeable under this section.

(4) [M663]Where a claim under this section relates to section **[**[F387]393A(1)**]**or 573(2) of this Act or to **[**[F385]section 145(3) of the 1990 Act**]** and an accounting period of the company falls partly before and partly within the time mentioned in that subsection, then—

(a) the restriction imposed by section **[**[F388]393A(2)**]** or 573(3) of this Act or by **[**[F385]section 145(4) of the 1990 Act**]** on the amount of the relief shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as profits of the accounting period under this section; but

(b) relief under this section shall be given only against a part of the amount so treated proportionate to the part of the accounting period falling within that time.

(5) [M664]Where—

(a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a trade, or of any amount which could be treated as a loss under section 393(9); and

(b) in a later accounting period the franked payments made by the company exceed its franked investment income;

then (unless the company has ceased to carry on the trade or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 393(1), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of—

(i) the excess referred to in paragraph (b) above; and

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier accounting period.

(6) [M665]Subject to subsection (7) below, subsection (5) above shall apply, with the necessary adaptations—

(a) in relation to relief given in respect of management expenses; and

(b) in relation to relief given in respect of capital allowances; and

(c) in relation to relief given in respect of losses under section 573(2);

as it applies in relation to relief given in respect of a loss (the reference to the company ceasing to be within the charge to corporation tax in respect of the trade being construed as a reference to its ceasing to be within that charge at all, and as respects the relief mentioned in paragraph (c) above, the reference to the purposes of section 393(1) being construed as a reference to the purposes of corporation tax on chargeable gains).

(7) Any amount which may be dealt with under subsection (5) above as a loss shall be so dealt with rather than under subsection (6) above, except in so far as the company concerned otherwise elects.

(8) [M666]The time limits for claims under this section shall be as follows—

(a) if and so far as the purpose for which the claim is made is the setting of trading losses against total profits under **[**[F389]subsection (1) of section 393A, the time limit that would, by virtue of subsection (10) or (11) of that section, be applicable in the case of a claim under that section in respect of those losses**]**;

(b) if and so far as the purpose for which the claim is made is the deduction of charges on income under section 338 or paragraph 5 of Schedule 4 or of expenses of management under section 75 or 76, six years from the end of the accounting period in which the charges were paid or the expenses of management were incurred;

(c) if and so far as the purpose for which the claim is made is the setting of capital allowances against total profits under **[**[F390]section 145(3) of the 1990 Act**]**, two years from the end of the accounting period for which the capital allowances fall to be made;

(d) if and so far as the purpose for which the claim is made is the setting of a loss against income under section 573(2), two years from the end of the accounting period in which the loss was incurred.

[[F391](e) if and so far as the purpose for which the claim is made is the setting of an amount against profits under subsection (4) of section 131 of the Finance Act 1993, the time limit that would, by virtue of subsection (14) of that section, be applicable in the case of a claim under subsection (4) of that section.**]**

(9) [M667]For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period; and for the purposes of subsection (5) above franked investment income which by virtue of section 241(5) cannot be used to frank distributions of a company shall be left out of account.

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Textual Amendments

F384 Words in s. 242(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(1)**

F385 1990(C) s.164 and Sch.1 para.8(11).*Previously*
"section 74(3) of the 1968 Act"
in subss.(2)(d)*and* (4)*and*
"section 74(4) of the 1968 Act"
in subs.(4)(a).

F386 S. 242(2)(f) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para. 3(2)**

F387 Words in s. 242(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(2)(a)**

F388 Words in s. 242(4)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(2)(b)**

F389 Words in s. 242(8)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 5(3)**

F390 1990 s.164*and* Sch.1 para.8(11).*Previously*
"section 74(3) of the 1968 Act".

F391 S. 242(8)(e) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para. 3(3)**

Marginal Citations

M660 Source—1970 s.254(1); 1972 Sch.15 Pt.I
M661 Source—1970 s.254(2); 1981 s.37(2); 1984 Sch.9 13
M662 Source—1970 s.254(3)
M663 Source—1970 s.254(4); 1981 s.37(3)
M664 Source—1970 s.254(5)
M665 Source—1970 s.254(6); 1981 s.37(4)
M666 Source-1970 s.254(7); 1981 s.37(5); 1984 Sch.9 13
M667 Source—1970 s.254(8)

243 Set-off of loss brought forward, or terminal loss.

M668(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 242, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 393(1) F392 . . ., up to the amount of franked investment income for the accounting period which, if chargeable to corporation tax, would have been so taken into account by virtue of section 393(8); and (subject to the restriction to that amount of franked investment income) the following subsections shall have effect where the company makes a claim under this section for any accounting period.

(2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.

(3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(4) If the claim relates to section 393(1), section 242(5) shall apply in relation to it.

F393(5) . . . . . .

(6) The time limits for claims under this section shall be as follows—

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(a) if and so far as the purpose for which the claim is made is the allowance of relief under section 393(1), six years from the end of the accounting period for which the claim is made,

[F394](b) . . . . . .

(7) For the purposes of a claim under this section for any accounting period the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

Textual Amendments

F392 Words in s. 243(1) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(1), **Sch. 19 Pt. V** Note 4

F393 S. 243(5) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(2), **Sch. 19 Pt.V**, Note 4

F394 S. 243(6)(b) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 6(3), **Sch. 19 Pt.V**, Note 4

Modifications etc. (not altering text)

C212 S. 243(1) amended (27.7.1993) by 1993 c. 34, **s. 78(10)**

Marginal Citations

M668 Source—1970 s.255; 1972 Sch.15 Pt.I

244 Further provisions relating to claims under section 242 or 243.

[M669](1) Without prejudice to section 242(9) or 243(7), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.

(2) Where in consequence of a claim under either section 242 or section 243 for any accounting period a company is entitled to payment of a sum in respect of tax credit—

(a) an amount equal to that sum shall be deducted from any advance corporation tax which apart from this subsection would fall, under section 239, to be set against the company's liability to corporation tax for the next accounting period or the benefit of which could be surrendered under section 240; and

(b) if that amount exceeds that advance corporation tax or there is no such advance corporation tax, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

Marginal Citations

M669 Source—1972 s.90(2), (3); 1973 Sch.13 9

245 Calculation etc. of ACT on change of ownership of company.

[M670](1) This section applies if—

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(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or

(b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Sections 239 and 241 and Schedule 13 shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the profits of the company charged to corporation tax for the accounting period (as defined in section 239(6)) shall be apportioned between those parts.

(3) No advance corporation tax paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

[[F395](3A) No advance corporation tax paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall be treated under section 239(3) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3B) Subsection (3A) above applies in relation to changes in ownership occuring on or after 16th March 1993.**]**

(4) In subsection (1) above "a major change in the nature or conduct of a trade or business" includes—

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business; or

(b) a major change in customers, outlets or markets of the trade or business; or

(c) a change whereby the company ceases to be a trading company and becomes an investment company or vice versa; or

(d) where the company is an investment company, a major change in the nature of the investments held by the company;

and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

(5) In this section—

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"investment company" means a company (other than a holding company) whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom;

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies.

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(6) Subsection (3) above applies to advance corporation tax which a company is treated as having paid by virtue of section 240 as it applies to advance corporation tax which it has actually paid.

(7) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of the losses were a reference to the benefit of advance corporation tax.

Textual Amendments

F395 S. 245(3A)(3B) inserted (27.7.1993) by 1993 c. 34, **s.81**

Marginal Citations

M670 Source—1972 s.101; 1987 (No.2) s.74(5)

[F396 245A Restriction on application of section 240 in certain circumstances.

(1) This section applies if—

(a) there is a change in the ownership of a company ("the relevant company");

(b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and

(c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.

(2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.

(4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.**]**

Textual Amendments

F396 Ss. 245A, 245B inserted (in relation to changes in ownership on or after 14 March 1989) by Finance Act 1989 (c. 26), **s. 98**

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245B Restriction on set-off where asset transferred after change in ownership of company.

(1) Subsection (4) below applies if—

(a) there is a change in the ownership of a company ("the relevant company");

(b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;

(c) after the change the relevant company acquires an asset from another company in such circumstances that section **[**[F397]171(1) of the 1992 Act**]** applies to the acquisition; and

(d) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.

(2) Subsection (1)(b) above shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(3) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(4) In relation to the accounting period in which the chargeable gain accrues to the relevant company ("the relevant period"), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company's liability to corporation tax were reduced by whichever is the lesser of—

(a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and

(b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.

(5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

Textual Amendments

F397 Words in s. 245B(1)(c) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(15)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C213 S. 245B(4)(a) modified (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 3 para. 17(3)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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246 Charge of ACT at previous rate until new rate fixed, and changes of rate.

(1) [M671]If, at the beginning of any financial year, the **[**[F398]lower rate**]** percentage for the appropriate year of assessment has not been determined (whether under the Provisional Collection of Taxes Act 1968 or otherwise), then, subject to subsection (2) below, advance corporation tax in respect of distributions made in that financial year shall be payable under Schedule 13 and may be assessed under that Schedule according to the rate of advance corporation tax fixed for the previous financial year.

(2) Subsection (1) above does not apply with respect to any distribution made in a financial year after—

(a) the date on which is determined the **[**[F398]lower rate**]** percentage for the appropriate year of assessment; or

(b) 5th **[**[F399]May**]** in that year,

whichever is the earlier.

(3) If a rate of advance corporation tax for any financial year is not fixed, under section 14(3) or any other enactment, or if advance corporation tax for any financial year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

(4) [M672]In subsections (1) and (2) above "the **[**[F398]lower rate**]** percentage for the appropriate year of assessment", in relation to a financial year, means the percentage at which income tax at the **[**[F398]lower rate**]** is charged for the year of assessment which begins on 6th April in that financial year.

(5) [M673]Where different rates of advance corporation tax are in force in different parts of an accounting period, the maximum set-off permitted for that accounting period under section 239(2) shall be determined by apportioning the profits of the company charged to corporation tax for that period (as defined in section 239(6)) between the different parts of the period, calculating the maximum for each part as if it were a separate accounting period and aggregating the result.

(6) Where the rate of advance corporation tax for any financial year differs from the rate last fixed—

(a) any advance corporation tax payable in respect of a distribution made in that financial year on or before 5th April shall be calculated according to the rate last fixed and—

(i) the definition of "franked payment" in section 238(1), and

(ii) section 231(1) and Schedule 13,

shall have effect in relation to the distribution as if the rate for that year were the same as the rate last fixed;

(b) if a distribution is made on or before 5th April in an accounting period which extends beyond 5th April in that year and another distribution is made, or franked investment income is received, in that period after that date, then—

(i) the company's liability for advance corporation tax,

(ii) the amount of any such tax, and

(iii) the amount of any surplus of franked investment income,

for that accounting period, shall be determined under section 241 and Schedule 13 as if the part of the accounting period ending with, and the part of it beginning after, that date were separate accounting periods.

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Textual Amendments

F398 Words in s. 246(1)(2)(4) substituted (27.7.1993 with effect in relation to the financial year 1994 and subsequent financial years) by 1993 c. 34, **s. 78(12)(13)**

F399 Word in s. 246(2)(b) substituted (27.7.1993) by 1993 c. 34, **s. 206(3)**

Modifications etc. (not altering text)

C214 S. 246(5) applied (with modifications) (1.7.1997) by The Manufactured Dividends (Tax) Regulations 1997 (S.I. 1997/993), **reg. 9(1)**

Marginal Citations

M671 Source—1986 s.17(2)-(4)

M672 Source—1986 s.17(1)

M673 Source—1972 s.103(4), (5); 1973 Sch.14 5; 1987 (No.2) s.74(5)

VALID FROM 03/05/1994

CHAPTER VA

FOREIGN INCOME DIVIDENDS

Modifications etc. (not altering text)

C215 Pt. 6 Ch. 5A modified (retrospective to 8.10.1996) by Finance Act 1997 (c. 16), **Sch. 7 para. 2(1)(3)**

[F400 Election by company paying dividend

Textual Amendments

F400 Pt. 6 Ch. 5A (ss. 246A-246Y) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 1**

246A Election by company paying dividend.

(1) Where a company pays a dividend, the dividend shall be treated as a foreign income dividend for the purposes of this Chapter if the company elects for it to be so treated in accordance with this section and section 246B.

(2) An election may not be made under this section as regards a dividend unless the dividend is paid, or to be paid, in cash.

(3) An election may not be made under this section as regards a dividend which is paid, or to be paid, to a person by virtue of his holding a share in respect of which there are arrangements for the holder to choose whether, or in what form, dividends are to be paid; and the arrangements may be for the holder to choose to be paid a dividend by a company other than the one which issued the share.

(4) Where at a given time—

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(a) a company pays one dividend in respect of each of two or more shares of the same class, and

(b) payment is on the same terms as respects all the shares involved,

an election may not be made under this section as regards any of the dividends unless an election is made as regards each of the dividends.

(5) Where at a given time—

(a) a company pays two or more dividends in respect of each of two or more shares of the same class, and

(b) payment is on the same terms as respects all the shares involved,

an election may not be made under this section as regards any one of the dividends in respect of a given share unless an election is also made as regards the corresponding dividend in respect of each of the other shares involved.

(6) Subject to subsection (7) below, a company which has more than one class of share capital may not make an election under this section as regards any dividend.

(7) In a case where—

(a) a company has more than one class of share capital,

(b) at a given time the company pays a dividend in respect of each share of each such class, and

(c) all of those dividends are paid on the same terms,

the company may elect that each of those dividends is to be treated as a foreign income dividend.

(8) For the purposes of subsection (7) above a dividend is paid on the same terms as another dividend if the relevant proportion in the case of each dividend is the same; and the relevant proportion, in relation to a dividend, is the proportion which the amount of the dividend bears to the nominal value of the share in respect of which the dividend is paid.

(9) For the purposes of subsections (6) and (7) above fixed-rate preference shares shall not be treated as constituting a class of share capital; and "fixed-rate preference shares" shall be construed in accordance with section 95(5).

(10) Where an election is made under this section as regards a dividend in respect of which an election is in force under section 247(1)—

(a) the election under this section shall have effect as if it were also a notice to the collector under section 247(3) stating that the paying company does not wish the election under section 247(1) to have effect in relation to the dividend as regards which the election under this section is made;

(b) if the election under this section is revoked, the revocation shall have effect as if it were also a revocation of the notice deemed by paragraph (a) above;

(c) the notice deemed by paragraph (a) above may not be revoked otherwise than as mentioned in paragraph (b) above;

(d) if the notice deemed by paragraph (a) above is revoked it shall be treated as never having been made.

246B Procedure for making election.

(1) An election under section 246A—

(a) must be made by notice to the inspector;

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(b) must be made not later than the time the dividend is paid;

(c) may be revoked by a further notice to the inspector before that time (without prejudice to the making of another election as regards the same dividend);

(d) cannot be revoked after the dividend is paid.

(2) A notice under subsection (1)(a) above must—

(a) identify the dividend in respect of which the election is made, and

(b) be in such form as the Board may require.

(3) Where section 246A(4), (5) or (7) applies—

(a) the same notice must be used to elect as regards all the dividends concerned, and

(b) the notice may identify the dividends concerned, or any of them, by means of a general description.

Recipient of foreign income dividend

246C No tax credit for recipient.

Section 231(1) shall not apply where the distribution there mentioned is a foreign income dividend.

246D Individuals etc.

(1) Where a company pays a foreign income dividend in a case in which an individual is beneficially entitled to the dividend, that individual shall be treated as having received on the date of the payment income of an amount which, if reduced by an amount equal to income tax on that income at the lower rate for the year of assessment in which the date of the payment fell, would be equal to the amount of the dividend.

(2) Where subsection (1) above applies—

(a) no assessment shall be made on the individual in respect of income tax at the lower rate on that income but he shall be treated as having paid tax at the lower rate on it or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;

(b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid;

(c) to the extent that it would not otherwise be so treated, that income shall be treated as income to which (without prejudice to paragraph (a) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F;

(d) that income shall be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

(3) Where a company pays a foreign income dividend to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased; and the preceding provisions of this subsection shall be construed as if they were contained in Part XVI.

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(4) Where a company pays a foreign income dividend to trustees and the dividend is income to which section 686 applies—

(a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to the dividend, that individual would be treated under subsection (1) above as having received;

(b) income of that amount shall be treated as having arisen to the trustees on the date of the payment and as if it had been chargeable to income tax at the lower rate;

(c) paragraphs (a) to (d) of subsection (2) above shall, with the substitution of "income" for "total income" and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under subsection (1) above.

(5) Subsections (1) and (1A) of section 233 shall not apply where the distribution mentioned in either of those subsections is a foreign income dividend **[**[F401]to which an individual is beneficially entitled, a foreign income dividend paid to personal representatives or a foreign income dividend paid to trustees in a case in which the dividend is income to which section 686 applies.**]**

Textual Amendments

F401 Words in s. 246D(5) inserted (retrospectively) by Finance Act 1996 (c. 8), **Sch. 27 para. 2**

Companies: payments and receipts

246E Foreign income dividend not franked payment.

A foreign income dividend shall not constitute a distribution for the purposes of the definition of "franked payment" in section 238(1).

246F Calculation of ACT where company receives foreign income dividend.

(1) Where in any accounting period a company receives foreign income dividends, the company shall not be liable to pay advance corporation tax in respect of foreign income dividends paid by it in that period unless the amount of the foreign income dividends paid by it in that period exceeds the amount of the foreign income dividends received by it in that period.

(2) If in an accounting period there is such an excess, advance corporation tax shall be payable on an amount equal to the excess.

(3) If the amount of foreign income dividends received by a company in an accounting period exceeds the amount of the foreign income dividends paid by it in that period the excess shall be carried forward to the next accounting period and treated for the purposes of this section (including any further application of this subsection) as foreign income dividends received by the company in that period.

(4) This section shall have effect subject to section 246T and paragraph 2(6) of Schedule 23A.

(5) Without prejudice to section 238(5), Schedule 13 shall apply for the purpose of regulating the manner in which effect is to be given to this section.

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246G Information relating to foreign income dividends.

(1) Where section 234A applies by virtue of the fact that a foreign income dividend is paid by a company, references in that section to an appropriate statement shall be construed as references to a written statement—
  (a) in such form as the Board may require,
  (b) showing the amount of the dividend paid,
  (c) showing the date of the payment, and
  (d) stating that the dividend carries no entitlement to a tax credit;
and in such a case section 234A(7) shall not apply.

(2) In a case where—
  (a) a requirement is imposed on a company under section 234A(2) or (3) in relation to a foreign income dividend paid by it, and
  (b) the company fails to comply with the requirement,
no election may be made by the company under section 246J or 246K as regards the dividend or any part of it.

246H Power of inspector to require information.

(1) This section applies where a return made by a company for a return period in accordance with Schedule 13 shows that the company has paid foreign income dividends in the period.

(2) The inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating to the dividends as he may reasonably require for the purposes of any enactment relating to foreign income dividends.

(3) Without prejudice to the generality of subsection (2) above, the notice may require information as to the persons to whom dividends are paid.

Foreign source profit and distributable foreign profit

246I Foreign source profit and distributable foreign profit.

(1) Where for an accounting period of a company there is any income, or any chargeable gain, in respect of which double taxation relief is afforded, then so much of that income or gain as forms part of the company's chargeable profits for the period is a foreign source profit of the company for the period.

(2) Subsection (3) below applies where in the accounting period concerned there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.

(3) In finding for the purposes of this section whether, or how much of, any income or gain forms part of the company's chargeable profits for the period the company may allocate the deduction in such amounts and to such of its profits for the period as it thinks fit.

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(4) Where a company has a foreign source profit for an accounting period, such part of it as exceeds the relevant amount of tax is for the purposes of this Chapter a distributable foreign profit of the company for the period.

(5) Where the amount of foreign tax payable in respect of the foreign source profit exceeds the amount of corporation tax payable, before double taxation relief is afforded, in respect of that profit, the relevant amount of tax is the amount of foreign tax payable in respect of that profit.

(6) Where subsection (5) above does not apply, the relevant amount of tax is an amount equal to the aggregate of—
  (a) the amount of foreign tax payable in respect of the foreign source profit, and
  (b) the amount of corporation tax payable in respect of that profit after double taxation relief is afforded.

(7) In this section "double taxation relief" means—
  (a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or
  (b) unilateral relief under section 790(1) which takes that form;

  and "double taxation arrangements" here means arrangements having effect by virtue of section 788.

(8) References in this section to a company's chargeable profits for an accounting period are to the amount of its profits for that period on which corporation tax falls finally to be borne; and section 238(4) shall apply for the purposes of this subsection.

(9) For the purposes of this section foreign tax is any tax, imposed by the laws of a territory outside the United Kingdom, for which double taxation relief is afforded.

(10) Section 788(5) shall apply for the purposes of this section.

Matching of dividend with distributable foreign profit

246J Matching of dividend with distributable foreign profit.

(1) Where a company pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) a distributable foreign profit of the company; and subsections (2) to (6) below shall have effect with regard to matching.

(2) Different parts of a dividend may be matched with different distributable foreign profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same distributable foreign profit.

(3) A foreign income dividend (or part of one) may be matched with a distributable foreign profit (or part of one) only if the amount of the distributable foreign profit or part is equal to the amount of the dividend or part.

(4) Subject to subsection (5) below, where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) a distributable foreign profit of the company for that period or for the accounting period immediately preceding it, but without the need to exhaust distributable foreign profits for one of those periods before taking those for the other period.

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(5) Where a company pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) a distributable foreign profit of the company for any subsequent accounting period, but only if there is no amount of unmatched distributable foreign profit of the company for the given period and no such amount for the accounting period immediately preceding the given period.

(6) Where a distributable foreign profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

Modifications etc. (not altering text)
C216 S. 246J(5) modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **Sch. 6 para. 22(2)**

246K Matching: subsidiaries.

(1) This section applies where a company (the subsidiary) is a 51 per cent. subsidiary of another company (the parent); but this is subject to section 246L.

(2) In a case where—
  (a) an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
  (b) the subsidiary has a distributable foreign profit for its accounting period,

the whole of the profit is for the purposes of this section an eligible profit for the parent's accounting period.

(3) In a case where—
  (a) part of an accounting period of the subsidiary coincides with, or with part of, an accounting period of the parent, and
  (b) the subsidiary has a distributable foreign profit for its accounting period,

then, to the extent of the appropriate fraction, the profit is for the purposes of this section an eligible profit for the parent's accounting period.

(4) The appropriate fraction is one—
  (a) whose numerator is equal to the number of the days in the subsidiary's accounting period that coincide with days in the parent's accounting period, and
  (b) whose denominator is equal to the number of the days in the subsidiary's accounting period.

(5) Where the parent pays a foreign income dividend in an accounting period it may elect that the dividend (or part of it) shall be matched with (or with part of) an eligible profit; and subsections (6) to (11) below shall have effect with regard to matching.

(6) No election as to matching may be made unless the subsidiary gives its written consent in such form as the Board may require.

(7) Different parts of a dividend may be matched with different eligible profits or parts; and different dividends, or parts of different dividends, may be matched with different parts of the same eligible profit.

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(8) A foreign income dividend (or part of one) may be matched with an eligible profit (or part of one) only if the amount of the eligible profit or part is equal to the amount of the dividend or part.

(9) Subject to subsection (10) below, where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may only be matched with (or with part of) an eligible profit for that period or for the accounting period immediately preceding it, but without the need to exhaust eligible profits for one of those periods before taking those for the other period.

(10) Where the parent pays a foreign income dividend in a given accounting period the dividend (or part of it) may be matched with (or with part of) an eligible profit for any subsequent accounting period, but only if there is no amount of unmatched eligible profit derived from the same subsidiary for the given period and no such amount for the accounting period immediately preceding the given period.

(11) Where an eligible profit (or part of one) has been matched with a foreign income dividend (or part of one) it cannot be matched with another foreign income dividend or part.

(12) References in this section to a company apply only to bodies corporate; and in determining for the purposes of this section whether one company is a 51 per cent. subsidiary of another company, that other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade, or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Modifications etc. (not altering text)

C217 S. 246K(10) modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **Sch. 6 para. 22(2)**

246L Requirement as to subsidiaries.

(1) Section 246K(5) does not apply unless the subsidiary is a 51 per cent. subsidiary of the parent throughout the relevant period (determined under subsection (3) or (4) below).

(2) In this section "the payment period" means the accounting period of the parent in which it pays the dividend as regards which an election under section 246K is proposed.

(3) If the proposed election involves only eligible profits deriving from an accounting period of the subsidiary coinciding with the payment period, the relevant period is the payment period.

(4) In any other case the relevant period is one that—

(a) begins with the beginning of the payment period or (if earlier) the beginning of the first or only relevant accounting period of the subsidiary, and

(b) ends with the end of the payment period or (if later) the end of the last or only relevant accounting period of the subsidiary.

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(5) For the purposes of subsection (4) above a relevant accounting period of the subsidiary is an accounting period of the subsidiary for which there is a distributable foreign profit which—

(a) is (as to the whole or part) an eligible profit, and

(b) would, under the proposed election, be to any extent matched with the dividend as regards which the election is proposed.

(6) Section 246K(12) shall apply in determining for the purposes of this section whether the subsidiary is a 51 per cent. subsidiary of the parent at any given time.

246M Matching: further provisions.

(1) Where a parent elects under section 246K as regards an eligible profit for an accounting period, the following rules shall have effect for the purposes of this Chapter—

(a) to the extent provided for in the election, the eligible profit shall be treated as a separate distributable foreign profit of the parent for the parent's accounting period and as matched;

(b) the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) shall be treated as reduced accordingly or (depending on the circumstances) as extinguished;

(c) the foreign source profit of which the distributable foreign profit mentioned in section 246K(2)(b) or (3)(b) forms a part shall be treated as correspondingly divided between the parent and the subsidiary or (depending on the circumstances) as a foreign source profit of the parent alone for its accounting period.

(2) Where an election is made under section 246J or 246K with regard to anything which is or represents a distributable foreign profit of a subsidiary (or part of such a profit) no further election can be made with regard to it under the other section.

Repayment or set-off of advance corporation tax

246N ACT to be repaid or set off against corporation tax liability.

(1) This section and section 246Q apply where—

(a) a company pays a foreign income dividend in an accounting period (the relevant period), and

(b) the company does not treat itself as an international headquarters company at any time in the period by virtue of section 246S(9).

(2) In a case where—

(a) the company pays an amount of advance corporation tax in respect of qualifying distributions actually made by it in the relevant period,

(b) the amount, or part of it, is available to be dealt with under this section, and

(c) there is as regards the company an amount of notional foreign source advance corporation tax for the relevant period,

an amount of the advance corporation tax paid shall be repaid to the company, or set off, or partly repaid and partly set off, in accordance with this section and section 246Q.

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(3) In the following provisions of this section "the relevant advance corporation tax" means the advance corporation tax paid as mentioned in subsection (2)(a) above.

(4) The amount of the relevant advance corporation tax to be repaid or (as the case may be) set off, or partly repaid and partly set off, is whichever of the following is smaller—

(a) so much of the relevant advance corporation tax as is available to be dealt with under this section;

(b) so much of the relevant advance corporation tax as is equal to the amount which is, as regards the company, the amount of notional foreign source advance corporation tax for the relevant period (found under section 246P).

(5) So much of the relevant advance corporation tax as remains after deducting the aggregate of the deductible amounts is available to be dealt with under this section; and each of the following is a deductible amount—

(a) an amount equal to so much (if any) of the relevant advance corporation tax as has been repaid;

(b) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period under section 239(1) or, if there is—

(i) any amount of advance corporation tax from a preceding accounting period,

(ii) any amount of surrendered advance corporation tax, or

(iii) any amount of advance corporation tax from a succeeding accounting period,

as would have been so set off if there had been no amounts as mentioned in sub-paragraphs (i) to (iii) above;

(c) an amount equal to so much (if any) of the relevant advance corporation tax as has been dealt with under section 239(3);

(d) an amount equal to so much (if any) of the relevant advance corporation tax as is advance corporation tax the benefit of which has been surrendered by the company under section 240;

(e) an amount equal to so much (if any) of the relevant advance corporation tax as has been set off against the company's corporation tax liability for the relevant period by virtue of the previous application of this section and section 246Q.

(6) For the purposes of subsection (5)(b) above—

(a) advance corporation tax from a preceding accounting period is advance corporation tax which by virtue of section 239(4) is treated for the purposes of section 239 as paid by the company in respect of distributions made by it in the relevant period;

(b) surrendered advance corporation tax is advance corporation tax which by virtue of section 240 is so treated;

(c) advance corporation tax from a succeeding accounting period is advance corporation tax which by virtue of section 239(3) is so treated;

and in applying subsection (5)(b) above in a case where there is any amount as mentioned in subsection (5)(b)(i) to (iii), it shall be assumed that the company would not have surrendered the benefit of any of the relevant advance corporation tax under section 240.

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(7) No amount shall be repaid or set off under this section and section 246Q unless the company makes a claim for the purpose.

246P Notional foreign source advance corporation tax.

(1) As regards the company mentioned in section 246N(1), the amount of notional foreign source advance corporation tax for the relevant period is the amount of advance corporation tax which—
  (a) the company would have paid in respect of distributions made by it in the relevant period, and
  (b) would not have been set off against the company's corporation tax liability for the relevant period under section 239(1),

on the assumptions mentioned in subsection (2) below.

(2) The assumptions are that—
  (a) the qualifying foreign income dividends were the only distributions made by the company in the relevant period,
  (b) no distributions were received (or treated for the purposes of section 246F as received) by the company in the relevant period,
  (c) no amounts of advance corporation tax were by virtue of section 239(3) or (4) or section 240 treated for the purposes of section 239 as having been paid in respect of distributions made by the company in the relevant period,
  (d) the benefit of the advance corporation tax paid in respect of distributions made by the company in the relevant period was not surrendered under section 240;
  (e) the company's profits for the relevant period on which corporation tax fell finally to be borne consisted of the matched foreign source profits and no other profits, and
  (f) the amount of corporation tax charged in respect of a matched foreign source profit actually arising in an accounting period other than the relevant period was found by reference to—
    (i) the rate of foreign tax, within the meaning given by section 246I(9), actually chargeable in respect of the profit (having regard to the time when it arose), and
    (ii) the rate of corporation tax that would have applied had the profit arisen in the relevant period.

(3) A foreign income dividend is a qualifying foreign income dividend if—
  (a) it is a matched foreign income dividend paid by the company in the relevant period, and
  (b) the company has elected for it to be a qualifying foreign income dividend.

(4) A foreign income dividend the whole of which is, at the material time, matched with the whole or part of a distributable foreign profit of the company is a matched foreign income dividend.

(5) Where there is a foreign income dividend only part of which is at the material time matched as mentioned in subsection (4) above, the part of the dividend which at that time is so matched shall be treated for the purposes of this section as a separate dividend and, accordingly, as a matched foreign income dividend.

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(6) The company may elect that matched foreign income dividends paid by it in the relevant period are qualifying foreign income dividends only if the amount found under paragraph (a) of subsection (7) below exceeds the amount found under paragraph (b) of that subsection; and where there is such an excess the election may only be made as regards matched foreign income dividends whose total amount is the same as or less than the amount of the excess.

(7) The amounts referred to in subsection (6) above are—

(a) the total amount of foreign income dividends paid by the company in the relevant period (other than excluded dividends);

(b) the total amount of foreign income dividends received (or treated for the purposes of section 246F as received) by the company in the relevant period;

and for the purposes of this subsection an excluded dividend is a foreign income dividend which by virtue of section 246G(2) is not capable of being matched.

(8) A matched foreign source profit is a foreign source profit of which a matched distributable foreign profit forms part; and for the purposes of this subsection "a matched distributable foreign profit" means a distributable foreign profit of the company the whole or part of which is, at the material time, matched with a qualifying foreign income dividend, or with part of such a dividend, or with different such dividends or parts.

(9) Where the matched foreign source profit is a foreign source profit of which a partly matched distributable foreign profit forms part, for the purposes of any calculation required by subsections (1) and (2) above the amount of the matched foreign source profit shall be taken to be reduced by an amount which bears to the full amount of the matched foreign source profit the same proportion as the unmatched part of the distributable foreign profit bears to the amount of the distributable foreign profit.

(10) For the purposes of subsection (9) above—

(a) "a partly matched distributable foreign profit" means a distributable foreign profit of the company part of which is not, at the material time, matched as mentioned in subsection (8) above, and

(b) "the unmatched part of the distributable foreign profit" shall be construed accordingly.

(11) For the purposes of this section—

(a) "the relevant period" shall be construed in accordance with section 246N(1);

(b) "the material time" means the time at which the claim mentioned in section 246N(7) is made.

(12) References in this section to matching shall be construed in accordance with sections 246J to 246M.

(13) Section 238(4) shall apply for the purposes of this section.

246Q Repayment or set-off: supplementary.

(1) Subsections (2) and (3) below shall have effect to determine whether the amount which is the smaller of the amounts found under section 246N(4) is to be repaid, set off, or partly repaid and partly set off.

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(2) If at the time when it falls to be determined whether the amount mentioned in subsection (1) above is to be repaid or set off—

(a) advance corporation tax paid (or treated for the purposes of section 239 as paid) by the company in respect of distributions made by it in the relevant period has so far as possible been set against its liability to corporation tax for the period under section 239(1), but

(b) the company's liability to corporation tax for the period is to any extent undischarged,

the amount mentioned in subsection (1) above shall so far as possible be set off against the company's liability to corporation tax for the relevant period (and an amount of that liability equal to the amount so set off shall accordingly be discharged); and any excess of the amount mentioned in subsection (1) above over the amount so set off shall be repaid.

(3) Where paragraph (a) of subsection (2) above applies but paragraph (b) of that subsection does not, the whole of the amount mentioned in subsection (1) above shall be repaid.

(4) No amount shall be repayable under section 246N and this section until the expiry of nine months from the end of the relevant period.

(5) An amount of advance corporation tax which has been dealt with under section 246N and this section—

(a) shall not be set off under section 239(1) against the company's liability to corporation tax for any accounting period;

(b) shall not be available for the purposes of a claim under section 240.

(6) A return made by the company for the relevant period under section 11 of the Management Act, or an amendment of such a return, shall be treated as a claim for the purposes of section 246N and this section if the return or (as the case may be) the amendment contains such particulars as the inspector may require.

(7) A claim for those purposes which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.

(8) In a case where—

(a) a claim is made under section 246N and this section, and

(b) by virtue of the claim, an amount of advance corporation tax is repaid or set off which has already been set off by virtue of section 239(4) against the company's corporation tax liability for an accounting period falling after the accounting period to which the claim relates,

the set-off by virtue of section 239(4) of that amount shall be treated for the purposes of section 252 as if it ought not to have been made.

(9) In determining for the purposes of subsection (8) above whether an amount repaid or set off by virtue of a claim under section 246N and this section is an amount which has already been set off against the company's corporation tax liability for an accounting period, amounts of advance corporation tax repaid or set off by virtue of that claim shall be treated as having been set off against that liability only after any other amounts of advance corporation tax that were capable of being set off against that liability have been taken into account.

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(10) Where section 252 applies by virtue of this section the reference in subsection (5) of that section to the Management Act shall be treated as not including a reference to section 34 of that Act.

(11) In this section "the relevant period" shall be construed in accordance with section 246N(1).

246R Supplementary claims.

(1) This section applies where—
  (a) a claim is made under sections 246N and 246Q, and
  (b) at any time after the claim is made the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in the accounting period to which the claim relates.

(2) The company may as regards that accounting period make a further claim under sections 246N and 246Q (a supplementary claim) so as to take account of the election.

(3) Subsections (5) and (6) below shall apply in determining for the purposes of the supplementary claim the amount of notional foreign source advance corporation tax for the accounting period to which that claim relates.

(4) In subsections (5) and (6) below a "previously counted dividend" means a foreign income dividend (or part of one) which was included in an election made by the company under section 246P for the purposes of an earlier claim as regards the accounting period (and which, accordingly, was treated as a qualifying foreign income dividend for those purposes).

(5) In applying section 246P for the purposes of the supplementary claim, a previously counted dividend shall be treated as not being a qualifying foreign income dividend notwithstanding the election mentioned in subsection (4) above; and the company may not include the previously counted dividend in any further election made under section 246P for the purposes of the supplementary claim.

(6) In relation to an election which the company proposes to make under section 246P for the purposes of the supplementary claim, section 246P(6) shall have effect as if for the reference to matched foreign income dividends whose total amount is the same as or less than the amount of the excess there mentioned there were substituted a reference to matched foreign income dividends whose total amount, when added to the total amount of the previously counted dividends, gives an amount which is equal to or less than the amount of that excess.

(7) A company may make more than one supplementary claim as regards any accounting period.

International headquarters companies

246S International headquarters companies.

(1) For the purposes of this Chapter a company is an international headquarters company in an accounting period if—
  (a) at least one of the first three conditions (set out in subsections (2) to (5) below) is fulfilled, and

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(b) the fourth condition (set out in subsection (7) below) is fulfilled;

but the fourth condition need not be fulfilled if the second condition is fulfilled.

(2) The first condition is that—

(a) the company is wholly owned by another company throughout the accounting period, and

(b) that other company is a foreign held company in the accounting period.

(3) The second condition is that—

(a) the company is wholly owned by another company throughout the accounting period,

(b) that other company is not resident in the United Kingdom at any time in the accounting period,

(c) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are quoted in the official list of a recognised stock exchange other than a stock exchange in the United Kingdom,

(d) at a time falling within the accounting period or the period of 12 months immediately preceding it, shares in that other company have been the subject of dealings on a recognised stock exchange other than a stock exchange in the United Kingdom, and

(e) throughout the accounting period, and the period of 12 months immediately preceding it, the shares in that other company are not quoted in the official list of a recognised stock exchange in the United Kingdom;

but this is subject to subsection (8) below.

(4) For the purposes of subsection (3)(e) above, shares that (apart from this subsection) would be regarded as quoted in the official list of a recognised stock exchange shall be regarded as not being so quoted if the issuer of the shares is not subject, in relation to them, to the full requirements applicable by virtue of listing rules to the listing of shares on that exchange; and in this subsection "listing rules" shall be construed in accordance with section 142(6) of the Financial Services Act 1986.

(5) The third condition is that—

(a) at each given time in the accounting period each shareholder of the company owns at least 5 per cent. of the company's share capital, and

(b) the test mentioned in subsection (6) below is satisfied.

(6) The test is that at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by—

(a) persons who are not companies and who are not resident in the United Kingdom at any time in the accounting period,

(b) companies which are foreign held companies in the accounting period, or

(c) persons falling within paragraph (a) above and companies falling within paragraph (b) above.

(7) The fourth condition is that at each given time in the accounting period not more than 20 per cent. of the company's ordinary share capital is ultimately owned by persons who are not companies and are resident in the United Kingdom; and where any shares are not directly owned by a person who is not a company their ultimate ownership shall be found by tracing ownership through any corporate holders to persons who are not companies on such basis as is reasonable.

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(8) Notwithstanding subsection (3) above, the second condition shall also be treated as fulfilled in relation to a company (the company concerned) and an accounting period if—

(a) the company concerned is throughout the accounting period wholly owned by another company, and that other company is throughout the period wholly owned by a company which satisfies the conditions set out in subsection (3)(b) to (e) above,

(b) there are two or more companies (intermediary companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and there is another company which throughout the period wholly owns all the intermediary companies and which satisfies the conditions set out in subsection (3)(b) to (e) above, or

(c) there are two or more companies (relevant companies) which throughout the accounting period beneficially own between them all the share capital of the company concerned, and one of the relevant companies is a company which throughout the period wholly owns all the other relevant companies and which satisfies the conditions set out in subsection (3)(b) to (e) above;

and in determining for the purposes of this subsection whether a particular company satisfies the conditions set out in subsection (3)(b) to (e) above, references in subsection (3)(b) to (e) to "that other company" shall be construed as references to that particular company.

(9) Where a company pays a foreign income dividend, for the purposes of this Chapter it may treat itself as an international headquarters company if—

(a) in the company's opinion it is likely to be an international headquarters company in the accounting period in which the dividend is paid, and

(b) in a case where the dividend is paid in the company's second accounting period or a subsequent accounting period, it is an international headquarters company in the immediately preceding accounting period;

and for the purposes of paragraph (a) above the company's opinion held at the time the dividend is paid is to be taken.

(10) For the purposes of this section a company is a foreign held company in an accounting period if—

(a) at each given time in the accounting period at least 80 per cent. of the company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period, or

(b) throughout the accounting period the company is wholly owned by another company and at each given time in the accounting period at least 80 per cent. of that other company's share capital is owned by persons who are not resident in the United Kingdom at any time in the accounting period.

(11) For the purposes of this section a company wholly owns another company if the first company is the beneficial owner of all the share capital of the second company.

(12) For the purposes of this section the question whether a person owns a particular percentage of a company's share capital at a particular time shall be determined by—

(a) assuming that a general meeting of the company is held at that time;

(b) taking the number of votes carried by the company's share capital and capable of being cast at such a meeting;

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(c) taking the number of those votes capable of being so cast by the person concerned by virtue of the company's share capital beneficially owned by him;

(d) expressing the number found under paragraph (c) above as a percentage of the number found under paragraph (b) above;

(e) taking the percentage found under paragraph (d) above as the percentage of the company's share capital owned by that person at that time.

(13) Subsection (12) above shall not apply for the purposes of subsection (7) above; and in subsection (7) references to ownership shall be construed as references to beneficial ownership.

246T Liability to pay ACT displaced.

(1) This section applies where—

(a) a company pays a foreign income dividend in an accounting period, and

(b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).

(2) The company shall not be liable to pay advance corporation tax in respect of the dividend.

(3) This section shall have effect subject to section 246V.

246U Settlement of liability by IHC as to ACT.

(1) This section applies where—

(a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and

(b) the company is an international headquarters company in the accounting period.

(2) If amount A exceeds amount B, the company shall be liable to pay an amount equal to the excess as if the amount were advance corporation tax payable in respect of a distribution made by the company in the last return period falling within the accounting period; and "return period" here has the same meaning as in Schedule 13.

(3) If amount B exceeds amount A, an amount equal to the excess shall be paid to the company in accordance with this section; and the payment shall be treated as if it were a repayment of advance corporation tax which—

(a) was paid by the company in respect of distributions made by it in the accounting period, and

(b) falls to be repaid under sections 246N and 246Q.

(4) Amount A is the total amount of the advance corporation tax which by virtue of section 246T and paragraph 3A of Schedule 13 the company is not liable to pay, and has not paid, in respect of dividends paid by it in the accounting period.

(5) Amount B is the amount (if any) of the advance corporation tax which would be required to be repaid, or set off, or partly repaid and partly set off, under sections 246N and 246Q if the company—

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(a) had not treated itself as an international headquarters company at any time in the accounting period, and

(b) had, at the expiry of nine months from the end of the accounting period, made a claim as regards the accounting period in accordance with sections 246N and 246Q.

(6) Where an amount of advance corporation tax actually paid by the company in respect of qualifying distributions made by it in the accounting period has been dealt with under section 239(3), or the benefit of such an amount has been surrendered under section 240, in applying section 246N(5)(c) and (d) by virtue of subsection (5) above it shall be assumed that an equivalent amount of advance corporation tax would have been so dealt with or (as the case may be) that the benefit of an equivalent amount of advance corporation tax would have been so surrendered.

(7) No amount shall be paid under subsection (3) above unless the company makes a claim for payment; and—

(a) a return made by the company for the accounting period under section 11 of the Management Act, or

(b) an amendment of such a return,

shall be treated as a claim for payment if the return or (as the case may be) the amendment contains such particulars as the inspector may require.

(8) A claim which is not made by means of a return under section 11 of the Management Act, or by means of an amendment of such a return, shall be supported by such particulars as the inspector may require.

(9) No amount shall be payable under subsection (3) above until the expiry of nine months from the end of the accounting period.

246V Settlement of liability by non-IHC as to ACT.

(1) This section applies where—

(a) at any time when it pays a dividend in an accounting period a company treats itself as an international headquarters company by virtue of section 246S(9), and

(b) the company is not an international headquarters company in the accounting period.

(2) Section 246T shall not apply, and shall be treated as never having applied, as regards the dividend.

(3) Sections 246N and 246Q shall apply as if the company had not treated itself as an international headquarters company at any time in the period by virtue of section 246S(9).

246W Payments and repayments where further matching takes place.

(1) Subsection (2) below applies where—

(a) a company pays an amount under section 246U(2) as regards an accounting period,

(b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and

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(c) had the election been made before the relevant time, the company would not have been required to pay some or all of the amount mentioned in paragraph (a) above.

(2) The company shall be entitled to repayment of so much of the amount mentioned in subsection (1)(a) above as it would not have been required to pay if the election had been made before the relevant time.

(3) Subsection (4) below applies where—

(a) a company either pays an amount under section 246U(2) as regards an accounting period or is paid an amount under section 246U(3) as regards the period,

(b) the company makes an election under section 246J(5) or 246K(10) matching profits with dividends paid in that accounting period, and

(c) had the election been made before the relevant time, the company would have been entitled under section 246U(3) to be paid an amount which was not in fact paid to it.

(4) The company shall be entitled to payment of the amount mentioned in subsection (3)(c) above.

(5) Any repayment under subsection (2) above shall (without prejudice to section 246U(2)) be treated as if it were a repayment of advance corporation tax which—

(a) was paid by the company in respect of a distribution made by it in the last return period falling within the accounting period mentioned in subsection (1) above, and

(b) falls to be repaid under sections 246N and 246Q.

(6) In relation to a repayment under subsection (2) above which by virtue of subsection (5) above is treated as a repayment of advance corporation tax, the material date for the purposes of section 826 shall be the date when advance corporation tax in respect of distributions made by the company in the return period mentioned in subsection (5) above became (or, as the case may be, would have become) due and payable; and accordingly subsection (2A) of section 826 shall not apply in relation to the repayment.

(7) Any payment under subsection (4) above shall be treated as if it were a repayment of advance corporation tax which—

(a) was paid by the company in respect of distributions made by it in the accounting period mentioned in subsection (3) above, and

(b) falls to be repaid under sections 246N and 246Q.

(8) Subsections (7) and (8) of section 246U shall apply in relation to payments and repayments under this section as they apply in relation to payments under section 246U(3).

(9) For the purposes of this section—

(a) "the relevant time" means the expiry of nine months from the end of the accounting period mentioned in subsection (1) or (3) above;

(b) "return period" has the same meaning as in Schedule 13.

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Adjustments

246X Adjustments where profits or foreign tax altered.

(1) This section applies where a company is paid or repaid an amount under any provision of this Chapter, or sets off under any such provision an amount against a liability of the company to corporation tax, and either—

(a) there is any alteration of the profits of a company for an accounting period which renders the payment or repayment, or the amount set off, excessive or insufficient, or

(b) there is any alteration of an amount of tax payable under the laws of a territory outside the United Kingdom which renders the payment or repayment, or the amount set off, excessive or insufficient.

(2) Where there is any such alteration as is mentioned in subsection (1) above the company may revise any election made under section 246J or 246K or 246P in such manner as is just and reasonable having regard to the alteration.

(3) Where there is any such alteration as is mentioned in subsection (1) above, then such adjustments shall be made of any calculation required by this Chapter as are just and reasonable having regard to the alteration and to any revision made under subsection (2) above; and payments or repayments shall be made accordingly.

*Application of this Chapter***]**

246Y Application of this Chapter.

This Chapter shall have effect in relation to—

(a) any dividend paid on or after 1st July 1994;

(b) any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1st July 1993.

CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

Group income

247 Dividends etc. paid by one member of a group to another.

(1) [M674]Where a company ("the receiving company") receives dividends from another company ("the paying company"), both being bodies corporate resident in the United Kingdom, and the paying company is—

(a) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary; or

[[F402](b) a trading or holding company which does not fall within subsection (1A) below and which is owned by a consortium the members of which include the receiving company,**]**

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then, subject to the following provisions of this section, the receiving company and the paying company may jointly elect that this subsection shall apply to the dividends received from the paying company by the receiving company ("the election dividends").

[[F403](1A) A company falls within this subsection if—

(a) it is a 75 per cent. subsidiary of any other company, or

(b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.**]**

(2) So long as an election under subsection (1) above is in force the election dividends shall be excluded from sections 14(1) and 231 and are accordingly not included in references to franked payments made by the paying company or the franked investment income of the receiving company but are in the Corporation Tax Acts referred to as "group income" of the receiving company.

(3) Where an election under subsection (1) above is in force the paying company may by notice to the collector state that it does not wish the election to have effect in relation to any amount of dividends specified in the notice and the Corporation Tax Acts shall then have effect in relation to that amount as if there had been no such election.

(4) [M675]Where a company ("the recipient company") receives from another company ("the payer company"), both being bodies corporate resident in the United Kingdom, any payments which are for corporation tax charges on income of the payer company and either—

(a) the conditions in subsection (1)(a) or (b) above would be satisfied in relation to the companies if the payments were dividends, or

(b) the recipient company is a 51 per cent. subsidiary of the payer company,

then, subject to the following provisions of this section, the recipient company and the payer company may jointly elect that this subsection shall apply to any such payments received from the payer company by the recipient company, and so long as the election is in force those payments may be made without deduction of income tax and neither section 349 nor section 350 shall apply thereto.

(5) [M676]Subsections (1) to (4) above shall not apply to dividends or other payments received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company, and shall not apply to a dividend in any case where, if those subsections do not apply to it, the receiving company will, or would but for section 235 or 237, be entitled by virtue of any exemption to claim payment of the tax credit to which it is entitled in respect of the dividend.

(6) [M677]Where—

(a) the paying company purports by virtue of an election under subsection (1) above to pay any dividends without paying advance corporation tax, or

(b) the payer company purports by virtue of an election under subsection (4) above to make any payment without deduction of income tax,

and advance corporation tax ought to have been paid or income tax ought to have been deducted, as the case may be, the inspector may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the paying or payer company and the receiving or recipient company are, so far as possible, the same as they would have been if the advance corporation tax had been duly paid or the income tax had been duly deducted.

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(7) Where tax assessed under subsection (6) above on the paying or payer company is not paid by that company before the expiry of the period of three months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the receiving or recipient company.

(8) [M678]In determining for the purposes of this section whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—

(a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

[[F404](8A) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

(a) the parent company would be beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.**]**

(9) [M679]For the purposes of this section—

(a) "trading or holding company" means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries;

(b) "trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades; and

[[F405](c) a company is owned by a consortium if 75 per cent. or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none—

(i) beneficially owns less than 5 per cent. of that capital,

(ii) would be beneficially entitled to less than 5 per cent. of any profits available for distribution to equity holders of the company, or

(iii) would be beneficially entitled to less than 5 per cent. of any assets of the company available for distribution to its equity holders on a winding-up,

and those companies are called the members of the consortium.**]**

[[F405](9A) Schedule 18 shall apply for the purposes of subsections (8A) and (9)(c) above as it applies for the purposes of section 413(7).**]**

(10) [M680]References in this section to dividends or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to "group income" shall be construed accordingly.

Textual Amendments

F402 1989 s.99(2)*in relation to dividends etc. paid on or after* 27*July* 1989.*Previously*

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"(b) a trading or holding company owned by a consortium the members of which include the receiving company,".

F403 1989 s.99(3).

F404 1989 s.99(4)*in relation to dividends etc. paid on or after* 27*July* 1989.

F405 1989 s.99(5)(6)*in relation to dividends etc. paid on or after* 27*July* 1989.*Previously*
"(c) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none beneficially owns less than one-twentieth of that capital, and those companies are called the members of the consortium."
in subs. (9)(c).

Marginal Citations

M674 Source—1970 s.256(1); 1972 Sch.15 Pt.II
M675 Source—1970 s.256(2)
M676 Source—1973 s.24
M677 Source—1970 s.256(4), (4A); 1972 Sch.15 Pt.II
M678 Source—1970 s.256(5)
M679 Source—1970 s.256(6)
M680 Source—1970 s.256(7)

248 Provisions supplementary to section 247.

(1) [M681]The Board may make regulations with respect to the procedure to be adopted for giving effect to section 247 and as to the information and evidence to be furnished by a company in connection with that section and, subject to the provisions of such regulations, an election under that section ("the election") shall be made by notice to the inspector which shall set out the facts necessary to show that the companies are entitled to make the election.

(2) [M682]The election shall not have effect in relation to dividends or other payments paid less than three months after the giving of the notice and before the inspector is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those three months the inspector notifies the companies concerned that the validity of the election is not established to his satisfaction.

(3) The companies concerned shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends or other payments would have if it were an assessment made on that company, and Part V of the Management Act shall apply accordingly.

(4) [M683]The election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the inspector.

(5) Either of the companies making the election may at any time give the inspector notice revoking the election; and any such notice shall have effect from the time it is given.

(6) [M684]The Board shall not make any regulations under subsection (1) above unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Marginal Citations

M681 Source—1972 s.91(3); 1970 s.257(1)

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M682 Source—1970 s.257(2)
M683 Source—1970 s.257(3), (4)
M684 Source—1972 s.91(3)

Stock dividends

249 Stock dividends treated as income.

(1) [M685]Subject to subsections (7) to (9) below, this section applies to any of the following share capital, that is to say—

(a) any share capital issued by a company resident in the United Kingdom in consequence of the exercise by any person of an option conferred on him to receive in respect of shares in the company (whether the last-mentioned shares were issued before or after the coming into force of this section) either a dividend in cash or additional share capital; and

(b) any bonus share capital issued by a company so resident in respect of any shares in the company of a relevant class (whether the last-mentioned shares were issued before or after the coming into force of this section).

(2) For the purposes of subsection (1)(b) above a class of shares is a relevant class if—

(a) shares of that class carry the right to receive bonus share capital in the company of the same or a different class; and

(b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.

(3) Where a company issues any share capital in a case in which two or more persons are entitled thereto, the following provisions of this section*and paragraph* 12(1)*to* (3)*of Schedule* 19 [F406] shall have effect as if the company had issued to each of those persons separately a part of that share capital proportionate to his interest therein on the due date of issue.

(4) Subject to the following provisions of this section, where a company issues any share capital in a case in which an individual is beneficially entitled to that share capital, that individual shall be treated as having received on the due date of issue income of an amount which, if reduced by an amount equal to income tax on that income at the **[**[F407]lower rate**]** for the year of assessment in which that date fell, would be equal to the appropriate amount in cash, and—

(a) no assessment shall be made on the individual in respect of income tax at the **[**[F407]lower rate**]** on that income but he shall be treated as having paid tax at the **[**[F407]lower rate**]** on it or, if his total income is reduced by any deductions, on so much of it as is part of his total income as so reduced;

(b) no repayment shall be made of income tax treated by virtue of paragraph (a) above as having been paid; and

(c) that income shall be treated **[**[F408]as income **[**[F409]to which (without prejudice to paragraph (a) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F, but shall be treated**]]** for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

(5) Where a company issues any share capital to the personal representatives of a deceased person as such during the administration period, the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital,

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that individual would have been treated under subsection (4) above as having received shall be deemed for the purposes of Part XVI to be part of the aggregate income of the estate of the deceased.

This subsection shall be construed as if it were contained in Part XVI.

(6) Where a company issues any share capital to trustees in respect of any shares in the company held by them (or by them and one or more other persons) in a case in which a dividend in cash paid to the trustees in respect of those shares would have been to any extent income to which section 686 applies, then—

(a) there shall be ascertained the amount of income which, if the case had been one in which an individual was beneficially entitled to that share capital, that individual would have been treated under subsection (4) above as having received; and

(b) income of that amount shall be treated as having arisen to the trustees on the due date of issue and as if it had been chargeable to income tax at the **[**[F410]lower rate**]**; and

(c) paragraphs (a) to (c) of subsection (4) above shall, with the substitution of " income " for "total income" and with all other necessary modifications, apply to that income as they apply to income which an individual is treated as having received under that subsection.

(7) [M686]This section does not apply to—

(a) any share capital of which the due date of issue is earlier than 6th April 1975; or

(b) any share capital issued by a company in respect of shares in the company which confer on the holder a right to convert or exchange them into or for shares in the company of a class which is not a relevant class for the purposes of subsection (1)(b) above where the due date of issue of the share capital so issued precedes the earlier of the following dates, namely—

(i) the day next after the earliest date after 5th August 1975 on which conversion or exchange of the shares could be effected by an exercise of that right; and

(ii) 6th April 1976 or, in the case of share capital issued by an investment trust, 6th April 1977.

(8) Where, in a case within subsection (4) above, the share capital in question is issued in respect of shares in the company issued before 6th April 1975 which confer on the holder a right to convert or exchange them into or for shares of a different class, this section shall not apply to so much (if any) of any bonus share capital issued by the company after 5th April 1976 in connection with an exercise of that right as would have been issued if that right had been exercised so as to effect the conversion or exchange of the shares on the earliest possible date after 5th April 1975; and subsections (5) and (6) above shall, where applicable, have effect accordingly.

(9) Where any bonus share capital falling within subsection (1)(b) above is after 5th April 1975 converted into or exchanged for shares in the company in question of a different class, then—

(a) this section shall not apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of that bonus share capital; but

(b) section 230(a) and (b) shall apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the

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cancellation, extinguishment or acquisition by the company of so much of that bonus share capital as caused an individual to be treated under subsection (4) above as having received an amount of income on the due date of issue (or would have done so if the case had been one in which an individual was beneficially entitled to that share capital).

Textual Amendments

F406 *Words repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F407 Words in s. 249(4) substituted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(3)(a)(i)(5)**

F408 Words in s. 249(4)(c) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(4)(7)**.

F409 Words in s. 249(4)(c) substituted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(3)(a)(ii)(5)**

F410 Words in s. 249(6)(b) substituted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(3)(b)(5)**

Modifications etc. (not altering text)

C218 *See* Sch.10 para.5—*profit sharing schemes.*

Marginal Citations

M685 Source—1975 (No.2) s.34(1)-(6)

M686 Source—1975 (No.2) s.34(9)-(11)

250 Returns.

(1) [M687]A company shall for each of its accounting periods make, in accordance with this section, returns to the inspector of all share capital to which section 249 applies ("relevant share capital") and which was issued by it in that period.

(2) [M688]A return shall be made for—

(a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September or 31st December which falls within that period;

(b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;

(c) if none of those dates falls within the accounting period, the whole accounting period.

(3) A return for any period for which a return is required to be made under this section (a "return period") shall be made within 30 days from the end of that period.

(4) [M689]No return need be made under this section by a company for any period in which it has issued no relevant share capital.

(5) The return made by a company for any return period shall state—

(a) the date on which any relevant share capital issued by it in the period was issued and, if different, the date on which the company was first required to issue it;

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(b) particulars of the terms on which any such share capital so issued by it was issued; and

(c) what is, in relation to any such share capital so issued, the appropriate amount in cash.

(6) If it appears to the inspector that a company ought to have, but has not, made a return for any return period, he may (notwithstanding subsection (4) above) by notice require the company to make a return for that period within such time (not being less than 30 days) as may be specified in the notice; and a return required to be made under this subsection shall, if such be the case, state that no relevant share capital was issued in the period in question.

(7) As regards any share capital included in a return made under this section by a company, the inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating thereto as he may reasonably require for the purposes of sections 230 and 249, this section and section 251*and paragraph* 12*of Schedule* 19 [F411].

Textual Amendments

F411 Words in s. 250(7) repealed by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Part V** (in relation to accounting periods beginning after 31 March 1989).

Marginal Citations

M687 Source—1975 (No.2) Sch.8 7(1)
M688 Source—1975 (No.2) Sch.8 7(2)
M689 Source—1975 (No.2) Sch.8 7(3)-(6)

251 Interpretation of sections 249 and 250.

[M690](1) For the purposes of sections 249 and 250 —

(a) "bonus share capital", in relation to a company, means share capital issued by the company otherwise than wholly for new consideration or such part of any share capital so issued as is not properly referable to new consideration;

(b) "due date of issue", in relation to any share capital issued by a company, means the earliest date on which the company was required to issue that share capital;

(c) an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person's abandonment of, or failure to exercise, such a right is to be treated as an exercise of the option;

and in section 254 the definition of "security" (in subsection (1)) and subsections (5) and (11) shall not apply.

(2) [M691]In sections 249 and 250 "the appropriate amount in cash", in relation to any share capital to which section 249 applies—

(a) in a case where that share capital was issued —

(i) in consequence of the exercise of an option such as is mentioned in section 249(1)(a); or

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(ii) in a quantity which is determined by or determines the amount of a dividend in cash payable in respect of share capital in the company of a different class,

and where the relevant cash dividend is not substantially greater nor substantially less than the market value of that share capital on the relevant date, means the amount of the relevant cash dividend or, in a case in which section 249(3) applies, a due proportion of that amount;

(b) in a case where paragraph (a) above does not apply, means the market value of that share capital on the relevant date or, in a case in which section 249(3) applies, a due proportion of that market value.

(3) [M692]In subsection (2) above—

"the relevant cash dividend", in a case falling within subsection (2)(a)(i) above, means the cash dividend mentioned in section 249(1)(a) or, in a case falling within subsection (2)(a)(ii) above, means the cash dividend there mentioned (subject to subsection (4) below);

"the relevant date", in the case of share capital listed in the Stock Exchange Daily Official List, means the date of first dealing and, in the case of share capital not so listed, means the due date of issue; and

"market value", in relation to any share capital in a company, means, subject to the provisions applied by subsections (5) and (6) below, the price which that share capital might reasonably be expected to fetch on a sale in the open market.

(4) [M693]Where, in a case falling within subsection (2)(a)(ii) above, the company on the occasion on which it issues the share capital in question also issues a dividend in cash ("the accompanying cash dividend") in respect of the shares in the company in respect of which that share capital is issued, "the relevant cash dividend" means the cash dividend mentioned in subsection (2)(a)(ii) above reduced by the amount of the accompanying cash dividend.

(5) [M694]Section **[**[F412]272(3) of the 1992 Act**]** (market value of shares or securities listed in the Stock Exchange Daily Official List) shall apply for the purposes of subsection (3) above as it applies for the purposes of that Act.

(6) In the case of shares or securities which are not quoted on a recognised stock exchange at the time when their market value for the purposes of subsection (2) above falls to be determined, subsection (3) of section **[**[F412]273 of the 1992 Act**]** shall apply with respect to the determination of their market value for those purposes as it applies with respect to a determination falling within subsection (1) of that section.

Textual Amendments

F412 Words in s. 251(5)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(16)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M690 Source—1975 (No.2) s.34(8)(a)-(d)
M691 Source—1975 (No.2) Sch.8 1(1)-(3)
M692 Source—1975 (No.2) Sch.8 1(4), 2(1)
M693 Source—1970 (No.2) Sch.8 1(5)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M694 Source—1975 (No.2) Sch.8 2(2), (3); 1979(C) Sch.7

VALID FROM 06/04/2003

[F413 *Approved share incentive plans*

Textual Amendments

F413 Ss. 251A-251D and preceding cross-heading inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 34** (with Sch. 7)

251A Application of sections 251B and 251C

(1) Sections 251B and 251C apply for income tax purposes in connection with shares awarded under an approved share incentive plan.

(2) But those sections do not apply to an individual if, at the time of the award of shares in question—

(a) the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, or

(b) in the case of an award made before 6th April 2003, he was not chargeable to tax under Schedule E in respect of the employment by reference to which he met the requirement of paragraph 14 of Schedule 8 to the Finance Act 2000 (employee share ownership plans: the employment requirement) in relation to the plan.

(3) For the purposes of subsection (2)—

(a) "the eligible employment" means the employment which results in the individual meeting the employment requirement in relation to the plan, and

(b) the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 has the same meaning as it has in the employment income Parts of that Act (see sections 14(3) and 20(3) of that Act).

Modifications etc. (not altering text)

C219 Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

251B Treatment of cash dividend retained and then later paid out

(1) Where a cash dividend is paid over to a participant under paragraph 68(4) of Schedule 2 to ITEPA 2003 (cash dividend paid over if not reinvested), the participant is chargeable to tax on the appropriate amount under Schedule F for the year of assessment in which the dividend is paid over.

(2) In subsection (1), the "appropriate amount" means the amount of the dividend paid over (except to the extent that it represents a foreign cash dividend).

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(3) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231, the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the dividend is paid over to the participant.

Modifications etc. (not altering text)

C220 Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

251C Charge on dividend shares ceasing to be subject to plan

(1) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on the participant's behalf, the participant is chargeable to tax on the appropriate amount under Schedule F for the year of assessment in which the shares cease to be subject to the plan.

(2) In subsection (1) "the appropriate amount" means the amount of the cash dividend applied to acquire the shares on the participant's behalf (except to the extent that it represents a foreign cash dividend).

(3) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231, the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the shares cease to be subject to the plan.

(4) Where the participant is charged to tax under this section the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts under section 501 of ITEPA 2003 in respect of those shares.

(5) In subsection (4) "the tax due" means the amount of tax due after deduction of the tax credit determined under subsection (3).

(6) This section has effect subject to section 498 of ITEPA 2003 (no charge on shares ceasing to be subject to plan in certain circumstances).

Modifications etc. (not altering text)

C221 Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

251D Interpretation of sections 251A to 251C

(1) Sections 251A to 251C and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in those sections and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) In sections 251B and 251C "foreign cash dividend" means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.**]**

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Modifications etc. (not altering text)

C222 Ss. 251A-251D applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 87** (with Sch. 7)

Supplemental

M695 252. Rectification of excessive set-off etc. of ACT or tax credit.

(1) If an inspector discovers that—

(a) any set-off of advance corporation tax under section 239, or

(b) any set-off or payment of tax credit,

ought not to have been made, or is or has become excessive, the inspector may make any such assessments as may in his judgment be required for recovering any tax that ought to have been paid or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.

(2) In any case where—

(a) interest has been paid under section 826 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.

(3) 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.

(4) Subsections (2) and (3) above shall have effect in relation to payments of tax credit claimed in respect of accounting periods ending after such day as may be appointed for the purpose of those subsections by order made by the Treasury, not being earlier than 31st March 1992.

(5) The Management Act shall apply to any assessment under this section for recovering a payment of tax credit or interest on such a payment as if it were an assessment to income tax for the year of assessment, or in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed, and as if that payment represented a loss of tax to the Crown; and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

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Subordinate Legislation Made

P3 S. 252(4) power exercised: 30.9.1993 appointed for the purposes of s. 252(2)(3) by S.I. 1992/3066, **art. 2(2)(b)**.

Modifications etc. (not altering text)

C223 S. 252 modified (27.7.1993) by 1993 c. 34, **s. 80(8)**

C224 S. 252 modified (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 15(4)(5)**

C225 S. 252 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 20**

C226 S. 252 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 35(10)**

C227 *See* 1989 s.157(1)*for reckonable date for interest charge under* 1970(M) s.86*where assessment made to recover corporation tax payable as the result of a claim under* s.240*made on or after* 14*March* 1989. (*Ceases to have effect for accounting periods ending after the day appointed for the purposes of* s.86).

Marginal Citations

M695 Source—1972 s.102; (No.2) s.88(5)-(7)

253 Power to modify or replace section 234(5) to (9) and Schedule 13.

M696(1) The Board may by regulations—

(a) modify, supplement or replace any of the provisions of subsections (5) to (9) of section 234 for the purpose of requiring companies resident in the United Kingdom to make returns and give information to the inspector in respect of distributions made by them, whether before or after the passing of this Act, which are not qualifying distributions;

(b) modify, supplement or replace any of the provisions of Schedule 13 for the purpose of regulating the time and manner in which advance corporation tax is to be accounted for and paid or the manner in which effect is to be given to section 241(1) to (3);

and references in this Act and in any other enactment to section 234(5) to (9) and to Schedule 13 shall be construed as including references to any such regulations.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may, in relation to advance corporation tax, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.

(3) Regulations under this section may—

(a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects advance corporation tax or the repayment of income tax borne by a company or the payment to a company of amounts in respect of any tax credit to which it is entitled;

(b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.

(4) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

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Marginal Citations
M696 Source—1972 s.108

254 Interpretation of Part VI.

(1) [M697]In this Part, except where the context otherwise requires—

"new consideration" means, subject to subsections (5) and (6) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution;

"security" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;

"share" includes stock, and any other interest of a member in a company;

and in this section "a 90 per cent. group" means a company and all of its 90 per cent. subsidiaries.

(2) [M698]In this Part, the expressions "in respect of shares in the company" and "in respect of securities of the company", in relation to a company which is a member of a 90 per cent. group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.

(3) Without prejudice to section 209(2)(b) as extended by subsection (2) above, in relation to a company which is a member of a 90 per cent. group, "distribution" includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

(4) Nothing in subsections (2) and (3) above shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the United Kingdom.

(5) [M699]Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been taken into account under section 211(5) so as to enable a distribution to be treated as a repayment of share capital.

(6) [M700]Subject to subsection (7) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Part as new consideration received by the company unless the consideration consists of—

(a) money or value received from the company as a qualifying distribution;

(b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or

(c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

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(7) No amount shall be regarded as new consideration by virtue of subsection (6)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.

(8) [M701]Where two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may for the purposes of this Part be treated as if anything done by any one of those companies had been done by any of the others.

(9) [M702]A distribution shall be treated under this Part as made, or consideration as provided, out of assets of a company if the cost falls on the company.

(10) [M703]References in this Part to issuing share capital as paid up apply also to the paying up of any issued share capital.

(11) [M704]Where securities are issued at a price less than the amount repayable on them, and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.

(12) [M705]For the purposes of this Part a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.

Marginal Citations

M697 Source—1970 s.237(1), (3), (5); 1972 Sch.22 10(4)
M698 Source—1972 Sch.22 10(1)-(3)
M699 Source—1970 s.237(1)
M700 Source—1972 Sch.22 8
M701 Source—1972 Sch.22 9
M702 Source—1970 s.237 (2)
M703 Source—1970 s.237(4)
M704 Source—1970 s.237(6)
M705 Source—1970 s.237(7)

255 "Gross rate" and "gross amount" of distributions to include ACT.

[M706](1) Where any right or obligation created before 6th April 1973 is expressed by reference to a dividend at a gross rate or of a gross amount, that right or obligation shall continue to have effect, in relation to a dividend payable on or after that date, as if the reference were to a dividend of an amount which, when there is added to it such proportion thereof as corresponds to the rate of advance corporation tax in force on that date, that is to say, 6th April 1973, is equal to a dividend at that gross rate or of that gross amount.

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(2) Subsection (1) above shall apply with the necessary modifications to a dividend partly at a gross rate or of a gross amount and shall apply to any distribution other than a dividend as it applies to a dividend.

Marginal Citations
M706 Source—1972 Sch.23 18; 1976 s.46(1)

PART VII

GENERAL PROVISIONS RELATING TO TAXATION OF INCOME OF INDIVIDUALS

CHAPTER I

PERSONAL RELIEFS

The reliefs

256 General.

[M707]An individual who makes a claim in that behalf or, in the case of relief under section 266, who satisfies the conditions of that section, shall be entitled to such relief as is specified in sections 257 to 274, subject however to the provisions of sections 275 to 278 and **[**[F414]287 and 288.**]**

Textual Amendments
F414 "287 and 288"
repealed by 1988(F) Sch.14 Part. VIII*for* 1990-91*and subsequent years. And see* 1970(M) ss.42*and* 43*—procedure on claims and appeals.*

Marginal Citations
M707 Source-1970 s.5; 1971 Sch.4 3; 1975 (No.2) s.31(3); 1976 Sch.4 3(1), 18(1)

VALID FROM 06/04/2007

[F415]256A Meaning of "adjusted net income"

(1) For the purposes of this Chapter an individual's adjusted net income for a year of assessment is calculated as follows.

Step 1

Take the amount of the individual's net income for the year of assessment.

Step 2

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If in the year of assessment the individual makes, or is treated under section 426 of ITA 2007 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid) deduct the grossed up amount of the gift.

Step 3

If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the year of assessment under a pension scheme, deduct the gross amount of the contribution.

Step 4

Add back any relief under section 266 of this Act given by virtue of subsection (7) of that section (payments for life insurance etc) that was deducted in calculating the individual's net income for the year of assessment.

The result is the individual's adjusted net income for the year of assessment.

(2) The grossed up amount of a gift is the amount of the gift grossed up by reference to the basic rate for the year of assessment.

(3) The gross amount of a contribution is the amount of the contribution before deduction of tax under section 192(1) of FA 2004.**]**

Textual Amendments

F415 Ss. 256A, 256B inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 28** (with Sch. 2)

VALID FROM 06/04/2007

[F415 256B Meaning of "the minimum amount"

In this Chapter "the minimum amount" means £2,350.**]**

Textual Amendments

F415 Ss. 256A, 256B inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 28** (with Sch. 2)

Modifications etc. (not altering text)

C228 S. 256B amended (2008-09) by S.I. 2008/673, **art. 2(2)**
S. 256B amended (2009-10) by S.I. 2008/3024, **art. 2(a)**

[F416 257 Personal allowance.

(1) The claimant shall be entitled to a deduction from his total income of **[F417** £3,005,**]**.

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(2) If the claimant proves that he is at any time within the year of assessment of the age of 65 or upwards, he shall be entitled to a deduction from his total income of **[**[F417]£3,670**]** (instead of the deduction provided for by subsection (1) above).

(3) If the claimant proves that he is at any time within the year of assessment of the age of **[**[F418]75**]** or upwards, he shall be entitled to a deduction from his total income of **[**[F417]£3,820**]** (instead of the deduction provided for by subsection (1) or (2) above).

(4) For the purposes of subsections (2) and (3) above a person who would have been of or over a specified age within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(5) In relation to a claimant whose total income for the year of assessment exceeds **[**[F417]£12,300**]**, subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by **[**[F418]one half**]** of the excess (but not so as to reduce those amounts below that specified in subsection (1) above).**]]**

Textual Amendments

F416 Ss. 257-257F substituted for s. 257 (1990-91 and subsequent years) by Finance Act 1988 (c. 39), **s. 33**

F417 S.I. 1990 No.677, **arts.2(1)(3)** (*in* Part III Vol.5)*for* 1990-91.

F418 1989 s.33 for 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C229 S. 257 amended (1991-92) by S.I. 1991/732, **art. 2(3)**
S. 257 amended (1992-93) by S.I. 1992/622, **art. 2(3)**
S. 257 amounts specified (1993-94) by 1993 c. 34, **s. 52** (in place of S.I. 1993/755, **art. 2(3)**)
S. 257 amounts specified (1994-95) by 1994 c. 9, **s. 76** (in place of S.I. 1993/2948, **art. 2(3)**)
S. 257(1)(5) amended (1995-96) by S.I. 1994/3012, **art. 2(3)(a)(d)**
S. 257(2)(3) amended (1995-96) by 1995 c. 4, **s. 36** (in place of S.I. 1994/3012, **art. 2(3)(b)(c)**)
S. 257(5) amended (1996-97) by S.I. 1995/3031, **art. 2(3)(d)**

VALID FROM 27/07/1999

[[F419]**257AC Children's tax credit.**

(1) If a qualifying child (or more than one) is resident with the claimant during the whole or part of the year of assessment, the claimant shall be entitled to an income tax reduction, to be known as a children's tax credit.

(2) The reduction shall be calculated by reference to £4,160.

(3) Where any part of the claimant's income for the year of assessment falls within section 1(2)(b), his children's tax credit for the year shall be calculated as if the amount specified in subsection (2) above were reduced by £2 for every £3 of that part of his income.

(4) In this section "qualifying child" means, in relation to a person—
(a) a child of his who has not attained the age of 16, or
(b) a child who has not attained the age of 16 and who is maintained by, and at the expense of, the person for any part of the year of assessment;

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and "child" includes illegitimate child and stepchild.

(5) Schedule 13B (which modifies this section where a child lives with more than one adult during a year of assessment) shall have effect.**]**

Textual Amendments

F419 S. 257AA inserted (with effect in accordance with s. 30(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 30(1)**

257A Married couple's allowance.

(1) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, he shall be entitled to a deduction from his total income of **[**[F420]£1,720**]**.

(2) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, and that either of them is at any time within that year of the age of 65 or upwards, he shall be entitled to a deduction from his total income of **[**[F420]£2,145**]** (instead of the deduction provided for by subsection (1) above).

(3) If the claimant proves that for the whole or any part of the year of assessment he is a married man whose wife is living with him, and that either of them is at any time within that year of the age of **[**[F421]75**]** or upwards, he shall be entitled to a deduction from his total income of **[**[F420]£2,185**]** (instead of the deduction provided for by subsection (1) or (2) above).

(4) For the purposes of subsections (2) and (3) above a person who would have been of or over a specified age within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(5) In relation to a claimant whose total income for the year of assessment exceeds **[**[F420]£12,300**]**, subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by—

(a) **[**[F421]one half**]** of the excess, less

(b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section,

(but not so as to reduce amounts so specified below the amount specified in subsection (1) above).

(6) A man shall not be entitled by virtue of this section to more than one deduction for any year of assessment; and in relation to a claim by a man who becomes married in the year of assessment and has not previously in the year been entitled to relief under this section, this section shall have effect as if the amounts specified in subsections (1) to (3) above were reduced by one twelfth for each month of the year ending before the date of the marriage.

In this subsection "month" means a month beginning with the 6th day of a month of the calendar year.

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Textual Amendments

F420 S.I. 1990 No.677, **arts.2(1)(4)** (*in* Part III Vol.5)*for* 1990-91.

F421 1989 s.33 for 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C230 S. 257A(2)(3)(5) amended (1991-92) by S.I. 1991/732, **art. 2(4)(b)-(d)**
S. 257A(1) amended (1991-92) by 1991 c. 31, **s. 22(2)** (in place of S.I. 1991/732, **art. 2(4)(a)**)
S. 257A(2)(3)(5) amended (1992-93) by S.I. 1992/622, **art. 2(4)(b)-(d)**
S. 257A(1) amended (1992-93) by 1992 c. 20, **s. 10(3)(5)** (in place of S.I. 1992/622, **art. 2(4)(a)**)
S. 257A amounts specified (1993-94) by 1993 c. 34, **s. 52** (in place of S.I. 1993/755, **art. 2(4)**)
S. 257A(1)(2)(3) amended (1994-95) by S.I. 1993/2948, **art. 2(4)(a)-(c)**
S. 257A(5) amount specified (1994-95) 1994 c. 9, **s. 78** (in place of S.I. 1993/2948, **art. 2(4)(d)**)
S. 257A(1)(2)(3) amended (1995-96) by 1994 c. 9, **s. 77(9)**
S. 257A(5) amended (1995-96) by S.I. 1994/3012, **art. 2(4)**
S. 257A amended (1996-97) by S.I. 1995/3031, **art. 2(4)**
S. 257A amended (1997-98) by S.I. 1996/2952, **art. 2(4)**
S. 257A amended (1998-99) by S.I. 1998/755, **art. 2(4)**
S. 257A(2)(3) amended (1999-00) by 1998 c. 36, **s. 27(2)**
S. 257A amended (1999-00) by S.I. 1999/597, **art. 2(4)**
S. 257A amended (2000-01) by S.I. 2000/806, **art. 2(4)**
S. 257A amended (2001-02) by S.I. 2000/2996, **art. 2(3)**
S. 257A amended (2002-03) by S.I. 2001/3773, **art. 2(3)**
S. 257A amended (2003-04) by S.I. 2002/2930, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2004-05) by S.I. 2003/3215, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2005-06) by S.I. 2004/3161, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2006-07) by S.I. 2005/3327, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2007-08) by S.I. 2006/3241, **art. 2(3)**
S. 257A(2)(3)(5) amended (2008-09) by S.I. 2008/673, **art. 2(4)**
S. 257A(2)(3)(5) amended (2009-10) by S.I. 2008/3024, **art. 2(c)**

C231 S. 257A(1)(2)(3)(5) amended, unless Parliament otherwise determines, by S.I. 1991/732, **art. 2(1)(4)**.
S. 257A (1)(2)(3)(5) amended (10.3.1992) unless Parliament otherwise determines, by S.I. 1992/622, **art. 2(4)**.
S. 257A(1)(2)(3)(5) amended, unless Parliament otherwise determines, for the year 1993-94 by S.I. 1993/755, **art. 2(4)**
S. 257A(1)(2)(3)(5) amended, unless Parliament otherwise determines, for the year 1994-95 by S.I. 1993/2948, **art. 2(4)**
S. 257A(5) modified (with application for the year 1995-96 and with effect in accordance with art. 2(1) of the amending provision) by The Income Tax (Indexation) Order 1995 (S.I. 1994/3012), **art. 2(4)**
S. 257A(1)(2)(3)(5) modified (with application for the year 1996-97 and with effect in accordance with art. 2(1) of the amending provision) by The Income Tax (Indexation) Order 1995 (S.I. 1995/3031), **art. 2(4)**
S. 257A(1)(2)(3)(5) modified (26.11.1996 with application for the year 1997-98) by The Income Tax (Indexation) Order 1995 (S.I. 1996/2952), **art. 2(4)**
S. 257A(1)(2)(3)(5) modified (17.03.1998 with application for the year 1998-99) by The Income Tax (Indexation) Order 1998 (S.I. 1998/755), **art. 2(4)**
S. 257A(1)(2)(3)(5) modified (9.3.1998 with application for the year 1999-00) by The Income Tax (Indexation) Order 1998 (S.I. 1999/597), **art. 2(4)**

C232 S. 257A(1) amended by Finance Act 1991 (c. 31, SIF 63:1), **s. 22(2)**
S. 275A(1) amended (16.3.1992) by Finance Act 1992 (c. 20), **s. 10(3)(5)**.

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VALID FROM 05/12/2005

[F422 257AA Married couple's allowance (post-5th December 2005 marriages and civil partnerships etc.)

(1) This section applies if —
- (a) the claimant is, for the whole or any part of the year of assessment, living with his spouse or civil partner,
- (b) either the claimant or his spouse or civil partner was born before 6th April 1935,
- (c) the marriage or civil partnership was entered into on or after 5th December 2005 or, if the marriage was entered into before that date, an election for this section to apply has effect for that year, and
- (d) the claimant's total income for that year exceeds that of his spouse or civil partner or, if they have the same amount of total income for that year, the claimant is specified in an election as the person to be entitled to relief under this section for that year.

(2) The claimant shall be entitled for that year to an income tax reduction —
- (a) calculated by reference to £5,975 (if either the claimant or his spouse or civil partner is at any time within that year of the age of 75 or upwards), or
- (b) calculated by reference to £5,905 (in any other case).

(3) For the purposes of subsection (2)(a) above an individual who would have been of or over the age of 75 within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(4) In relation to a claimant whose total income for the year of assessment exceeds £19,500, subsection (2) above applies as if the amounts specified in it were reduced by—
- (a) one half of the excess, less
- (b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section.

(5) The amounts specified in subsection (2) above shall not by virtue of subsection (4) above be treated as reduced below £2,280.

(6) An individual shall not be entitled by virtue of this section to more than one income tax reduction for any year of assessment.

(7) In relation to a claim by an individual who —
- (a) becomes a spouse or civil partner in the year of assessment, and
- (b) has not previously in the year been entitled to relief under this section,

this section shall have effect as if the amounts specified in subsection (2) above were reduced by one twelfth for each month of the year ending before the date of the marriage or civil partnership.

In this subsection "month" means a month beginning with the 6th day of a month of the calendar year.

(8) An election under subsection (1)(c) —
- (a) shall be made jointly by the parties to the marriage,

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(b) shall be made before the first year of assessment for which it is to have effect,

(c) shall have effect for that and each succeeding year of assessment for which any party to the marriage is entitled to relief under this section, and

(d) shall be irrevocable.

(9) An election under subsection (1)(d) —

(a) shall be made jointly by the parties to the marriage or civil partnership, and

(b) shall be made on or before the 5th anniversary of the 31st January next following the end of the year of assessment to which the election relates.**]**

Textual Amendments

F422 S. 257AB inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 52

Modifications etc. (not altering text)

C233 S. 257AB(2)(4)(5) amended (2006-07) by S.I. 2005/3327, **art. 2(4)**
S. 257AB(2)(4)(5) amended (2007-08) by S.I. 2006/3241, **art. 2(4)**
S. 257AB(2)(4) amended (2008-09) by S.I. 2008/673, **art. 2(5)**
S. 257AB(2)(4) amended (2009-10) by S.I. 2008/3024, **art. 2(d)**

[F423 257BA Elections as to transfer of relief under section 257A.

(1) A woman may elect that for any year of assessment for which her husband is entitled to relief under section 257A—

(a) she shall be entitled (on making a claim)

to deduct from her total income one half of the amount specified in section 257A(1) for that year, and

(b) the amount that he is entitled to deduct under section 257A shall be reduced accordingly.

(2) A husband and wife may jointly elect that for any year of assessment for which the husband is entitled to relief under section 257A—

(a) she shall be entitled (on making a claim) to deduct from her total income the amount specified in section 257A(1) for that year, and

(b) the amount that he is entitled to deduct under section 257A shall be reduced accordingly (to nil, unless section 257A(2) or (3) applies to him).

(3) A man may elect that for any year of assessment for which his wife is entitled to relief by virtue of an election under subsection (2) above—

(a) he shall be entitled (on making a claim) to deduct from his total income one half of the amount specified in section 257A(1) for that year (in addition to the amount, if any, that he is already entitled to deduct under section 257A), and

(b) the amount that she is entitled to deduct by virtue of that election shall be reduced accordingly.

(4) An election under this section shall be made by giving notice to the inspector in such form as the Board may determine and—

(a) subject to subsections (5) and (7) below, shall be made before the first year of assessment for which it is to have effect, and

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(b) shall have effect for that and each succeeding year of assessment for which the husband is entitled to relief under section 257A, subject to its withdrawal under subsection (8) below or a subsequent election under this section.

(5) An election may be made during the first year of assessment for which it is to have effect if that is the year of assessment in which the marriage takes place.

(6) Where subsection (5) above applies, the references in subsections (1)(a), (2)(a) and (3)(a) above to the amount specified for the year of assessment in section 257A(1) shall be read as references to that amount reduced in accordance with section 257A(6).

(7) An election may be made within the first thirty days of the first year of assessment for which it is to have effect if before that year the inspector has been given written notification that it is intended to make the election.

(8) The person or persons by whom an election was made may withdraw it by giving notice to the inspector in such form as the Board may determine; but the withdrawal shall not have effect until the year of assessment after the one in which the notice is given.

(9) A woman shall not be entitled by virtue of an election under this section to more than one deduction for any year of assessment.**]**

Textual Amendments

F423 Ss. 257BA, 257BB substituted for s. 257B (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.2, **10**.

[F424]257BB Transfer of relief under section 257A where relief exceeds income.

(1) Where—

(a) a man is entitled to relief under section 257A, but

(b) the amount that he is entitled to deduct exceeds what is left of his total income after all other deductions have been made from it,

his wife shall be entitled to deduct from her total income the amount of the excess (in addition to any amount she is entitled to deduct by virtue of an election under section 257BA).

(2) Subsection (1) above shall not apply for a year of assessment unless the claimant's husband gives notice to the inspector that it is to apply.

(3) Where—

(a) a woman is entitled to relief by virtue of an election under section 257BA, but

(b) the amount that she is entitled to deduct exceeds what is left of her total income after all other deductions have been made from it,

her husband shall be entitled to deduct from his total income the amount of the excess (in addition to the amount, if more than nil, that he is already entitled to deduct under section 257A).

(4) Subsection (3) above shall not apply for a year of assessment unless the claimant's wife gives notice to the inspector that it is to apply.

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(5) Any notice under subsection (2) or (4) above—
- (a) shall be given not later than six years after the end of the year of assessment to which it relates,
- (b) shall be in such form as the Board may determine, and
- (c) shall be irrevocable.

(6) In determining for the purposes of this section the amount that is left of a person's total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—
- (a) on account of any payments of loan interest which become due in that year and to which section 369 applies,
- (b) under section 289,
- (c) on account of any payments to which section 593(2) or 639(3) applies,
- (d) on account of any payments to which section 54(5) of the Finance Act 1989 applies, or
- (e) on account of any payments to which section 32(4) of the Finance Act 1991 applies.

Textual Amendments

F424 Ss. 257BA, 257BB substituted for s. 257B (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.2, **10**.

257C Indexation of amounts in sections 257 and 257A.

(1) If the retail prices index for the month of **[**[F429]September**]** preceding a year of assessment is higher than it was for the previous **[**[F429]September**]**, then, unless Parliament otherwise determines, sections 257 and 257A shall apply for that year as if for each amount specified in them as they applied for the previous year (whether by virtue of this section or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index, and—
- (a) if in the case of an amount specified in sections 257(5) and 257A(5) the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple;
- (b) if in the case of any other amount the increase is not a multiple of £10, rounding the increase up to the nearest amount which is such a multiple.

[F430](2) . . . . . .

(3) The Treasury shall in each year of assessment make an order specifying the amounts which by virtue of subsection (1) above will be treated as specified for the following year of assessment in sections 257 and 257A.

[[F431](4) *This section shall have effect in relation to reliefs for the year* 1990-91 (*as well as for later years*);*and for that purpose it shall be assumed that sections* 257*and* 257A*applied for the year* 1989-90*as they apply, apart from this section, for the year* 1990-91.**]**

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Textual Amendments

F429 Words in s. 257C(1) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(3)(a)(8)**

F430 S. 257C(2) repealed (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 107(3)(b)(8), 213, **Sch. 23 Pt.III**

F431 *Repealed by* 1990 s.132*and* Sch.19 Part IV.

Modifications etc. (not altering text)

C235 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

C236 S. 257C applied (2000-01 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 32(5)**

C237 S. 257C(1) excluded (1991-92) by Finance Act 1991 (c. 31, SIF 63:1), **s. 22(1)**
S. 257C(1) excluded (1992-93) by Finance Act 1992 (c. 20), **s. 10(3)(5)**
S. 257C(1) excluded (1993-94) by Finance Act 1993 c. 34, **s. 52**
S. 257C(1) excluded (1994-95) by Finance Act 1994 (c. 9), **s. 76**
S. 257C(1) excluded (1994-95, 1995-96) by Finance Act 1994 (c. 9), **s. 77(10)**
S. 257C(1) excluded (1994-95) by Finance Act 1994 (c. 9), **s. 78**
S. 257C(1) excluded (1995-96) by Finance Act 1995 (c. 4), **s. 36**
S. 257C(1) excluded (1996-97) by Finance Act 1996 (c. 8), **s. 74(1)**
S. 257C(1) excluded (1997-98) by Finance Act 1997 (c.16), **s. 55(1)**
S. 257C(1) excluded (1999-00) by Finance Act 1999 (c. 16), **s. 24(2)**
S. 257C(1) excluded (2003-04) by Finance Act 2002 (c. 23), **ss. 28(2)**, 29(2)
S. 257C(1) excluded (2004-05) by Finance Act 2004 (c. 12), **s. 24(2)**
S. 257C(1) excluded (2005-06) by Finance Act 2005 (c. 7), **s. 9**
S. 257C excluded (2008-09) by Finance Act 2008 (c. 9), **ss. 2(2)(b)**, 3(2)(b)
S. 257C excluded (2009-10) by Finance Act 2009 (c. 10), **s. 3(2)(b)**

C238 *See* S.I. 1990 No.677*in* Part III Vol.5*for* 1990-91.

257D Transitional relief: husband with excess allowances.

(1) Where—

(a) a husband and wife are living together for the whole or any part of the year 1990-91 and section 279 (but not section 287) applied in relation to them for the whole or any part of the year 1989-90, and

(b) the deductions which the husband was entitled to make from his total income for the year 1989-90 under this Chapter exceed the aggregate mentioned in subsection (2) below,

the wife shall be entitled to a deduction from her total income for the year 1990-91 of an amount equal to the excess.

(2) The aggregate referred to in subsection (1) above is the aggregate of—

(a) the husband's total income for the year 1990-91, and

(b) the deductions which the wife is entitled to make from her total income for that year under this Chapter (apart from this section).

(3) Where—

(a) a husband and wife are living together for the whole or any part of the year 1990-91 and for part of the year 1989-90 but section 279 did not apply in relation to them for any part of the year 1989-90, and

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(b) the deductions which the husband was entitled to make from his total income for the year 1989-90 under this Chapter, apart from section 257(6), exceed his total income for the year 1990-91,

then, subject to subsection (4) below, the wife shall be entitled to a deduction from her total income for the year 1990-91 of an amount equal to the excess.

(4) If the deductions which the wife is entitled to make from her total income for the year 1990-91 under this Chapter (apart from this section) exceed the lesser of—

(a) her total income for the year 1989-90, and

(b) the deductions which she was entitled to make from her total income for that year under this Chapter, apart from section 259, section 262 and section 280,

the deduction provided for by subsection (3) above shall be reduced by an amount equal to the excess.

(5) Where—

(a) a husband and wife are living together for the whole or any part of the year 1991-92 or any subsequent year of assessment ("the year in question"), and

(b) they were also living together throughout the immediately preceding year of assessment and the wife made a deduction from her total income for that year under this section, and

(c) the deductions which the wife is entitled to make from her total income under this Chapter (apart from this section) are either no greater for the year in question than for the immediately preceding year, or greater by a margin which does not exceed the deduction referred to in paragraph (b) above, and

(d) the deductions which the husband is entitled to make from his total income for the year in question under this Chapter, apart from section 257A and section 265, exceed his total income for that year,

the wife shall be entitled to a deduction from her total income for that year.

(6) The amount of that deduction shall be equal to—

(a) the deduction referred to in subsection (5)(b) above, reduced where applicable by an amount equal to the margin referred to in subsection (5)(c), or

(b) the excess referred to in subsection (5)(d),

whichever is less.

(7) In determining for the purposes of subsection (5)(b) above whether the wife made a deduction from her total income for the immediately preceding year of assessment under this section, and the amount of any such deduction, it shall be assumed that a deduction under this section is made after all other deductions (except any deduction under section 289).

(8) In determining for the purposes of this section a person's total income for the year of assessment there shall be disregarded any deduction made—

(a) on account of any payments of relevant loan interest which become due in that year and to which section 369 applies, or

(b) under this Chapter or under section 289; **[**[F432]or

(c) on account of any payments to which section 593(2) or 639(3) applies,**][**[F433]or

(d) on account of any payments to which section 54(5) of the Finance Act 1989 applies**]**

[[F434], or

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(e) on account of any payments to which section 32(4) of the Finance Act 1991 applies.**]**

and in determining for the purposes of subsection (1)(b) above the deductions which a man was entitled to make under this Chapter for the year 1989-90, any application under section 283 shall be disregarded.

(9) This section shall not apply for a year of assessment unless the claimant's husband has given to the inspector written notice that it is to apply; and any such notice—

(a) shall be given not later than six years after the end of the year of assessment to which it relates,

(b) shall be in such form as the Board may determine, and

(c) shall be irrevocable.

(10) A notice given under subsection (9) above in relation to a year of assessment shall have effect also as a notice under **[**[F435]section 257BB(2)**]** (and, where it is relevant, under section 265(5)).

Textual Amendments

F432 1989 s.33(10).

F433 1989 s.57(4).

F434 S. 257D(8)(e) and ',or' preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 33(4)**

F435 Words in s. 257D(10) substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.3, **10**.

Modifications etc. (not altering text)

C239 S. 257D(9) modified (1990-91) by The Lloyd's Underwriters (Tax) (1990-91) Regulations 1993 (S.I. 1993/415), regs. 1, 9, **Sch.2**
S. 257D(9) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**
S. 257D(9) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

C240 S. 257D(9) modified (with effect in accordance with reg. 1(2) of the amending provision) by The Lloyd?s Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **reg. 9** {Sch. 2}
S. 257D(9) modified (with application for the year 1992-93, 1993-94 and 1994-5 and with effect in accordance with regs. 14(2), 15(2) of the amending Instrument) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), reg. 14(1), 15(1), **Sch.**

257E Transitional relief: the elderly.

(1) This section shall apply in relation to a claimant for any year of assessment for the whole or any part of which he has his wife living with him if he proves—

(a) that for the year 1989-90 he was entitled to relief by virtue of section 257(2)(a) of this Act (as it had effect for that year) and that his entitlement was due to her age and not to his (he being under the age of 65 throughout that year), or

(b) that for the year 1989-90 he was entitled to relief by virtue of section 257(3)(a) of this Act (as it had effect for that year) and that his entitlement was due to her age and not to his (he being under the age of **[**[F436]75**]** throughout the year),

and, in either case, that the amount of that relief exceeded the aggregate amount of any relief to which he would be entitled for the year 1990-91 under sections 257 and 257A (apart from this section).

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(2) Where this section applies, section 257 shall have effect—

(a) in a case within subsection (1)(a) above as if for the amount specified in subsection (1) of that section there were substituted **[**[F437]£3,400**]**, and

(b) in a case within subsection (1)(b) above, as if for the amounts specified in subsections (1) and (2) of that section there were substituted **[**[F438]£3,540**]**.

(3) Section 257(5) shall have effect in relation to section 257(1) as modified by this section as it has effect in relation to section 257(2) and (3); and in all cases the reference in section 257(5) to the amount specified in section 257(1) is a reference to the amount specified apart from this section.

(4) The references in section 257C to the amounts specified in section 257 are references to the amounts specified apart from this section.

(5) In determining for the purposes of this section the amount of any reliefs to which a person was entitled for the year 1989-90, any application under section 283 shall be disregarded.

Textual Amendments

F436 1989 s.33(11).

F437 1989 s.33(12).

F438 1989 s.33(13).

Modifications etc. (not altering text)

C241 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

257F Transitional relief: separated couples.

If the claimant proves—

(a) that he and his wife ceased to live together before 6th April 1990 but that ever since they ceased to live together they have continued to be married to one another and she has been wholly maintained by him, and

(b) that he is not entitled to make any deduction in respect of the sums paid for her maintenance in computing for income tax purposes the amount of his income for the year to which the claim relates, and

(c) that he was entitled to a deduction for the year 1989-90 by virtue of section 257(1)(a) of this Act (as it had effect for that year) and, if the claim relates to a year later than 1990-91, that he has been entitled by virtue of this section to a deduction under section 257A for each intervening year,

sections 257A and 257E (but not section **[**[F439]section 257BA, section 257BB**]** or section 257D) shall have effect for the year to which the claim relates as if his wife were living with him.

Textual Amendments

F439 Words in s. 257F substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.4, **10**.

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Modifications etc. (not altering text)

C242 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

[F440]258 Widower's or widow's housekeeper.

. . . . . .

Textual Amendments

F440 S. 258 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

259 Additional relief in respect of children.

[[F441](1) This section applies to—

(a) any woman who is not throughout the year of assessment married and living with her husband;

(b) any man who is neither married and living with his wife for the whole or any part of the year, nor entitled to a deduction from his total income by virtue of section 257F; and

(c) any man who for the whole or any part of the year is married to and living with a wife who is totally incapacitated by physical or mental infirmity throughout the year.**]**

(2) [M708]Subject to subsections (3) **[**[F442]to 4(A)**]** below and to **[**[F443]sections 260 and 261A**]**, if the claimant, being a person to whom this section applies, proves in the case of a year of assessment that a qualifying child is resident with him for the whole or part of the year, he shall be entitled to a deduction from his total income of an amount equal to **[**[F444]that specified in section 257A(1).**]**

(3) [M709]A claimant is entitled to only one deduction under subsection (2) above for any year of assessment irrespective of the number of qualifying children resident with him in that year.

[[F445](3A) A person shall not be entitled to relief under this section by virtue of subsection (1)(a) or (b) above for a year of assessment if that is the year in which he and his spouse separate (as defined in section 261A(6)).**]**

[[F444](4) A woman shall not be entitled to relief under this section for a year of assessment during any part of which she is married and living with her husband unless the child in respect of whom the relief is claimed is resident with her during a part of the year when she is not married and living with her husband.**]**

[[F446](4A) Where—

(a) a man and a woman who are not married to each other live together as husband and wife for the whole or any part of a year of assessment, and

(b) apart from this subsection each of them would on making a claim be entitled to a deduction under subsection (2) above,

neither of them shall be entitled to such a deduction except in respect of the youngest of the children concerned (that is to say, the children in respect of whom either would otherwise be entitled to a deduction).**]**

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(5) [M710]For the purposes of this section a qualifying child means, in relation to any claimant and any year of assessment, a child who—

(a) is born in, or is under the age of 16 years at the commencement of, the year or, being over that age at the commencement of that year, is receiving full-time instruction at any university, college, school or other educational establishment; and

(b) is a child of the claimant or, not being such a child, is born in, or is under the age of 18 years at the commencement of, the year and maintained for the whole or part of that year by the claimant at his own expense.

(6) In subsection (5)(a) above the reference to a child receiving full-time instruction at an educational establishment includes a reference to a child undergoing training by any person ("the employer") for any trade, profession or vocation in such circumstances that the child is required to devote the whole of his time to the training for a period of not less than two years.

For the purposes of a claim in connection with a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Board.

(7) If any question arises under this section whether a child is receiving full-time instruction at an educational establishment, the Board may consult the Secretary of State or the Department of Education for Northern Ireland.

(8) In subsection (5)(b) above the reference to a child of the claimant includes a reference to a stepchild of his, an illegitimate child of his if he has married the other parent after the child's birth and an adopted child of his if the child was under the age of 18 years when he was adopted.

(9) Notwithstanding anything in section 9 of the [M711]Family Law Reform Act 1969 or section 5 of the [M712]Age of Majority Act (Northern Ireland) 1969 or any rule of law in Scotland, for the purposes of subsection (5) above a child whose birthday falls on 6th April shall be taken to be over the age of 16 at the commencement of the year which begins with his 16th birthday and over the age of 18 at the commencement of the year which begins with his 18th birthday.

Textual Amendments

F441 1988(F) s.35*and* Sch.3 para.5*for* 1990-91*and subsequent years. Previously*
"—(1) This section applies—(a) to any individual who is not entitled for the year of assessment to the higher (married persons) relief under section 257(1); and (b) to any married man who is entitled for the year of assessment to that higher relief but whose wife was throughout that year totally incapacitated by physical or mental infirmity.".

F442 1988(F) s.30(1)*from* 1989-90.*Previously*
"and (4)".

F443 Words in s. 259(2) substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras. 5(2), **10**.

F444 1988(F) s.35*and* Sch.3 para.5(3), (4)*for* 1990-91*and subsequent years. Previously*
"the difference between the higher (married persons) relief and the lower (single persons) relief under subsection (1) of section 257 as it applies to persons not falling within subsection (2) or (3) of that section."
and

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"(4) A person to whom this section applies by virtue of subsection (1)(a) above shall not be entitled to relief under this section for a year of assessment during any part of which that person is married and living with his or her spouse unless the child in connection with whom the relief is claimed is resident with that person during a part of the year in which that person is not married and living with his or her spouse.".

F445 S. 259(3A) inserted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras. 5(3), **10**.

F446 1988(F) s.30*for* 1989-90*and subsequent years.*

Marginal Citations

M708 Source-1970 s.14(1), (2); 1976 s.36(4); 1979 (No.2) Sch.1 2(2); 1980 s.24(6); 1987 s.26(5)

M709 Source-1970 s.14(3); 1979 (No.2) Sch.1 2(3)

M710 Source-1970 s.14(5)-(9)); 1979 (No.2) Sch.1 2(4); 1987 Sch.15 2(2)

M711 1969 c. 46.

M712 1969 c. 28 (N.I.).

260 Apportionment of relief under section 259.

M713(1) Where for any year of assessment two or more individuals are entitled to relief under section 259 in connection with the same child—

(a) the amount referred to in subsection (2) of that section shall be apportioned between them; and

(b) the deduction to which each of them is entitled under that section shall, subject to subsection (2) below, be equal to so much of that amount as is apportioned to him.

(2) Where for any year of assessment amounts are apportioned to an individual under this section in respect of two or more children, the deduction to which he is entitled for that year under section 259 shall be equal to the sum of those amounts or the amount referred to in subsection (2) of that section, whichever is the less.

(3) Any amount required to be apportioned under this section shall be apportioned between the individuals concerned in such proportions as may be agreed between them or, in default of agreement, in proportion to the length of the periods for which the child in question is resident with them respectively in the year of assessment; and where the proportions are not so agreed, the apportionment shall be made by such body of General Commissioners, being the General Commissioners for a division in which one of the individuals resides, as the Board may direct, or, if none of the individuals resides in **[**F447the United Kingdom**]**, by the Special Commissioners.

(4) Where a claim is made under section 259 and it appears that, if the claim is allowed, an apportionment will be necessary under this section, the Board may if they think fit direct that the claim itself shall be dealt with by any specified body of Commissioners which could under this section be directed to make the apportionment and that the same Commissioners shall also make any apportionment which proves to be necessary; and where a direction is given under this subsection no other body of Commissioners shall have jurisdiction to determine the claim.

(5) The Commissioners making any apportionment under this section shall hear and determine the case in like manner as an appeal, but any individual who is, or but for the provisions of this section would be, entitled to relief in connection with the child shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

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(6) For the purposes of this section an individual shall not be regarded as entitled to relief under section 259 for any year of assessment in connection with the same child as another individual if there is another child in connection with whom he, and he alone, is entitled to relief under that section for that year.

Textual Amendments

F447 1988(F) s.134(3), (4)*from* 3*April* 1989 (*commencement order* S.I. 1989 No.473—*not reproduced*).*Previously*
"*Great Britain*".

Marginal Citations

M713 Source-1970 s.14A; 1979 (No.2) Sch.1 3; 1980 s.24(6)

[[F448]261 Claims under section 259 for year of marriage.

A man (but not a woman) who becomes married during a year of assessment may by notice to the inspector elect that his marriage shall be disregarded for the purposes of any claim that he makes for that year under section 259, and, in that case, the marriage shall also be disregarded for the purposes of any claim that he makes for that year under section 257A.**]**

Textual Amendments

F448 1988(F) s.35*and* Sch.3 para.6*for* 1990-91*and subsequent years. Previously*
"**261.** A man who becomes married during a year of assessment may by notice to the inspector elect that his marriage be disregarded for the purposes of any claim for that year under section 258*or* ("258 or"
repealed by s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*) 259, and, in that case, the marriage shall also be disregarded for the purposes of any claim for that year under section 257.".

Modifications etc. (not altering text)

C243 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

[[F449]261AAdditional relief in respect of children for year of separation.

(1) A person who proves that a qualifying child is resident with him for any period—
   (a) after he and his spouse separate, and
   (b) in the year of assessment in which that separation occurs,

shall be entitled to a deduction from his total income of an amount equal to that specified in section 257A(1) for the year.

(2) But if the person is entitled to relief for the year of assessment under section 257A (including by virtue of an election under section 257BA) the amount that he is entitled to deduct under subsection (1) above shall be reduced by the amount of that relief (to nil where the amount of that relief equals or exceeds it).

(3) Subsection (1) above shall not apply to a man who is entitled to relief under section 259 by virtue of subsection (1)(c) of that section.

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(4) A person is entitled to only one deduction under subsection (1) above irrespective of the number of qualifying children resident with him.

(5) Where for any year of assessment a person is entitled to relief under this section and another person is entitled to relief in connection with the same child under section 259 or this section—

(a) the total amount of the relief to which those persons are entitled shall not exceed the amount specified in section 257A(1) for that year,

(b) section 260(3) to (5) shall apply for the purpose of apportioning that total amount between the persons (and the reference in section 260(4) to section 259 shall be taken to include a reference to this section), and

(c) the deduction to which each of them is entitled under section 259 or this section shall be equal to so much of that amount as is apportioned to him (subject, in the case of relief under this section, to subsection (2) above).

(6) In this section, "separate" means—

(a) separate under an order of a court of competent jurisdiction, or by deed of separation, or

(b) separate in such circumstances that the separation is likely to be permanent.

(7) Subsections (5) to (9) of section 259 shall apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F449 S. 261A inserted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.6, **10**.

[F450F451 262 Widow's bereavement allowance.

(1) Where a married man whose wife is living with him dies, his widow shall be entitled—

(a) for the year of assessment in which the death occurs, to a deduction from her total income of an amount equal to the amount specified in section 257A(1) for that year, and

(b) (unless she marries again before the beginning of it) for the next following year of assessment, to a deduction of an amount equal to the amount specified in section 257A(1) for that year.**]**

[F452(2) Where a widow would (but for this subsection) be entitled for a year of assessment—

(a) to a deduction from her total income under subsection (1)(a) above, and

(b) to a deduction from her total income by virtue of an election under section 257BA,

the deduction mentioned in paragraph (b) above shall instead be made (without a claim being made) from her late husband's total income for the year.

(3) If the deduction mentioned in subsection (2)(b) above exceeds what is left of the husband's total income for the year after all other deductions have been made from it, the widow shall be entitled to deduct from her total income the amount of the excess (in addition to the deduction to which she is entitled by virtue of subsection (1) above and without making a further claim).

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(4) In determining for the purposes of this section the amount that is left of a person's total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—

(a) on account of any payments of loan interest which become due in that year and to which section 369 applies,

(b) under section 289,

(c) on account of any payments to which section 593(2) or 639(3) applies,

(d) on account of any payments to which section 54(5) of the Finance Act 1989 applies, or

(e) on account of any payments to which section 32(4) of the Finance Act 1991 applies.**]**

Textual Amendments

F450 1988(F) s.35*and* Sch.3 para.7(3)*for* 1990-91.*Previously*
"[**262.** Where a man dies in the year 1989-90 and for that year he is entitled to the higher (married person's) relief under section 257(1), or would be so entitled but for an election under section 261 or 287, his widow shall be entitled—(a) for that year of assessment, to a deduction from her total income of an amount equal to the amount referred to in section 259(2), and (b) (unless she marries again before the beginning of it) for the year 1990-91, to a deduction from her total income of an amount equal to the amount specified in section 257A(1) for that year.]"
for 1989-90.*For* 1988-89— "**262.** Where a man dies in a year of assessment for which he is entitled to the higher (married persons) relief under section 257(1), or would be so entitled but for an election under section 261 or 287, his widow shall be entitled—(a) for that year of assessment, and (b) unless she marries again before the beginning of it, for the next following year of assessment, to a deduction from her total income of an amount equal to that referred to in section 259(2).".

F451 S. 262 renumbered as s. 262(1) (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by virtue of Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.7, **10**.

F452 S. 262(2)-(4) inserted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.7, **10**.

[F453]263 Dependent relatives.

. . . . . .

Textual Amendments

F453 S. 263 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

[F454]264 Claimant depending on services of a son or daughter.

. . . . . .

Textual Amendments

F454 S. 264 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

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[[F455]265 Blind person's allowance.

(1) If the claimant proves that he is a registered blind person for the whole or any part of the year of assessment, he shall be entitled to a deduction of **[**[F456]£1,080**]** from his total income.

(2) Where—

(a) a person entitled to relief under subsection (1) above is a married man whose wife is living with him for the whole of any part of the year of assessment, but

(b) the amount which he is entitled to deduct from his total income by virtue of that subsection exceeds what is left of his total income after all other deductions have been made from it,

his wife shall be entitled to a deduction from her total income of an amount equal to the excess.

(3) In determining for the purposes of subsection (2)(b) above the amount that is left of a person's total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—

(a) on account of any payments of relevant loan interest which becomes due in that year and to which section 369 applies, or

(b) under section **[**[F457]257A (including by virtue of an election under section 257BA) or under**]** section 289 **[**[F458]or

(c) on account of any payments to which section 593(2) or 639(3) applies,**][**[F459]or

(d) on account of any payments to which section 54(5) of the Finance Act 1989 applies.**]**

[[F460], or

(e) on account of any payments to which section 32(4) of the Finance Act 1991 applies.**]**

(4) Subsections (2) and (3) above shall have effect where a wife is entitled to relief under subsection (1) above as they have effect where the husband is entitled to that relief, but with the appropriate modifications [F461]. . ..

(5) Subsections (2) to (4) above shall not apply for a year of assessment unless the person entitled to relief under subsection (1) has given to the inspector written notice that they are to apply; and any such notice—

(a) shall be given not later than six years after the end of the year of assessment to which it relates,

(b) shall be in such form as the Board may determine, and

(c) shall be irrevocable.

(6) A notice given under subsection (5) above in relation to a year of assessment by a husband shall have effect also as a notice under **[**[F462]section 257BB(2)**]**.

(7) In this section "registered blind person" means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or, in the case of a person ordinarily resident in Scotland or Northern Ireland, a person who is a blind person within the meaning of section 64(1) of that Act**]**.

Textual Amendments

F455 1988(F) s.35*and* Sch.3 para.8*for* 1990-91*and subsequent years. Previously*

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"Relief for blind persons.**265.**—(1) Subject to subsection (3) below, if the claimant proves—(a) that he is a married man who for the year of assessment has his wife living with him, and that one of them was, and the other was not, a registered blind person for the whole or part of the year; or (b) that, not being such a married man, he was a registered blind person for the whole or part of the year, he shall be entitled to a deduction of £540 from his total income. (2) Subject to subsection (3) below, if the claimant proves—(a) that he is a married man who for the year of assessment has his wife living with him, and (b) that he was a registered blind person for the whole or part of the year and his wife was also a registered blind person for the whole or part of the year, he shall be entitled to a deduction of £1,080 from his total income. (3)*Unless a claimant who is entitled to relief for the year of assessment under section* 264*in respect of the services of a son or daughter relinquishes his claim to that relief, he shall not be allowed relief under this section for that year* (*Repealed by* 1988(F) ss.25(3), 148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*). (4) In this section "registered blind person" means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or, in the case of a person ordinarily resident in Scotland or in Northern Ireland, a person who is a blind person within the meaning of section 64(1) of that Act.".*And see* Table E Vol.1*for previous years.*

F456 1990 s.18.*Previously*
"£540".

F457 Words in s. 265(3)(b) substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras. 8(2), **10**.

F458 1989 s.33(10).

F459 1989 s.57(4)

F460 S. 265(3)(e) and ' ,or' preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 33(4)**

F461 Words in s. 265(4) repealed (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), ss. 20, 82, Sch. 5 paras. 8(3), 10, **Sch. 18 Pt.VII**.

F462 Words in s. 265(6) substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras. 8(4), **10**.

Modifications etc. (not altering text)

C244 S. 265(5) modified (1990-91) by The Lloyd's Underwriters (Tax) (1990-91) Regulations 1993 (S.I. 1993/415), regs. 1, 9, **Sch. 2**

C245 S. 265(5) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**
S. 265(5) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

266 Life assurance premiums.

(1) [M714]Subject to the provisions of this section, sections 274 and 619(6) and Schedules 14 and 15, an individual who pays any such premium as is specified in subsection (2) below or makes a payment falling within subsection (7) below shall (without making any claim) be entitled to relief under this section.

(2) [M715]The premiums referred to in subsection (1) above are any premiums paid by an individual under a policy of insurance or contract for a deferred annuity, where—

(a) the payments are made to —

(i) any insurance company legally established in the United Kingdom or any branch in the United Kingdom of an insurance company lawfully carrying on in the United Kingdom life assurance business (as defined in section 431); or

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(ii) underwriters being members of Lloyd's who comply with the requirements set forth in section 83 of the [M716]Insurance Companies Act 1982; or

(iii) a **[**[F463]friendly society**]**; or

(iv) in the case of a deferred annuity, the National Debt Commissioners; and

(b) the insurance or, as the case may be, the deferred annuity is on the life of the individual or on the life of his spouse; and

(c) the insurance or contract was made by him or his spouse.

(3) Subject to subsections (7), (10) and (11) below, no relief under this section shall be given—

(a) [M717]except in respect of premiums payable under policies for securing a capital sum on death, whether in conjunction with any other benefit or not;

(b) [M718]in respect of premiums payable under any policy issued in respect of an insurance made after 19th March 1968 unless the policy is a qualifying policy;

(c) [M719]in respect of premiums payable under any policy issued in respect of an insurance made after 13th March 1984, except where the relief relates to part only of any such payment as falls within subsection (6) below;

(d) [M720]in respect of premiums payable during the period of deferment in respect of a policy of deferred assurance.

(4) [M721]Subject to subsections (6) to (8) below, relief under this section in respect of any premiums paid by an individual in a year of assessment shall be given by making good to the person to whom they are paid any deficiency arising from the deductions authorised under subsection (5) below; and this section and Schedule 14 shall have effect in relation to any premium or part of a premium which is paid otherwise than in the year of assessment in which it becomes due and payable as if it were paid in that year.

(5) Subject to the provisions of Schedule 14—

(a) an individual resident in the United Kingdom who is entitled to relief under this section in respect of any premium may deduct from any payment in respect of the premium and retain an amount equal to **[**[F464]12.5 per cent.**]** of the payment; and

(b) the person to whom the payment is made 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 may recover the deficiency from the Board.

(6) [M722]Where—

(a) a person is entitled to relief under this section in respect of part only of a payment made to a **[**[F463]friendly society**]**; and

(b) the insurance or contract was made by the society in the course of tax exempt life or endowment business (as defined in section 466(2)),

subsection (4) above shall not apply with respect to that relief but there shall be deducted from his total income an amount equal to one-half of that part of the payment.

(7) [M723]Where a person makes a payment to a trade union as defined in section 28(1) of the [M724]Trade Union and Labour Relations Act 1974, and part of that payment is attributable to the provision of superannuation, life insurance or funeral benefits, he shall be entitled to relief under this section in respect of that part of the payment, but—

(a) subsection (4) above shall not apply; and

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(b) there shall be deducted from his total income an amount equal to one-half of that part of the payment.

This subsection shall also apply in relation to any payment made to an organisation of persons in police service but only where the annual amount of the part of the payment attributable to the provision of the benefits in question is £20 or more.

(8) [M725]Where the individual is not resident in the United Kingdom but is entitled to relief by virtue of section 278(2), subsection (4) above shall not apply but (subject to section 278(3)) the like relief shall be given to him under paragraph 6 of Schedule 14.

(9) [M726]Subsections (5) and (8) above shall apply in relation to an individual who is not resident in the United Kingdom but is a member of the armed forces of the Crown or the **[**[F465]spouse**]** of such a member as if the individual were so resident.

(10) [M727]Subsection (3)(b) above shall not apply—

(a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals; or

(b) to any policy of life insurance issued in connection with an approved scheme as defined in Chapter I of Part XIV.

In the application of this subsection to Scotland, for any reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the [M728]Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

(11) [M729]Subsection (3)(a) and (d) above shall not affect premiums payable—

(a) under policies or contracts made in connection with any superannuation or bona fide pension scheme for the benefit of the employees of any employer, or of persons engaged in any particular trade, profession, vocation or business, or for the benefit of the **[**[F466]spouse, widow, widower or children or other dependants of any such employee or person,**]** or

(b) under policies taken out by teachers in the schools known in the year 1918 as secondary schools, pending the establishment of a superannuation or pension scheme for those teachers.

(12) Schedule 14 shall have effect for the purpose of modifying, for certain cases, and supplementing the provisions of this section.

[[F467](13) In this section and Schedule 14, "friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act).**]**

Textual Amendments

F463 Words in s. 266(2)(a)(iii)(6)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 paras. 2(2)**; S.I. 1993/236, **art.2**

F464 Words in s. 266(5)(a) substituted (from 6.4.1989) by Finance Act 1988 (c. 39), **s. 29**

F465 Words in s. 266(9) substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 35, **Sch. 3 para. 9(a)**

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F466 Words in s. 266(11)(a) substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 35, **Sch. 3 para. 9(b)**

F467 S. 266(13) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 paras. 2(3)**; S.I. 1993/236, **art.2**

Marginal Citations

M714 Source-1970 s.19(1); 1976 Sch.4 3(1)
M715 Source-1970 s.19(2); 1976 s.36(5), Sch.4 3(2)
M716 1982 c. 50.
M717 Source-1970 s.19(3)(a)
M718 Source-1970 s.19(4)
M719 Source-1984 s.72(1)
M720 Source-1970 s.19(3)(b)
M721 Source-1976 Sch.4 4(1) 5; 1978 Sch.3 2; 1980 s.29(2)(b)
M722 Source-1978 Sch.3 11
M723 Source-1978 Sch.3 12; 1981 s.33
M724 1974 c. 52.
M725 Source-1976 Sch.4 4(2)
M726 Source-1976 Sch.4 5A; 1978 Sch.3 5
M727 Source-1970 s.19(4)(a), (c); 1971 Sch.3 11
M728 1924 c. 27.
M729 Source-1970 s.19(3)(i)(ii)

VALID FROM 06/04/2003

[F468 266A Life assurance premiums paid by employer

(1) This section applies if—

(a) pursuant to a non-approved retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for or in respect of any employee of that employer, and

(b) the payment is made under such an insurance or contract as is mentioned in section 266.

This section applies whether or not the accrual of the relevant benefits is dependent on any contingency.

(2) Relief, if not otherwise allowable, shall be given to that employee under section 266 in respect of the payment to the extent, if any, to which such relief would have been allowable to him if—

(a) the payment had been made by him, and

(b) the insurance or contract under which the payment is made had been made with him.

(3) For the purposes of subsection (1)(a)—

(a) a retirement benefits scheme is "non-approved" unless it is—

(i) an approved scheme,

(ii) a relevant statutory scheme, or

(iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, and

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(b) benefits are provided in respect of an employee if they are provided for the employee's spouse, widow or widower, children, dependants or personal representatives.

(4) Sections 611, 611A and 612 apply for the purposes of this section as they apply for the purposes of Chapter 1 of Part 14.

(5) Section 388 of ITEPA 2003 (apportionment of payments in respect of more than one employee) applies in relation to a sum within subsection (1) as it applies in relation to a sum within section 386 of that Act (charge on payments to non-approved retirement benefits schemes).

(6) This section does not apply in any case where either of the following provisions of ITEPA 2003 provides for section 386 of that Act not to apply—

(a) section 389 (employments where earnings charged on remittance basis), and

(b) section 389 (non-domiciled employees with foreign employers).]

Textual Amendments

F468 S. 266A inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 36** (with Sch. 7)

267 Qualifying policies.

Schedule 15, Part I of which contains the basic rules for determining whether or not a policy is a qualifying policy, Part II of which makes provision for the certification etc. of policies as qualifying policies and Part III of which modifies Parts I and II in their application to certain policies issued by non-resident companies, shall have effect for the purpose of determining whether or not a policy is a qualifying policy; and, accordingly, any reference in this Act to a qualifying policy shall be construed in accordance with that Schedule.

268 Early conversion or surrender of life policies.

M730(1) Where a policy of life insurance to which this section applies has been issued and, within four years from the making of the insurance in respect of which it was issued, any of the following events happens, that is to say—

(a) the surrender of the whole or part of the rights conferred by the policy;

(b) the falling due (otherwise than on death) of a sum payable in pursuance of a right conferred by the policy to participate in profits; and

(c) the conversion of the policy into a paid-up or partly paid-up policy;

the body by whom the policy was issued shall pay to the Board, out of the sums payable by reason of the surrender or, as the case may be, out of the sum falling due or out of the fund available to pay the sums which will be due on death or on the maturity of the policy, a sum determined in accordance with the following provisions of this section, unless the body is wound up and the event is a surrender or conversion effected in connection with the winding-up.

(2) The sum payable under subsection (1) above shall, subject to the following provisions of this section, be equal to the lower of the following, that is to say—

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(a) the appropriate percentage of the premiums payable under the policy up to the happening of the event; and

(b) the surrender value of the policy at the time of the happening of the event less the complementary percentage of the premiums mentioned in paragraph (a) above.

(3) If the event is one of those mentioned below, the sum payable to the Board shall not exceed the following limit, that is to say—

(a) if it is the surrender of part of the rights conferred by the policy, the value of the rights surrendered at the time of the surrender;

(b) if it is the conversion of the policy into a partly paid-up policy, the surrender value at the time of the conversion, of so much of the policy as is paid up; and

(c) if it is the falling due of a sum, that sum.

(4) If the event was preceded by the happening of such an event as is mentioned in subsection (1) above, subsection (2) above shall apply—

(a) as if the lower of the amounts mentioned therein were reduced by the sum paid under this section in respect of the earlier event; and

(b) if the earlier event was such an event as is mentioned in paragraph (a) or (c) of subsection (3) above, as if the surrender value of the policy were increased by the amount which, under that paragraph, limited or might have limited the sum payable under this section in respect of the earlier event.

(5) For the purposes of this section the appropriate percentage, in relation to any event, is the percentage equal to the following fraction of the percentage found by doubling that mentioned in section 266(5)(a) as in force for the year of assessment in which the event happened, that is to say—

(a) if the event happens in the first two of the four years mentioned in subsection (1) above, three-sixths;

(b) if it happens in the third of those years, two-sixths; and

(c) if it happens in the last of those years, one-sixth;

and the complementary percentage, in relation to any event, is 100 per cent. less the appropriate percentage.

(6) Where the annual amount of the premiums payable under a policy of life insurance is at any time increased (whether under the policy or by any contract made after its issue) so as to exceed by more than 25 per cent.—

(a) if the insurance was made on or before 26th March 1974, the annual amount as at that date, or

(b) in the case of any other insurance, the first annual amount so payable,

the additional rights attributable to the excess shall be treated for the purposes of this section as conferred by a new policy issued in respect of an insurance made at that time, and the excess shall be treated as premiums payable under the new policy.

(7) This section applies to any policy of life insurance which is a qualifying policy unless—

(a) it is a policy in respect of the premiums on which relief under section 266 is not available by virtue of subsection (3)(c) of that section; or

(b) it is a policy of life insurance issued in connection with an approved scheme, as defined in Chapter I of Part XIV;

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and in relation to a policy of life insurance issued in respect of an insurance made before 27th March 1974 applies only in accordance with subsection (6) above.

Marginal Citations

M730 Source-1975 s.7; 1976 Sch.4 19(1); 1984 s.72(5)

269 Surrender etc. of policies after four years.

M731(1) Where a policy of life insurance to which this section applies has been issued and, in the fifth or any later year from the making of the insurance in respect of which it was issued, either of the following events happens, that is to say—

(a) the surrender of the whole or part of the rights conferred by the policy; and

(b) the falling due (otherwise than on death or maturity) of a sum payable in pursuance of a right conferred by the policy to participate in profits;

then, if either of those events has happened before, the body by whom the policy was issued shall pay to the Board, out of the sums payable by reason of the surrender, or, as the case may be, out of the sum falling due, a sum determined in accordance with the following provisions of this section.

(2) The sum payable under subsection (1) above shall, subject to the following provisions of this section, be equal to the applicable percentage of the lower of the following—

(a) the total of the premiums which are payable in that year under the policy; and

(b) the sums payable by reason of the surrender or, as the case may be, the sum falling due;

and the percentage to be applied for this purpose shall be a percentage equal to that mentioned in section 266(5)(a) as in force for the year of assessment in which the event happens.

(3) Where, after a sum has become payable under subsection (1) above, and within the same year from the making of the insurance, another such event happens as is mentioned therein, the sums payable under that subsection in respect of both or all of the events shall not exceed the applicable percentage of the total mentioned in subsection (2)(a) above.

(4) Where, on the happening of an event in the fifth or any later year from the making of the insurance, any sum is payable under subsection (1) of section 268 as applied by subsection (6) of that section as well as under subsection (1) above, subsection (2) above shall apply as if the sums or sum mentioned in paragraph (b) thereof were reduced by the sum payable under that section.

(5) This section applies to any policy of life insurance which is a qualifying policy unless—

(a) it is a policy in respect of the premiums on which relief under section 266 is not available by virtue of subsection (3)(c) of that section; or

(b) it is a policy issued in the course of an industrial insurance business; or

(c) it was issued in respect of an insurance made before 27th March 1974.

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Marginal Citations
M731 Source-1975 s.8; 1976 Sch.4 19(2); 1984 s.72(5)

270 Provisions supplementary to sections 268 and 269.

[M732](1) Where on the happening of an event in relation to a policy of life insurance a sum is payable under section 268 or 269, relief under section 266 in respect of the relevant premiums paid under the policy shall be reduced by the sum so payable or, as the case may be, by so much of the sum as does not exceed the amount of that relief (or as does not exceed so much of that amount as remains after any previous reduction under this section).

(2) For the purposes of this section the relevant premiums are—
- (a) in relation to a sum payable under section 268, the premiums payable under the policy up to the happening of the event by reason of which the sum is payable; and
- (b) in relation to a sum payable under section 269, the premiums payable in the year (from the making of the insurance) in which the event happens by reason of which the sum is payable.

(3) Where the relevant premiums are payable in more than one year of assessment the reduction in relief under this section shall, so far as possible, reduce relief for an earlier year of assessment before reducing relief for a later one.

(4) Any sum paid under section 268 or 269 by reason of any event shall be treated—
- (a) as between the parties, as received by the person by whom the premiums under the policy were paid; and
- (b) for the purposes of section 266, as a sum paid by that person in satisfaction of his liability resulting from the reduction of relief under this section;

and where that sum exceeds that liability he shall be entitled, on a claim made by him not later than six years after the end of the year of assessment in which the event happens, to repayment of the excess.

Marginal Citations
M732 Source-1975 s.9(1)-(4); 1976 Sch.4 19(3)

271 Deemed surrender in cases of certain loans.

[M733](1) Where—
- (a) under section 547 a gain arising in connection with a policy [F469]. . . would be treated as forming part of an individual's total income; and
- (b) the policy was issued in respect of an insurance made after 26th March 1974 [F470]. . .; and
- (c) any sum is at any time after the making of the insurance [F469]. . . lent to or at the direction of that individual by or by arrangement with the body issuing the policy [F471]. . .;

then, subject to subsection (2) below, the same results shall follow under sections 268 to 270 as if at the time the sum was lent there had been a surrender of part of the rights

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conferred by the policy [F469]. . . and the sum had been paid as consideration for the surrender (and if the policy is a qualifying policy, whether or not the premiums under it are eligible for relief under section 266, those results shall follow under section 269, whether or not a gain would be treated as arising on the surrender).

(2) Subsection (1) above does not apply—

(a) in relation to a policy if—

(i) it is a qualifying policy; and

(ii) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling used or to be used as his only or main residence; [F472]. . .

[F472](b) . . . . . .

Textual Amendments

F469 Words in s. 271(1) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(a), **Sch. 26 Pt. 5(22)**

F470 Words in s. 271(1)(b) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(b), **Sch. 26 Pt. 5(22)**

F471 Words in s. 271(1)(c) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(c), **Sch. 26 Pt. 5(22)**

F472 S. 271(2)(b) and preceding word repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(2), **Sch. 26 Pt. 5(22)**

Marginal Citations

M733 Source-1975 Sch.2 16(1), (3); 1976 s.35

272 Collection of sums payable under sections 268 and 269.

[M734](1) Any body by whom a policy to which section 268 or 269 applies has been issued shall, within 30 days of the end of each period of 12 months ending with 31st March in every year, make a return to the collector of the sums which, in that period, have become payable by it under either of those sections.

(2) Any sum which is to be included in a return made under subsection (1) above shall be due at the time by which the return is to be made and shall be paid without being demanded.

(3) Where any sum which was or ought to have been included in such a return is not paid by the end of the period for which the return was to be made, it may be recovered by an assessment as if it were income tax for the year of assessment in which that period ends; and where it appears to the inspector that a sum which ought to have been so included had not been included or that a return is not correct he may make such an assessment to the best of his judgment.

(4) All the provisions of the Income Tax Acts relating to the assessment and collection of tax, interest on unpaid tax, appeals and penalties shall, with the necessary modifications, apply in relation to sums due under this section; and for the purposes of those provisions so far as they relate to interest on unpaid tax, a sum assessed in pursuance of this section shall be treated as having been payable when it would have been payable had it been included in a return under subsection (1) above.

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(5) Where, on an appeal against an assessment made in pursuance of this section, it is determined that a greater sum has been assessed than was payable, the excess, if paid, shall be repaid.

(6) Where a body has paid a sum which is payable under section 268 or 269 it shall give within 30 days to the person by whom the sum is, under section 270(4), treated as received a statement specifying that sum and showing how it has been arrived at.

(7) The Board or an inspector may, by notice served on the body by whom a policy to which section 268 or 269 applies has been issued, require the body, within such time, not being less than 30 days, as may be specified in the notice—
   (a) to furnish such particulars; or
   (b) to make available for inspection by an officer authorised by the Board such books and other documents in the possession or under the control of the body;

as the Board or officer may reasonably require for the purposes of those sections or this section.

Marginal Citations
M734 Source-1975 Sch.1

[[F473]273 Payments securing annuities.

Subject to sections 274, 617(3) and 619(6), if the claimant is, under any Act of Parliament or under any terms and conditions of employment, liable to the payment of any sum, or to the deduction from any salary or stipend of any sum, for the purpose of securing a deferred annuity to a widow or widower of the claimant or provision for the claimant's children after the claimant dies, the claimant shall be entitled to a deduction from the amount of income tax on which he or she is chargeable equal to income tax at the basic rate on the amount of the sum which he or she has paid or which has been deducted from his or her salary or stipend.**]**

Textual Amendments
F473 1988(F) s.35*and* Sch.3 para.10*for* 1990-91*and subsequent years. Previously*
"Payments securing widows' and children's annuities.**273.** Subject to sections 274, 617(3) and 619(6), if the claimant is, under any Act of Parliament or under the terms or conditions of his employment, liable to the payment of any sum, or to the deduction from his salary or stipend of any sum, for the purpose of securing a deferred annuity to his widow or provision for his children after his death, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the basic rate on the amount of the sum paid by him or deducted from his salary or stipend.".

274 Limits on relief under sections 266 and 273.

(1) [M735]The aggregate of the premiums or other sums in respect of which relief is given to any person under section 266 shall not exceed £1,500 in any year of assessment or one-sixth of that person's total income, whichever is the greater.

(2) [M736]The aggregate of the relief given under sections 266 and 273 in respect of premiums or sums payable for securing any benefits other than capital sums on death

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shall not exceed the amount of the income tax calculated at the appropriate rate on £100.

(3) [M737]In subsection (2) above "the appropriate rate"—

(a) in relation to premiums to which section 266 applies, means **[**[F474]12.5 per cent.**]**;

(b) in relation to other payments, means the basic rate of income tax.

(4) [M738]War insurance premiums shall not be taken into account in calculating the limits of one-sixth of total income or of £100 mentioned in this section.

In this subsection "war insurance premiums" means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which appears to the inspector to be attributable to those risks, or either of them.

Textual Amendments

F474 1988(F) s.29—*from* 6*April* 1989.*Previously* "15 per cent.".

Marginal Citations

M735 Source-1970 s.21(1); 1976 Sch.4 21
M736 Source-1970 s.21(3); 1975 Sch.2 6
M737 Source-1970 s.21(4); 1975 Sch.2 6; 1980 s.29; 1976 Sch.4 21; 1987 Sch.15 2(5)
M738 Source-1970 s.21(5)

Supplemental

[F475]275 Meaning of "relative".

. . . . . .

Textual Amendments

F475 S. 275 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part IV**

276 Effect on relief of charges on income.

[M739](1) Where any of the claimant's income is income the income tax on which (at the basic rate) he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment, he shall not be entitled to relief under this Chapter in respect of that income, except to the extent, if any, that the relief would exceed tax at the basic rate on that income.

(2) Notwithstanding subsection (1) above, relief under section 273 may be given to the extent that the deduction from tax provided for by that section can be made from so much of the income tax with which the claimant is chargeable as exceeds what would be the amount of that tax if all income tax were chargeable at the basic rate to the exclusion of any other rate.

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Marginal Citations
M739 Source-1970 s.25; 1971 s.33(5)

277 Partners.

[M740](1) Subject to subsection (2) below, the following persons having joint interests, that is to say—

(a) coparceners, joint tenants, or tenants in common of the profits of any property, and

(b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares, and

(c) partners carrying on a trade, profession or vocation together who are entitled to the profits thereof in shares,

may claim any relief under this Chapter according to their respective shares and interests, and any such claims which are proved may be dealt with in the same manner as in the case of several interests.

(2) The income of a partner from a partnership carrying on any trade, profession or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates in the partnership profits, such profits being estimated according to the provisions of the Income Tax Acts.

Marginal Citations
M740 Source-1970 s.26

278 Non-residents.

(1) [M741]Subject to the provisions of this section, no relief under this Chapter shall be given in the case of any individual who is not resident in the United Kingdom.

(2) *Subject to subsection* (3)*below*[F476], subsection (1) above shall not apply in the case of any individual who satisfies the Board that he or she—

(a) is a Commonwealth citizen or a citizen of the Republic of Ireland; or

(b) is a person who is or who has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any territory under Her Majesty's protection; or

(c) is resident in the Isle of Man or the Channel Islands; or

(d) has previously resided within the United Kingdom, and is resident abroad for the sake of his or her health, or the health of a member of his or her family resident with him or her; or

(e) is a widow whose late husband **[**[F477], or a widower whose late wife**]** was in the service of the Crown.

[[F477](2A) Notwithstanding subsection (2) above, no relief shall be given under section 257D in a case where the husband is not resident in the United Kingdom.**]**

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(3) *No relief under this Chapter shall be given so as to reduce the amount of the income tax payable by the individual below the amount which results from applying the fraction—*

$$\frac{A}{B}$$

to the amount which would have been payable by him by way of income tax if the tax were chargeable on his total income from all sources (including income which is not subject to income tax charged in the United Kingdom) where—

A*is the amount of his income subject to income tax charged in the United Kingdom; and*

B*is the amount of his total income*[F478].

(4) [M742]*Subsection* (3)*above shall have effect as if the amount of any relief to which an individual is entitled under section* 266(4)*were an amount by which his liability to income tax is reduced*[F477].

(5) [M743]*For the purposes of subsection* (3)*above as it applies to an individual whose income includes income eligible for double taxation relief—*

(a) *in computing the amount of the income tax payable by the individual, the tax chargeable in respect of the income eligible for double taxation relief shall be disregarded;*

(b) *in computing the amount of his income subject to income tax charged in the United Kingdom, the income eligible for double taxation relief shall be disregarded; and*

(c) *in computing his total income from all sources, including income which is not subject to income tax charged in the United Kingdom, income eligible for double taxation relief shall be included, and the income tax which would be chargeable on that total income shall be computed without regard to the double taxation relief available in respect of the income eligible for double taxation relief;*

and, accordingly, where this subsection applies, the amount of the tax chargeable in respect of the income eligible for double taxation relief shall not be affected by subsections (2)*and* (3)*above*[F478].

(6) *Subsection* (5)*shall not operate so as to make the tax payable by an individual for a year of assessment higher than it would have been if the double taxation relief had not been available*[F478].

(7) *In subsection* (5)*above "income eligible for double taxation relief" means any dividends, interest, royalties or other profits which are chargeable to income tax but in respect of which relief (other than credit) is available under an Order in Council under section* 788*so as to limit the rate of income tax so chargeable (but not so as to confer an exemption and make it income which is not subject to income tax charged in the United Kingdom)*[F478].

(8) Any claim which an individual is entitled to make by virtue of subsection (2) above shall be made to the Board.

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Textual Amendments

F476 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1990-91*and subsequent years.*

F477 1988(F) s.31*for* 1990-91*and subsequent years.*

F478 *Repealed by* 1988(F) ss.31, 148*and* Sch.14 Part IV*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C246 *See* British Nationality Act 1981 ss.37*and* 51(1)*for definition.*

Marginal Citations

M741 Source-1970 s.27(1), (2)

M742 Source-1976 Sch.4 18(3)

M743 Source-1970 s.27(3)-(5)

CHAPTER II

TAXATION OF INCOME OF SPOUSES

General rules

[F479]279 Aggregation of wife's income with husband's.

. . . . . .

Textual Amendments

F479 S. 279 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), ss. 32, 148, **Sch. 14 Part VIII**

[F480]280 Transfer of reliefs.

. . . . . .

Textual Amendments

F480 S. 280 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F481]281 Tax repayments to wives.

. . . . . .

Textual Amendments

F481 S. 281 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

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[F482 282 Construction of references to husband and wife living together.

A husband and wife shall be treated for income tax purposes as living together unless—

(a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or

(b) they are in fact separated in such circumstances that the separation is likely to be permanent.].

Textual Amendments

F482 1988(F) s.35*and* Sch.3 para.11*for* 1990-91*and subsequent years. Previously*
"Construction of references to married women living with their husbands.**282.**—(1) A married woman shall be treated for income tax purposes as living with her husband unless—(a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or (b) they are in fact separated in such circumstances that the separation is likely to be permanent (*See* 1988(F) s.40(3) —*application of* s.282(1)*to certain maintenance payments.*). (2) Where a married woman is living with her husband and either—(a) one of them is, and the other is not, resident in the United Kingdom for a year of assessment, or (b) both of them are resident in the United Kingdom for a year of assessment, but one of them is, and the other is not, absent from the United Kingdom throughout that year, the same consequences shall follow for income tax purposes as would have followed if, throughout that year of assessment, they had been in fact separated in such circumstances that the separation was likely to be permanent. (3) Where subsection (2) above applies and the net aggregate amount of income tax falling to be borne by the husband and the wife for the year is greater than it would have been but for that subsection, the Board shall cause such relief to be given (by the reduction of such assessments on the husband or the wife or the repayment of such tax paid, by deduction or otherwise, by the husband or the wife, as the Board may direct) as will reduce that net aggregate amount by the amount of the excess.".

Modifications etc. (not altering text)

C247 *See* 1979(C) s.155(2)*—capital gains—references to a married woman living with her husband to be construed in accordance with* s.282.

C248 S. 282 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 288(3)**, 289 (with ss. 60, 101(1), 171, 201(3)).

[F483 282A Jointly held property.

(1) Subject to the following provisions of this section, income arising from property held in the names of a husband and his wife shall for the purposes of income tax be regarded as income to which they are beneficially entitled to equal shares.

(2) Subsection (1) above shall not apply to income to which neither the husband nor the wife is beneficially entitled.

(3) Subsection (1) above shall not apply to income—

(a) to which either the husband or the wife is beneficially entitled to the exclusion of the other, or

(b) to which they are beneficially entitled in unequal shares,

if a declaration relating to it has effect under section 282B.

(4) Subsection (1) above shall not apply to—

(a) earned income, or

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(b) income which is not earned income but to which section 111 applies.

(5) Subsection (1) above shall not apply to income to which the husband or the wife is beneficially entitled if or to the extent that it is treated by virtue of any other provision of the Income Tax Acts as the income of the other of them or of a third party.

(6) References in this section to a husband and his wife are references to a husband and wife living together.**]**

Textual Amendments

F483 Ss. 282A, 282B inserted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), **s. 34**

282B Jointly held property: declarations.

(1) The declaration referred to in section 282A (3) is a declaration by both the husband and the wife of their beneficial interests in—

(a) the income to which the declaration relates, and

(b) the property from which that income arises.

(2) Subject to the following subsections, a declaration shall have effect under this section in relation to income arising on or after the date of the declaration; but a declaration made before 6th June 1990 shall also have effect in relation to income arising before that date.

(3) A declaration shall not have effect under this section unless notice of it is given to the inspector, in such form and manner as the Board may prescribe, within the period of 60 days beginning with the date of the declaration.

(4) A declaration shall not have effect under this section in relation to income from property if the beneficial interests of the husband and the wife in the property itself do not correspond to their beneficial interests in the income.

(5) A declaration having effect under this section shall continue to have effect unless and until the beneficial interests of the husband and wife in either the income to which it relates, or the property from which the income arises, cease to accord with the declaration.

Separate assessments

[F484]283 Option for separate assessment.

. . . . . .

Textual Amendments

F484 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F485]284 Effect of separate assessment on personal reliefs.

. . . . . .

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Textual Amendments

F485 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F486]285 Collection from wife of tax assessed on husband but attributable to her income.

. . . . . .

Textual Amendments

F486 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F487]286 Right of husband to disclaim liability for tax on deceased wife's income.

. . . . . .

Textual Amendments

F487 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

Separate taxation

[F488]287 Separate taxation of wife's earnings.

. . . . . .

Textual Amendments

F488 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F489]288 Elections under section 287.

. . . . . .

Textual Amendments

F489 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

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CHAPTER III

RELIEF FOR INVESTMENT IN CORPORATE TRADES: THE BUSINESS EXPANSION SCHEME

Modifications etc. (not altering text)

C249 *See*—s.360(3A)—*exclusion of relief for interest on loan to purchase close company shares if BES relief claimed.*1988(F) ss.50-53*and* Sch.4*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

289 The relief.

(1) This Chapter has effect for affording relief from income tax where an individual who qualifies for the relief subscribes for eligible shares in a qualifying company, and either—

(a) [M744]those shares are issued to him after 5th April 1983 **[**[F490]and before the end of 1993**]** for the purpose of raising money for a qualifying trade which is being carried on by the company or which it intends to carry on; or

(b) [M745]those shares are issued to him after 18th March 1986 **[**[F490]and before the end of 1993**]** for the purpose of raising money—

(i) for research and development which is being carried on by the company or by any subsidiary of the company on the date on which the shares are issued, or begins so to be carried on immediately thereafter, and from which it is intended that a qualifying trade (to be so carried on) will be derived; or

(ii) both for any such research and development and the resulting trade; or

(c) [M746]those shares are issued to him after 5th April 1985 and before 19th March 1986 for the purpose of raising money—

(i) for research and development which is being carried on at the time when the shares are issued, or begins immediately thereafter, and from which the company intends to derive a qualifying trade which will be carried on by it; or

(ii) both for any such research and development and the resulting trade; or

(d) [M747]those shares are issued to him after the passing of the Finance Act 1986 (25th July 1986) **[**[F490]and before the end of 1993**]** for the purpose of raising money for oil exploration which—

(i) is being carried on by the company, or by any subsidiary of the company, on the date on which the shares are issued; or

(ii) begins so to be carried on immediately thereafter; and from which it is intended that a qualifying trade (to be so carried on) will be derived.

(2) [M748]Subsection (1)(d) above shall not apply unless—

(a) throughout the period of three years beginning with the date on which the shares were issued the company, or any subsidiary of the company, holds an exploration licence which was granted to it, or to another such subsidiary;

(b) the exploration is carried out solely within the area to which the licence applies; and

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(c) on the date on which the shares are issued, neither the company nor any subsidiary of the company holds an appraisal licence or a development licence relating to that area or any part of that area.

(3) [M749]Where, at any time after the issue of the shares but before the end of the period mentioned in subsection (2)(a) above, the company, or any subsidiary of the company, comes to hold an appraisal licence or development licence which relates to the area, or any part of the area, to which the exploration licence relates, the exploration licence and that other licence shall be treated for the purposes of subsection (2)(a) above as a single exploration licence.

(4) [M750]In this Chapter "eligible shares" means new ordinary shares which, throughout the period of five years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed.

(5) Subject to subsection (6) below, the relief in respect of the amount subscribed by an individual for any eligible shares shall be given as a deduction of that amount from his total income for the year of assessment in which the shares are issued, and references in this Chapter to the amount of the relief are references to the amount of that deduction.

(6) [M751]If—

(a) the shares are issued before 6th October in a year of assessment; and

(b) the claimant so requests in his claim for relief;

the relief shall be given partly by way of deduction from the claimant's total income for the year of assessment in which the shares are issued and partly by way of deduction from his total income for the preceding year of assessment.

(7) A deduction from the claimant's total income for the year of assessment preceding that in which the shares are issued shall be of such amount as may be specified in the claim; but

(a) that amount shall not exceed one half of the total relief in respect of the shares; and

(b) the aggregate of that amount and the amounts of any other deductions made by virtue of subsection (6) above from the claimant's total income for the year of assessment preceding that in which the shares are issued shall not exceed £5,000.

(8) The relief shall be given on a claim and shall not be allowed—

(a) [M752]in a case falling within subsection (1)(a)—

(i) unless and until the company has carried on the trade for four months; and

(ii) if the company is not carrying on that trade at the time when the shares are issued, unless the company begins to carry it on within two years after that time;

(b) [M753]in a case falling within subsection (1)(b) or (c) unless and until the company or (as the case may be) the subsidiary has carried on the research and development for four months;

(c) [M754]in a case falling within subsection (1)(d) unless and until the company has carried on the exploration for four months.

(9) [M755]A claim for relief may be allowed—

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(a) under subsection (1)(a), (c) or (d) at any time after the trade, the research and development or the exploration (as the case may be) has been carried on by the company for four months;

(b) under subsection (1)(b) at any time after the research and development has been carried on for four months;

if the conditions for the relief are then satisfied.

(10) [M756]In the case of a claim allowed before the end of the relevant period, the relief shall be withdrawn if by reason of any subsequent event it appears that the claimant was not entitled to the relief allowed.

(11) [M757]An individual is not entitled to relief in respect of any shares unless the shares are subscribed for and issued for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose, or one of the main purposes of which, is the avoidance of tax.

(12) [M758]In this Chapter "the relevant period", in relation to relief in respect of any eligible shares issued by a company, means—

(a) as respects sections 291, 299, **[**[F491]299A,**]** 300, 302 and 303, the period beginning with the incorporation of the company (or, if the company was incorporated more than two years before the date on which the shares were issued, beginning two years before that date) and ending five years after the issue of the shares; and

(b) as respects **[**[F492]sections 290A, 293**]**, 294, 297, 308 and 309, the period beginning with the date on which the shares were issued and ending either—

(i) three years after that date; or

(ii) in a case falling within subsection (1)(a), where the company was not at that date carrying on a qualifying trade, three years after the date on which it subsequently began to carry on such a trade.

(13) [M759]Where by reason of its being wound up, or dissolved without winding up, the company carries on the qualifying trade for a period shorter than four months, subsection (8)(a) above shall have effect as if it referred to that shorter period but only if it is shown that the winding up or dissolution was for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax.

(14) [M760]The relief shall be treated for the purposes of section 835(5) as a deduction to be made under Chapter I of this Part after all other deductions under that Chapter and shall be disregarded for the purposes of calculating relief under section 550(2),*paragraph* 3*of Schedule* 2 [F493] and paragraphs 4 and 16 of Schedule 11 where an election has effect under paragraph 12 of that Schedule.

(15) Where effect is given to a claim for relief by repayment of tax, section 824 shall have effect in relation to the repayment as if the time from which the 12 months mentioned in subsections (1)(b) and (3)(a) of that section are to be calculated were the end of the year of assessment in which the shares are issued or, if the period mentioned in subsection (8)(a) above ends in a later year, the end of that later year.

Textual Amendments

F490 Words in s. 289(1)(a)(b)(d) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 38**.

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F491 Word in s. 289(12)(a) inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(2)(4)**

F492 1988(F) s.51(1)(a)—*deemed always to have had effect. Previously* "section 293".

F493 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

Modifications etc. (not altering text)

C250 S. 289 amended (as it has effect in relation to shares issued before 1st January 1994) by Finance Act 1995 (c. 4), **s. 68(1)(2)**

C251 *See* 1988(F) s.50*and* Sch.4 Part I para.2(1)*and* Part II*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C252 *See* 1988(F) s.35*and* Sch.3 para.12(3)(b)*for application to husband and wife where amounts are subscribed in* 1990-91.

C253 *See* 1988(F) s.50*and* Sch.4 para.2(2)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C254 *See* 1988(F) s.50*and* Sch.4 para.2(3)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C255 *See* 1988(F) s.50*and* Sch.4 para.2(4)*for changes applicable in respect of shares issued after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C256 Subs.(13)*omitted by* 1988(F) Sch.4 para.2(5)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M744 Source-1983 s.26(1), Sch.5 2(1); 1986 s.40(2)
M745 Source-1983 Sch.5 2(1)(b), 2A(2); 1985 s.44(2); 1986 Sch.9 3(b)
M746 Source-1983 Sch.5 2(1)(b), 2A(2); 1985 s.44(2), (7)
M747 Source-1983 Sch.5 2(1) (b), 2B(2); 1986 Sch.9 4
M748 Source-1983 Sch.5 2(1)(c)-(e), 2B(2); 1986 Sch.9 4
M749 Source-1983 Sch.5 2(1A), 2B(3); 1986 Sch.9 4
M750 Source-1983 Sch.5 2(2), (3)
M751 Source-1983 Sch.5 2(4A), (4B); 1987 s.42(1)
M752 Source-1983 Sch.5 2(4)
M753 Source-1983 Sch.5 2(4), 2A(3); 1985 s.44(2); 1986 Sch.9 3(c)
M754 Source-1983 Sch.5 2(4), 2B (4); 1985 s.44(2); 1986 Sch.9 4
M755 Source-1983 Sch.5 2(5), 2A(4), 2B(5); 1985 s.44(2); 1986 Sch.9 3(d), 4
M756 Source-1983 Sch.5 2(6)
M757 Source-1983 Sch.5 11
M758 Source-1983 Sch.5 2(7), 2A (5), 2B(6); 1985 s.44(2); 1986 Sch.9 2, 4
M759 Source-1983 Sch.5 2(8)
M760 Source-1983 Sch.5 2(9), (10); 1981 s.52(7), 8; 1987 s.42(2)

VALID FROM 03/05/1994

[F494 289A Form of relief.

(1) Where an individual eligible for relief in respect of any amount subscribed for eligible shares makes a claim, then, subject to the following provisions of this Chapter, the amount of his liability for the year of assessment in which the shares were issued ("the current year") to income tax on his total income shall be the following amount.

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(2) That amount is the amount to which he would be so liable apart from this section less whichever is the smaller of—

(a) an amount equal to tax at the lower rate for the current year on the amount or, as the case may be, the aggregate of the amounts subscribed for eligible shares issued in that year in respect of which he is eligible for relief, and

(b) the amount which reduces his liability to nil.

(3) Subject to subsection (4) below, if in the case of any issue of relevant shares, that is, shares—

(a) which are issued before 6th October in the current year, and

(b) in respect of the amount subscribed for which the individual is eligible for relief,

the individual so requests in his claim, subsection (1) above shall apply as if, in respect of such part of that issue as may be specified in his claim, the shares had been issued in the preceding year of assessment; and his liability to income tax for both years of assessment shall be determined accordingly.

(4) Not more than half of the relevant shares comprised in any issue may be treated by virtue of subsection (3) above as issued in the previous year; and the number of relevant shares (comprised in any issues) so treated as issued in a particular year shall not be such that the total amount subscribed for them exceeds £15,000.

(5) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII of this Act or under section 347B,

(b) any income tax reduction under section 353(1A),

(c) any income tax reduction under section 54(3A) of the Finance Act 1989,

(d) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1), or

(e) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

(6) A claim for relief shall not be allowed unless subsection (7) below is complied with but, where it is complied with, the relief may be given at any time when it appears that the conditions for the relief may be satisfied.

(7) This subsection is complied with if—

(a) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (a) of section 289(2), the company or subsidiary concerned has carried on the trade for four months,

(b) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (b) of that subsection or within both paragraph (a) and paragraph (b) of that subsection, the company or subsidiary concerned has carried on the research and development for four months, and

(c) in the case of shares issued for the purpose of a qualifying business activity falling within paragraph (c) of that subsection, the company or subsidiary concerned has carried on the exploration for four months.

(8) Where—

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(a) the company or subsidiary concerned, by reason of its being wound up, or dissolved without winding up, carries on a trade for a period shorter than four months, and

(b) it is shown that the winding up or dissolution was for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax,

subsection (7)(a) above shall have effect as if it referred to that shorter period.

(9) Where effect is given to a claim for relief by repayment of tax, section 824 shall have effect in relation to the repayment as if the time from which the twelve months mentioned in subsections (1)(a) and (3)(a) of that section are to be calculated were the end of the year of assessment in which the shares are issued or, if subsection (7) above is first complied with in a later year, the end of that later year.**]**

Textual Amendments

F494 Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

VALID FROM 03/05/1994

[F495 289B Attribution of relief to shares.

(1) References in this Chapter, in relation to any individual, to the relief attributable to any shares or issue of shares shall be read, subject to the provisions of this Chapter providing for the reduction or withdrawal of relief, as references to any reduction made in the individual's liability to income tax which is attributed to those shares or that issue in accordance with this section.

(2) Where an individual's liability to income tax is reduced in any year of assessment ("the current year") under section 289A, then—

(a) where the reduction is given by reason of an issue of shares made (or treated as made) in the current year, the amount of the reduction shall be attributed to that issue, and

(b) where the reduction is given by reason of two or more issues of shares made (or treated as made) in the current year, the reduction—

(i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the individual for each issue, and

(ii) shall be attributed to those issues accordingly.

(3) Where under this section an amount of any reduction of income tax is attributed to an issue of shares ("the original issue") in a company to an individual—

(a) a proportionate part of that amount shall be attributed to each share comprised in the original issue, and

(b) if any bonus shares in that company which are eligible shares are issued to him at any subsequent time—

(i) a proportionate part of the total amount attributed immediately before that time to shares comprised in the original issue shall be

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attributed to each of the shares in the holding comprising those shares and the bonus shares, and

(ii) this Chapter shall apply as if the original holding had comprised all those shares.

(4) Subject to subsection (5) below, in this Chapter references to an issue of shares in any company to an individual are to any shares in the company issued to him on the same day.

(5) Where section 289A(1) applies in the case of any issue of shares as if part of the issue had been issued in a previous year, this section and the following provisions of this Chapter (except section 290(1)) shall have effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous year).

(6) Where, at a time when any relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under this Chapter—

(a) where it falls to be withdrawn, the relief attributable to each of the shares in question shall be reduced to nil, and

(b) where it falls to be reduced by any amount, the relief attributable to each of the shares in question shall be reduced by a proportionate part of that amount.**]**

Textual Amendments

F495 Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

290 Minimum and maximum subscriptions.

M761(1) Subject to section 311(3), the relief shall not be given in respect of any amount subscribed by an individual for eligible shares issued to him by any company in any year of assessment unless the amount or total amount subscribed by him for the eligible shares issued to him by the company in that year is £500 or more.

(2) No more than £40,000 may be deducted by way of relief under section 289 from the total income of an individual for a year of assessment.

Modifications etc. (not altering text)

C257 *See* 1988(F) s.35*and* Sch.3 para.12(3)(b)*for application to husband and wife where amounts are subscribed in* 1990-91.

Marginal Citations

M761 Source-1983 Sch.5 3; 1987 s.42(3)

[F496290A Restriction of relief where amounts raised exceed permitted maximum.

(1) Where—

(a) a company raises any amount through the issue of eligible shares after 15th March 1988; and

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(b) the aggregate of that amount and of all other amounts (if any) so raised within the period mentioned in subsection (2) below exceeds **[**[F497]£750,000**]**.

the relief shall not be given in respect of the excess.

(2) The period referred to in subsection (1) above is—

(a) the period of 6 months ending with the date of the issue of the shares; or

(b) the period beginning with the preceding 6th April and ending with the date of that issue,

whichever is the longer.

(3) In determining the aggregate mentioned in subsection (1) above, no account shall be taken of any amount—

(a) which is subscribed by a person other than an individual who qualifies for relief; or

(b) as respects which relief is precluded by section 290 or this section.

(4) Where—

(a) at any time within the relevant period, the company in question or any of its subsidiaries carries on any trade or part of a trade in partnership, or as a party to a joint venture, with one or more other persons; and

(b) that other person, or at least one of those other persons, is a company,

the reference to **[**[F498]£750,000**]** in subsection (1) above shall have effect as if it were a reference to—

$$\frac{£750,000}{1 + A,}$$

where A is the total number of companies (apart from the company in question or any of its subsidiaries) which, during the relevant period, are members of any such partnership or parties to any such joint venture.

(5) Where this section precludes the giving of relief on claims in respect of shares issued to two or more individuals, the available relief shall be divided between them in proportion to the amounts which have been respectively subscribed by them for the shares to which their claims relate and which would, apart from this section, be eligible for relief.

(6) Where—

(a) in the case of a company falling within subsection (2)(a) of section 293, the qualifying trade or each of the qualifying trades is a trade to which subsection (7) below applies;

(b) in the case of a company falling within subsection (2)(b)(i) of that section, the subsidiary or each of the subsidiaries is a dormant subsidiary or exists wholly, or substantially wholly, for the purpose of carrying on one or more qualifying trades which or each of which is a trade to which subsection (7) below applies; or

(c) in the case of a company falling within subsection (2)(b)(ii) of that section, the requirements mentioned in each of paragraphs (a) and (b) above are satisfied,

subsections (1) and (4) above shall have effect as if for the amount there specified there were substituted £5 million.

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(7) This subsection applies to a trade if it consists, wholly or substantially wholly, of operating or letting ships, other than oil rigs or pleasure craft, and—

(a) every ship operated or let by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom;

(c) throughout the relevant period the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in section 297(7) are satisfied in relation to every letting by the company.

(8) Where—

(a) any of the requirements mentioned in paragraphs (a) to (c) of subsection (7) above are not satisfied in relation to any ships; or

(b) any of the conditions referred to in paragraph (d) of that subsection are not satisfied in relation to any lettings,

the trade shall not thereby be precluded from being a trade to which that subsection applies if the operation or letting of those ships, or, as the case may be, those lettings do not amount to a substantial part of the trade.

(9) The Treasury may by order amend any of the foregoing provisions of this section by substituting a different amount for the amount for the time being specified there.

(10) Where—

(a) the issue of the eligible shares is made in pursuance of a prospectus published, or an offer in writing made, before 15th March 1988;

(b) the shares are issued after that date and before 6th April 1988; and

(c) subsection (6) above does not apply,

subsections (1) and (4) above shall have effect as if for the amount there specified there were substituted £1 million.

(11) In this section—

"let" means let on charter and "letting" shall be construed accordingly;

"oil rig" and "pleasure craft" have the same meanings as in section 297;

"prospectus" has the meaning given by section 744 of the [M762]Companies Act 1985 or Article 2(3) of the [M763]Companies (Northern Ireland) Order 1986.**]**

Textual Amendments

F496 S. 290A inserted (retrospectively) by Finance Act 1988 (c. 39) s. 51(1)(b)

F497 S.I.1990 No.862, **art.3(a)** (*in* Part III Vol.5)*in force on* 1*May* 1990.*Previously* "£500,000".

F498 S.I.1990 No.862, **art.3(b)** (*in* Part III Vol.5)*in force on* 1*May* 1990.*Previously* "£500,000".

Modifications etc. (not altering text)

C258 *See* 1988(F) s.50*and* Sch.4 para.3(1)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C259 *See* 1988(F) s.50*and* Sch.4 paras.3(1), (2)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

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C260 Subss.(6)-(8)*omitted by* 1988(F) Sch.4 para.3(3)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

C261 Subss. (10)*and* (11)*omitted by* 1988(F) Sch.4 para.3(3)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M762 1985 c. 6.

M763 S.I. 1986/1032 (N.I. 6)

291 Individuals qualifying for relief.

(1) [M764]Subject to section 292, an individual qualifies for the relief if he—

(a) subscribes for the eligible shares on his own behalf,

(b) is resident and ordinarily resident in the United Kingdom at the time when they are issued, and

(c) is not at any time in the relevant period connected with the company;

and, in relation to shares issued after 5th April 1986, an individual who is at any time performing duties which are treated by virtue of section 132(4)(a) as performed in the United Kingdom shall be treated for the purposes of this section as resident and ordinarily resident in the United Kingdom at that time.

[[F499](1A)**]**

(2) [M765]An individual is connected with the company if he, or an associate of his, is—

(a) an employee of the company or of a partner of the company;

(b) a partner of the company; or

(c) subject to subsection (3) below, a director of the company or of another company which is a partner of that company.

(3) An individual is not connected with a company by reason only that he, or an associate of his, is a director unless he or his associate (or a partnership of which he or his associate is a member) receives a payment from the company during the period of five years beginning with the date on which the shares are issued or is entitled to receive such a payment in respect of that period or any part of it; but for that purpose there shall be disregarded—

(a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by him or his associate in the performance of his duties as a director of the company;

(b) any interest which represents no more than a reasonable commercial return on money lent to the company;

(c) any dividend or other distribution which does not exceed a normal return on the investment;

(d) any payment for the supply of goods which does not exceed their market value; and

(e) any reasonable and necessary remuneration which —

(i) is paid for services rendered to the company in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the company itself); and

(ii) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken

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into account if it fell in a period on the basis of which those profits or gains are assessed under that Schedule.

(4) An individual is connected with the company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—
   (a) the issued ordinary share capital of the company; or
   (b) the loan capital and issued share capital of the company; or
   (c) the voting power in the company.

(5) For the purposes of subsection (4)(b) above the loan capital of a company shall be treated as including any debt incurred by the company—
   (a) for any money borrowed or capital assets acquired by the company; or
   (b) for any right to receive income created in favour of the company; or
   (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).

(6) An individual is connected with the company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company which would then be available for distribution to equity holders of the company, and for the purposes of this subsection—
   (a) the persons who are equity holders of the company, and
   (b) the percentage of the assets of the company to which the individual would be entitled,

   shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.

(7) An individual is connected with a company if he has control of it within the meaning of section 840.

(8) For the purposes of this section an individual shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(9) [M766]In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by the company by overdrawing an account with a person carrying on a business of banking shall be treated as loan capital of the company if the debt arose in the ordinary course of that business.

(10) Where an individual subscribes for shares in a company with which he is not connected (either within the meaning of this section or by virtue of section 309(6)(b)) he shall nevertheless be treated as connected with it if he subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which that or any other individual who is a party to the arrangement is connected (within the meaning of this section or by virtue of section 309(6)(b)).

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Textual Amendments

F499 *See* 1988(F) s.50*and* Sch.4 para.4*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

Marginal Citations

M764 Source-1983 Sch.5 4(1), (5); 1983 (No.2) Sch.2 1; 1986 Sch.9 5
M765 Source-1981 s.54(2)-(8); 1983 Sch.5 4(2)
M766 Source-1983 Sch.5 4(3), (4)

VALID FROM 03/05/1994

[F500 291A Connected persons: directors.

(1) An individual is not connected with the issuing company by reason only that he, or an associate of his, is a director of that or another company unless he or his associate (or a partnership of which he or his associate is a member)—
  (a) receives a payment from the issuing company or a related person during the relevant period, or
  (b) is entitled to receive such a payment in respect of that period or any part of it.

(2) In this section—
  (a) "related person", in relation to the issuing company, means—
    (i) any company of which the individual or his associate is a director and which is a subsidiary or a partner of the issuing company or of a subsidiary, and
    (ii) any person connected with the issuing company or with a company falling within sub-paragraph (i) above, and
  (b) any reference to a payment to an individual includes a payment made to him indirectly or to his order or for his benefit.

(3) For the purposes of subsection (1) above there shall be disregarded—
  (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by him or his associate in the performance of his duties as a director,
  (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,
  (c) any dividend or other distribution which does not exceed a normal return on the investment,
  (d) any payment for the supply of goods which does not exceed their market value,
  (e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, and
  (f) any reasonable and necessary remuneration which —
    (i) is paid for services rendered to the issuing company or related person in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and

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(ii) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits or gains are assessed under that Schedule.

(4) An individual ("the subscriber") who subscribes for eligible shares ("the relevant shares") may qualify for the relief notwithstanding his connection with the company at any time in the relevant period if—

(a) he is so connected by reason only of his, or his associate's, being a director of, or of a company which is a partner of, the issuing company or a subsidiary in receipt of, or entitled to receive, remuneration as such, and

(b) the following conditions are satisfied;

and in this subsection and subsection (5) below "remuneration" includes any benefit or facility.

(5) The conditions are that—

(a) in relation to the director (whether he is the subscriber or his associate), his remuneration, or the remuneration to which he is entitled, (leaving out of account any reasonable and necessary remuneration falling within subsection (3)(f) above) consists only of remuneration which is reasonable remuneration for services rendered to the company of which he is a director in his capacity as such,

(b) the subscriber was issued with eligible shares (whether the relevant shares or a previous issue of eligible shares) at a time when he had never been—

(i) connected with the issuing company, or

(ii) an employee of any person who previously carried on the trade carried on by the issuing company, and

(c) where the issue of the relevant shares did not satisfy paragraph (b) above, they were not issued after the end of the period of five years beginning with the date of the latest issue of eligible shares which satisfied that paragraph,

and in paragraph (b) above "trade" includes any business, profession or vocation, and the reference to a trade previously carried on includes part of such a trade.

(6) In this section "subsidiary", in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company.**]**

Textual Amendments

F500 Ss. 291-291B substituted for s. 291 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 5**

VALID FROM 03/05/1994

[F501 291B Connected persons: persons interested in capital etc. of company.

(1) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—

(a) the issued ordinary share capital of the company or any subsidiary,

(b) the loan capital and issued share capital of the company or any subsidiary, or

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(c) the voting power in the company or any subsidiary.

(2) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or any subsidiary or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company or subsidiary (the "company in question") which would then be available for distribution to equity holders of the company in question.

(3) For the purposes of subsection (2) above—

(a) the persons who are equity holders of the company in question, and

(b) the percentage of the assets of the company in question to which the individual would be entitled,

shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company in question are available for distribution to its equity holders.

(4) An individual is connected with a company if he has control of it or of any subsidiary.

(5) Where an individual subscribes for shares in a company with which (apart from this subsection) he is not connected, he shall nevertheless be treated as connected with it if he subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which (assuming it to be an issuing company) that or any other individual who is a party to the arrangement is connected.

(6) In this section "subsidiary", in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company—

(a) whether it becomes such a subsidiary before, during or after the year of assessment in respect of which the individual concerned claims relief, and

(b) whether or not it is such a subsidiary while he has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.

(7) For the purposes of this section the loan capital of a company shall be treated as including any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company,

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).

(8) For the purposes of this section an individual shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(9) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by the company or any subsidiary by overdrawing an account with a person carrying on a business of banking shall be treated as loan capital of the company or subsidiary if the debt arose in the ordinary course of that business.

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(10) Section 840 applies for the purposes of this section.**]**

Textual Amendments

F501 Ss. 291-291B substituted for s. 291 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 5**

292 Parallel trades. [F502]

[M767](1) An individual is not entitled to relief in respect of any shares in a company which are issued after 18th March 1986 where, at the date mentioned in subsection (2) below—

(a) he is one of a group of persons—

(i) who control the company; or

(ii) to whom belongs an interest amounting in the aggregate to more than a half share in the trade carried on by the company;

(b) he is also an individual, or one of a group of persons—

(i) controlling another company; or

(ii) to whom belongs an interest amounting in the aggregate to more than a half share in another trade; and

(c) the trade carried on by the company, or a substantial part of it—

(i) is concerned with the same or similar types of property or parts thereof or provides the same or similar services or facilities; and

(ii) serves substantially the same or similar outlets or markets;

as the other trade or (as the case may be) the trade carried on by the other company.

(2) The date mentioned in subsection (1) above is—

(a) the date on which the shares are issued; or

(b) if later, the date on which the company begins to carry on the trade.

(3) For the purposes of subsection (1) above—

(a) the persons to whom a trade belongs, and (where a trade belongs to two or more persons) their respective shares in that trade, shall be determined in accordance with section 344(1)(a) and (b), (2) and (3); and

(b) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person.

(4) For the purposes of this section—

(a) references to a company's trade include references to the trade of any of its subsidiaries; and

(b) "trade" in the expressions "another trade", "other trade" and "trade carried on by the other company" includes any business, profession or vocation.

Textual Amendments

F502 S.292*omitted by* 1988(F) Sch.4 para.5*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

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Marginal Citations

M767 Source-1983 Sch.5 10A; 1986 Sch.9 12

293 Qualifying companies.

(1) [M768]Subject to section 294, a company is a qualifying company if it is incorporated in the United Kingdom and complies with the requirements of this section.

(2) [M769]The company must, throughout the relevant period, be an unquoted company which is resident in the United Kingdom and not resident elsewhere, and be—

(a) a company which exists wholly, or substantially wholly, for the purpose of carrying on wholly or mainly in the United Kingdom one or more qualifying trades; or

(b) a company whose business consists wholly of—

(i) the holding of shares or securities of, or the making of loans to, one or more qualifying subsidiaries of the company; or

(ii) both the holding of such shares or securities, or the making of such loans, and the carrying on wholly or mainly in the United Kingdom of one or more qualifying trades.

(3) [M770]In this section "qualifying subsidiary", in relation to a company, means a subsidiary of that company of a kind which may be held by virtue of sections 308 and 309.

[F503](4) [M771]Where a company has one or more qualifying subsidiaries, it shall not be a qualifying company in relation to shares issued after 18th March 1986 if the qualifying trade or trades carried on by the company and its subsidiaries, taken as a whole, are not carried out wholly or mainly in the United Kingdom.

(5) [M772]Without prejudice to the generality of subsection (2) above, but subject to subsection (6) below, a company ceases to comply with that subsection if before the end of the relevant period a resolution is passed, or an order is made, for the winding up of the company (or, in the case of a winding up otherwise than under the [M773]Insolvency Act 1986 or the [M774]Companies (Northern Ireland) Order 1986, any other act is done for the like purpose) or the company is dissolved without winding up.

(6) A company shall not be regarded as ceasing to comply with subsection (2) above if it does so by reason of being wound up or dissolved without winding up and—

(a) it is shown that the winding up or dissolution is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; and

(b) the company's net assets, if any, are distributed to its members or dealt with as bona vacantia before the end of the relevant period or, in the case of a winding up, the end (if later) of three years from the commencement of the winding up.

(7) The company's share capital must not, at any time in the relevant period, include any issued shares that are not fully paid up.

(8) Subject to sections 308 and 309, the company must not at any time in the relevant period—

(a) control (or together with any person connected with it control) another company or be under the control of another company (or another company and any other person connected with that other company); or

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(b) be a 51 per cent. subsidiary of another company or itself have a 51 per cent. subsidiary;

and no arrangements must be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b) above.

F504(9) M775A company is not a qualifying company in relation to shares issued before 19th March 1986 if—

(a) an individual has acquired a controlling interest in the company's trade after 5th April 1983; and

(b) at any time in the period mentioned in subsection (10) below he has, or has had, a controlling interest in another trade; and

(c) the trade carried on by the company or a substantial part of it—

(i) is concerned with the same or similar types of property or parts thereof or provides the same or similar services or facilities as the other trade, or

(ii) serves substantially the same or similar outlets or markets as the other trade.

Section 298(1) and (2) shall apply for the purposes of this subsection.

F504(10) M776The period referred to in subsection (9) above is the period beginning two years before and ending three years after—

(a) the date on which the shares were issued; or

(b) if later, the date on which the company began to carry on the trade.

F504(11) In subsections (9) and (10) above references to a company's trade include references to the trade of any of its subsidiaries.

Textual Amendments

F503 S.293(4)*omitted by* 1988(F) Sch.4 para.6(2)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

F504 Subss.(9)-(11)*omitted by* 1988(F) Sch.4 para.6(2)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Modifications etc. (not altering text)

C262 *See* 1988(F) s.50*and* Sch.4 para.6(1)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C263 *See* Insolvency (Northern Ireland) Order 1989 art.381(2)*and* Sch.9 para.59 (S.I.1989 No.2405—*not reproduced*)*for change from a day to be appointed.*

Marginal Citations

M768 Source-1983 Sch.5 5(1); 1986 Sch.9 6(2)

M769 Source-1983 Sch.5 5(2); 1983 (No.2) Sch.1 3(a)

M770 Source-1983 Sch.5 5(3)

M771 Source-1983 Sch.5 5(3A); 1986 Sch.9 6(3)

M772 Source-1983 Sch.5(4)-(7)

M773 1986 c. 45.

M774 S.I. 1986/1032 (N.I. 6).

M775 Source-1983 Sch.5 5(8); 1986 Sch.9 6(4)

M776 Source-1983 Sch.5 5(10), (11); 1983 (No.2) Sch.1 3(b); 1986 Sch.9 6(4)

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294 Companies with interests in land. [F505]

[M777](1) Subject to section 296, a company is not a qualifying company in relation to shares issued after 18th March 1986 if at any time during the relevant period—

(a) the value of the interests in land held by the company at that time; or

(b) where lower, the value of the interests in land which were held by the company immediately after the issue of the shares (adjusted in accordance with section 295);

is greater than half the value of the company's assets as a whole.

(2) For the purposes of this section, the value of the interests in land held by a company on any date shall be arrived at by first aggregating the market value on that date of each of those interests and then deducting—

(a) the amount of any debts of the company which are secured on any of those interests (including any debt secured by a floating charge on property which comprises any of those interests);

(b) the amount of any unsecured debts of the company which do not fall due for payment before the expiry of the period of 12 months beginning with that date; and

(c) the amount paid up in respect of those shares of the company (if any) which carry a present or future preferential right to the company's assets on its winding up.

(3) For the purposes of this section, the value of a company's assets as a whole shall be arrived at by first aggregating the market value of each of those assets and then deducting the amount of the debts and liabilities of the company.

(4) For the purposes of subsection (3) above, the amount paid up in respect of those shares of a company (if any) which carry a present or future preferential right to the company's assets on its winding up shall be treated as a debt of the company, but otherwise a company's share capital, share premium account and reserves shall not be treated for those purposes as debts or liabilities of the company.

(5) In this section "interest in land" means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other's ability to grant the estate, interest or right in question, except that it does not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land; or

(b) in Scotland, the interest of a creditor in a charge or security of any kind over land.

[[F506](5A) For the purposes of this section, the value of an interest in any building or other land shall be adjusted by deducting the market value of any machinery or plant which is so installed or otherwise fixed in or to the building or other land as to become, in law, part of it.**]**

(6) In arriving at the value of any interest in land for the purposes of this section—

(a) it shall be assumed that there is no source of mineral deposits in the land of a kind which it would be practicable to exploit by extracting them from underground otherwise than by means of opencast mining or quarrying; and

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(b) any borehole on the land shall be disregarded if it was made in the course of oil exploration.

(7) Where a company is a member of a partnership which holds any interest in land—

(a) that interest shall, for the purposes of this section and sections 295 and 296, be treated as an interest in land held by the company; but

(b) its value at any time shall, for those purposes, be taken to be such fraction of its value (apart from this subsection) as is equal to the fraction of the assets of the partnership to which the company would be entitled if the partnership were dissolved at that time.

(8) Where a qualifying company has one or more subsidiaries, the company and its subsidiaries ("the group") shall be treated as a single company for the purposes of this section and sections 295 and 296; but any debt owed by, or liability of, one member of the group to another shall be disregarded for those purposes.

(9) The Treasury may by order amend subsection (1) above by substituting a different fraction for the fraction for the time being specified there.

Textual Amendments

F505 Ss.294-296*omitted by* 1988(F) Sch.4 para. 70*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

F506 1988(F) s.52*in respect of valuations falling to be made on or after* 29*July* 1988.

Marginal Citations

M777 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), (7)

295 Valuation of interests in land for purposes of section 294(1)(b).

M778(1) For the purposes of section 294(1)(b), the value of the interests in land held by a company immediately after the issue of the shares in question ("the original interests") shall be adjusted by—

(a) adding—

(i) the cost of any interests in land subsequently acquired by the company ("the later interests"); and

(ii) any expenditure (whenever payable) incurred by the company wholly and exclusively in enhancing the value of any of the original or later interests;

(b) deducting any consideration received by the company on the disposal of any of the original or later interests or on the grant by the company of any interest in land out of any of those interests;

(c) deducting any consideration otherwise derived by the company from its ownership of any of the original or later interests.

(2) Any sum which is received by a company by way of rent, or which is attributable to the use of any premises by the company, shall be disregarded for the purposes of subsection (1)(c) above.

(3) For the purposes of this section—

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(a) the cost of an interest in land acquired by a company shall be taken to be the amount or value of the consideration given by the company, or on its behalf, wholly and exclusively for the acquisition of the interest;

(b) consideration shall be brought into account without any discount for the postponement of the right to receive any part of it; and

(c) the grant of an interest in land out of any of the original interests shall be treated as a disposal of the original interest in question.

(4) Where—

(a) the interest of a company as lessee under a lease ("the lease") falls to be valued at any time for the purposes of section 294 or the cost of acquiring that interest falls to be calculated for the purposes of this section; and

(b) the aggregate amount of the rent payable by the lessee under the lease before the end of the relevant period exceeds that which would be so payable under a lease of the premises at a full market rent (but otherwise on the same terms and conditions as the lease);

the value of the company's interest at that time shall be calculated on the assumption that the aggregate amount payable as mentioned in paragraph (b) above is a nominal amount and, where the interest was acquired after the issue of the shares in question, it shall be assumed that the company paid the appropriate premium when acquiring the interest.

(5) In determining, for the purposes of this section, the consideration for the disposal or acquisition of an interest in land, no account shall be taken in the first instance of any contingent liability assumed by the company or by any other person.

(6) If it is subsequently shown to the satisfaction of the Board that a contingent liability which was not taken into account in determining the consideration for a disposal or acquisition has become enforceable and is being or had been enforced, such adjustment, whether by way of a further assessment or the discharge or repayment of tax or otherwise, shall be made as is required in consequence.

(7) Where the relief obtainable under subsection (6) above requires a discharge or repayment of tax, it shall be given on a claim to the Board and such a claim may be made at any time.

Modifications etc. (not altering text)

C264 Ss.294-296*omitted by* 1988(F) Sch.4 para.8*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M778 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), 7

296 Section 294 disapplied where amounts raised total £50,000 or less. [F507]

[M779](1) Where a company raises any amount through the issue of eligible shares, section 294—

(a) shall not have effect to deny relief in relation to those shares if the aggregate of that amount and of all other amounts (if any) so raised within the period of 12 months ending with the date of that issue does not exceed £50,000; and

(b) where that aggregate exceeds £50,000, shall have effect to deny relief only in relation to the excess.

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(2) Where—

(a) at any time within the relevant period, the company in question or any of its subsidiaries carries on any trade or part of a trade in partnership, or as a party to a joint venture, with one or more other persons; and

(b) that other person, or at least one of those other persons, is a company;

each reference to £50,000 in subsection (1)(a) and (b) above shall have effect as if it were a reference to—

$$\frac{£50,000}{1+A}$$

where A is the total number of companies (apart from the company in question or any of its subsidiaries) which are members of any such partnership or parties to any such joint venture during the relevant period.

(3) Where section 294, as read with this section, requires a restriction to be placed on the relief given on claims in respect of shares issued to two or more individuals, the available relief shall be divided between them in proportion to the amounts which have been respectively subscribed by them for the shares to which their claims relate and which would, apart from the restrictions, be eligible for the relief.

(4) A claimant who is dissatisfied with the manner in which the available relief is divided under this section between him and any other claimant or claimants may apply to the appropriate Commissioners who shall, after giving the other claimant or claimants an opportunity to appear and be heard or to make representations in writing, determine the question for all the claimants in the same way as an appeal.

(5) In this section "the appropriate Commissioners" means—

(a) in a case where the same body of General Commissioners has jurisdiction with respect to all the claimants, those Commissioners, unless all the claimants agree that the question should be determined by the Special Commissioners;

(b) in a case where different bodies of General Commissioners have jurisdiction with respect to the claimants, such of those bodies as the Board may direct, unless all the claimants agree that the question should be determined by the Special Commissioners;

(c) in any other case, the Special Commissioners.

(6) In calculating the aggregate mentioned in subsection (1)(a) above in respect of any period of 12 months which begins on or before 18th March 1986, any amount raised by the issue of eligible shares on or before that date shall be disregarded.

Textual Amendments

F507 Ss.294-296*omitted by* 1988(F) Sch.4 para.8*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M779 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), 7

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297 Qualifying trades. [F508]

(1) [M780]Subject to section 298(6) and (7) below, a trade is a qualifying trade if it complies with the requirements of this section.

(2) [M781]Subject to subsection (9) below, the trade must not at any time in the relevant period consist of one or more of the following activities if that activity amounts, or those activities when taken together amount, to a substantial part of the trade—

(a) dealing in commodities, shares, securities, land or futures;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) oil extraction activities;

(e) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;

(f) providing legal or accountancy services;

(g) providing services or facilities for any trade carried on by another person which consists to any substantial extent of activities within any of paragraphs (a) to (f) above and in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company;

(h) [M782]property development;

(j) [M783]farming.

(3) [M784]For the purposes of subsection (2)(b) above—

(a) a trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption;

(b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption;

(c) a trade is not an ordinary trade of wholesale or retail distribution if—

(i) it consists to a substantial extent of dealing in goods of a kind which are collected or held as an investment or of that activity and any other activity of a kind falling within subsection (2) above, taken together; and

(ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value; and

(d) in determining whether a trade is an ordinary trade of wholesale or retail distribution regard shall be had to the extent to which it has the following features, that is to say—

(i) the goods are bought by the trader in quantities larger than those in which he sells them;

(ii) the goods are bought and sold by the trader in different markets;

(iii) the trader employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, in addition to any remuneration paid to any person connected with it;

(iv) there are purchases or sales from or to persons who are connected with the trader;

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(v) purchases are matched with forward sales or vice versa;

(vi) the goods are held by the trader for longer than is normal for goods of the kind in question;

(vii) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(viii) the trader does not take physical possession of the goods;

those features in sub-paragraphs (i) to (iii) being regarded as indications that the trade is such an ordinary trade and those in sub-paragraphs (iv) to (viii) being regarded as indications of the contrary.

(4) [M785]A trade shall not be treated as failing to comply with this section by reason only of its consisting to a substantial extent of receiving royalties or licence fees if—

(a) the company carrying on the trade is engaged throughout the relevant period in—

(i) the production of films; or

(ii) the production of films and the distribution of films produced by it in the relevant period; and

(b) all royalties and licence fees received by it in that period are in respect of films produced by it in that period or sound recordings in relation to such films or other products arising from such films.

(5) [M786]A trade shall not be treated as failing to comply with this section by reason only that at any time after 19th March 1985 it consists to a substantial extent of receiving royalties or licence fees if—

(a) the company carrying on the trade is engaged in research and development throughout the relevant period; and

(b) all royalties and licence fees received by it in that period are attributable to research and development which it has carried out.

(6) [M787]A trade shall not be treated as failing to comply with this section by reason only of its consisting of letting ships, other than oil rigs or pleasure craft, on charter if—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom; and

(c) throughout the relevant period the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in subsection (7) below are satisfied in relation to every letting on charter by the company;

but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings of such ships, the trade shall not thereby be treated as failing to comply with this section if those lettings and any other activity of a kind falling within subsection (2) above do not, when taken together, amount to a substantial part of the trade.

(7) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the lease or otherwise) for extending it beyond that period otherwise than at the option of the lessee;

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(b) during the period of the letting there is no provision in force (whether made in the lease or otherwise) for the grant of a new letting to end, otherwise than at the option of the lessee, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period; and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) above on behalf of the company;

but this subsection shall have effect, in relation to any letting between the company in question and its subsidiary, or between it and another company of which it is a subsidiary or between it and a company which is a subsidiary of the same company of which it is a subsidiary, as if paragraph (c) were omitted.

(8) [M788]The trade must, during the relevant period, be conducted on a commercial basis and with a view to the realisation of profits.

(9) [M789]A trade which consists to any substantial extent of oil extraction activities shall, if it would be a qualifying trade were it not for subsection (2)(d) above, be treated as a qualifying trade for the purposes of section 289(1)(d).

Textual Amendments

F508 Ss.297-298*omitted by* 1988(F) Sch.4 para.8*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M780 Source-1983 Sch.5 6(1)
M781 Source-1983 Sch.5 6(2); 1986 Sch.9 8(2)
M782 Source-1985 s.44(3)
M783 Source-1984 s.37(1)
M784 Source-1983 Sch.5 6(4); 1986 Sch.9 8(4); 1981 s.56(3), Sch.11
M785 Source-1983 Sch.5 6(2A); 1984 s.37(2); 1987 s.43
M786 Source-1983 Sch.5 6(2AA); 1985 s.44(4)
M787 Source-1983 Sch.5 6(2B), (2C); 1984 s.37(2); 1986 Sch.9 8(3)
M788 Source-1983 Sch.5 6(3)
M789 Source-1983 Sch.5 2B(7); 1986 Sch.9 4

298 Provisions supplementary to sections 293 and 297. [F509]

(1) [M790]For the purposes of sections 293(9) and 297 a person has a controlling interest in a trade—

(a) in the case of a trade carried on by a company, if—

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(i) he controls the company;

(ii) the company is a close company and he or an associate of his is a director of the company and the beneficial owner of, or able directly or through the medium of other companies or by any other indirect means to control, more than 30 per cent. of the ordinary share capital of the company; or

(iii) not less than half of the trade could in accordance with section 344(2) be regarded as belonging to him;

(b) in any other case, if he is entitled to not less than half of the assets used for, or the income arising from, the trade.

(2) For the purposes of subsection (1) above, there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(3) References in this section and section 297 to a trade shall be construed without regard to so much of the definition of "trade" in section 832(1) as relates to adventures or concerns in the nature of trade; but the foregoing provisions do not affect the construction of references in section 297(2)(g) or subsection (1) above to a trade carried on by a person other than the company and those references shall be construed as including a reference to any business, profession or vocation.

(4) [M791]The Treasury may by order amend section 297 and this section, except in relation to shares issued before 19th March 1986, in such manner as they consider expedient.

(5) [M792]In section 297—

"film" means an original master negative of a film, an original master film disc or an original master film tape;

"oil rig" means any ship which is an offshore installation for the purposes of the [M793]Mineral Workings (Offshore Installations) Act 1971;

"pleasure craft" means any ship of a kind primarily used for sport or recreation;

"property development" means the development of land, by a company which has, or at any time has had, an interest in the land (within the meaning of section 294(5)), with the sole or main object of realising a gain from disposing of the land when developed; and

"sound recording" means, in relation to a film, its sound track, original master audio disc or, as the case may be, original master audio tape.

(6) [M794]Section 297 shall have effect in relation to shares issued before 19th March 1986 subject to the following modifications—

(a) in subsection (2) the words "or those activities when taken together amount" shall be omitted;

(b) subsection (2)(h) shall not apply unless the shares were issued after 19th March 1985;

(c) subsection (2)(j) shall not apply unless the shares were issued after 13th March 1984;

(d) in subsection (3) the words in paragraph (a) "to members of the general public for their use or consumption" and paragraph (c) shall be omitted; and

(e) subsections (6) and (7) shall be omitted;

and in relation to shares issued after 18th March 1986 section 297(2) shall have effect with the omission of paragraphs (h) and (j).

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(7) [M795]Section 297(2) shall have effect so far as it relates to oil extraction only in relation to shares issued after 25th July 1986.

(8) [M796]Section 297(4) shall have effect in relation to shares issued before 17th March 1987 with the omission of paragraph (a)(ii), together with the word "or" immediately before it, (but not the word "and" at the end of it) and the words in paragraph (b) "in that period" in the second place where they appear.

Textual Amendments

F509 Ss.297-298*omitted by* 1988(F) Sch.4 para.8*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M790 Source-1981 s.56(8)-(10); 1983 Sch.5 5(9), 6(2), (3), 6(5)-(7); 1986 Sch.9 1(2), 8(4)
M791 Source-1983 Sch.5 6(8); 1986 Sch.9 1(2), 8(4)
M792 Source-1983 Sch.5 6(2B), (10); 1984 s.37(2); 1985 s.44(5); 1986 Sch.9 4
M793 1971 c. 61.
M794 Source-1985 s.44(7); 1986 Sch.9 1(2); 1984 s.37(3)
M795 Source-1986 Sch.9 8(5)
M796 Source-1987 s.43(2)

299 Disposal of shares.

(1) [M797]Where an individual disposes of any eligible shares before the end of the relevant period, then—

(a) if the disposal is otherwise than by way of a bargain made at arm's length, he shall not be entitled to any relief in respect of those shares; and

(b) in any other case, the amount of relief to which he is entitled in respect of those shares shall be reduced by the amount or value of the consideration which he receives for them.

(2) [M798]Where after 18th March 1986 an option, the exercise of which would bind the grantor to purchase any shares, is granted to an individual during the relevant period, the individual shall not be entitled to any relief in respect of the shares to which the option relates.

(3) [M799]Where an individual holds ordinary shares of any class in a company and the relief has been given (and not withdrawn) in respect of some shares of that class but not others, any disposal by him of ordinary shares of that class in the company, and any option of the kind mentioned in subsection (2) above, shall be treated for the purposes of this section as relating—

(a) first, to those (if any) in respect of which relief has been given (and not withdrawn) under Chapter II of Part IV of the Finance Act 1981 rather than to others; and

(b) then, to those in respect of which relief has been given (and not withdrawn) under this Chapter (or Schedule 5 to the Finance Act 1983).

(4) [M800]Where the relief has been given (and not withdrawn) to an individual in respect of shares of any class in a company which have been issued to him at different times, any disposal by him of shares of that class shall, subject to subsection (3) above, be

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treated for the purposes of this section as relating to those issued earlier rather than to those issued later.

(5) [M801]Where shares in respect of which the relief was given have by virtue of any such allotment as is mentioned in section **[**[F510]126(2)(a) of the 1992 Act**]** (not being an allotment for payment) fallen to be treated under section **[**[F510]127**]** of that Act as the same asset as a new holding—

(a) a disposal of the whole or part of the new holding shall be treated for the purposes of this section as a disposal of the whole or a corresponding part of those shares; and

(b) the new holding shall be treated for the purposes of subsection (3) above as shares in respect of which the relief has been given.

(6) [M802]For the purposes of this section—

(a) shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange; and

(b) references to a disposal of shares include references to the grant of an option (after 18th March 1986) the exercise of which would bind the grantor to sell the shares.

Textual Amendments

F510 Words in s. 299(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(17)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C265 S. 299 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 150(4)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M797 Source-1983 Sch.5 7(1)
M798 Source-1983 Sch.5 7(1A); 1986 Sch.9 9(2), (6)
M799 Source-1983 Sch.5 7(2); 1983 (No.2) Sch.1 4(2); 1986 Sch.9 9(3)
M800 Source-1983 Sch.5 7(2A); 1983 (No.2) Sch.1 4(3); 1986 Sch.9 9(4)
M801 Source-1983 Sch.5 7(3); 1983 (No.2) Sch.1 4(4); 1981 s.57(4)
M802 Source-1983 Sch.5 7(4); 1983 (No.2) Sch.1 4(5); 1986 Sch.9 9(5)

[[F511]**299A Loan linked investments.**

(1) An individual shall not be entitled to relief in respect of any shares in a company issued on or after 16th March 1993 if—

(a) there is a loan made by any person, at any time in the relevant period, to that individual or any associate of his; and

(b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not subscribed for those shares or had not been proposing to do so.

(2) References in this section to the making by any person of a loan to any individual or an associate of his include references—

(a) to the giving by that person of any credit to that individual or any associate of his; and

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(b) to the assignment or assignation to that person of any debt due from that individual or any associate of his;

and the references in section 307(6)(ca) to the making of a loan shall be construed accordingly.**]**

Textual Amendments

F511 S. 299A inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(1)(4)**

VALID FROM 31/07/1998

[F512 299B Pre-arranged exits.

(1) An individual is not eligible for relief in respect of any shares in a company if the relevant arrangements include—

(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the same company;

(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;

(c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.

(2) The arrangements referred to in subsection (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 304A(1).

(3) The arrangements referred to in subsection (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—

(a) the relevant arrangements include arrangements for the company to be wound up; or

(b) the company is wound up otherwise than for bona fide commercial reasons.

(4) The arrangements referred to in subsection (1)(d) above do not include any arrangements which are confined to the provision—

(a) for the company itself, or

(b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,

of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.

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(5) The reference in subsection (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 in that section.

(6) In this section "the relevant arrangements" means—
- (a) the arrangements under which the shares are issued to the individual; and
- (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

(7) In this section "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.**]**

Textual Amendments

F512 S. 299B inserted (with effect in accordance with s. 71(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 71(1)**

300 Value received from company.

(1) [M803]Subject to section 299, where an individual who subscribes for eligible shares in a company—
- (a) has, before the issue of the shares but within the relevant period, received any value from the company; or
- (b) after their issue but before the end of the relevant period, receives any such value;

the amount of the relief to which he is entitled in respect of the shares shall be reduced by the value received; but the value received shall be disregarded to the extent to which relief under Schedule 5 to the Finance Act 1983 or under this Chapter has been reduced on its account.

(2) [M804]For the purposes of this section an individual receives value from the company if the company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;
- (b) repays any debt owed to the individual other than a debt which was incurred by the company—
  - (i) on or after the date on which he subscribed for the shares in respect of which the relief is claimed; and
  - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
- (c) makes to the individual any payment for giving up his right to any debt (other than a debt in respect of a payment of the kind mentioned in section 291(3)(a) or (e) or an ordinary trade debt) on its extinguishment;
- (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
- (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares in respect of which relief is claimed;

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(f) provides a benefit or facility for the individual;

(g) transfers an asset to the individual for no consideration or for consideration less than its market value or acquires an asset from him for consideration exceeding its market value; or

(h) makes to him any other payment except a payment of the kind mentioned in section 291(3)(a), (b), (c), (d) or (e) or a payment in discharge of an ordinary trade debt.

(3) For the purposes of this section an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6).

(4) The value received by an individual is—

(a) in a case within paragraph (a), (b) or (c) of subsection (2) above, the amount receivable by the individual or, if greater, the market value of the shares, securities or debt in question;

(b) in a case within paragraph (d) of that subsection, the amount of the liability;

(c) in a case within paragraph (e) of that subsection, the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares in respect of which relief is claimed;

(d) in a case within paragraph (f) of that subsection, the cost to the company of providing the benefit or facility less any consideration given for it by the individual;

(e) in a case within paragraph (g) of that subsection, the difference between the market value of the asset and the consideration (if any) given for it;

(f) in a case within paragraph (h) of that subsection, the amount of the payment; and

(g) in a case within subsection (3) above, the amount of the payment or, as the case may be, the market value of the asset.

(5) [M805]For the purposes of this section an individual also receives value from the company if any person who would, for the purposes of section 291, be treated as connected with the company—

(a) purchases any of its share capital or securities which belong to the individual; or

(b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities;

and the value received by the individual is the amount receivable by the individual or, if greater, the market value of the shares or securities in question.

Marginal Citations

M803 Source-1983 Sch.5 8(1); 1986 Sch.9 10(2)

M804 Source-1983 Sch.5 8(2); 1981 s.58(2)-(4); 1986 Sch.9 10(3)

M805 Source-1983 Sch.5 8(3); 1983 (No.2) Sch.1 5

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VALID FROM 11/05/2001

[F513 300A Receipt of replacement value

(1) Where—

(a) any relief attributable to any eligible shares comprised in an issue of shares subscribed for by an individual ("the individual") would, in the absence of this section, be reduced or withdrawn under section 300 by reason of a receipt of value within subsection (2) or (5) of that section ("the original value"),

(b) the original supplier receives value ("the replacement value") from the original recipient by virtue of a qualifying receipt, and

(c) the amount of the replacement value is not less than the amount of the original value,

the receipt of the original value shall be disregarded for the purposes of section 300.

This is subject to subsections (7) and (8) below.

(2) For the purposes of this section—

"the original recipient" means the person who receives the original value, and

"the original supplier" means the person from whom that value was received.

(3) Where the amount of the original value is, by virtue of subsection (1BA) of section 300, treated as reduced for the purposes of that section as it applies in relation to the eligible shares in question, the reference in subsection (1)(c) above to the amount of the original value shall be read as a reference to the amount of that value disregarding the reduction.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) above if it arises—

(a) by reason of the original recipient doing one or more of the following—

(i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which subsection (5) below applies;

(ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset;

(iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset;

(b) where the receipt of the original value was within section 300(2)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or

(c) where the receipt of the original value was within section 300(5), by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.

(5) This subsection applies to—

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(a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—
  (i) the original supplier, or
  (ii) any other person who, at any time in the period of restriction, is an associate of, or connected with, that supplier (whether or not he is such an associate, or so connected, at the material time),

  which is reasonable in relation to the market value of those goods, services or facilities;

(b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—
  (i) the original recipient, or
  (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);

(c) any payment for the acquisition of an asset which does not exceed its market value;

(d) any payment, as rent for any property occupied by—
  (i) the original recipient, or
  (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),

  of an amount not exceeding a reasonable and commercial rent for the property;

(e) any payment in discharge of an ordinary trade debt; and

(f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii) above.

(6) For the purposes of this section, the amount of the replacement value is—

(a) in a case within paragraph (a) of subsection (4) above, the aggregate of—
  (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
  (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,

(b) in a case within subsection (4)(b) above, the same as the amount of the original value, and

(c) in a case within subsection (4)(c) above, the amount or value of the consideration received by the original supplier,

and section 300(4) and (5) shall apply for the purposes of determining the amount of the original value.

(7) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of this section, as it applies in relation to the eligible shares, to the extent to which that receipt has previously been set (under this section) against any receipts of value which are, in consequence, disregarded for the purposes of section 300 as that section applies in relation to those shares or any other shares subscribed for by the individual.

(8) The receipt of the replacement value by the original supplier ("the event") shall be disregarded for the purposes of this section if—

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(a) the event occurs before the start of the period of restriction, or

(b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or

(c) where an appeal has been brought by the individual against an assessment to withdraw or reduce any relief attributable to the eligible shares by reason of the receipt of the original value, the event occurs more than 60 days after the amount of relief which falls to be withdrawn has been finally determined.

But nothing in this section requires the replacement value to be received after the original value.

(9) Subsection (10) below applies where—

(a) the receipt of the replacement value by the original supplier is a qualifying receipt (for the purposes of subsection (1) above) in consequence of which any receipts of value are disregarded for the purposes of section 300 as that section applies in relation to the shares in question or any other shares subscribed for by the individual in question, and

(b) the event which gives rise to the receipt is (or includes) a subscription for shares by—

(i) the individual, or

(ii) any person who, at any time in the period of restriction, is an associate of his, whether or not he is such an associate at the material time.

(10) Where this subsection applies, the person who subscribes for the shares as mentioned in subsection (9)(b) above shall not—

(a) be eligible for any relief under this Chapter in relation to those shares or any other shares in the same issue, or

(b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of Schedule 5B to the 1992 Act (enterprise investment scheme: reinvestment).

(11) In this section—

(a) any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit, and

(b) references to "the period of restriction" are to the period of restriction relating to the shares mentioned in subsection (1)(a) above.**]**

Textual Amendments

F513 S. 300A inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 16**

301 Provisions supplementary to section 300.

(1) [M806]Where by virtue of section 300 any relief is withheld or withdrawn in the case of an individual to whom ordinary shares in a company have been issued at different times before 19th March 1986 the relief shall be withheld or withdrawn in respect of shares issued earlier rather than in respect of shares issued later.

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(2) [M807]Where relief to which an individual is entitled in respect of eligible shares issued after 18th March 1986 is reduced by virtue of section 300, effect shall be given to the reduction by apportioning it, as between any such eligible shares held by him, in such a way as appears to the inspector, or on an appeal to the Commissioners concerned, to be just and reasonable.

(3) [M808]For the purposes of section 300(2)(d) a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(4) For the purposes of section 300(2)(e) there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
- (b) the amount of any debt due from the individual to a third person which has been assigned to the company.

(5) In this section and section 300, "an ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where the credit given does not exceed six months and is not longer than that normally given to the customers of the person carrying on the trade or business.

(6) In this section and section 300—
- (a) any reference to a payment or transfer to an individual includes a reference to a payment or transfer made to him indirectly or to his order or for his benefit; and
- (b) any reference to an individual includes a reference to an associate of his and any reference to the company includes a reference to any person connected with the company.

(7) [M809]Section 300 shall apply in relation to shares issued before 19th March 1986 with the omission—
- (a) in subsection (2)(e) of the words "which has not been repaid in full before the issue of the shares in respect of which relief is claimed"; and
- (b) in subsection (4)(c) of the words "reduced by the amount of any repayment made before the issue of the shares in respect of which relief is claimed".

Marginal Citations

M806 Source-1983 Sch.5 8(2); 1981 s.58(5)
M807 Source-1983 Sch.5 8(4); 1986 Sch.9 10(4)
M808 Source-1981 s.58(6)-(9); 1983 Sch.5 8(2); 1986 Sch.9 10(3); 1987 Sch.15 14(2)
M809 Source-1985 Sch.9 1(2), 10(3)

VALID FROM 11/05/2001

[F514301A Receipts of insignificant value: supplementary provision

(1) In this section and section 300 references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

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This is subject to subsection (3) below.

(2) For the purposes of this section and section 300 "an amount of insignificant value" means an amount of value which—
- (a) does not exceed £1,000, or
- (b) if it exceeds that amount, is insignificant in relation to the amount subscribed by the individual in question for the eligible shares in question.

(3) For the purposes of section 300, if, at any time in the period—
- (a) beginning one year before the eligible shares in question are issued, and
- (b) expiring at the end of the issue date,

arrangements are in existence which provide for the individual in question to receive or to be entitled to receive, at any time in the period of restriction relating to those shares, any value from the company that issued those shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.

(4) For the purposes of this section—
- (a) references to the individual include references to any person who, at any time in the period of restriction relating to the shares in question, is an associate of his (whether or not he is such an associate at the material time), and
- (b) the reference in subsection (3) above to the company includes a reference to any person who, at any time in the period of restriction relating to the shares in question, is connected with the company (whether or not that person is so connected at the material time).

(5) For the purposes of this section, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.**]**

Textual Amendments

F514 S. 301A inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 18**

302 Replacement capital.

M810(1) An individual is not entitled to relief in respect of any shares in a company where—
- (a) at any time in the relevant period, the company or any of its subsidiaries—
  - (i) begins to carry on as its trade or as part of its trade a trade which was previously carried on at any time in that period otherwise than by the company or any of its subsidiaries; or
  - (ii) acquires the whole, or greater part, of the assets used for the purposes of a trade previously so carried on; and
- (b) subsection (2) below applies in relation to that individual.

(2) This subsection applies in relation to an individual where—
- (a) any person or group of persons to whom an interest amounting in the aggregate to more than a half share in the trade (as previously carried on) belonged, at any time in the relevant period, is or are a person or group of persons to whom

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such an interest in the trade carried on by the company belongs or has, at any such time, belonged; or

(b) any person or group of persons who control or, at any such time, have controlled the company is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade;

and the individual is that person or one of those persons.

(3) An individual is not entitled to relief in respect of any shares in a company where—

(a) the company comes to acquire all of the issued share capital of another company, at any time in the relevant period; and

(b) any person or group of persons who control or have, at any such time, controlled the company is or are a person or group of persons who, at any such time, controlled that other company;

and that individual is that person or one of those persons.

(4) For the purposes of subsection (2) above—

(a) the persons to whom a trade belongs and, where a trade belongs to two or more persons, their respective shares in that trade shall be determined in accordance with section 344(1)(a) and (b), (2) and (3); and

(b) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person.

(5) In this section—

"subsidiary" means a subsidiary of a kind which a qualifying company may have by virtue of sections 308 and 309; and

"trade" includes any business, profession or vocation, and references to a trade previously carried on include references to part of such a trade.

Modifications etc. (not altering text)

C266 *See* 1988(F) s.50*and* Sch.4 para.9(1), (2)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C267 *See* 1988(F) s.50*and* Sch.4 para.9(3)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C268 *Definition of*
"trade"
omitted by 1988(F) Sch.4 para.9(4)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M810 Source-1983 Sch.5 9; 1983 (No.2) Sch.1 6

303 Value received by persons other than claimants.

(1) [M811]The relief to which an individual is entitled in respect of any shares in a company shall be reduced in accordance with subsection (2) below if at any time in the relevant period the company repays, redeems or repurchases any of its share capital which belongs to any member other than—

(a) that individual; or

(b) another individual whose relief is thereby withdrawn or reduced by virtue of section 299 or reduced by virtue of section 300(2)(a);

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or makes any payment to any such member for giving up his right to any of the company's share capital on its cancellation or extinguishment.

(2) [M812]Where subsection (1) above applies, the amount of relief to which an individual is entitled shall be reduced by the amount receivable by the member or, if greater, the nominal value of the share capital in question; and where, apart from this subsection, two or more individuals would be entitled to relief the reduction shall be made in proportion to the amounts of relief to which they would, apart from this subsection, have been entitled.

(3) Where at any time in the relevant period a member of a company receives or is entitled to receive any value from the company within the meaning of this subsection, then, for the purposes of section 291(4) in its application to any subsequent time—

(a) the amount of the company's issued ordinary share capital; and

(b) the amount of the part of that capital which consists of the shares which (within the meaning of section 291) the individual directly or indirectly possesses or is entitled to acquire, and the amount of the part consisting of the remainder,

shall each be treated as reduced in accordance with subsection (4) below.

(4) The amount of each of the parts mentioned in subsection (3)(b) above shall be treated as equal to such proportion of that amount as the amount subscribed for that part less the relevant value bears to the amount subscribed; and the amount of the issued share capital shall be treated as equal to the sum of the amounts treated under this subsection as the amount of those parts respectively.

(5) In subsection (4) above "the relevant value", in relation to each of the parts there mentioned, means the value received by the member or members entitled to the shares of which that part consists.

(6) For the purposes of subsection (3) above a member of a company receives or is entitled to receive value from the company in any case in which an individual would receive value from the company by virtue of section 300(2)(d), (e), (f), (g) or (h) (but treating as excepted from paragraph (h) all payments made for full consideration) and the value received shall be determined as for the purposes of that section.

(7) For the purposes of subsection (6) above a person shall be treated as entitled to receive anything which he is entitled to receive at a future date or will at a future date be entitled to receive.

(8) [M813]Subsection (1) above does not apply in relation to the redemption of any share capital for which the redemption date was fixed before 15th March 1983.

(9) Where—

(a) a company issues share capital ("the original shares") of nominal value equal to the authorised minimum (within the meaning of the [M814]Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with); and

(b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares;

subsection (1) above shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

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In relation to companies incorporated under the law of Northern Ireland references in this subsection to the Companies Act 1985 and to section 117 of that Act shall have effect as references to the [M815]Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.

(10) [M816]Where relief to which an individual is entitled in respect of eligible shares issued after 18th March 1986 is reduced by virtue of this section, effect shall be given to the reduction by apportioning it as between any such eligible shares held by him in such a way as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable.

(11) [M817]In relation to shares issued before 19th March 1986, subsection (1)(b) above shall have effect with the omission of the words "withdrawn or reduced by virtue of section 299 or".

Marginal Citations

M811 Source-1983 Sch.5 10(1); 1986 Sch.9 11(2)
M812 Source-1981 s.59(3)-(8); 1983 Sch.5 10(2)
M813 Source-1983 Sch.5 10(3), (4); 1987 Sch.15 15(1)
M814 1985 c. 6.
M815 S.I. 1986/1032 (N.I. 6)
M816 Source-1983 Sch.5 10(5A); 1986 Sch.9 11(3)
M817 Source-1986 Sch.9 1(2)

VALID FROM 11/05/2001

[F515303AA Insignificant repayments disregarded for purposes of s.303(1)

(1) Any repayment shall be disregarded for the purposes of section 303(1) (repayments etc. which cause withdrawal or reduction of relief) if whichever is the greater of—
  (a) the market value of the shares to which it relates ("the target shares") immediately before the event occurs, and
  (b) the amount received by the member in question,

  is insignificant in relation to the market value of the remaining issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.

  This is subject to subsection (4) below.

(2) For the purposes of this section "repayment" means a repayment, redemption, repurchase or payment mentioned in section 303(1) (repayments etc. which cause withdrawal or reduction of relief).

(3) For the purposes of subsection (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.

(4) Where an individual subscribes for eligible shares in a company, subsection (1) above does not apply to prevent section 303(1) having effect in relation to those shares if, at a relevant time, arrangements are in existence that provide—

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(a) for a repayment by the company or any subsidiary of the company (whether or not it is such a subsidiary at the time the arrangements are made), or

(b) for anyone to be entitled to such a repayment,

at any time in the period of restriction relating to those shares.

(5) For the purposes of subsection (4) above "a relevant time" means any time in the period—

(a) beginning one year before the eligible shares were issued, and

(b) expiring at the end of the issue date.**]**

Textual Amendments

F515 S. 303AA inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 20**

VALID FROM 28/07/2000

[F516 303A Restriction on withdrawal of relief under section 303.

(1) Subsections (4) and (7) below apply where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.

(2) For the purposes of this section "repayment" means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) of that Schedule (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of this section "the relevant amount" is the amount determined by the formula—

$$X - 5Y$$

Where—

X is the amount of the repayment, and

Y is the aggregate amount of investment relief withdrawn by reason of the repayment.

(4) Where the relevant amount does not exceed £1,000 the repayment shall be disregarded for the purposes of section 303(1), unless repayment arrangements are in existence at any time in the period—

(a) beginning one year before the shares mentioned in subsection (1) above are issued, and

(b) expiring at the end of the issue date of those shares.

(5) For this purpose "repayment arrangements" means arrangements which provide—

(a) for a repayment by the company that issued the shares ("the issuing company") or any subsidiary of that company, or

(b) for anyone to be entitled to such a repayment,

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at any time.

(6) Subsection (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it is such a subsidiary—
  (a) at the time of the repayment mentioned in subsection (1) above, or
  (b) when the arrangements were made.

(7) Where the repayment is not disregarded by virtue of subsection (4) above, the amount receivable by reason of the repayment shall be treated for the purposes of section 303(1C)(a) as an amount equal to the relevant amount.

(8) Where, but for the existence of paragraph 57(1) of Schedule 15 to the Finance Act 2000 (repayments causing insignificant changes to share capital to be disregarded), any investment relief would be withdrawn by reason of a repayment, the repayment shall be disregarded for the purposes of section 303(1).

(9) In this section—
  (a) "investment relief" has the same meaning as in that Schedule; and
  (b) references to the withdrawal of investment relief include its reduction.**]**

Textual Amendments

F516 S. 303A inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 2(3)**

304 Husband and wife.

(1) [M818]*In the case of any amount subscribed by a married woman for eligible shares issued to her at a time—*
  (a) *when she is living with her husband; and*
  (b) *which falls in a year of assessment for which his income includes (or, if there were any, would include) any of hers,*

the deduction under section 289(5)*shall, subject to Chapter* II*of this Part and subsections* (2)*to* (5)*below, be made from his total income, and references in this Chapter to the relief to which an individual is entitled in respect of any shares shall be construed accordingly.*

(2) [M819]*The limits in section* 290*shall apply jointly to a husband and wife as respects amounts subscribed for shares at a time—*
  (a) *when they are married and living together; and*
  (b) *which falls in a year of assessment for which his income includes (or, if there were any, would include) any of hers;*

but if the husband dies or they are divorced or cease to live together before the end of any such year those limits shall apply to the wife as respects amounts subscribed by her for shares issued in the remainder of the year as if it were a separate year of assessment.

(3) *Where an application under section* 283(1)*or an election under section* 287(1)*is in force for a year of assessment in which shares are issued for which amounts have been subscribed both by the husband and the wife, then, if section* 290(2)*requires a restriction to be placed on the relief given on a claim or claims in respect of*

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those amounts, the available relief shall be divided between the husband and wife in proportion to the amounts which have been respectively subscribed by them for the shares to which the claim or claims relate and which would, apart from the restriction, be eligible for the relief.

(4) *Subsections* (2)*and* (3)*above shall apply in relation to the limit of* £5,000*imposed by section* 289(7)*as it applies in relation to the limit of* £40,000*imposed by section* 290(2);*and for this purpose the reference in subsection* (3)*above to a division in proportion to the amounts subscribed by the husband and wife shall be construed as a reference to a division in proportion to the aggregate amounts of the relevant deductions sought by each of them in their claims under section* 289(6) [F517].

[[F518](5) Subsection (1) of section 299 shall not apply to a disposal made by a married man to his wife or a married woman to her husband at a time when they are living together; but where shares issued to one of them have been transferred to the other by a transaction inter vivos that subsection shall apply on the disposal of the shares by the transferee to a third person and any assessment for withdrawing relief in respect of the shares shall be made on the transferee.

(6) If any relief given for the year 1989-90 or any earlier year of assessment in respect of shares for which a married man or married woman has subscribed and which were issued while they were living together falls to be withdrawn in the year 1990-91 or any subsequent year of assessment by virtue of a disposal of those shares by the person who subscribed for them, any assessment for withdrawing that relief shall be made on the person making the disposal and shall be made by reference to the reduction of tax flowing from the amount of the relief regardless of any allocation of that relief under section 280 or of any allocation of the reduction under section 284 for the year of assessment for which the relief was given.**]**

Textual Amendments

F517 *Repealed by* 1988(F) ss.35*and* 148*and* Sch.3 para.12(1)*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F518 1988(F) s.35*and* Sch.3 para.12*for* 1990-91*and subsequent years. Previously*
"(5) Subsection (1) of section 299 shall not apply to a disposal made by a married woman to her husband at a time when she is living with him or to a disposal made at such a time by him to her; but where shares issued to one of them have been transferred to the other by a transaction inter vivos—(a) that subsection shall apply on the disposal of the shares by the transferee to a third person; and (b) if at any time the husband and wife are divorced or cease to live together and any of those shares have not been disposed of by the transferee before that time, any assessment for withdrawing relief in respect of those shares shall be made on the transferee. (6) Where a husband and wife are divorced or cease to live together, then, if any relief given in respect of shares for which either of them has subscribed and which were issued while they were married and living together falls to be withdrawn by virtue of a subsequent disposal of those shares by the person who subscribed for them, any assessment for withdrawing that relief shall be made on the person making the disposal and shall be made by reference to the reduction of tax flowing from the amount of the relief regardless of any allocation of that relief under section 280 or of any allocation of the reduction under section 284."

Marginal Citations

M818 Source-1983 Sch.5 12(1)

M819 Source-1981 s.60(4)-(7); 1983 Sch.5 12(2), (3); 1987 s.42(4)

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VALID FROM 31/07/1998

[F519 304A Acquisition of share capital by new company.

(1) This section applies where—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company");

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;

(e) at some time before the issue of the new shares—

(i) the old company issued eligible shares; and

(ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and

(f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—

(i) will be effected for bona fide commercial reasons; and

(ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.

(2) For the purposes of this Chapter—

(a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and

(b) any relief under this Chapter which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

(3) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—

(a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;

(b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;

(c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and

(d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which his liability was so reduced in respect of the old shares.

(4) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—

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(a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;

(b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;

(c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and

(d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

(5) Where relief becomes so attributable to any new shares—

(a) this Chapter shall have effect as if anything which, under section 306(2), 307(1A) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

(b) any appeal brought by the old company against a notice under section 307(1A)(b) may be prosecuted by the new company as if it had been brought by that company.

(6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions "eligible shares" and "subscriber shares", include references to securities.

(7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.

(8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.**]**

Textual Amendments

F519 S. 304A inserted (with effect in accordance with s. 74(3), Sch. 13 para. 17(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 17(1)**; and see also the s. 304A inserted (with effect in accordance with s. 74(3), Sch. 13 para. 41(2) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 paras. 37, **41(1)**

305 Reorganisation of share capital.

M820(1) Where shares in respect of which relief has been given and not withdrawn have by virtue of any such allotment, otherwise than for payment, as is mentioned in section **[**F520126(2)(a) of the 1992 Act**]** fallen to be treated under section **[**F520127**]** of that Act as the same asset as a new holding—

(a) a disposal of the whole or part of the new holding shall be treated for the purposes of this Part as a disposal of the whole or a corresponding part of those shares; and

(b) the new holding shall be treated for the purposes of section 299(3) as shares in respect of which relief has been given and not withdrawn.

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(2) Where—

(a) there is, by virtue of any such allotment for payment as is mentioned in section 77(2)(a) of the 1979 Act, a reorganisation affecting ordinary shares in respect of which relief has been given; and

(b) immediately before the reorganisation the relief had not been withdrawn; and

(c) the amount of relief (or, where the relief has been reduced, the amount remaining) and the market value of the shares immediately before the reorganisation, exceeds their market value immediately after the reorganisation;

the relief shall be reduced by an amount equal to whichever is the smaller of those excesses.

(3) Subsection (2) above shall also apply where—

(a) an individual who has received, or become entitled to receive, in respect of any ordinary shares in a company, a provisional allotment of shares in or debentures of the company disposes of his rights; and

(b) subsection (2) above would have applied (apart from this subsection) had those rights not been disposed of but an allotment of shares or debentures made to him.

(4) This section has effect in relation to reorganisations occurring after 18th March 1986.

Textual Amendments

F520 Words in s. 305(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(17)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M820 Source-1983 Sch.5 16A(1), (3), (4); 1986 Sch.9 17(1), (2)

VALID FROM 03/05/1994

[F521 305A Relief for loss on disposal of shares.

(1) Section 574 shall apply on the disposal by an individual of shares to which relief is attributable as it applies to a disposal by him of shares in a qualifying trading company for which he has subscribed ("qualifying trading company" and "subscribed" having for this purpose the same meaning as in that section).

(2) For the purposes of that section (as applied by this) sections 575(1) and (3) and 576(2) and (3) shall apply**]**

Textual Amendments

F521 S. 305A inserted (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 20**

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306 Claims.

[M821](1) A claim for relief in respect of eligible shares issued by a company in any year of assessment shall be made—

(a) not earlier than the end of the period of four months mentioned in section 289(8)(a), (b) or (c), as the case may be; and

(b) not later than two years after the end of that year of assessment or, if that period of four months ended after the end of that year, not later than two years after the end of that period.

(2) A claim for relief in respect of eligible shares in a company shall not be allowed unless it is accompanied by a certificate issued by the company in such form as the Board may direct and certifying that the conditions for the relief, so far as applying to the company and the trade, are satisfied in relation to those shares.

(3) Before issuing a certificate for the purposes of subsection (2) above a company shall furnish the inspector with a statement to the effect that it satisfies the conditions for the relief, so far as they apply in relation to the company and the trade, and has done so at all times since the beginning of the relevant period.

(4) No such certificate shall be issued without the authority of the inspector or where the company, or a person connected with the company, has given notice to the inspector under section 310(2).

(5) Any statement under subsection (3) above shall contain such information as the Board may reasonably require, shall be in such form as the Board may direct and shall contain a declaration that it is correct to the best of the company's knowledge and belief.

(6) Where a company has issued a certificate for the purposes of subsection (2) above, or furnished a statement under subsection (3) above and—

(a) the certificate or statement is made fraudulently or negligently; or

(b) the certificate was issued in contravention of subsection (4) above;

the company shall be liable to a penalty not exceeding **[**[F522]£3,000**]**.

(7) For the purposes of regulations made under section 203 no regard shall be had to the relief unless a claim for it has been duly made and admitted.

(8) No application shall be made under section 55(3) or (4) of the Management Act (application for postponement of payment of tax pending appeal) on the ground that the applicant is entitled to the relief unless a claim for the relief has been duly made by him.

(9) For the purposes of section 86 of the Management Act (interest on overdue tax), tax charged by an assessment—

(a) shall be regarded as due and payable notwithstanding that relief from the tax (whether by discharge or repayment) is subsequently given on a claim for the relief; but

(b) shall, unless paid earlier or due and payable later, be regarded as paid on the date of the making of the claim on which the relief is given;

and section 91 of that Act (effect on interest of reliefs) shall not apply in consequence of any discharge or repayment for giving effect to the relief.

(10) [M822]For the purposes of the provisions of the Management Act relating to appeals against decisions on claims, the refusal of the inspector to authorise the issue of a

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certificate under subsection (2) above shall be taken to be a decision refusing a claim made by the company.

This subsection shall not apply in relation to shares issued before 19th March 1986.

Textual Amendments

F522 1989 s.170(3)*in relation to things done or omitted on or after* 27*July* 1989.*Previously* "£250 or, in the case of fraud, £500.".

Modifications etc. (not altering text)

C269 S. 306(1)(b) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch.2**.
S. 306(1)(b) modified (28.3.1992) for the year of assessment 1989-90 by S.I. 1992/511, reg. 9, **Sch.2**.
S. 306(1)(b) applied (with modifications) for the year of assessment 1990-91 by S.I. 1993/415, regs. 1(1), 9, **Sch.2**

C270 *See* 1988(F) s.50*and* Sch.4 para.10*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

Marginal Citations

M821 Source-1983 Sch.5 13(1)-(9); 1981 s.61(6)

M822 Source-1983 Sch.5 13(10); 1986 Sch.9 1(2), 13

307 Withdrawal of relief.

(1) [M823]Where any relief has been given which is subsequently found not to have been due, it shall be withdrawn by the making of an assessment to tax under Case VI of Schedule D for the year of assessment for which the relief was given; but where by virtue of section 289(6) relief has been given for each of two consecutive years of assessment, any withdrawal of relief shall be made for the first of those years before being made for the second.

(2) [M824]Subject to subsections (3) to (7) below, any assessment for withdrawing relief which is made by reason of an event occurring after the date of the claim may be made within six years after the end of the year of assessment in which that event occurs.

(3) No assessment for withdrawing relief in respect of shares issued to any person shall be made by reason of any event occurring after his death.

(4) Where a person has, by a disposal or disposals to which section 299(1)(b) applies, disposed of all the ordinary shares issued to him by a company, no assessment for withdrawing relief in respect of any of those shares shall be made by reason of any subsequent event unless it occurs at a time when he is connected with the company within the meaning of section 291.

(5) Subsection (2) above is without prejudice to section 36 of the Management Act ([[F523]fraudulent or negligent conduct]).

(6) In its application to an assessment made by virtue of this section, section 86 of the Management Act (interest on overdue tax) shall have effect as if the reckonable date were—

(a) [M825]in the case of relief withdrawn by virtue of section 289(11)—

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(i) so far as effect has been given to the relief in accordance with regulations under section 203, 5th April in the year of assessment in which effect was so given;

(ii) so far as effect has not been so given, the date on which the relief was granted.

(b) [M826]in the case of relief withdrawn by virtue of section 291, 293, 297, 302, 303(1) or 305 in consequence of any event after the grant of the relief, the date of that event;

(c) in the case of relief withdrawn by virtue of section 299(1) in consequence of a disposal after the grant of the relief, the date of the disposal;

[[F524](ca) in the case of relief withdrawn by virtue of section 299A in consequence of the making of any loan after the grant of the relief, the date of the making of the loan;**]**

(d) in the case of relief withdrawn by virtue of section 300 in consequence of a receipt of value after the grant of the relief, the date of the receipt.

(7) [M827]For the purposes of subsection (6) above the date on which the relief is granted is the date on which a repayment of tax for giving effect to the relief was made or, if there was no such repayment, the date on which the inspector issued a notice to the claimant showing the amount of tax payable after giving effect to the relief.

(8) [M828]Where a company has ceased to be a qualifying company in consequence of the operation of section 294, subsection (6) above shall apply as if the relief was withdrawn in consequence of an event which occurred at the time when the company so ceased to be a qualifying company.

(9) Subsections (1) to (7) above apply in relation to relief under Chapter II of Part IV of the Finance Act 1981 as they apply in relation to relief under this Chapter (or Schedule 5 to the Finance Act 1983) but—

(a) with the substitution for references to sections 299 (in both places), 291, 289(11), 293, 297, 302, 303(1), 305 and 300 of this Act of references respectively to sections 57, 54, 59(1), 53(7), 54, 55, 56, 59(2) and 58 of the Finance Act 1981; and

(b) with the omission of subsection (6)(a)(i).

Textual Amendments

F523 1989 s.149(4)(b)*but does not affect the making of assessments for years before* 1983-84*or for accounting periods ending before* 1*April* 1983.*Previously*
"fraud and wilful default) and section 37 of that Act (neglect.".

F524 S. 307(6)(ca) inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(3)(4)**

Marginal Citations

M823 Source-1983 Sch.5 14(1), (1A); 1987 s.42(5)

M824 Source-1981 s.62(2)-(5); 1983 Sch.5 14(2)

M825 Source-1981 s.62(6)(d); 1983 Sch.5 14(2)

M826 Source-1981 s.62(6)(a)-(c); 1983 Sch.5 14(2); 1983 Sch.1 8; 1986 Sch.9 14

M827 Source-1981 s.62(7)

M828 Source-1983 Sch.5 5A(10); 1986 Sch.9 7

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308 Application to subsidiaries.

[M829](1) A qualifying company may, in the relevant period, have one or more subsidiaries if—

(a) the conditions mentioned in subsection (2) below are satisfied in respect of the subsidiary or, as the case may be, each subsidiary and, except as provided by subsection (3) below, continue to be so satisfied until the end of the relevant period; and

(b) the subsidiary or, as the case may be, each subsidiary exists wholly, or substantially wholly, for the purpose of carrying on one or more qualifying trades or is a property managing, or dormant, subsidiary;

(2) The conditions referred to are—

(a) that the qualifying company, or another of its subsidiaries, possesses not less than 90 per cent. of the issued share capital of, and not less than 90 per cent. of the voting power in, the subsidiary;

(b) that the qualifying company, or another of its subsidiaries, would in the event of a winding up of the subsidiary or in any other circumstances be beneficially entitled to receive not less than 90 per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;

(c) that the qualifying company or another of its subsidiaries is beneficially entitled to not less than 90 per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;

(d) that no person other than the qualifying company or another of its subsidiaries has control of the subsidiary within the meaning of section 840; and

(e) that no arrangements are in existence by virtue of which the conditions in paragraphs (a) to (d) above could cease to be satisfied.

(3) The conditions shall not be regarded as ceasing to be satisfied by reason only of the subsidiary or the qualifying company being wound up, or dissolved without winding up, if—

(a) it is shown that the winding up or dissolution is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; and

(b) the net assets, if any, of the subsidiary or, as the case may be, the qualifying company are distributed to its members or dealt with as bona vacantia before the end of the relevant period, or in the case of a winding up, the end (if later) of three years from the commencement of the winding up.

(4) The conditions shall not be regarded as ceasing to be satisfied by reason only of the disposal by the qualifying company or (as the case may be) by another subsidiary, within the relevant period, of all its interest in the subsidiary if it is shown that the disposal is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(5) For the purposes of this section—

(a) a subsidiary of a qualifying company is a property managing subsidiary if it exists wholly, or substantially wholly, for the purpose of holding and managing property used by the qualifying company, or by any of its subsidiaries, for the purposes of—

(i) research and development from which it is intended that a qualifying trade to be carried on by the company or any of its subsidiaries will be derived; or

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(ii) one or more qualifying trades so carried on;

(b) a subsidiary is a dormant subsidiary if it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments; and

(c) the persons who are equity holders of a subsidiary and the percentage of the assets of a subsidiary to which an equity holder would be entitled shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

(6) [M830]In relation to shares issued before 19th March 1986 this section shall have effect subject to the following modifications—

(a) the following paragraph shall be substituted for subsection (1)(b)—

"(b) the subsidiary or each subsidiary was incorporated in the United Kingdom and is a company falling within section 293(2)(a).";

(b) the following subsection shall be substituted for subsection (2)—

"(2) The conditions referred to in subsection (1)(a) above are—

(a) that the qualifying company possesses all the issued share capital of, and all the voting power in, the subsidiary; and

(b) that no other person has control of the subsidiary within the meaning of section 840; and

(c) that no arrangements are in existence by virtue of which the conditions in paragraphs (a) and (b) above could cease to be satisfied."; and

(c) subsections (4) and (5) shall be omitted.

Modifications etc. (not altering text)

C271 *See* 1988(F) s.50*and* Sch.4 para.11*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

Marginal Citations

M829 Source-1983 Sch.5 17(1)-(10); 1986 Sch.9 18; 1987 Sch.15 15(2)

M830 Source-1981 s.65; 1983 Sch.5 17(1)(b); 1986 Sch.9 1(2);

309 Further provisions as to subsidiaries.

(1) [M831]Where a qualifying company has one or more subsidiaries in the relevant period, this Chapter shall have effect subject to subsections (2) to (8) below.

(2) [M832]The shares issued by the qualifying company may, instead of or as well as being issued for the purpose mentioned in subsection (1)(a) of section 289, be issued for the purpose of raising money for a qualifying trade which is being carried on by a subsidiary or which a subsidiary intends to carry on; and, where shares are so issued, subsections (8), (9), 12(b)(ii) and (13) of that section shall have effect as if references to the company were or, as the case may be, included references to the subsidiary.

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(3) In relation to a qualifying trade carried on by a subsidiary the reference in section 297(2)(g) to another person shall not include a reference to the company of which it is a subsidiary.

(4) In section 303(1) references to the company (except the first) shall include references to a company which during the relevant period is a subsidiary of the company whether it becomes a subsidiary before or after the redemption, repayment, repurchase or payment referred to in that subsection.

(5) [M833]In subsections (2), (4) and (6) of section 291, references to the company (except, in each subsection, the first such reference) include references to a company which is during the relevant period a subsidiary of that company—

(a) whether it becomes a subsidiary before, during or after the year of assessment in respect of which the individual concerned claims relief; or

(b) whether or not it is such a subsidiary while he is such an employee, partner or director as is mentioned in subsection (2) or while he has or is entitled to acquire such capital or voting power or rights as are mentioned in subsections (4) and (6).

(6) Without prejudice to the provisions of section 291 (as it has effect in accordance with subsection (5) above), an individual shall be treated as connected with a company if—

(a) he has at any time in the relevant period had control (within the meaning of section 840) of another company which has since that time and before the end of the relevant period become a subsidiary of the company; or

(b) he directly or indirectly possesses or is entitled to acquire any loan capital of a subsidiary of that company.

(7) Section 291(5) and (8) shall apply for the purposes of this section.

(8) [M834]In sections 300(1) and 303(3) references to the receipt of value from the company shall include references to the receipt of value from any company which during the relevant period is a subsidiary of that company, whether it becomes a subsidiary before or after the individual concerned receives any value from it, and other references to the company in sections 300 and 301 and in section 303(6) shall be construed accordingly.

Modifications etc. (not altering text)

C272 *See* 1988(F) s.50*and* Sch.4 para.12*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

Marginal Citations

M831 Source-1983 Sch.5 17(2)

M832 Source-1983 Sch.5 18(1)-(3); 1983 (No.2) Sch.1 9

M833 Source-1981 Sch.12 2; 1982 s.52(2); 1983 Sch.5 18(5)

M834 Source-1981 Sch.12 4; 1982 s.52(3); 1983 Sch.5 18(5)

310 Information.

(1) [M835]Where an event occurs by reason of which any relief given to an individual falls to be withdrawn by virtue of sections 291, 299, **[**[F525]299A,**]** 300 or 304(2) to (6), the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the event.

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(2) Where an event occurs by reason of which any relief in respect of any shares in a company falls to be withdrawn by virtue of section 289(11), 293, 297, 300, 302 or 303—

(a) the company; and

(b) any person connected with the company who has knowledge of that matter;

shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the event or payment.

(3) [M836]Where—

(a) a company has issued a certificate under section 306(2) in respect of any eligible shares in the company; and

(b) it appears to the company, or to any person connected with the company who has knowledge of the matter, that section 294 may have effect to deny relief in respect of those shares;

the company or (as the case may be) that person or (where it so appears to each of them) both the company and that person shall give notice to the inspector setting out the particulars of the case.

(4) [M837]If the inspector has reason to believe that a person has not given a notice which he is required to give under subsection (1) or (2) above in respect of any event, or under subsection (3) above in respect of any particular case, the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Chapter.

(5) [M838]Where relief is claimed in respect of shares in a company and the inspector has reason to believe that it may not be due by reason of any such arrangement or scheme as is mentioned in section 289(11), 291(10), 293(8) or 308(2)(e), he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed;

(b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

(6) References in subsection (5) above to the person concerned are references, in relation to sections 289(11), 291(10) and 308(2)(e), to the claimant and, in relation to sections 289(11), 293(8) and 308(2)(e), to the company and any person controlling the company.

(7) [M839]Where relief has been given in respect of shares in a company—

(a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of sections 300, 301 and 303(3); and

(b) any person on whose behalf such a payment or asset is received,

shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

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(8) Where relief has been claimed in respect of shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself and, if so, the name and address of that person.

(9) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

(10) [M840]This section shall have effect in relation to relief under Chapter II of Part IV of the Finance Act 1981 as it has effect in relation to relief under this Chapter but with the substitution—

(a) in subsection (1) for "291, 299, **[**[F525]299A,**]** 300 or 304(2) to (6)" of " 54, 57, 58 and 60(6) of the Finance Act 1981 ";

(b) for subsection (3) of the following subsection—

"(3) Where the company is notified by the inspector that relief has been given in respect of any shares issued by the company on a specified date, then, if any shares in the company (whether or not shares in respect of which relief has been given) are transferred at any time in the period of five years beginning with that date, the company shall within 60 days of—

(a) coming to know of the transfer; or

(b) receiving the notification from the inspector,

whichever is the later, give a notice to the inspector containing particulars of the transfer.";

(c) in subsection (5) for references to sections 289(11), 291(10), 293(8) and 308(2)(e) of references to sections 54(9), 55(8) and 59(1) of the 1981 Act;

(d) in subsection (6) for "289(11), 293(10) and 308(2)(e)" and "289(11), 293(8) and 308(2)(e)" of " 54(9) and 59(1) of the Finance Act 1981 " and " 55(8) and 59(1) of that Act ", respectively;

(e) in subsection (7) for "300, 301 or 303(3)" of " 58 or 59(4) of the Finance Act 1981 ".

(11) In any case where this section has effect in accordance with subsection (10) above and the qualifying company has one or more subsidiaries—

(a) subsection (3) above shall, where the inspector has notified the subsidiary that relief has been given in respect of shares in the company of which it is a subsidiary, apply to the subsidiary as respects any transfer of its shares as it applies to the company as respects any transfer of shares in the company; and

(b) subsections (5) and (6) above shall have effect in relation to any such arrangements as are mentioned in paragraph (c) of subsection (2) of section 308 (as that subsection has effect by virtue of subsection (6) of that section) as they have effect in relation to any such arrangement as is mentioned in section 289(11).

Textual Amendments

F525 Words in s. 310(1)(10)(a) inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(2)(4)**

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Marginal Citations

M835 Source-1983 Sch.5 15(1), (2)
M836 Source-1983 Sch.5 15A(1); 1986 Sch.9 15
M837 Source-1983 Sch.5 15(3), 15A(2); 1986 Sch.9 15
M838 Source-1983 Sch.5 15(4), (5), 18(4); 1986 Sch.9 19(2)
M839 Source-1981 s.63(7)-(9); 1983 Sch.5 15(6)
M840 Source-1983 s.26(2); 1981 Sch.12 6, 7

311 Nominees, bare trustees and approved investment funds.

(1) [M841]Shares subscribed for, issued to, held by or disposed of for an individual by a nominee shall be treated for the purposes of this Chapter as subscribed for, issued to, held by or disposed of by that individual.

(2) [M842]Where eligible shares issued after 18th March 1986 are held on a bare trust for two or more beneficiaries, this Chapter shall have effect (with the necessary modifications) as if—

(a) each beneficiary had subscribed as an individual for all of those shares; and

(b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.

[[F526](2A) Subsection (2B) below applies where an individual claims relief in respect of eligible shares in a company and—

(a) the shares have been issued to the managers of an approved fund as nominee for the individual;

(b) the fund has closed, that is to say, no further investments in the fund are to be accepted; and

(c) the amounts which the managers have, as nominee for the individual, subscribed for eligible shares issued within six months after the closing of the fund represent not less than 90 per cent. of his investment in the fund;

and in this section "the managers of an approved fund" means the person or persons having the management of an investment fund approved for the purposes of this section by the Board.

(2B) In any case where this subsection applies, subsections (5) to (7) of section 289 and subsections (1) to (3) and (6) of section 304 shall have effect as if—

(a) any reference to the year of assessment or other period in which the shares are issued were a reference to the year of assessment or other period in which the fund closes; and

(b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.

(3) Section 290(1) shall not apply where the amount is subscribed as nominee for an individual by the managers of an approved fund.**]**

(4) Where an individual claims relief in respect of eligible shares in a company which have been issued to the managers of an approved fund as nominee for that individual, section 306(2) shall apply as if it required—

(a) the certificate referred to in that section to be issued by the company to the managers;

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(b) the claim for relief to be accompanied by a certificate issued by the managers, in such form as the Board may authorise, certifying that the managers hold certificates issued to them by the companies concerned, for the purposes of sections 306(2), in respect of the holdings of eligible shares shown on the managers' certificate.

(5) The managers of an approved fund may be required by a notice given to them by an inspector or other officer of the Board to deliver to the officer, within the time limited by the notice, a return of the holdings of eligible shares shown on certificates issued by them in accordance with subsection (4) above in the year of assessment to which the return relates.

(6) Section 306(6) shall not apply in relation to any certificate issued by the managers of an approved fund for the purposes of subsection (4) above.

Textual Amendments

F526 1988(F) s.53*in respect of funds closing after* 15*March* 1988.

Marginal Citations

M841 Source-1983 Sch.5 19(1)

M842 Source-1983 Sch.5 19A; 1986 Sch.9 20

312 Interpretation of Chapter III.

(1) [M843]In this Chapter—

"associate" has the meaning given in subsections (3) and (4) of section 417 except that in those subsections "relative" shall not include a brother or sister;

"appraisal licence" means an appraisal licence incorporating the model clauses set out in Schedule 4 to the 1984 Regulations or a Northern Ireland licence granted for the five year renewal term and includes in either case any modified appraisal licence;

"control", except in sections 291(7), 308(2) and 309(6)(a), shall be construed in accordance with section 416(2) to (6);

"debenture" has the meaning given by section 744 of the [M844]Companies Act 1985;

"development licence" means a development licence incorporating the model clauses set out in Schedule 5 to the 1984 Regulations or a Northern Ireland licence granted for the 30 year renewal term and includes in either case any modified development licence;

"director" shall be construed in accordance with section 417(5);

"exploration licence" means an exploration licence incorporating the model clauses set out in Schedule 3 to the 1984 Regulations or a Northern Ireland licence granted for the initial term and includes in either case any modified exploration licence;

"fixed-rate preference share capital" means share capital consisting of shares which—

(a) are issued for consideration which is or includes new consideration; and

(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and

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(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares; and

(d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares listed in the Official List of the Stock Exchange;

"modified appraisal licence", "modified development licence" and "modified exploration licence" mean, respectively, any appraisal licence, development licence or exploration licence in which any of the relevant model clauses have been modified or excluded by the Secretary of State or in Northern Ireland the Department of Economic Development;

"new consideration" has the same meaning as in Part VI;

"Northern Ireland licence" means a licence granted under the [M845]Petroleum (Production) Act (Northern Ireland) 1964 and incorporating the model clauses set out in Schedule 2 to the [M846]Petroleum Production (Licences) Regulations (Northern Ireland) 1965, and in relation to such a licence the references above to "the initial term", "the 30 year renewal term" and "the five year renewal term" shall be construed in accordance with Clause 2 of Schedule 2 to those Regulations;

"oil" and "oil extraction activities" have the same meanings as they have in Chapter V of Part XII;

"oil exploration" means searching for oil;

"ordinary shares" means shares forming part of a company's ordinary share capital;

"the relevant period" has the meaning given in section 289(12);

"research and development" means any activity which is intended to result in a patentable invention (within the meaning of the [M847]Patents Act 1977) or in a computer program;

"the relief" and "relief", except where the reference is to relief under Chapter II of Part IV of the Finance Act 1981, means relief under section 289 (and includes relief under Schedule 5 to the Finance Act 1983), and references to the amount of the relief shall be construed in accordance with section 289(5); and

"unquoted company" means a company none of whose shares, stocks or debentures are listed in the Official List of the Stock Exchange or dealt in on the Unlisted Securities Market;

and "the 1984 Regulations" means the [M848]Petroleum (Production) (Landward Areas) Regulations 1984.

(2) [M849]Section 839 applies for the purposes of this Chapter other than section 291.

(3) References in this Chapter to a disposal of shares include references to a disposal of an interest or right in or over the shares and an individual shall be treated for the purposes of this Chapter as disposing of any shares which he is treated by virtue of section **[**[F527]136(1) of the 1992 Act**]** as exchanging for other shares.

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(4) References in this Chapter to the reduction of any amount include references to its reduction to nil.

(5) [M850]For the purposes of this Chapter—

(a) in relation to shares issued after 18th March 1986, the market value at any time of any asset shall be taken to be the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it;

(b) in relation to shares issued before 19th March 1986, "market value" shall be construed in accordance with section **[**[F527]272 of the 1992 Act**]**.

(6) References in this Chapter to relief given to an individual in respect of eligible shares, and to the withdrawal of such relief, include respectively references to relief given to him in respect of those shares at any time after he has disposed of them and references to the withdrawal of such relief at any such time.

(7) In relation to any case falling within section 289(1)(d), any reference in that section to any licence being held by, or granted to, any person shall be read as including a reference to such a licence being held by, or (as the case may be) granted to, that person together with one or more other persons.

(8) The Treasury may by order amend any of the definitions set out in subsection (1) above which relate to licences under the [M851]Petroleum (Production) Act 1934 or the [M852]Petroleum (Production) Act (Northern Ireland) 1964.

Textual Amendments

F527 Words in s. 312(3)(5)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(18)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M843 Source-1981 s.67; 1983 Sch.5 20(1), (2); 1985 s.44(6); 1986 Sch.9 21(1), (2)
M844 1985 c. 6.
M845 1964 c. 28 (N.I.).
M846 S.R.& O.(N.I.) 1965 No.47.
M847 1977 c. 37.
M848 S.I. 1984/1832.
M849 Source-1981 s.67(2)-(4); 1983 Sch.5 20(1)
M850 Source-1983 Sch.5 20(3)-(6); 1986 Sch.9 21(3)
M851 1934 c. 36.
M852 1964 c. 28 (N.I.).

CHAPTER IV

SPECIAL PROVISIONS

313 Taxation of consideration for certain restrictive undertakings.

[[F528M853](1) Where an individual who holds, has held, or is about to hold, an office or employment gives in connection with his holding that office or employment an undertaking

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(whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict him as to his conduct or activities, any sum to which this section applies shall be treated as an emolument of the office or employment, and accordingly shall be chargeable to tax under Schedule E, for the year of assessment in which it is paid.

(2) This section applies to any sum which—

(a) is paid, in respect of the giving of the undertaking or its total or partial fulfilment, either to the individual or to any other person; and

(b) would not, apart from this section, fall to be treated as an emolument of the office or employment.

(3) Where the individual has died before the payment of any sum to which this section applies, subsections (1) and (2) above shall have effect as if that sum had been paid immediately before his death.

(4) Where valuable consideration otherwise than in the form of money is given in respect of the giving of the undertaking or its total or partial fulfillment, subsections (1) to (3) above shall have effect as if a sum had instead been paid equal to the value of that consideration.

(5)**]**

[F528](6) In this section—

(a) "office or employment" means any office or employment whatsoever such that the emoluments thereof, if any, are or would be chargeable to income tax under Case I or II of Schedule E; and

(b) references to the giving of valuable consideration do not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but do include references to the doing of anything in or towards the discharge of such an obligation.

Textual Amendments

F528 *Subss.* (1)-(5)*replaced by* 1988(F) s.73*in respect of undertakings given on or after* 9*June* 1988.*And see* 1970(M) s.98—*penalty for failure to deliver particulars.*

Marginal Citations

M853 Source-1970 s.34(1); 1971 Sch.6 15

314 Divers and diving supervisors.

[M854](1) Where the duties of any employment which are performed by a person in the United Kingdom or a designated area consist wholly or mainly—

(a) of taking part, as a diver, in diving operations concerned with the exploration or exploitation of the seabed, its subsoil and their natural resources; or

(b) of acting, in relation to any such diving operations, as a diving supervisor,

the Income Tax Acts shall have effect as if the performance by that person of those duties constituted the carrying on by him of a trade within Case I of Schedule D; and accordingly Schedule E shall not apply to the emoluments from the employment so far as attributable to his performance of those duties.

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(2) In this section "designated area" means any area designated under section 1(7) of the [M855]Continental Shelf Act 1964.

Marginal Citations

M854 Source-1978 s.29(1), (2)

M855 1964 c. 29.

315 Wounds and disability pensions.

[M856](1) Income from wounds and disability pensions to which this subsection applies shall be exempt from income tax and shall not be reckoned in computing income for any purposes of the Income Tax Acts.

(2) Subsection (1) above applies to—

(a) wounds pensions granted to members of the naval, military or air forces of the Crown;

(b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service; and

(e) injury and disablement pensions payable under any scheme made under the [M857]Injuries in War (Compensation) Act 1914, the [M858]Injuries in War Compensation Act 1914 (Session 2) and the [M859]Injuries in War (Compensation) Act 1915 or under any War Risks Compensation Scheme for the Mercantile Marine.

(3) Where the amount of any retired pay or pensions to which subsection (1) above applies is not solely attributable to disablement or disability, the relief conferred by that subsection shall extend only to such part as is certified by the **[**[F529]Secretary of State for Social Security**]**, after consultation with the appropriate government department, to be attributable to disablement or disability.

Textual Amendments

F529 Words in s. 315(3) substituted by The Transfer of Functions (Health and Social Security) Order 1988 (S.I. 1988/1843), **Sch. 3 para. 2(d)**

Modifications etc. (not altering text)

C273 S. 315(3): functions transferred by The Transfer of Functions (Health and Social Security) Order 1988 (S.I. 1988/1843), art. 2, **Sch. 2 Pt. 2**

Marginal Citations

M856 Source-1970 s.365

M857 1914 c. 30.

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M858 1914 c. 18 (5 & 6 Geo. 5 c. 18).
M859 1915 c. 24.

316 Allowances, bounties and gratuities.

[M860](1) Where, under the scheme relating to men in the Armed Forces of the Crown announced on behalf of His Majesty's Government in the United Kingdom on 15th April 1946 or under any other scheme certified by the Treasury to make analogous provision for classes of persons to whom the first-mentioned scheme does not apply, a person who has served in the armed forces of the Crown at any time during the continuance in force of the [M861]Emergency Powers (Defence) Act 1939 voluntarily undertakes to serve therein for a further period, any sum payable to him in pursuance of the scheme out of moneys provided by Parliament by way of gratuity at the end of his further period of service shall not be regarded as income for any income tax purposes.

(2) Where, under the scheme relating to members of the Women's Royal Naval Service, the Auxiliary Territorial Service and the Women's Auxiliary Air Force announced on behalf of His Majesty's Government in the United Kingdom on 20th November 1946, or under any other scheme certified by the Treasury to make analogous provision for classes of persons to whom the first-mentioned scheme does not apply, a woman who has served in or with the armed forces of the Crown at any time during the continuance in force of the Emergency Powers (Defence) Act 1939 voluntarily undertakes to serve in or with those forces for a further period, any sum payable to her in pursuance of the scheme out of moneys provided by Parliament by way of gratuity at the end of her further period of service shall not be regarded as income for any income tax purposes.

(3) Any allowance payable out of the public revenue to or in respect of any class of persons, being members of the armed forces of the Crown, as respects which the Treasury certifies either—

(a) that it is payable to the persons in question in lieu of food or drink normally supplied in kind to members of the armed forces, or

(b) that it is payable in respect of the persons in question as a contribution to the expenses of a mess,

shall not be regarded as income for any income tax purposes.

(4) The sums known as training expenses allowances payable out of the public revenue to members of the reserve and auxiliary forces of the Crown, and the sums payable by way of bounty out of the public revenue to such members in consideration of their undertaking prescribed training and attaining a prescribed standard of efficiency, shall not be treated as income for any income tax purpose.

(5) Any sum which, in pursuance of the scheme as to service emoluments contained in the Command Paper laid before Parliament in August 1950, becomes payable out of moneys provided by Parliament by way of bounty to a person who, having served in the armed forces of the Crown, voluntarily undertakes to serve for a further period shall not be regarded as income for any income tax purpose.

Marginal Citations
M860 Source-1970 s.366
M861 1939 c. 62.

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317 Victoria Cross and other awards.

[M862](1) The following shall be disregarded for all the purposes of the Income Tax Acts—

(a) annuities and additional pensions paid to holders of the Victoria Cross;
(b) annuities and additional pensions paid to holders of the George Cross;
(c) annuities paid to holders of the Albert Medal or of the Edward Medal;
(d) additional pensions paid to holders of the Military Cross;
(e) additional pensions paid to holders of the Distinguished Flying Cross;
(f) additional pensions paid to holders of the Distinguished Conduct Medal;
(g) additional pensions paid to holders of the Conspicuous Gallantry Medal;
(h) additional pensions paid to holders of the Distinguished Service Medal;
(i) additional pensions paid to holders of the Military Medal;
(j) additional pensions paid to holders of the Distinguished Flying Medal;

where paid by virtue of holding the award.

Marginal Citations
M862 Source-1970 s.368; 1980 s.26

318 Other pensions in respect of death due to war service etc.

[M863](1) Payments of pensions or allowances to which this section applies shall not be treated as income for any purposes of the Income Tax Acts.

(2) This section applies to—

(a) any pension or allowance payable by or on behalf of the Department of Health and Social Security under so much of any Order in Council, Royal Warrant, order or scheme as relates to death due to—
  (i) service in the armed forces of the Crown or war-time service in the merchant navy, or
  (ii) war injuries;
(b) any pension or allowance at similar rates and subject to similar conditions which is payable by the Ministry of Defence in respect of death due to peacetime service in the armed forces of the Crown before 3rd September 1939; and
(c) any pension or allowance which is payable under the law of a country other than the United Kingdom and is of a character substantially similar to a pension or allowance falling within paragraph (a) or (b) above.

(3) Where a pension or allowance falling within subsection (2) above is withheld or abated by reason of the receipt of another pension or allowance not falling within that subsection, there shall be treated as falling within that subsection so much of the other pension or allowance as is equal to the pension or allowance that is withheld or, as the case may be, to the amount of the abatement.

Marginal Citations
M863 Source-1979 (No.2) s.9

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319 Crown servants: foreign service allowance.

Where any allowance to any person in the service of the Crown is certified by the Treasury to represent compensation for the extra cost of having to live outside the United Kingdom in order to perform his duties, that allowance shall not be regarded as income for any income tax purpose.

320 Commonwealth Agents-General and official agents etc.

[M864](1) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from income tax as that to which the head of a mission so resident is entitled under the [M865]Diplomatic Privileges Act 1964.

(2) Any person having or exercising any employment to which this subsection applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from income tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.

(3) The employments to which subsection (2) above applies are the employment in the United Kingdom as—

(a) a member of the personal staff of any Agent-General; or

(b) an official agent for, or for any state or province of, any of the countries for the time being mentioned in Schedule 3 to the [M866]British Nationality Act 1981 or the Republic of Ireland; or

(c) an official agent for any self-governing colony,

of a person certified by the High Commissioner of the country in question or, as the case may be, by the Agent-General for the state, province or self-governing colony in question to be ordinarily resident outside the United Kingdom and to be resident in the United Kingdom solely for the purpose of the performance of his duties as such member or official agent.

(4) In this section—

"Agent-General" means the Agent-General for any state or province of a country within subsection (3)(b) above or for any self-governing colony;

"High Commissioner" includes the head of the mission of a country within subsection (3)(b) above by whatever name called;

"mission" has the same meaning as in the Diplomatic Privileges Act 1964, and references to the head of a mission and a member of the staff of a mission shall be construed in accordance with that Act;

"self-governing colony" means any colony certified by a Secretary of State to be a self-governing colony.

Modifications etc. (not altering text)

C274 *The countries mentioned in the* British Nationality Act 1981 Sch.3 (*as amended*)*are—Countries whose citizens are Commonwealth citizens*Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Republic of Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Nauru, New Zealand, Nigeria, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Western Samoa, Zambia, Zimbabwe.

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Marginal Citations
M864 Source-1970 s.372
M865 1964 c. 81.
M866 1981 c. 81.

321 Consuls and other official agents.

M867(1) Income arising from any office or employment to which this section applies shall be exempt from income tax, and no account shall be taken of any such income in estimating the amount of income for any income tax purposes.

(2) The offices and employments to which this section applies are the following, that is to say—

(a) the office of a consul in the United Kingdom in the service of any foreign state; and

(b) the employment of an official agent in the United Kingdom for any foreign state, not being an employment exercised by a Commonwealth citizen or a citizen of the Republic of Ireland or exercised in connection with any trade, business or other undertaking carried on for the purposes of profit.

(3) In this section—

"consul" means a person recognised by Her Majesty as being a consul-general, consul, vice-consul or consular agent; and

"official agent" means a person, not being a consul, who is employed on the staff of any consulate, official department or agency of a foreign state, not being a department or agency which carries on any trade, business or other undertaking for the purposes of profit.

Marginal Citations
M867 Source-1970 s.373

322 Consular officers and employees.

M868(1) Where a consular officer or employee in the United Kingdom of any foreign state to which this section applies—

(a) is not a British citizen, a British Dependent Territories citizen **[**F530, a British National (Overseas)**]** or a British Overseas citizen, and

(b) is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as such a consular officer or employee, and

(c) either is a permanent employee of that state or was not ordinarily resident in the United Kingdom immediately before he became a consular officer or employee in the United Kingdom of that state;

then any income of his falling within Case IV or V of Schedule D shall be exempt from income tax, and he shall be treated as not resident in the United Kingdom for the purposes of sections 48 and 123(4).

(2) Without prejudice to section 321, the income arising from a person's employment in the United Kingdom as a consular employee of any foreign state to which this section applies shall be exempt from income tax, except in the case of a person who is not

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a national of that state but is a British citizen, a British Dependent Territories citizen **[**[F530], a British National (Overseas)**]** or a British Overseas citizen.

(3) For the purposes of this section "consular employee" includes any person employed, for the purposes of the official business of a consular officer, at any consulate or consular establishment or at any other premises used for those purposes.

(4) This section shall apply to any foreign state to which Her Majesty by Order in Council directs that it shall apply for the purpose of giving effect to any consular convention or other arrangement with that state making similar provision in the case of Her Majesty's consular officers or employees in that state.

(5) An Order in Council under subsection (4) above—
- (a) may limit the operation of this section in relation to any state in such manner as appears to Her Majesty to be necessary or expedient having regard to the arrangement with that state;
- (b) may be made so as to have effect from a date earlier than the making of the Order or the passing of this Act (but not earlier than the coming into force of the arrangement with regard to which it is made); and
- (c) may contain such transitional provisions as appear to Her Majesty to be necessary or expedient;

and any statutory instrument under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

Textual Amendments
F530 1990 s.89*and* Sch.14 para.4(1) (*correction of errors*)*—deemed always to have had effect.*

Modifications etc. (not altering text)
C275 *For orders see* Part III Vol.5.

Marginal Citations
M868 Source-1970 s.374(1), (3)-(7)

323 Visiting forces.

[M869](1) The emoluments paid by the government of any designated country to any member of a visiting force of that country who is not a British citizen, a British Dependent Territories citizen **[**[F531], a British National (Overseas)**]** or a British Overseas citizen shall be exempt from income tax.

(2) A period during which a member of a visiting force to whom subsection (1) above applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of income tax either as a period of residence in the United Kingdom or as creating a change of his residence or domicile.

(3) Subsection (2) above shall not affect the operation of section 278 in relation to any person for any year of assessment.

(4) In subsections (1) and (2) above references to a visiting force shall apply to a civilian component of such a force as they apply to the force itself; and those subsections shall be construed as one with the [M870]Visiting Forces Act 1952, but so that, for the purposes

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of this section, references to a designated country shall be substituted in that Act for references to a country to which a provision of that Act applies.

(5) For the purpose of conferring on persons attached to any designated allied headquarters the like benefits as are conferred by subsections (1) and (2) above on members of a visiting force or civilian component, any members of the armed forces of a designated country shall, while attached to any such headquarters, be deemed to constitute a visiting force of that country, and there shall be a corresponding extension of the class of persons who may be treated as members of a civilian component of such a visiting force.

(6) In the case of persons of any category for the time being agreed between Her Majesty's government in the United Kingdom and the other members of the North Atlantic Council—

(a) employment by a designated allied headquarters shall be treated for the purposes of subsection (2) above as if it were service as a member of a visiting force of a designated country; and

(b) the emoluments paid by a designated allied headquarters to persons employed by such a headquarters shall be exempt from income tax.

(7) The exemption conferred by subsection (6)(b) above shall cease to apply to British citizens, British Dependent Territories citizens **[**[F532], a British National (Overseas)**]** and British Overseas citizens if it becomes unnecessary that it should so apply for the purpose of giving effect to any agreement between parties to the North Atlantic Treaty.

(8) For the purposes of this section—

"allied headquarters" means any international military headquarters established under the North Atlantic Treaty, and

"designated" means designated for the purpose in question by or under any Order in Council made for giving effect to any international agreement.

Textual Amendments

F531 1990 s.89*and* Sch.14 para.4(1) (*correction of errors*)*—deemed always to have had effect.*

F532 1990 s.89*and* Sch.14 para.4(2) (*correction of errors*)*—deemed always to have had effect.*

Modifications etc. (not altering text)

C276 *For orders see* Part III Vol.5*under* "Securities".

Marginal Citations

M869 Source-1970 s.367

M870 1952 c. 67.

324 Designated international organisations.

[M871](1) The Treasury may by order designate for the purposes of this section—

(a) any international organisation—

(i) if one of its members is the United Kingdom or any of the Communities; and

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(ii) if the agreement under which that member became a member provides for exemption from tax, in relation to the organisation, of the kind for which provision is made by this section; or

(b) any of the Communities or the European Investment Bank.

(2) Where an organisation has been so designated, a person not resident in the United Kingdom shall not be liable to income tax in respect of income from any security issued by the organisation if he would not be liable but for the fact that—

(a) the security or income is issued, made payable or paid in the United Kingdom or in sterling; or

(b) the organisation maintains an office or other place of business in the United Kingdom.

Marginal Citations

M871 Source-1984 s.126(1), (2), (3)(a), (4); 1985 s.96(1)

325 Interest on deposits with National Savings Bank.

Where the total income of an individual for the year of assessment includes, or would but for this section include, any sums paid or credited in respect of interest on deposits with the National Savings Bank, other than investment deposits, those sums shall be disregarded for all purposes of the Income Tax Acts, other than the furnishing of information, if or in so far as they do not exceed £70;*and for this purpose the question whether or how far those sums exceed* £70*shall, where by virtue of section* 279*a woman's income is deemed to be her husband's, be determined separately as regards the part of his income which is his by virtue of that section and the part which is his apart from that section*[F533].

Textual Amendments

F533 *Words repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

326 Interest etc. under contractual savings schemes.

[M872](1) Any terminal bonus, or interest or other sum, payable under a certified contractual savings scheme—

(a) in respect of money raised under section 12 of the [M873]National Loans Act 1968, or

(b) in respect of shares in a building society, **[**[F534]or

(c) in respect of money paid to an institution authorised under the [M874]Banking Act 1987,**]**

shall **[**[F535]not be regarded as income for any income tax purpose.**]**

(2) In this section "certified contractual savings scheme" means, except in relation to a building society **[**[F536]or an institution authorised under the Banking Act 1987**]**, a scheme—

(a) governed by regulations made under section **[**[F537]11 of the [M875]National Debt Act 1972**]**; and

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(b) providing for periodical contributions by individuals for a specified period, and the repayment in accordance with the regulations of contributions together with any additional sum by way of bonus or interest, and

(c) certified by the Treasury as qualifying for exemption under this section.

(3) In this section "certified contractual savings scheme" means, in relation to a building society, a scheme—

(a) providing for periodical contributions by individuals for a specified period, being contributions by way of investment in shares in the building society, and

(b) certified by the Treasury as corresponding to a scheme certified under subsection (2) above, and as qualifying for exemption under this section.

[[F538](4) In this section "certified contractual savings scheme" means, in relation to an institution authorised under the Banking Act 1987, a scheme—

(a) providing for periodical contributions by individuals for a specific period, and

(b) certified by the Treasury as corresponding to a scheme certified under subsection (2) above, and as qualifying for exemption under this section.**]**

Textual Amendments

F534 1990 s.29(a).

F535 1990 s.29(b).*Previously*
"be disregarded for all purposes of the Income Tax Acts."

F536 1990 s.29(c).

F537 1990 s.89*and* Sch.14 para.5 (*correction of errors*)*—deemed always to have had effect. Previously*
"12 of the National Debt Act 1958 or section 52 of the Finance Act 1969".

F538 1990 s.29(d).

Modifications etc. (not altering text)

C277 *See* 1988(F) Sch.12 para.7*—application of* s.326*to building society transfers.*

Marginal Citations

M872 Source-1970 s.415(1)-(3), (5)

M873 1968 c. 13.

M874 1987 c. 22.

M875 1972 c. 65.

[[F539]326A Tax-exempt special savings accounts.

(1) Subject to the provisions of section 326B, any interest or bonus payable on a deposit account in respect of a period when it is a tax-exempt special savings account shall not be regarded as income for any income tax purpose.

(2) An account is a "tax-exempt special savings account" for the purposes of this section if the conditions set out in subsections (3) to (9) below and any further conditions prescribed by regulations made by the Board are satisfied when the account is opened; and subject to section 326B it shall continue to be such an account until the end of the period of five years beginning with the day on which it is opened, or until the death of the account-holder if that happens earlier.

(3) The account must be opened on or after 1st January 1991 by an individual aged 18 or more.

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(4) The account must be with a building society or an institution authorised under the Banking Act 1987.

(5) The account must be identified as a tax-exempt special savings account and the account-holder must not simultaneously hold any other such account (with the same or any other society or institution).

(6) The account must not be a joint account.

(7) The account must not be held on behalf of a person other than the account-holder.

(8) The account must not be connected with any other account held by the account-holder or any other person; and for this purpose an account is connected with another if—
   (a) either was opened with reference to the other, or with a view to enabling the other to be opened on particular terms, or with a view to facilitating the opening of the other on particular terms, and
   (b) the terms on which either was opened would have been significantly less favourable to the holder if the other had not been opened.

(9) There must not be in force a notice given by the Board to the society or institution prohibiting it from operating new tax-exempt special savings accounts.**]**

Textual Amendments
F539 Ss. 326A-326C inserted by Finance Act 1990 (c. 29), **s. 28(1)**

326B Loss of exemption for special savings accounts.

(1) A tax-exempt special savings account shall cease to be such an account if at any time after it is opened any of the conditions set out in subsections (4) to (8) of section 326A, or any further condition prescribed by regulations made by the Board, is not satisfied, or if any of the events mentioned in subsection (2) below occurs.

(2) The events referred to in subsection (1) above are—
   (a) the deposit of more than £3,000 in the account during the period of 12 months beginning with the day on which it is opened, more than £1,800 in any of the succeeding periods of 12 months, or more than £9,000 in total;
   (b) a withdrawal from the account which causes the balance to fall below an amount equal to the aggregate of—
      (i) all the sums deposited in the account before the time of the withdrawal, and
      (ii) an amount equal to income tax at the basic rate on any interest or bonus paid on the account before that time (and for this purpose the basic rate in relation to any interest or bonus is the rate that was the basic rate when the interest or bonus was paid);
   (c) the assignment of any rights of the account-holder in respect of the account, or the use of such rights as security for a loan.

(3) If at any time an account ceases to be a tax-exempt special savings account by virtue of subsection (1) above, the Income Tax Acts shall have effect as if immediately after that time the society or institution had credited to the account an amount of interest

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equal to the aggregate of any interest and bonus payable in respect of the period during which the account was a tax-exempt special savings account.

Modifications etc. (not altering text)

C278 S. 326B(3) modified (2.1.1996) by The Tax-exempt Special Savings Account (Relevant European Institutions) Regulations 1995 (S.I. 1995/3239), **reg. 7**

VALID FROM 01/05/1995

[F540 326BB Follow-up TESSAs.

(1) Subsection (2) below applies where—

(a) an individual, within the period of six months from the day on which a tax-exempt special savings account held by him matured, opens another account ("a follow-up account") which is a tax-exempt special savings account at the time it is opened; and

(b) the total amount deposited in the matured account, before it matured, exceeded £3,000.

(2) In relation to the follow-up account section 326B(2)(a) shall apply as if the reference to £3,000 were a reference to the total amount so deposited.

(3) For the purposes of subsection (1) above a tax-exempt special savings account held by an individual matures when a period of five years throughout which the account was a tax-exempt special savings account comes to an end.

(4) An account is not connected with another account for the purposes of section 326A(8) merely because one of them is a follow-up account.]

Textual Amendments

F540 S. 326BB inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 62(2)**

326C Tax-exempt special savings accounts: supplementary.

(1) The Board may make regulations—

(a) prescribing conditions additional to those set out in section 326A which must be satisfied if an account is to be or remain a tax-exempt special savings account;

(b) making provision for the giving by the Board to building societies and other institutions of notices prohibiting them from operating new tax-exempt special savings accounts, including provision about appeals against the giving of notices;

(c) requiring building societies and other institutions operating or proposing to operate tax-exempt special savings accounts to give information or send documents to the Board or to make documents available for inspection;

(d) making provision as to the transfer of tax-exempt special savings accounts from one building society or institution to another;

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(e) generally for supplementing the provisions of sections 326A and 326B.

(2) The reference in section 326A to a deposit account shall be taken to include a reference to a share account with a building society, and accordingly that section, section 326B and subsection (1) above shall apply to such an account with the necessary modifications.

VALID FROM 01/05/1995

[F541 326D Tax-exempt special savings accounts: tax representatives.

(1) Without prejudice to the generality of section 326C(1), the Board may make regulations providing that an account held with a relevant European institution shall not be a tax-exempt special savings account at the time it is opened, or shall cease to be a tax-exempt special savings account at a given time, unless at the time concerned one of the following three requirements is fulfilled.

(2) The first requirement is that—
(a) a person who falls within subsection (5) below is appointed by the institution to be responsible for securing the discharge of prescribed duties which fall to be discharged by the institution, and
(b) his identity and the fact of his appointment have been notified to the Board by the institution.

(3) The second requirement is that there are other arrangements with the Board for a person other than the institution to secure the discharge of such duties.

(4) The third requirement is that there are other arrangements with the Board designed to secure the discharge of such duties.

(5) A person falls within this subsection if—
(a) he is not an individual and has a business establishment in the United Kingdom, or
(b) he is an individual and is resident in the United Kingdom.

(6) Different duties may be prescribed as regards different institutions or different descriptions of institution.

(7) The regulations may provide that—
(a) the first requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;
(b) the appointment of a person in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(8) The regulations may provide that—
(a) the second requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;
(b) arrangements made in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(9) The regulations may provide as mentioned in subsection (10) below as regards a case where—

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(a) in accordance with the first requirement a person is at any time appointed to be responsible for securing the discharge of duties, or

(b) in accordance with the second requirement there are at any time arrangements for a person to secure the discharge of duties.

(10) In such a case the regulations may provide that the person concerned—

(a) shall be entitled to act on the institution's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the institution's behalf) the institution's compliance with and discharge of the duties;

(c) shall be personally liable in respect of any failure of the institution to comply with or discharge any such duty as if the duties imposed on the institution were imposed jointly and severally on the institution and the person concerned.

(11) Regulations under this section may include provision that section 326B(3) shall have effect as if the reference to subsection (1) included a reference to the regulations.

(12) In this section "prescribed" means prescribed by the regulations.**]**

Textual Amendments

F541 S. 326D inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 63(4)**

327 Disabled person's vehicle maintenance grant.

A grant made under paragraph 2 of Schedule 2 to the [M876]National Health Service Act 1977 or section 46(3) of the [M877]National Health Service (Scotland) Act 1978 (cost of maintenance etc. of vehicles belonging to disabled persons) or under Article 30 of the [M878]Health and Personal Social Services (Northern Ireland) Order 1972 to any person owning a vehicle shall not be treated as income for any purpose of the Income Tax Acts.

Marginal Citations

M876 1977 c. 49.
M877 1978 c. 29.
M878 S.I. 1972/1265 (N.I. 14).

VALID FROM 10/07/2003

[[F542]327A Payments to adopters

(1) The following payments shall not be treated as income for any purpose of the Income Tax Acts—

(a) any payment or reward falling within section 57(3) of the Adoption Act 1976 (payments authorised by the court) which is made to a person who has adopted, or intends to adopt, a child;

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(b) payments under section 57(3A)(a) of that Act (payments by adoption agencies of legal or medical expenses of persons seeking to adopt);

(c) payments of allowances under regulations under section 57A of that Act (permitted allowances to persons who have adopted, or intend to adopt, children) (as at 9th April 2003, see the Adoption Allowance Regulations 1991);

(d) any payment or reward falling within section 51(3) of the Adoption (Scotland) Act 1978 (payments authorised by the court) which is made to a person who has adopted, or intends to adopt, a child;

(e) payments under section 51(4)(a) of that Act (payments by adoption agencies of legal or medical expenses of persons seeking to adopt);

(f) payments of allowances by virtue of section 51B of that Act (transitional provisions) in accordance with a scheme approved by the Secretary of State under section 51(5) of that Act (schemes for payment of allowances to persons who have adopted, or intend to adopt, a child);

(g) payments of allowances in accordance with an adoption allowances scheme under section 51A of that Act;

(h) any payment or reward falling within Article 59(2)(b) of the Adoption (Northern Ireland) Order 1987 (payments authorised by the court) which is made to a person who has adopted, or intends to adopt, a child;

(i) any payment under Article 59(2)(c) of that Order (payments by registered adoption societies) which is made to a person who has adopted, or intends to adopt, a child;

(j) payments of allowances under regulations under Article 59A of that Order (permitted allowances to persons who have adopted, or intend to adopt, children) (as at 9th April 2003, see the Adoption Allowance Regulations (Northern Ireland) 1996);

(k) payments of financial support made in the course of providing adoption support services within the meaning of the Adoption and Children Act 2002 (see sections 2(6) and (7) and 4 of that Act);

(l) payments made under regulations under paragraph 3(1) of Schedule 4 to that Act (transitional and transitory provisions: adoption support services).

(2) The Treasury may by order amend this section for the purposes of—

(a) adding a description of payment, or

(b) removing a description of payment if the power to make a payment of that description has been repealed or revoked or has otherwise ceased to be exercisable.**]**

Textual Amendments

F542 S. 327A inserted (with effect in accordance with s. 175(2) of the amending Act) by Finance Act 2003 (c. 14), **s. 175(1)**

328 Funds in court.

(1) [M879]If any common investment fund established under section 42 of the [M880]Administration of Justice Act 1982 is for the time being designated for the purposes

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of this subsection by an agreement between the Board and the investment manager of the fund—

(a) subject to subsection (2) below, the investment manager shall be entitled to exemption from income tax in respect of so much of the income derived from that fund or any investment thereof as is paid by him by way of dividend on the shares into which the fund is divided; and

(b) dividends on those shares shall be paid without deduction of income tax and shall be chargeable under Case III of Schedule D.

A claim for exemption under paragraph (a) shall be made to the Board.

(2) [M881]Where the income or part of the income derived in a year of assessment from the fund or its investments consists of interest on securities, the income or part (as the case may be) shall for the purposes of subsection (1)(a) above be calculated by treating it as the amount it would be apart from section 714(5), but reduced by an amount (if any) equal to the excess of A over B.

(3) In subsection (2) above—

A is the total amount of allowances to which, by virtue of section 714(4), the investment manager of the fund is entitled in the year of assessment in respect of all securities comprised in the fund; and

B is the total amount of annual profits or gains which, by virtue of section 714(2), he is treated as receiving in the year of assessment in respect of those securities.

(4) In subsections (2) and (3) above "interest" and "securities" have the same meanings as in sections 710 and 711.

(5) [M882]Where at any time by virtue of subsection (1) above the income of any person from any source becomes chargeable to income tax as provided by that subsection, not having previously been chargeable by direct assessment on that person, section 66(3) shall apply as if the source of that income were a new source of income acquired by that person at that time.

(6) The Accountant General and any other person authorised to invest in a fund designated for the purposes of subsection (1) above shall as respects each year of assessment furnish to the Board, at such time and in such manner as they may direct, particulars of any sums paid without deduction of tax by virtue of that subsection and of the persons to whom they were paid, except that particulars shall not be required of any case where the total of such sums paid to any person in that year did not exceed £15.

(7) An agreement designating a fund for the purposes of subsection (1) above may provide for incidental and consequential matters, including arrangements for giving effect to subsection (1)(a) above by provisional repayments of tax deducted at source, and may be determined by the Board or the investment manager of the fund by one year's notice expiring at the end of any year of assessment.

(8) The reference to the Accountant General is a reference to the Accountant General of the Supreme Court of England and Wales and in relation to money in the Supreme Court of Judicature of Northern Ireland, or money in a county court in Northern Ireland, and in relation to investments representing such money, includes a reference to the Accountant General of the Supreme Court of Judicature of Northern Ireland or any other person by whom such funds are held.

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Modifications etc. (not altering text)

C279 *See the* Common Investment Funds Scheme 1965 (S.I. 1965 No.1467) (*not reproduced*) para.3—*establishment of Gross Income Fund, and* para.5—*dividends thereon to be paid without deduction of tax so far as permitted by arrangements between Public Trustee and Commissioners of Inland Revenue.*

Marginal Citations

M879 Source-1970 s.413(1), (2)
M880 1982 c. 53.
M881 Source-1985 Sch.23 8(5), (6); 1986 Sch.17 1(1)
M882 Source-1970 s.413(3)-(6)

329 Interest on damages for personal injuries.

(1) [M883]The following interest shall not be regarded as income for any income tax purpose—

(a) any interest on damages in respect of personal injuries to a plaintiff or any other person, or in respect of a person's death, which is included in any sum for which judgment is given by virtue of a provision to which this paragraph applies; and

(b) any interest on damages or solatium in respect of personal injuries sustained by a pursuer or by any other person, decree for payment of which is included in any interlocutor by virtue of section 1 of the [M884]Interest on Damages (Scotland) Act 1958.

(2) [M885]The provisions to which subsection (1)(a) above applies are—

(a) section 3 of the [M886]Law Reform (Miscellaneous Provisions) Act 1934;

(b) section 17 of the [M887]Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937;

(c) section 35A of the [M888]Supreme Court Act 1981;

(d) section 69 of the [M889]County Courts Act 1984;

(e) section 33A of the [M890]Judicature (Northern Ireland) Act 1978; and

(f) Article 45A of the [M891]County Courts (Northern Ireland) Order 1980.

(3) [M892]A payment in satisfaction of a cause of action, including a payment into court, shall not be regarded as income for any income tax purpose to the extent to which it is in respect of interest which would fall within subsection (1) above if included in a sum for which a judgment is given or if decree for payment of it were included in an interlocutor.

(4) [M893]In this section "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

Marginal Citations

M883 Source-1970 s.375A(1); 1971 s.19
M884 1958 c. 61.
M885 Source-1970 s.375A(1B)
M886 1934 c. 41.
M887 1937 c. 9 (N.I.).

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M888 1981 c. 54.
M889 1984 c. 28.
M890 1978 c. 23 (N.I.).
M891 S.I. 1980/397 (N.I. 13).
M892 Source-1970 s.375A(1A); 1981 s.39
M893 Source-1970 s.35 7A(2); 1971 s.19

VALID FROM 29/04/1996

[F543 329AA Personal injury damages in the form of periodical payments.

(1) Where—
- (a) an agreement is made settling a claim or action for damages for personal injury on terms whereby the damages are to consist wholly or partly of periodical payments; or
- (b) a court awarding damages for personal injury makes an order incorporating such terms,

the payments shall not for the purposes of income tax be regarded as the income of any of the persons mentioned in subsection (2) below and accordingly shall be paid without any deduction under section 348(1)(b) or 349(1).

(2) The persons referred to in subsection (1) above are—
- (a) the person ("A") entitled to the damages under the agreement or order;
- (b) any person who, whether in pursuance of the agreement or order or otherwise, receives the payments or any of them on behalf of A;
- (c) any trustee who, whether in pursuance of the agreement or order or otherwise, receives the payments or any of them on trust for the benefit of A under a trust under which A is during his lifetime the sole beneficiary.

(3) The periodical payments referred to in subsection (1) above, or any of them, may, if the agreement or order mentioned in that subsection or a subsequent agreement so provides, consist of payments under one or more annuities purchased or provided for, or for the benefit of, A by the person by whom the payments would otherwise fall to be made.

(4) Sums paid to, or for the benefit of, A by a trustee or trustees shall not be regarded as his income for the purposes of income tax if made out of payments which by virtue of this section are not to be regarded for those purposes as income of the trustee or trustees.

(5) In this section "personal injury" includes any disease and any impairment of a person's physical or mental condition.

(6) For the purposes of this section a claim or action for personal injury includes—
- (a) such a claim or action brought by virtue of the [M894]Law Reform (Miscellaneous Provisions) Act 1934;
- (b) such a claim or action brought by virtue of the [M895]Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937;
- (c) such a claim or action brought by virtue of the [M896]Damages (Scotland) Act 1976;
- (d) a claim or action brought by virtue of the [M897]Fatal Accidents Act 1976;

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(e) a claim or action brought by virtue of the [M898]Fatal Accidents (Northern Ireland) Order 1977.

(7) In relation to such an order as is mentioned in paragraph (b) of subsection (1) above "damages" includes an interim payment which the court, by virtue of rules of court in that behalf, orders the defendant to make to the plaintiff; and where, without such an order, the defendant agrees to make a payment on account of the damages that may be awarded against him in such an action as is mentioned in paragraph (a) of that subsection, that paragraph shall apply to the payment and the agreement as it applies to damages and to such an agreement as is there mentioned.

(8) In the application of subsection (7) above to Scotland for references to the plaintiff and the defendant there shall be substituted references to the pursuer and the defender.**]**

Textual Amendments

F543 Ss. 329AA, 329AB inserted (with effect in accordance with s. 150(2)-(4) of the amending Act) by Finance Act 1996 (c. 8), s. 150(1), **Sch. 26**

Modifications etc. (not altering text)

C280 S. 329AA applied (with modifications) (5.8.2004) by The Thalidomide Children's Trust (Application of Section 329AA of the Income and Corporation Taxes Act 1988) Order 2004 (S.I. 2004/1819), **art. 2**

Marginal Citations

M894 1934 c. 41.
M895 1937 c. 9 (N.I.).
M896 1976 c. 13.
M897 1976 c. 30.
M898 S.I. 1977/1251 (N.I. 18).

VALID FROM 29/04/1996

[[F543]329AB Compensation for personal injury under statutory or other schemes.

(1) Section 329AA applies to annuity payments under an award of compensation made under the Criminal Injuries Compensation Scheme as it applies to payments of damages in that form under such an agreement or order as is mentioned in subsection (1) of that section.

(2) In subsection (1) above "the Criminal Injuries Compensation Scheme" means—

(a) the scheme established by arrangements made under the [M899]Criminal Injuries Compensation Act 1995; or

(b) arrangements made by the Secretary of State for compensation for criminal injuries and in operation before the commencement of that scheme.

(3) If it appears to the Treasury that any other scheme or arrangement, whether established by statute or otherwise, makes provision for the making of periodical payments by way of compensation for personal injury within the meaning of

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section 329AA, the Treasury may by order apply that section to those payments with such modifications as the Treasury consider necessary.**]**

Textual Amendments

F543 Ss. 329AA, 329AB inserted (with effect in accordance with s. 150(2)-(4) of the amending Act) by Finance Act 1996 (c. 8), s. 150(1), **Sch. 26**

Marginal Citations

M899 1995 c. 53.

VALID FROM 01/05/1995

[F544 329A Annuities purchased for certain persons.

(1) In a case where—

(a) an agreement is made settling a claim or action for damages for personal injury,

(b) under the agreement the damages are to consist wholly or partly of periodical payments, and

(c) under the agreement the person entitled to the payments is to receive them as the annuitant under one or more annuities purchased for him by the person against whom the claim or action is brought or, if he is insured against the claim concerned, by his insurer,

the agreement is for the purposes of this section a qualifying agreement.

(2) In a case where—

(a) an agreement is made settling a claim or action for damages for personal injury,

(b) under the agreement the damages are to consist wholly or partly of periodical payments, and

(c) a later agreement is made under which the person entitled to the payments is from a future date to receive them as the annuitant under one or more annuities purchased for him by the person against whom the claim or action is brought or, if he is insured against the claim concerned, by his insurer,

the agreement mentioned in paragraph (c) above is for the purposes of this section a qualifying agreement.

(3) Subsection (4) below applies where—

(a) a person receives a sum as the annuitant under an annuity purchased for him pursuant to a qualifying agreement, or

(b) a person receives a sum on behalf of the annuitant under an annuity purchased for the annuitant pursuant to a qualifying agreement.

(4) Where this subsection applies the sum shall not be regarded as the recipient's or annuitant's income for any purposes of income tax and accordingly shall be paid without any deduction under section 349(1).

(5) Subsections (6) to (10) below apply for the purposes of subsection (1) above.

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(6) The periodical payments may be for the life of the claimant, for a specified period or of a specified number or minimum number or include payments of more than one of those descriptions.

(7) The amounts of the periodical payments (which need not be at a uniform rate or payable at uniform intervals) may be—
- (a) specified in the agreement, with or without provision for increases of specified amounts or percentages,
- (b) subject to adjustment in a specified manner so as to preserve their real value, or
- (c) partly specified as mentioned in paragraph (a) and partly subject to adjustment as mentioned in paragraph (b) above.

(8) The annuity or annuities must be such as to provide sums which as to amount and time of payment correspond to the periodical payments described in the agreement.

(9) Personal injury includes any disease and any impairment of a person's physical or mental condition.

(10) A claim or action for personal injury includes—
- (a) such a claim or action brought by virtue of the [M900]Law Reform (Miscellaneous Provisions) Act 1934;
- (b) such a claim or action brought by virtue of the [M901]Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937;
- (c) such a claim or action brought by virtue of the [M902]Damages (Scotland) Act 1976;
- (d) a claim or action brought by virtue of the [M903]Fatal Accidents Act 1976;
- (e) a claim or action brought by virtue of the [M904]Fatal Accidents (Northern Ireland) Order 1977.

(11) For the purposes of subsection (2) above—
- (a) subsections (6), (9) and (10) above apply;
- (b) subsection (7) above applies as if the reference to the agreement were to that mentioned in subsection (2)(a) above;
- (c) subsection (8) above applies as if the reference to periodical payments described in the agreement were to periodical payments described in the agreement mentioned in subsection (2)(a) above and falling to be made after the later agreement takes effect.

(12) This section does not apply unless the sum concerned is received after the day on which the Finance Act 1995 is passed, but it is immaterial when—
- (a) the agreement mentioned in subsection (1) above is made or takes effect, or
- (b) either of the agreements mentioned in subsection (2) above is made or takes effect.**]**

Textual Amendments

F544 Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 142**

Marginal Citations

M900 1934 c. 41.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M901 1937 c. 9 (N.I.).
M902 1976 c. 13.
M903 1976 c. 30.
M904 S.I. 1977/1251 (N.I. 18).

VALID FROM 01/05/1995

[F544 329B Annuities assigned in favour of certain persons.

(1) In a case where—
- (a) an agreement is made settling a claim or action for damages for personal injury,
- (b) under the agreement the damages are to consist wholly or partly of periodical payments,
- (c) the person against whom the claim or action is brought (or, if he is insured against the claim concerned, his insurer) purchases one or more annuities, and
- (d) a later agreement is made under which the annuity is, or the annuities are, assigned in favour of the person entitled to the payments so as to secure that from a future date he receives the payments as the annuitant under the annuity or annuities,

the agreement mentioned in paragraph (d) above is for the purposes of this section a qualifying agreement.

(2) Subsection (3) below applies where—
- (a) a person receives a sum as the annuitant under an annuity assigned in his favour pursuant to a qualifying agreement, or
- (b) a person receives a sum on behalf of the annuitant under an annuity assigned in the annuitant's favour pursuant to a qualifying agreement.

(3) Where this subsection applies the sum shall not be regarded as the recipient's or annuitant's income for any purposes of income tax and accordingly shall be paid without any deduction under section 349(1).

(4) For the purposes of subsection (1) above—
- (a) subsections (6), (9) and (10) of section 329A apply;
- (b) subsections (7) and (8) of section 329A apply as if references to the agreement were to that mentioned in subsection (1)(a) above.

(5) This section does not apply unless the sum concerned is received after the day on which the Finance Act 1995 is passed, but it is immaterial when either of the agreements mentioned in subsection (1) above is made or takes effect.**]**

Textual Amendments
F544 Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 142**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 08/11/1995

[F545 329C Annuities: criminal injuries.

(1) For the purposes of this section—

(a) "a qualifying award" is an award of compensation made under the Criminal Injuries Compensation Scheme with respect to a person ("A") on terms which provide—

(i) for p ayments under one or more annuities purchased for A in accordance with the provisions of the Scheme to be received by A or by another person on his behalf; or

(ii) for payments under one or more annuities purchased in accordance with the provisions of the Scheme to be received and held on trust by trustees of a qualifying trust for the benefit of A; and

(b) "a qualifying trust" is a trust under which A is, during his lifetime, the sole beneficiary.

(2) Where a person receives a sum—

(a) as the annuitant under an annuity purchased for him pursuant to a qualifying award,

(b) on behalf of the annuitant under an annuity purchased for the annuitant pursuant to a qualifying award, or

(c) as a trustee to be held on trust for A under a qualifying trust, in a case where the sum is paid under the terms of an annuity purchased pursuant to a qualifying award,

the sum shall not be regarded for the purposes of income tax as income of the recipient, or as A's income, and accordingly shall be paid without any deduction under section 349(1).

(3) In this section "the Criminal Injuries Compensation Scheme" means—

(a) the scheme established by arrangements made under the Criminal Injuries Compensation Act 1995; or

(b) arrangements made by the Secretary of State for compensation for criminal injuries and in operation at any time before the commencement of that scheme.**]**

Textual Amendments

F545 S. 329C inserted (8.11.1995) by Criminal Injuries Compensation Act 1995 (c. 53), **s. 8**

330 Compensation for National-Socialist persecution.

Annuities and pensions payable under any special provision for victims of National-Socialist persecution which is made by the law of the Federal Republic of Germany or any part of it or of Austria shall not be regarded as income for any income tax purpose.

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331 Scholarship income.

[M905](1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for income tax purposes.

(2) In this section "scholarship" includes an exhibition, bursary or any other similar educational endowment.

Marginal Citations
M905 Source-1970 s.375(1), (2)

VALID FROM 27/07/1999

[F546 331A Student loans: certain interest to be disregarded.

(1) If—
- (a) a loan is made to a person under any of the relevant student loan provisions,
- (b) an amount is recovered from him in respect of the loan,
- (c) an amount is repaid to him in respect of the amount recovered, and
- (d) interest is paid to him in respect of the amount repaid,

the interest shall be disregarded for all purposes of income tax.

(2) For the purposes of subsection (1) above the relevant student loan provisions are—
- (a) section 22 of the [M906]Teaching and Higher Education Act 1998;
- (b) section 73(f) of the [M907]Education (Scotland) Act 1980;
- (c) Article 3 of the [M908]Education (Student Support) (Northern Ireland) Order 1998.]

Textual Amendments
F546 S. 331A inserted (27.7.1999) by Finance Act 1999 (c. 16), **s. 60**

Marginal Citations
M906 1998 c.30
M907 1980 c.44
M908 S.I. 1998/1760 (N.I. 14).

332 Expenditure and houses of ministers of religion.

[M909](1) Subsection (2) below applies where an interest in any premises belongs to a charity or any ecclesiastical corporation and (in right of that interest)—
- (a) the persons from time to time holding any full-time office as clergyman or minister of any religious denomination, or
- (b) any particular person holding such an office,

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have or has a residence in those premises from which to perform the duties of the office.

(2) In the case of such a clergyman or minister, for the purposes of income tax with which he may be chargeable under Schedule E, there shall be disregarded—

(a) the making good to him, in consequence of his being the holder of his office, of statutory amounts payable in connection with the premises or statutory deductions falling to be made in connection therewith, except in so far as an amount or deduction is properly attributable to a part of the premises in respect of which he receives rent;

(b) the payment on his behalf, except as aforesaid, of such a statutory amount; and

(c) unless he is in **[**[F547]employment to which Chapter II of Part V applies**]**, the value to him of any expenses incurred in connection with the provision in the premises of living accommodation for him, being expenses incurred in consequence of his being the holder of his office.

(3) In assessing the income tax chargeable (whether under Schedule E or any other Schedule) upon a clergyman or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his profession or vocation—

(a) any sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman or minister;

(b) such part of the rent (not exceeding one-quarter) as the inspector by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister; and

(c) in respect of expenses borne by him in the maintenance, repairs, insurance or management of any premises in which, in right of such an interest as is mentioned in subsection (1) above, he has such a residence as is mentioned in that subsection, such part of the expenses as, together with any deduction allowable in respect of such expenses under paragraph (a) above, is equal to one-quarter of the amount of the expenses.

On an appeal to the General Commissioners or Special Commissioners, the Commissioners shall have jurisdiction to review the inspector's decision under paragraph (b) above.

(4) In this section "statutory amount" and "statutory deduction" mean an amount paid and a deduction made in pursuance of any provision contained in or having the force of an Act.

Textual Amendments

F547 1989 s.53(2)(f).*Previously*
"director's or higher-paid employment (as defined in section 167)".

Marginal Citations

M909 Source-1970 s.194; 1977 Sch.8 2, 3; 1987 Sch.15 2(12)

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VALID FROM 01/05/1995

[F548 332A Venture capital trusts: relief.

Schedule 15B shall have effect for conferring relief from income tax in respect of investments in venture capital trusts and distributions by such trusts.**]**

Textual Amendments

F548 S. 332A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 71(1)**

333 Personal equity plans.

M910 (1) The Treasury may make regulations providing that an individual who invests under a plan shall be entitled to relief from income tax in respect of the investments.

(2) The regulations shall set out the conditions subject to which plans are to operate and the extent to which investors are to be entitled to relief from tax.

(3) In particular, the regulations may—

(a) specify the description of individuals who may invest and the kind of investments they may make;

(b) specify maximum investment limits and minimum periods for which investments are to be held;

(c) provide that investments are to be held by persons ("plan managers") on behalf of investors;

(d) specify how relief from tax is to be claimed by, and granted to, investors or plan managers on their behalf;

(e) provide that plans and plan managers must be such as are approved by the Board;

(f) specify the circumstances in which approval may be granted and withdrawn.

[F549 (g) provide for plans to be treated as being of different kinds, according to criteria set out in the regulations;

(h) provide that the Board may register a plan as being of a particular kind;

(i) make different provision as to different kinds of plan;

(j) provide for investment by an individual under more than one plan in the same year of assessment.**]**

(4) The regulations may include provision—

(a) that in prescribed circumstances—

(i) an investor under a plan shall cease to be, and be treated as not having been, entitled to relief from tax in respect of the investments; and

(ii) he or the plan manager concerned (depending on the terms of the regulations) shall account to the Board for tax from which relief has already been given on the basis that the investor was so entitled;

(b) that an investor under a plan or the plan manager concerned (depending on the terms of the regulations) shall account to the Board for tax from which relief has been given in circumstances such that the investor was not entitled to it;

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(c) adapting, or modifying the effect of, any enactment relating to income tax in order to—
  (i) secure that investors under plans are entitled to relief from tax in respect of investments;
  (ii) secure that investors under plans cease to be, and are treated as not having been, so entitled;
  (iii) secure that investors under plans or plan managers account for tax as mentioned in paragraph (a) or (b) above;

(d) that a person who is, or has at any time been, either an investor under a plan or a plan manager—
  (i) shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board's inspection documents (of a prescribed kind) relating to a plan or to investments which are or have been held under it;
  (ii) shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about a plan or about investments which are or have been held under it;

(e) generally for the purpose of bringing plans into existence, and generally for the purpose of the administration of plans and the administration of income tax and corporation tax in relation to them.

(5) In this section "prescribed" means prescribed by the regulations.

Textual Amendments

F549 S. 333(3)(g)-(j) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s.70**

Modifications etc. (not altering text)

C281 S. 333(2)-(5) applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 151(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

C282 *For regulations see* Part III Vol.5.

Marginal Citations

M910 Source-1986 Sch.8

VALID FROM 01/05/1995

[F550 333A Personal equity plans: tax representatives.

(1) Regulations under section 333 may include provision that a European institution cannot be a plan manager unless one of the following three requirements is fulfilled.

(2) The first requirement is that—
  (a) a person who falls within subsection (5) below is for the time being appointed by the institution to be responsible for securing the discharge of prescribed duties which fall to be discharged by the institution, and
  (b) his identity and the fact of his appointment have been notified to the Board by the institution.

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(3) The second requirement is that there are for the time being other arrangements with the Board for a person other than the institution to secure the discharge of such duties.

(4) The third requirement is that there are for the time being other arrangements with the Board designed to secure the discharge of such duties.

(5) A person falls within this subsection if—
- (a) he is not an individual and has a business establishment in the United Kingdom, or
- (b) he is an individual and is resident in the United Kingdom.

(6) Different duties may be prescribed as regards different institutions or different descriptions of institution.

(7) The regulations may provide that—
- (a) the first requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;
- (b) the appointment of a person in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(8) The regulations may provide that—
- (a) the second requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;
- (b) arrangements made in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(9) The regulations may provide as mentioned in subsection (10) below as regards a case where—
- (a) in accordance with the first requirement a person is for the time being appointed to be responsible for securing the discharge of duties, or
- (b) in accordance with the second requirement there are for the time being arrangements for a person to secure the discharge of duties.

(10) In such a case the regulations may provide that the person concerned—
- (a) shall be entitled to act on the institution's behalf for any of the purposes of the provisions relating to the duties;
- (b) shall secure (where appropriate by acting on the institution's behalf) the institution's compliance with and discharge of the duties;
- (c) shall be personally liable in respect of any failure of the institution to comply with or discharge any such duty as if the duties imposed on the institution were imposed jointly and severally on the institution and the person concerned.

(11) In this section—
- (a) "European institution" has the same meaning as in the [M911]Banking Co-ordination (Second Council Directive) Regulations 1992;
- (b) "prescribed" means prescribed by the regulations.

(12) The preceding provisions of this section shall apply in the case of a relevant authorised person as they apply in the case of a European institution; and "relevant authorised person" here means a person who is an authorised person for the purposes of the [M912]Financial Services Act 1986 by virtue of section 31 of that Act.**]**

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Textual Amendments

F550 S. 333A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 64(1)**

Marginal Citations

M911 S.I. 1992/3218.

M912 1986 c. 60.

VALID FROM 31/07/1998

[F551 333B Involvement of insurance companies with plans and accounts.

(1) The Treasury may make regulations providing exemption from tax for income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company's long term business fund as is referable to section 333 business.

(2) The Treasury may by regulations modify the effect of section 30(4) of the M913 Finance (No. 2) Act 1997 (which repeals section 231(2) of the Taxes Act 1988 with effect from 6th April 1999) in relation to distributions which—

(a) are made before 6th April 2004; and

(b) are received by an insurance company in respect of investments of so much of its long term business fund as is referable to section 333 business.

(3) Regulations under this section may make provision for insurance companies that are not resident in the United Kingdom to be treated, in relation to investments of so much of their long term business funds as are referable to section 333 business—

(a) as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits in respect of investments; and

(b) as if such other conditions of any entitlement to, or to the payment of, tax credits were also satisfied.

(4) Regulations under section 333 or this section may include provision which, in relation to insurance companies that are not resident in the United Kingdom—

(a) requires a person to be appointed to be responsible for securing the discharge of any duties to which such an insurance company is subject under the regulations; and

(b) confers rights and powers, and imposes liabilities, on a person so appointed;

and, without prejudice to the generality of paragraphs (a) and (b) above, regulations made by virtue of this subsection may include any provision corresponding to any that, in relation to a European institution, may be made under section 333A.

(5) Regulations under this section may provide that an insurance company—

(a) shall comply with any notice served on it by the Board which requires it, within a prescribed period, to make available for the Board's inspection documents (of a prescribed kind) relating to, or to matters connected with, its past or present section 333 business; and

(b) shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about its past or present section 333 business or any matters connected with it.

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(6) Any power of the Treasury under this section to make provision by regulations in relation to insurance companies shall include power by regulations to make such corresponding provision in relation to friendly societies as the Treasury think fit.

(7) Regulations under this section may—

(a) for purposes connected with any exemption from tax conferred by virtue of subsection (1) above, apply or modify any provision made by or under the Tax Acts;

(b) make different provision for different cases;

(c) include such incidental, supplemental, consequential and transitional provision as the Treasury may consider appropriate.

(8) Without prejudice to the generality of the powers conferred by subsection (7) above, the provision that may be made in connection with an exemption from tax conferred by virtue of subsection (1) above shall include provision for section 436 to apply (with any such modifications as may be prescribed) in relation to section 333 business as it applies in relation to pension business.

(9) In this section—

"friendly society" has the same meaning as in Chapter II of Part XII;

"insurance company" means an insurance company within the meaning of the [M914]Insurance Companies Act 1982;

"long term business fund" has the same meaning as in Chapter I of Part XII;

"prescribed" means prescribed by regulations under this section;

"section 333 business", in relation to an insurance company, means the business of the company that is attributable to the making of investments with that company under plans for which provision is made by regulations under section 333.**]**

Textual Amendments

F551 S. 333B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 77(1)**

Marginal Citations

M913 1997 c. 58.

M914 1982 c. 50.

CHAPTER V

RESIDENCE OF INDIVIDUALS

334 Commonwealth citizens and others temporarily abroad.

Every Commonwealth citizen or citizen of the Republic of Ireland—

(a) shall, if his ordinary residence has been in the United Kingdom, be assessed and charged to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if

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he has so left the United Kingdom for the purpose only of occasional residence abroad, and

(b) shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity or stipend, or from any trade, profession, employment or vocation in the United Kingdom or elsewhere.

335 Residence of persons working abroad.

[M915](1) Where—

(a) a person works full-time in one or more of the following, that is to say, a trade, profession, vocation, office or employment; and

(b) no part of the trade, profession or vocation is carried on in the United Kingdom and all the duties of the office or employment are performed outside the United Kingdom;

the question whether he is resident in the United Kingdom shall be decided without regard to any place of abode maintained in the United Kingdom for his use.

(2) Where an office or employment is in substance one of which the duties fall in the year of assessment to be performed outside the United Kingdom there shall be treated for the purposes of this section as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.

Marginal Citations

M915 Source-1970 s.50

336 Temporary residents in the United Kingdom.

[M916](1) A person shall not be charged to income tax under Schedule D as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, if—

(a) he is in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence there, and

(b) he has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment,

but if any such person resides in the United Kingdom for such a period he shall be so chargeable for that year.

(2) For the purposes of Cases I, II and III of Schedule E, a person who is in the United Kingdom for some temporary purpose only and not with the intention of establishing his residence there shall not be treated as resident in the United Kingdom if he has not in the aggregate spent at least six months in the United Kingdom in the year of assessment, but shall be treated as resident there if he has.

[[F552](3) The question whether—

(a) a person falls within subsection (1)(a) above, or

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(b) for the purposes of subsection (2) above a person is in the United Kingdom for some temporary purpose only and not with the intention of establishing his residence there,

shall be decided without regard to any living accommodation available in the United Kingdom for his use.**]**

Textual Amendments

F552 S. 336(3) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 208(1)(4)**

Modifications etc. (not altering text)

C283 *See* 1979(C) s.18(3)—*corresponding provision for capital gains.*

Marginal Citations

M916 Source-1970 s.51

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Taxation of income

VALID FROM 24/07/2002

[F553 338B Charges on income: annuities or other annual payments

(1) An annuity or other annual payment is a charge on income if—

(a) the requirements specified in subsection (2) are met, and

(b) it is not excluded from being a charge on income for the purposes of corporation tax—

(i) by any of the following provisions of this section, or

(ii) by any other provision of the Corporation Tax Acts.

(2) The requirements are that the payment—

(a) is made under a liability incurred for a valuable and sufficient consideration,

(b) is not charged to capital,

(c) is ultimately borne by the company, and

(d) in the case of a company not resident in the United Kingdom, is incurred wholly and exclusively for the purposes of a trade which is or is to be carried on by it in the United Kingdom through a branch or agency.

(3) An annuity or other annual payment made to a person not resident in the United Kingdom shall be treated as a charge on income only if the following conditions are met.

(4) The conditions are that the company making the payment is resident in the United Kingdom and that either—

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(a) the company deducts tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or

(b) the person beneficially entitled to the income in respect of which the payment is made is a company that is not resident in the United Kingdom but which carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2) of that company, or

(c) the payment is one payable out of income brought into charge to tax under Case V of Schedule D.

(5) An annuity or other annual payment is not a charge on income if—

(a) it is payable in respect of the company's loan relationships, or

(b) it is a royalty to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets).

(6) Nothing in this section prevents an annuity or other annual payment from being a charge on income if it is a qualifying donation (within the meaning of section 339).**]**

Textual Amendments

F553 Ss. 338-338B substituted for s. 338 (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 1(2)**

337 Companies beginning or ceasing to carry on a trade.

M917(1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company's income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.

(2) Subject to subsection (3) below and to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—

(a) in respect of dividends or other distributions; nor

(b) in respect of any yearly interest, annuity or other annual payment or in respect of any such other payments as are mentioned in section 348(2), but not including sums which are, or but for any exemption would be, chargeable under Schedule A.

(3) In computing income from a trade, subsection (2)(b) above shall not prevent the deduction of yearly interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom.

Modifications etc. (not altering text)

C284 *See* 1988 s.500—Oil Taxation Acts—*deduction of petroleum revenue tax and* s.501—*interest on petroleum revenue tax overpaid to be disregarded for corporation tax.*

Marginal Citations

M917 Source-1970 s.251

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 29/04/1996

337A Interest payable by companies.

No deduction shall be made in respect of interest in computing a company's income from any source except in accordance with Chapter II of Part IV of the Finance Act 1996 (loan relationships).

338 Allowance of charges on income and capital.

(1) [M918]Subject to sections 339, 494 and 787, in computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.

(2) [M919]Subject to the following subsections, **[**[F554]to section 339**]** and to any other express exceptions, "charges on income" means for the purposes of corporation tax—

(a) payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; and

(b) payments which are qualifying donations (within the meaning of section 339);

but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax shall be treated as a charge on income.

(3) [M920]Subject to subsections (4) to (6) below, the payments referred to in subsection (2)(a) above are—

(a) any yearly interest (whether charged to revenue or capital), annuity or other annual payment and any such other payments as are mentioned in section 348(2) but not including sums which are or, but for any exemption would be, chargeable under Schedule A; and

(b) any other interest (whether charged to revenue or capital) payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person who in the opinion of the Board is bona fide carrying on business as a member of the Stock Exchange or bona fide carrying on the business of a discount house in the United Kingdom;

and for the purposes of this section any interest payable by a company as mentioned in paragraph (b) above shall be treated as paid on its being debited to the company's account in the books of the person to whom it is payable.

(4) No such payment as is mentioned in subsection (3)(a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—

(a) [M921]the company deducts income tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or

(b) [M922]it is a payment of interest on a quoted Eurobond falling within section 124; or

(c) [M923]the payment is a payment of interest falling within section 340; or

(d) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.

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(5) [M924]No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—

(a) the payment, not being interest, is charged to capital or the payment is not ultimately borne by the company; or

(b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade **[**[F555]which is or is to be**]** carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity (within the meaning of section 339).

(6) [M925]No such payment of interest as is mentioned in subsection (3) above made by a company shall be treated as a charge on income unless—

(a) the company exists wholly or mainly for the purpose of carrying on a trade; or

(b) the payment of interest is wholly and exclusively laid out or expended for the purposes of a trade carried on by the company; or

(c) the company is an investment company, within the meaning of section 130 and including an authorised unit trust; or

(d) the payment of interest would, on the assumptions made below, be eligible for relief under section 353 by virtue of section 354 if it were made by an individual.

For the purposes of paragraph (d) above, it shall be assumed that if the land concerned is occupied by the company the conditions of section 355(1) are satisfied if the land either—

(i) is not used as a residence; or

(ii) is used as an individual's main or only residence;

but the limit imposed by section 357 shall apply only in a case falling within paragraph (ii) above and shall then apply without regard to any loan made in connection with any other land.

(7) [M926]Any payment to which section 125(1) applies shall not be charge on income for the purposes of corporation tax.

Textual Amendments

F554 Words in s. 338(2) substituted (in relation to accounting periods beginning on or after 19.3.1991) by virtue of Finance Act 1991 (c. 31, SIF 63:1), **s. 71(2)(3)**

F555 Words in s. 338(5)(b) inserted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by 1993 c. 34, **s. 109(3)(4)**

Modifications etc. (not altering text)

C285 *See* 1988 s.494—Oil Taxation Acts—*restriction of relief against income from oil extraction activities or oil rights.*

C286 *See*—1981 s.127—Oil Taxation Acts—*deduction of supplementary petroleum duty.*1988 s.500—Oil Taxation Acts—*deduction of petroleum revenue tax in computing income.*Housing Subsidies Act 1967 (c.29) ss.24(2)*and* 26(4) (*reproduced in* Part II Vol.5)—*approved housing association not entitled to relief for interest subsidised under that Act.*

C287 *See* 1990 s.56*and* Sch.10 para.25— "*profit*"
from redemtion of convertible securities treated as interest. (*Applies also to ring fence profits—see* 1988 s.494—Oil Taxation Acts.)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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C288 *See* 1989 s.116—*certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after* 1*April* 1989.

Marginal Citations

M918 Source-1970 s.248(1); 1986 s.29
M919 Source-1970 s.248(2); 1986 s.29
M920 Source-1970 s.248(3); 1973 s.54(1)(a); 1981 s.38(1)
M921 Source-1970 s.248(4); 1972 Sch.24 20
M922 Source-1970 s.248(4)(aa); 1984 s.35(4)
M923 Source-1970 s.248(4)(b), (c)
M924 Source-1970 s.248(5); 1981 s.38(2)
M925 Source-1970 s.248(6); 1974 Sch.1 27
M926 Source-1977 s.48(1)

VALID FROM 01/05/1995

338A Charges on income: loans to buy land.

(1) Subject to the following provisions of this section, interest shall qualify for treatment in accordance with section 338(6)(d) as a charge on income if—

(a) at the time when the interest is paid the company in question owns an estate or interest in land, or the property in a caravan or house-boat, in the United Kingdom or the Republic of Ireland;

(b) the interest is paid on a loan to defray money applied—

(i) in purchasing that estate, interest or property, or another estate, interest or property absorbed into, or given up to obtain, that estate, interest or property;

(ii) in improving or developing the land, or buildings on the land; or

(iii) in paying off another loan in a case in which interest on that other loan would have qualified under this section for treatment as a charge on income had the loan not been paid off (and on the assumption, if the loan was free of interest, that it carried interest);

(c) the land, caravan or house-boat—

(i) is occupied by the company and used as the only or main residence of an individual;

(ii) is occupied by the company and used otherwise than as a residence; or

(iii) is, in any period of 52 weeks comprising the time at which the interest is payable, let at a commercial rent for more than 26 weeks and, when not so let, either available for letting at such a rent or occupied and used as mentioned in sub-paragraph (i) or (ii) above;

and

(d) the interest is not interest incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements.

(2) Subsections (2) and (7) of section 354 shall have effect in relation to subsection (1) above as they have effect in relation to subsection (1) of that section.

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(3) Interest shall qualify under this section for treatment as a charge on income by reference to any land, caravan or house-boat which is being used as the only or main residence of an individual to the extent only that the amount on which it is payable does not exceed the following limit, that is to say, the qualifying maximum for the year of assessment in which the payment is made reduced by the amount on which interest is payable by the company under any earlier loans so far as they—

(a) are loans the interest on which qualifies under this section for treatment as a charge on income; and

(b) fall within subsection (1)(b) above in respect of the same land, caravan or house-boat.

(4) Accordingly—

(a) if the amount on which interest is payable under any loan exceeds the limit specified in subsection (3) above, so much only of the interest that would otherwise qualify under this section shall so qualify as bears to the whole of that interest the same proportion as that part of that amount that does not exceed the limit bears to the whole of that amount; and

(b) if the amount on which interest is payable under the earlier loans mentioned in that subsection is equal to or exceeds the qualifying maximum for the year of assessment in which the interest is paid, none of the interest on the later loan shall qualify under this section for treatment as a charge on income.

(5) Subsections (1A) and (2) of section 355 shall have effect for the purposes of this section in relation to the condition in paragraph (c) of subsection (1) above as they have effect in relation to the condition referred to in section 355(1A)(a).

(6) Interest shall not qualify under this section for treatment as a charge on income by reference to any case in which—

(a) the land, caravan or house-boat is used as the only or main residence of an individual, and

(b) the interest is paid on a home improvement loan,

unless the loan was made before 6th April 1988; and subsections (2B) and (2C) of section 355 shall apply for the purposes of this subsection as they apply for the purposes of subsection (2A) of that section.

(7) Interest shall not qualify by virtue of subsection (1)(b)(i) above for treatment as a charge on income—

(a) where the purchaser has, since 15th April 1969, disposed of an estate or interest in the land, or the property in the caravan or house-boat, in question and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan or to allow interest on the loan to be treated as a charge on income; or

(b) where the purchaser is directly or indirectly purchasing from a person who is connected with him and the price substantially exceeds the value of what is acquired;

and interest shall not qualify by virtue of subsection (1)(b)(ii) above for such treatment where the money spent is received directly or indirectly by a person connected with the person spending it and substantially exceeds the value of the work done.

(8) For the purposes of subsection (7) above one person is connected with another if he is so connected within the terms of section 839.

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(9) In this section—

"caravan" and "house-boat" have the same meanings as are given to them for the purposes of sections 354 to 366 by subsection (1) of section 367; and

"the qualifying maximum" has the same meaning as is given to it for the purposes of sections 356A to 357 by subsection (5) of that section;

and subsections (2) to (4) of section 367 shall apply with the necessary modifications for the determination of any question whether interest qualifies under this section for treatment as a charge on income as they apply for the determination of any question whether interest is eligible for relief under section 353 by virtue of section 354.

(10) References in this section to an estate or interest do not include references—

(a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or

(b) to the interest of a chargee or mortgagee or, in Scotland, the interest of a creditor in a charge or security of any kind over land.

339 Charges on income: donations to charity.

(1) [M927]A qualifying donation is a payment made by a company to a charity, other than—

(a) a covenanted payment **[**[F556]of a sum of money**]** to charity, as defined in section 660(3); and

(b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.

(2) [M928]A qualifying donation shall not constitute a charge on the income of the company unless a claim is made by the company and the company is resident in the United Kingdom*and is not a close company*[F557].

(3) [M929]A payment made by a company is not a qualifying donation unless, on the making of it, the company deducts out of it a sum representing the amount of income tax on it.

[[F558](3A) A payment made by a close company is not a qualifying donation if it is of a sum which leaves less than **[**[F559]£250**]** after deducting income tax under subsection (3) above.

(3B) A payment made by a close company is not a qualifying donation if—

(a) it is made subject to a condition as to repayment, or

(b) the company or a connected person receives a benefit in consequence of making it and either the relevant value in relation to the payment exceeds two and a half per cent of the amount given after deducting tax under section 339(3) or the amount to be taken into account for the purposes of this paragraph in relation to the payment exceeds £250.

(3C) For the purposes of subsections (3B) above and (3D) below, the relevant value in relation to a payment to a charity is—

(a) where there is one benefit received in consequence of making it which is received by the company or a connected person, the value of that benefit;

(b) where there is more than one benefit received in consequence of making it which is received by the company or a connected person, the aggregate value of all the benefits received in consequence of making it which are received by the company or a connected person.

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(3D) The amount to be taken into account for the purposes of subsection (3B)(b) above in relation to a payment to a charity is an amount equal to the aggregate of—

(a) the relevant value in relation to the payment, and

(b) the relevant value in relation to each payment already made to the charity by the company in the accounting period in which the payment is made which is a qualifying donation within the meaning of this section.

(3E) A payment made by a close company is not a qualifying donation if it is conditional on, or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the company or a connected person.

(3F) A payment made by a company is not a qualifying donation unless the company gives to the charity to which the payment is made a certificate in such form as the Board may prescribe and containing—

(a) in the case of any company, a statement to the effect that the payment is one out of which the company has deducted tax under subsection (3) above, and

(b) in the case of a close company, a statement to the effect that the payment satisfies the requirements of subsections (3A) to (3E) above.

(3G) A payment made by a company is not a qualifying donation if the company is itself a charity.**]**

(4) Where, with a view to securing relief under section 338 a company makes a payment subject to such a deduction as is mentioned in subsection (3) above, then, whether or not it proves to be a qualifying donation, the payment—

(a) shall be treated as a relevant payment for the purposes of Schedule 16; and

(b) shall in the hands of the recipient (whether a charity or not) be treated for the purposes of this Act as if it were an annual payment.

(5) *In any accounting period of a company, the maximum amount allowable under section* 338*by virtue of subsection* (2)(b)*of that section in respect of qualifying donations made by the company shall be a sum equal to* 3*per cent. of the dividends paid on the company's ordinary share capital in that accounting period*[F560].

(6) [M930]A covenanted donation to charity shall not be regarded for the purposes of the definition of "charges on income" in section 338, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of any provision of this Act, a distribution.

(7) [M931]Notwithstanding anything in any other provision of the Tax Acts, a covenanted donation to charity made by a company shall not be a charge on income for the purposes of section 338 unless the company—

(a) deducts out of it a sum representing the amount of income tax on it; and

(b) accounts for that tax in accordance with Schedule 16;

and any such payment from which a deduction is made as mentioned in paragraph (a) above shall be treated as a relevant payment for the purposes of Schedule 16, whether or not it would otherwise fall to be so treated.

[[F561](7A) In subsections (3B) to (3E) above references to a connected person are to a person connected with—

(a) the company, or

(b) a person connected with the company;

and section 839 applies for the purposes of this subsection.**]**

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(8) [M932]In this section "covenanted donation to charity" means a payment under a disposition or covenant made by the company in favour of a charity whereby the like annual payments (of which the donation is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.

(9) [M933]For the purposes of this section "charity" includes **[**[F562]each of the bodies mentioned in section 507, and in subsections (1) to **[**[F563](4)**]** above includes**]** any Association of a description specified in section 508, but, subject to that, in this section "charity" has the same meaning as in section 506.

Textual Amendments

F556 1990 s.26(2)*in relation to payments made on or after* 1*October* 1990.

F557 *Words repealed by* 1990 ss.26(3)*and* 132*and* Sch.19 Part IV*in relation to payments made on or after* 1*October* 1990.

F558 1990 s.26(4)*in relation to payments made on or after* 1*October* 1990.

F559 Word in s. 339(3A) substituted (27.7.1993 with application in relation to payments made on or after 16.3.1993) by 1993 c. 34, **s. 67(1)(3)**

F560 *Repealed by* 1990 ss.27(2)*and* 132*and* Sch.19 Part IV*in relation to accounting periods ending on or after* 1*October* 1990.

F561 1990 s.26(5)*in relation to payments made on or after* 1*October* 1990.

F562 1989 s.60(2)*in respect of payments due on or after* 14*March* 1989.*Previously*
"the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England and, additionally, in subsections (1) to (5) above includes the Trustees of the British Museum, the Trustees of the British Museum (Natural History) and".

F563 1990 s.27(2).*Previously*
"(5)".

Modifications etc. (not altering text)

C289 *See* 1990 s.94*re production of books etc. in respect of repayment claims in respect of payments made on or after* 1*October* 1990.

Marginal Citations

M927 Source-1986 s.29(1), (2)
M928 Source-1986 s.29(1)
M929 Source-1986 s.29(3)-(5)
M930 Source-1970 s.248(8); 1972 Sch.24 20
M931 Source-1970 s.248(8A); 1986 s.30(2)
M932 Source-1970 s.248(a); 1980 s.55(3)
M933 Source-1981 s.49; 1983 s.46(3); 1986 s.29(6)

[[F564F565]**339A. . . . . .**

. . . . . .]

Textual Amendments

F564 S. 339A inserted (in relation to accounting periods ending on or after 1 October 1990) by Finance Act 1990 (c. 29), **s. 27(3)(4)**

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F565 S. 339A repealed (in relation to accounting periods beginning on or after 19.3.1991) by Finance Act 1991 (c. 31), ss. 71(1)(3), 123, **Sch. 19 Pt. V**, Note 5; and s. 339A modified in its application to accounting periods beginning before 19.3.1991 and ending on or after that date by s. 71(4) of that repealing Act

340 Charges on income: interest payable to non-residents.

(1) A payment of interest by a company is one to which section 338(4)(c) applies if the company is carrying on a trade and—

(a) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom; and

(b) the interest is in fact paid outside the United Kingdom; and

(c) either—

(i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company's trade carried on outside the United Kingdom; or

(ii) the interest is payable in a currency other than sterling and, subject to subsection (2) below, the liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on.

(2) Subsection (1)(c)(ii) above does not apply where—

(a) the trade is carried on by a body of persons over whom the person entitled to the interest has control; or

(b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control; or

(c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.

In this subsection references to a body of persons include references to a partnership and "control" has the meaning given by section 840.

(3) For the purposes of subsection (1) above the company paying the interest shall be treated as carrying on any trade carried on by a 75 per cent. subsidiary of it (both being bodies corporate) if the subsidiary (as well as the company making the payment) is resident in the United Kingdom.

(4) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another that other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

341 Payments of interest etc. between related companies.

(1) This section applies where—

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(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 840 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 16, 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.

(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.

342 Tax on company in liquidation.

(1) [M934]In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) [M935]Subject to subsection (3) below—

(a) corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed or proposed for the penultimate year; but

(b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.

(3) If, before the affairs of the company are completely wound up, any of the rates or fractions mentioned in subsection (2) above has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

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(4) [M936]An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.

(5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 12(7).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 12(7) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.

(7) [M937]References in this section to a rate or fraction fixed or proposed are references to a rate or fraction fixed by an Act passed before the completion of the winding-up or, if not so fixed, proposed by a Budget resolution (and without regard to any subsequent Act); except that if a rate or fraction so fixed is proposed to be altered by a Budget resolution any such reference to it is a reference to it as proposed to be so altered.

In this subsection "Budget resolution" means a resolution of the House of Commons for fixing any such rate or fraction as is mentioned in this section.

(8) Where the winding-up commenced before the company's final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

(9) Any assessment made by virtue of section 8(4) shall be subject to any such adjustment by discharge or repayment of tax or by a further assessment as may be required to give effect to this section.

Marginal Citations

M934 Source-1970 s.245(1)
M935 Source-1970 s.245(2), (3); 1974 s.37(1)
M936 Source-1970 s.245(4)-(6)
M937 Source-1970 s.245(7)-(9); 1974 s.37(1)

VALID FROM 10/07/2003

[[F566]342A Tax on companies in administration

(1) In this section—

(a) references to the relevant event, in relation to a company in administration, are references—

(i) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or

(ii) in the case of a company which enters administration otherwise than under that Act, to the doing of any other act for a like purpose, and

(b) references to a company's final year are references to the financial year in which the relevant event occurs, and references to the company's

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penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsections (3) and (4)—

(a) corporation tax shall be charged on the profits of the company arising in the administration in its final year at the rate of corporation tax fixed or proposed for the penultimate year, but

(b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.

(3) If, before the relevant event, any of the rates or fractions mentioned in subsection (2) has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

(4) If, in the case of the company's final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.

(5) In subsection (4) "the company's final accounting period" means the last accounting period of the company before the relevant event.

(6) An assessment on the company's profits for an accounting period in which the company is in administration shall not be invalid because made before the end of the accounting period.

(7) In making an assessment after the company enters administration and before the date of the relevant event, the administrator may act on an assumption as to when that date will fall so far as it governs section 12(3).

(8) The assumption of the wrong date shall not alter the company's final and penultimate year and, if the right date is later—

(a) an accounting period shall end on the date assumed and a new accounting period shall begin, and

(b) thereafter, section 12(3) shall apply as if the company had entered administration at the beginning of that new accounting period.

(9) Subsections (7) and (9) of section 342 apply in relation to this section as they apply in relation to that section, except that in subsection (7) of that section the reference to the completion of the winding up is to be read as a reference to the relevant event.

(10) Where the company entered administration before its final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) apply in relation to the company's profits arising at any time in its penultimate year.**]**

Textual Amendments

F566 S. 342A inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 3**

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343 Company reconstructions without a change of ownership.

(1) [M938]Where, on a company ("the predecessor") ceasing to carry on a trade, another company ("the successor") begins to carry it on, and—

(a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and

(b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

(2) [M939]The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Acts; but—

(a) there shall be made to or on the successor in accordance with those Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and

(b) the amount of any such allowance or charge shall be computed as if—

(i) the successor had been carrying on the trade since the predecessor began to do so, and

(ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987.

(3) [M940F567] . . ., subject to subsection (4) below and to any claim made by the predecessor under section **[**[F568]393A(1)**]**, the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to [F569]. . . relief if it had continued to carry on the trade.

(4) [M941]Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

(5) [M942]Any securities, within the meaning of section 731, which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to

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the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.

[F570](6) . . . . . .

(7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, [F571] . . ., subsections (2) to **[**[F572](5)**]** above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

(a) in relation to the earlier event "successor" shall include the successor at either event; and

(b) in relation to the later event "predecessor" shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

(8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.

(9) [M943]Where under subsection (8) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.

(10) [M944]Where, by virtue of subsection (9) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners,

and any such Commissioners shall determine the question in like manner as if it were an appeal except that all those companies shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

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(12) [M945]In the application of this section to any case in relation to which subsection (4) above does not apply—

(a) subsection (9) above shall have effect with the substitution for the words following "separate trade" of the words " any necessary apportionment shall be made of receipts or expenses "; and

(b) subsection (10) above shall have effect with the substitution for "item" of " sum ".

Textual Amendments

F567 Words in s. 343(3) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(1)(a), **Sch. 19 Pt. V**, Note 4

F568 Words in s. 343(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, **Sch 15 para. 7(1)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

F569 Word in s. 343(3) repealed (with effect in relation to accounting periods ending after the day appointed for the purposes of s. 10 of 1988 c. 1) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** and omitted (27.7.1993) by virtue of s. 120, Sch. 14 para. 8(2)

F570 S. 343(6) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), **ss. 73(3)**(-(5), 123, Sch. 15 para. 7(2), Sch. 19 Pt. V, Note 4

F571 Words in s. 343(7) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(3)(a), **Sch. 19 Pt. V**, Note 4

F572 Words in s. 343(7) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 7(3)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

Modifications etc. (not altering text)

C290 S. 343 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para 12(2)** (with s. 43(6))

C291 S. 343 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 20(8)**

C292 S. 343(2) excluded (16.7.1992) by Capital Allowances Act 1990 (c. 1), **s. 152B(10)(e)** (as inserted (16.7.1992) by Finance Act 1992 (c. 48), **s. 67**).

C293 S. 343(3) restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 15(1)(a)(7)**

C294 S. 343(3) restricted (11.1.1994 with retrospective effect) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15(7)**

Marginal Citations

M938 Source-1970 s.252(1)

M939 Source-1970 s.252(2), (2A); 1971 Sch.8 16(5); 1986 s.56(7), Sch.13 2; 1987 (No.2) s.64(2)

M940 Source-1970 s.252(3)-(7)

M941 Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)

M942 Source-1970 s.252(4)-(7)

M943 Source-1970 s.252(8); 1986 Sch.10 1(3)

M944 Source-1970 s.252(9), (10)

M945 Source-1986 s.42(2), (3)

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VALID FROM 21/07/2008

[F573 343ZA Transfers of trade to obtain balancing allowances

(1) This section applies where—
- (a) a company ("the predecessor") ceases to carry on a trade,
- (b) another company ("the successor") begins to carry on the activities of that trade as its trade or as part of its trade,
- (c) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of the Capital Allowances Act to a balancing allowance in respect of the trade, and
- (d) the predecessor's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor to that balancing allowance.

(2) This section also applies where—
- (a) a company ("the predecessor") ceases to carry on part of a trade,
- (b) another company ("the successor") begins to carry on the activities of that part of the trade as its trade or as part of its trade, and
- (c) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of the trade, to a balancing allowance in respect of the trade under Part 2 of the Capital Allowances Act.

(3) This section does not apply where section 343 applies.

(4) Where this section applies, the Corporation Tax Acts have effect subject to section 343(2), but as if the words "and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)" were omitted.

(5) Where this section applies because of subsection (1), and the successor carries on the activities of the trade the predecessor ceased to carry on as part of the successor's trade, for the purposes of section 343(2) that part of the successor's trade is to be treated as a separate trade carried on by the successor.

(6) Where this section applies because of subsection (2), for the purposes of section 343(2)—
- (a) that part of the trade which the predecessor ceased to carry on is to be treated as a separate trade carried on by the predecessor, and
- (b) where the successor carries on the activities of that part of the trade as part of its trade, that part of the successor's trade is to be treated as a separate trade carried on by the successor.

(7) Where subsection (5) or (6) applies, such apportionment of receipts, expenses, assets and liabilities is to be made as may be just.

(8) Section 343(10) applies to an apportionment under subsection (7) as it applies to an apportionment under section 343(9).**]**

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Textual Amendments

F573 S. 343ZA inserted (with effect in accordance with s. 89(2) of the amending Act) by Finance Act 2008 (c. 9), **s. 89(1)**

VALID FROM 19/07/2007

[F574 343A Company reconstructions involving business of leasing plant or machinery

(1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.

(2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless—

(a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and

(b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).

(3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless—

(a) the predecessor ceases to carry on the whole of its trade, and

(b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.

(4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.

(5) In this section—

"business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), and

(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),

"consortium principal company" means a company which is a principal company as a result of paragraph 12 of that Schedule,

"market value", in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,

"plant or machinery" has the same meaning as in Part 2 of the Capital Allowances Act,

"principal company" is to be construed in accordance with paragraph 11 or (as the case may be) 12 of Schedule 10 to the Finance Act 2006, and

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"relevant fraction" has the same meaning as in paragraph 12 of that Schedule.]

Textual Amendments

F574 S. 343A inserted (19.7.2007, the inserted subsections (2) and (3) having effect in accordance with Sch. 6 para. 1(3)-(5) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 6 para. 1(2)**

344 Company reconstructions: supplemental.

M946(1) For the purposes of section 343—

(a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;

(b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and

(c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (1) or (7) of section 343 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.

(2) For the purposes of section 343, a trade or interest in a trade which belongs to a company engaged in carrying it on may be regarded—

(a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or

(b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

(3) For the purposes of subsection (2) above—

(a) references to ownership shall be construed as references to beneficial ownership;

(b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;

(c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with section 838(5) to (10); and

(d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

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(4) In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose "relative" means husband, wife, ancestor, lineal descendant, brother or sister.

(5) For the purposes of section 343(4), relevant assets are—

(a) assets which were vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; and

(b) consideration given to the predecessor by the successor in respect of the change of company carrying on the trade;

and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.

(6) For the purposes of section 343(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; but a liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(7) For the purposes of section 343(4)—

(a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and

(b) the amount of liabilities shall be taken to be their amount at that time.

(8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.

(9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 343(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 343(4), be reduced by an amount equal to the amount of the liability.

(11) In this section "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.

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(12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

Marginal Citations

M946 Source-1970 s.253; 1986 s.42, Sch.10 2

Chargeable gains

[F575]345 . . . . . .

Textual Amendments

F575 S. 345 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

[F576]346 . . . . . .

Textual Amendments

F576 S. 346 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

[F577]347 . . . . . .

Textual Amendments

F577 S. 347 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

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PART IX

ANNUAL PAYMENTS AND INTEREST

Annual payments

[F578 347A General rule.

(1) A payment to which this section applies shall not be a charge on the income of the person liable to make it, and accordingly—
  (a) his income shall be computed without any deduction being made on account of the payment, and
  (b) the payment shall not form part of the income of the person to whom it is made or of any other person.

(2) This section applies to any annual payment made by an individual which would otherwise be within the charge to tax under Case III of Schedule D except—
  (a) a payment of interest;
  (b) a covenanted payment to charity (within the meaning given by section 660(3));
  (c) a payment made for bona fide commercial reasons in connection with the individual's trade, profession or vocation; and
  (d) a payment to which section 125(1) applies.

(3) This section applies to a payment made by personal representatives (within the meaning given in section 701(4)) where—
  (a) the deceased would have been liable to make the payment if he had not died, and
  (b) this section would have applied to the payment if he had made it.

(4) A maintenance payment arising outside the United Kingdom shall not be within the charge to tax under Case V of Schedule D if, because of this section, it would not have been within the charge of tax under Case III had it arisen in the United Kingdom; and for this purpose "maintenance payment" means a periodical payment (not being an instalment of a lump sum) which satisfies the conditions set out in paragraphs (a) and (b) of section 347B(5).

(5) No deduction shall be made under section 65(1)(b) **[**F579, 68(1)(b) or 192(3)**]** on account of an annuity or other annual payment which would not have been within the charge to tax under Case III of Schedule D if it had arisen in the United Kingdom.

(6) References in subsection (2) above to an individual include references to a Scottish partnership in which at least one partner is an individual.

Textual Amendments

F578 Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), **s. 36(1)(3)-(5)**

F579 Words in s. 347A(5) inserted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s.60**.

Modifications etc. (not altering text)

C295 S. 347A applied (with modifications) by Finance Act 1994 (c. 9), **s. 79(1)(2)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F580 347B Qualifying maintenance payments.

(1) In this section "qualifying maintenance payment" means a periodical payment which—

(a) is made under an order made by a court [F581 in a member State], or under a written agreement the [F582 law applicable to] which is the law of [F581 a member State or of a part of a member State]

(b) is made by one of the parties to a marriage (including a marriage which has been dissolved or annulled) either—

(i) to or for the benefit of the other party and for the maintenance of the other party, or

(ii) to the other party for the maintenance by the other party of any child of the family,

(c) is due at a time when—

(i) the two parties are not a married couple living together, and

(ii) the party to whom or for whose benefit the payment is made has not remarried, and

(d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.

(2) Notwithstanding section 347A(1)(a) but subject to subsections (3) and (4) below, a person making a claim for the purpose shall be entitled, in computing his total income for a year of assessment, to deduct an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.

(3) The amount which may be deducted under this section by a person in computing his total income for a year of assessment shall not exceed the amount [F583 specified in section 257A(1) for the year].

(4) Where qualifying maintenance payments falling due in a year of assessment are made by a person who also makes other maintenance payments attracting relief for that year, subsection (3) above shall apply as if the limit imposed by it were reduced by an amount equal to the aggregate amount of those other payments.

(5) The reference in subsection (4) above to other maintenance payments attracting relief for a year is a reference to periodical payments which—

(a) are made under an order made by a court (whether in the United Kingdom or elsewhere) or under a written or oral agreement, and

(b) are made by a person—

(i) as one of the parties to a marriage (including a marriage which has been dissolved or annulled) to or for the benefit of the other party to the marriage and for the maintenance of the other party, or

(ii) to any person under 21 years of age for his own benefit, maintenance or education, or

(iii) to any person for the benefit, maintenance or education of a person under 21 years of age,

and in respect of which the person making them is entitled otherwise than under this section to make a deduction in computing his income for the year.

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(6) *The reference in subsection* (1)*above to a married couple living together shall be construed in accordance with section* 282(1),*but section* 282(2)*shall not apply for the purposes of this section*[F584].

(7) In this section—

"child of the family", in relation to the parties to a marriage, means a person under 21 years of age—

(a) who is a child of both those parties, or

(b) who (not being a person who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family;

"periodical payment" does not include an instalment of a lump sum.

[[F585](8) In subsections (1)(a) and (5)(a) above, the reference to an order made by a court in the United Kingdom includes a reference to a maintenance assessment.

(9) Where—

(a) any periodical payment is made under a maintenance assessment by one of the parties to a marriage (including a marriage which has been dissolved or annulled),

(b) the other party to the marriage is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991, a parent of the child or children with respect to whom the assessment has effect,

(c) the assessment was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance assessment), and

(d) any of the conditions mentioned in subsection (10) below is satisfied,

this section shall have effect as if the payment had been made to the other party for the maintenance by that other party of that child or (as the case may be) those children.

(10) The conditions are that—

(a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991, by virtue of subsection (3)(a)(ii) of that section;

(b) the payment is made to the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991, by virtue of paragraph (3)(a)(ii) of that Article;

(c) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act;

(d) the payment is retained by the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 38 of that Order.

(11) In this section "maintenance assessment" means a maintenance assessment made under the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.

(12) Where any periodical payment is made to the Secretary of State or to the Department of Health and Social Services for Northern Ireland—

(a) by one of the parties to a marriage (including a marriage which has been dissolved or annulled), and

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(b) under an order made under section 106 of the Social Security Administration Act 1992 or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by the other party to the marriage,

this section shall have effect as if the payment had been made to the other party to the marriage to or for the benefit, and for the maintenance, of that other party or (as the case may be) to that other party for the maintenance of the child or children concerned.**]**

Textual Amendments

F580 Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), **s. 36(1)(3)-(5)**

F581 Words in s. 347B(1)(a) substituted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 61**.

F582 Words in s. 347B(1)(a) substituted (1.4.1991) by Contracts (Applicable Law) Act 1990 (c. 36, SIF 30), s. 5, **Sch. 4 para. 6**; S.I. 1991/707, **art. 2**

F583 1988(F) s.35*and* Sch.3 para.13*for* 1990-91*and subsequent years. Previously*
"of the difference between the higher (married person's) relief and the lower (single person's) relief under subsection (1) of section 257 as it applies for the year to a person not falling within subsection (2) or (3) of that section".

F584 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F585 S. 347B(8)-(12) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), **s. 62(1)**; S.I. 1992/2642, **art.2**.

Modifications etc. (not altering text)

C296 S. 347B modified (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), **s. 79(3)-(6)**

348 Payments out of profits or gains brought into charge to income tax: deduction of tax.

(1) [M947]Subject to any provision to the contrary in the Income Tax Acts, where any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest, is payable wholly out of profits or gains brought into charge to income tax—

(a) the whole of the profits or gains shall be assessed and charged with income tax on the person liable to the annuity or other annual payment, without distinguishing the annuity or other annual payment; and

(b) the person liable to make the payment, whether out of the profits or gains charged with income tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of income tax thereon; and

(c) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid; and

(d) the deduction shall be treated as income tax paid by the person to whom the payment is made.

(2) Subject to any provision to the contrary in the Income Tax Acts, where—

(a) any royalty or other sum paid in respect of the user of a patent; or

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(b) any rent, royalty or other payment which, by section 119 or 120, is declared to be subject to deduction of income tax under this section or section 349 as if it were a royalty or other sum paid in respect of the user of a patent;

is paid wholly out of profits or gains brought into charge to income tax, the person making the payment shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of the income tax thereon.

(3) [M948]This section does not apply to*a small maintenance payment within the meaning of section* 351*or to*[F586] any payment to which section 687 applies.

Textual Amendments

F586 *Words repealed by* 1988(F) Sch.14 Part IV—*in respect of payments made on or after* 6*April* 1989.

Modifications etc. (not altering text)

C297 *See also*1970(M) s.90—*interest on unpaid tax.*1970(M) s.106—*avoidance of agreements for payment without deduction of tax.*1989 s.94*and* Sch.11 para.18—*deep gain securities.*S.I. 1970 No.448 (in Part III Vol.5) regns. 2-11—*procedure for payment without deduction of tax of income exempt under double taxation arrangements.*

Marginal Citations

M947 Source-1970 s.52; 1971 Sch.6 20(c); 1973 s.17(1)

M948 Source-1970 s.65(2)

349 Payments not out of profits or gains brought into charge to income tax, and annual interest.

(1) [M949]Where—

(a) any annuity or other annual payment charged with tax under Case III of Schedule D, not being interest; or

(b) any royalty or other sum paid in respect of the user of a patent; or

(c) any rent, royalty or other payment which, by section 119 or 120, is declared to be subject to deduction of income tax under this section or section 348 as if it were a royalty or other sum paid in respect of the user of a patent,

is not payable or not wholly payable out of profits or gains brought into charge to income tax, the person by or through whom any payment thereof is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon.

This subsection does not apply to any payment to which section 687 applies.

(2) [M950]Subject to subsection (3) below and to any other provision to the contrary in the Income Tax Acts, where any yearly interest of money chargeable to tax under Case III of Schedule D is paid—

(a) otherwise than in a fiduciary or representative capacity, by a company **[**[F587] (other than a building society)**]** or local authority; or

(b) by or on behalf of a partnership of which a company is a member; or

(c) by any person to another person whose usual place of abode is outside the United Kingdom;

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the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3) Subsection (2) above does not apply—

(a) to interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom; or

(b) to interest paid by such a bank in the ordinary course of that business; or

(c) to any payment to which section 124 applies; or

(d) to any payment to which section 369*or* 479(1) [F588] applies; **[**[F589]or

[F590](e) . . . . . .

(f) to any payment in respect of which a liability to deduct income tax is imposed by section 480A(1); or

(g) to any payment in respect of which a liability to deduct income tax would be imposed by section 480A(1) if conditions prescribed by regulations under section 480B were not fulfilled. **[**[F591]or**]]**

[[F592](h) to any payment in respect of which a liability to deduct income tax would, but for section 481(5)(k), be imposed by section 480A(1).**]**

and subsection (1)*above does not apply to any small maintenance payment within the meaning of section* 351 [F593].

[[F594](3A) Subject to subsection (3B) below and to any other provision to the contrary in the Income Tax Acts, where—

(a) any dividend or interest is paid in respect of a security issued by a building society other than a qualifying certificate of deposit **[**[F595]and other than a qualifying deposit right**]]**, and

(b) the security was quoted, or capable of being quoted, on a recognised stock exchange at the time the dividend or interest became payable,

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3B) Subsection (3A) above does not apply to any payment to which section 124 applies.

[[F596](4) In **[**[F597]this section**]]** —

" dividend" has the same meaning as in section 477A,

[[F597]" qualifying certificate of deposit" means a certificate of deposit, as defined in section 56(5), under which—

(a) the amount payable by the issuing society, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made), and

(b) the obligation of the society to pay that amount arises after a period of not more than five years beginning with the date on which the deposit is made; and

[[F598]"qualifying deposit right" means a right to receive an amount (with or without interest) in pursuance of a deposit of money, where—

(a) the right subsists under an arrangement falling within section 56A,

(b) no certificate of deposit, as defined in section 56(5), has been issued in respect of the right at the time the dividend or interest concerned is paid, and

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(c) the conditions set out in paragraphs (a) and (b) in the definition of "qualifying certificate of deposit" apply; and**]**

"security" includes share.**]**

Textual Amendments

F587 Words in s. 349(2)(a) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(2)**

F588 *Words*
"or 479(1)"
repealed by 1990 s.132*and* Sch.19 Part.IV.

F589 S. 349(3)(e)-(g) and the word "or" inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)** (for payments made on or after 6th April 1991).

F590 S. 349(3)(e) (which was inserted 26.7.1990 by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)**) repealed (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 52(1), 123, Sch. 11 para. 1(3), **Sch. 19 Pt. V**

F591 Word in s. 349(3), at the end of para. (g), inserted (27.7.1993) by 1993 c. 34, **s.59**

F592 S. 349(3)(h) inserted (27.7.1993) by 1993 c. 34, **s. 59**

F593 *Words repealed by* 1988(F) s.148*and* Sch.14 Part IV*for payments made on or after* 6*April* 1989.

F594 S. 349(3A)(3B) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(4)**.

F595 Words in s. 349(3A)(a) inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(2), **6**.

F596 S. 349(4) inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(3)(4)** (for payments made on or after 6th April 1991).

F597 S. 349(4): definitions of "qualifying certificate of deposit" and "security" substituted for words in s. 349(4) (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(5)**

F598 S. 349(4): definition of "qualifying deposit right" inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(3), **6**

Modifications etc. (not altering text)

C298 S. 349 excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 174**

C299 *See* S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of* s.349(1)*for the purposes of* S.I. 1986 No.482 (*Building Society Regulations*).

C300 *See* S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of* s.349(1)*for the purposes of* S.I. 1986 No.482 (*Building Society Regulations*).

C301 *See*—1970(M) s.106—*avoidance of agreements for payment without deduction of tax, etc.*1989 s.94*and* Sch.11 para.18—*deep gain securities.*1989 s.116—*certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after* 1*April* 1989.

Marginal Citations

M949 Source-1970 s.53(1); 1973 s.17(1); 1971 Sch.6 21

M950 Source-1970 s.54(1), (2); 1971 Sch.6 22; 1982 s.26(1); 1984 ss.27(2), 35(1); 1970 s.65(2)

VALID FROM 06/04/2005

[F599 349ZA Extension of section 349: proceeds of sale of UK patent rights

(1) Subsection (2) applies if—

(a) a person who is a non-UK resident is chargeable to tax under section 587 of ITTOIA 2005 on profits from the sale of the whole or part of any patent rights, and

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(b) the net proceeds of the sale consist wholly or partly of a capital sum.

(2) Subsection (1) of section 349 of this Act applies to any payment of the net proceeds of sale, or of an instalment of them, as if the net proceeds or instalment were, so far as consisting of the capital sum—

(a) an annual sum to which paragraph (a) of that subsection applies, and

(b) payable otherwise than out of profits or gains charged to income tax.

(3) For the purposes of this section the net proceeds of the sale is the amount of the proceeds net of any incidental expenses of the sale which are deducted before payment.

(4) Sections 597 to 599 of ITTOIA 2005 (licences connected with patents etc.) apply for the purposes of this section as they apply for the purposes of sections 587 to 596 of that Act.

(5) Section 4 of the Capital Allowances Act 2001 (meaning of "capital sums" etc.) applies in relation to this section as it applies in relation to Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property).

(6) In this section "a non-UK resident" means a person who is not resident in the United Kingdom.**]**

Textual Amendments

F599 S. 349ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 149** (with Sch. 2)

VALID FROM 01/05/2001

[F600 349A Exceptions to section 349 for payments between companies etc

(1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company if, at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied.

(2) Subsection (1) above has effect subject to any directions under section 349C.

(3) The provisions are—

section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),

section 349(2)(a) and (b) (UK interest),

section 349(3A) (dividend or interest on securities issued by building societies), and

section 524(3)(b) (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).

(4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—

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(a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or

(b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).

(5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.

(6) For the purposes of this section, a payment by a partnership is treated as made by a company if any member of the partnership is a company.**]**

Textual Amendments

F600 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

VALID FROM 01/05/2001

[F600 349B The conditions mentioned in section 349A(1)

(1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—

(a) a company resident in the United Kingdom, or

(b) a partnership each member of which is a company resident in the United Kingdom.

(2) The second of those conditions is that—

(a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom ("the non-resident company"),

(b) the non-resident company carries on a trade in the United Kingdom through a branch or agency, and

(c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.**]**

Textual Amendments

F600 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

VALID FROM 01/05/2001

[F600 349C Directions disapplying section 349A(1)

(1) The Board may give a direction to a company directing that section 349A(1) is not to apply in relation to any payment that—

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(a) is made by the company after the giving of the direction, and
(b) is specified in the direction or is of a description so specified.

(2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that neither of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.

(3) A direction under this section may be varied or revoked by a subsequent such direction.

(4) In this section "company" includes a partnership of which any member is a company.**]**

Textual Amendments

F600 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

VALID FROM 01/05/2001

[F600 349D Section 349A(1): consequences of reasonable but incorrect belief

(1) Where—
(a) a payment is made by a company without an amount representing the income tax on the payment being deducted from the payment,
(b) at the time the payment is made, the company reasonably believes that one of the conditions specified in section 349B is satisfied,
(c) if the company did not so believe, tax would be deductible from the payment under section 349, and
(d) neither of the conditions specified in section 349B is satisfied at the time the payment is made,

section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).

(2) In this section "company" includes a partnership of which any member is a company.**]**

Textual Amendments

F600 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

VALID FROM 24/07/2002

[F601 349E Deductions under section 349(1): payment of royalties overseas

(1) Where—
(a) a company makes a payment of a royalty to which section 349(1) applies, and

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(b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),

the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.

(2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.

(3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.

(4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.

(5) In this section—

"payee", in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and

"royalty" includes—

(a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or

(b) any proceeds of sale of all or any part of any patent rights.

(6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.

(7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—

(a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and

(b) sub-paragraphs (2) and (3) were omitted.**]**

Textual Amendments

F601 S. 349E inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 96(1)**

350 Charge to tax where payments made under section 349.

(1) [M951]Where any payment within section 349 is made by or through any person, that person shall forthwith deliver to the inspector an account of the payment, and shall be assessable and chargeable with income tax at the basic rate on the payment, or on so much thereof as is not made out of profits or gains brought into charge to income tax.

(2) [M952]In section 349(1) any reference to a payment or sum as being not payable, or not wholly payable, out of profits or gains brought into charge to income tax shall be

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construed as a reference to it as being payable wholly or in part out of a source other than profits or gains brought into charge; and any such reference elsewhere in the Tax Acts shall be construed accordingly.

(3) [M953]All the provisions of the Income Tax Acts relating to persons who are to be chargeable with income tax, to income tax assessments, and to the collection and recovery of income tax, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.

(4) [M954]Section 349 and this section have effect subject to the provisions of Schedule 16 which has effect for the purpose of regulating the time and manner in which companies resident in the United Kingdom—

(a) are to account for and pay income tax in respect of payments from which tax is deductible under section 349, and

(b) are to be repaid income tax in respect of payments received by them;

and for that purpose the Board may by regulations modify, supplement or replace any of the provisions of Schedule 16; and references in this Act and in any other enactment to any of those provisions shall be construed as including references to any such regulations.

(5) [M955]Without prejudice to the generality of subsection (4) above, regulations under that subsection may, in relation to income tax for which a company is liable to account, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.

(6) Regulations under this section may—

(a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;

(b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.

(7) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Modifications etc. (not altering text)

C302 *See* 1970(M) s.98*—penalties for non-compliance.*

C303 S. 350(1) excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d)**.

C304 *See* 1970(M) Parts IV-VI*—principal provisions as to assessment, appeals and collection.*

C305 *See* 1988(F) s.130(7)(b)*—payment of outstanding tax by migrating companies.*

C306 S. 350(4) amended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)(2)**

C307 S. 350(4) extended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(3)**

C308 (*See* 1970(M) Parts IV-VI*—principal provisions as to assessment, appeals and collection.*)*and also:—* 1970(M) s.31(3)*appeals under* s.349(1)*and* 350*to go to Special Commissioners.*

C309 *See* 1989 s.94*and* Sch.11 para.18*—deep gain securities.*

Marginal Citations

M951 Source-1970 ss.53(2), 54(3); 1971 Sch.6 21

M952 Source-1970 s.56

M953 Source-1970 s.53(3), 54(3)

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M954 Source-1970 s.53(4), 54(3); 1972 s.104, 108(1), Sch.24 16
M955 Source-1972 s.108(2)-(4)

VALID FROM 28/07/2000

[F602 350A UK public revenue dividends: deduction of tax.

(1) The Board may by regulations—
(a) make provision as to the time and manner in which persons who under section 349(3C) deduct sums representing income tax out of payments of UK public revenue dividends are to account for and pay those sums; and
(b) otherwise modify the provisions of sections 349 and 350 in their application to such dividends;

and in this section "UK public revenue dividend" has the same meaning as in section 349.

(2) Regulations under this section may—
(a) make different provision for different descriptions of UK public revenue dividend and for different circumstances;
(b) make special provision for UK public revenue dividends which—
(i) are payable to the Bank of Ireland out of the public revenue of the United Kingdom, or
(ii) are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast;
(c) include such transitional and other supplementary provisions as appear to the Board to be necessary or expedient.

(3) No regulations under this section shall be made unless a draft of them has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments
F602 S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(4)**

F603 351 Small maintenance payments.

. . . . . .

Textual Amendments
F603 S. 351 repealed by Finance Act 1988 (c. 39) s. 36(6), Sch.14 Part IV, Note 5 (with s. 36(3))

352 Certificates of deduction of tax.

M956 (1) A person making any payment which is subject to deduction of income tax by virtue of section 339, 348, 349 or 687 shall, if the recipient so requests in writing, furnish

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him with a statement in writing showing the gross amount of the payment, the amount of tax deducted, and the actual amount paid.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the statement.

Modifications etc. (not altering text)

C310 S. 352 excluded (22.3.1992) by S.I. 1992/569, **reg.21**.
S. 352 modified (22.3.1992) by S.I. 1992/569, **reg.23**.

C311 *See* s.30*and* Sch.5 para.11—*words*
"or 687"
replaced by
", 480A or 687 or by virtue of regulations under section 477A(1)"
as regards a payment made on or after 6*April* 1991.

Marginal Citations

M956 Source-1970 s.55; 1973 s.17(4), 1986 s.29(3)

Relief for payments of interest (excluding MIRAS)

353 General provision.

(1) [M957]Where a person pays in any year of assessment—

(a) annual interest chargeable to tax under Case III of Schedule D; or

(b) interest payable in the United Kingdom or the Republic of Ireland on an advance from a bank carrying on a bona fide banking business in the United Kingdom or the Republic of Ireland or from a person bona fide carrying on a business as a member of the Stock Exchange or bona fide carrying on the business of a discount house in the United Kingdom or the Republic of Ireland;

and the interest is stated in sections 354 to 365 to be eligible for relief under this section, then, if he makes a claim to the relief and subject to the following provisions of this section, sections 354 to 368 and section 237(5)(b), the amount of the interest shall be deducted from or set off against his income for that year of assessment, and income tax shall be discharged or repaid accordingly.

(2) [M958]This section does not apply to a payment of relevant loan interest to which section 369 applies.

(3) [M959]Relief under this section shall not be given in respect of—

(a) interest on a debt incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements; or

(b) where interest is paid at a rate in excess of a reasonable commercial rate, so much of the interest as represents the excess.

[[F604](4) In computing for the purposes of excess liability the total income of a person for any year of assessment, no deduction shall be allowed in respect of any amount of interest which falls to be deducted or set off under subsection (1) above by virtue of section 355(1)(a), 356(1) or 365.

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(5) In subsection (4) above, "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F605]not chargeable at the lower rate**]**[F606]by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]**to the exclusion of any higher rate.

Textual Amendments

F604 S. 353(4)(5) added by Finance Act 1991 (c. 31, SIF 63:1), **s. 27(1)(3)(5)(7)**

F605 Words in s. 353(5) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**.

F606 Words in s. 353(5) substituted (27.7.1993 for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

Modifications etc. (not altering text)

C312 *See*—1988 s.117—*limited partners.*1988 s.280—*transfer of reliefs between spouses.*1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

Marginal Citations

M957 Source-1972 s.75(1), (6), (7); 1974 s.19(1)(a), (d); 1973 s.23(6); 1976 s.49(5)

M958 Source-1986 s.26(1)

M959 Source-1972 s.75(1A), (2); 1974 s.19(1)(b)

354 Loans to buy land etc.

(1) [M960]Subject to sections 355 to 358 and subsections (2) **[**[F607]to (4)**]** below, interest is eligible for relief under section 353 if it is paid by a person for the time being owning an estate or interest in land, or the property in a caravan or house-boat, in the United Kingdom or the Republic of Ireland on a loan to defray money applied—

(a) in purchasing that estate, interest or property, or another estate, interest or property absorbed into, or given up to obtain, that estate, interest or property; or

(b) in improving or developing the land, or buildings on the land; or

(c) in paying off another loan, if interest on that other loan would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest) or would have been so eligible apart from section 353(2).

(2) In this section and section 355—

(a) [M961]references to money applied in improving or developing land or buildings include references to payments in respect of maintenance or repairs incurred by reason of dilapidation attributable to a period before the estate or interest was acquired, but otherwise do not include references to payments in respect of maintenance or repairs, or any of the other payments mentioned in section 25(1); and

(b) [M962]references to money applied in improving or developing land include references to expenditure incurred or defrayed directly or indirectly in respect of street works, other than works of maintenance or repair, for any highway or road, or in Scotland any right of way, adjoining or serving the land.

[F608](3) . . . . . .

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(4) [M963]References in this section and in section 355 to an estate or interest do not include references—

(a) to a rentcharge or, in Scotland, a superiority or the interest of a creditor in a contract of ground annual; or

(b) to the interest of a chargee or mortgagee or, in Scotland, the interest of a creditor in a charge or security of any kind over land.

[F609](5) . . . . . .

[F609](6) . . . . . .

(7) [M964]Where interest is payable by the tenant occupier of any property to the landlord in pursuance of arrangements whereby money advanced at interest by the landlord is applied by the tenant in purchasing the landlord's estate or interest, or in the case of a caravan or house-boat the property in the caravan or house-boat, but that estate or interest or property is not to pass to the tenant until some time after the interest begins to be payable, this section and section 355(5) shall have effect in relation to the tenant as if he were the owner of the landlord's estate, interest or property.

Textual Amendments

F607 Words in s. 354(1) substituted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993(whenever falling due)) by 1993 c. 34, **s. 57(4)(a)(5)**

F608 S. 354(3) repealed (1991-92 and subsequent years) by Finance Act 1991 (c. 31, SIF 63:1), ss. 28, 123, **Sch. 19 Pt. V**, Note 6

F609 S. 354(5)(6) repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993(whenever falling due)) by 1993 c. 34, ss. 57(5), 213, **Sch. 23 Pt. III**

Marginal Citations

M960 Source-1972 Sch.9 1, 5, 5A; 1974 Sch.1 1-3; 1983 s.17(5)

M961 Source-1972 Sch.9 3

M962 Source-1972 Sch.9 4

M963 Source-1972 Sch.9 6

M964 Source-1972 Sch.9 7

355 Matters excluded from section 354.

(1) [M965]Subject to the following provisions of this section and sections 356 to 358, section 354 shall not apply unless the land, caravan or house-boat in question—

(a) is at the time the interest is paid used as the only or main residence of the person by whom it is paid ("the borrower") ***[***[F610]*or of a dependent relative or former or separated spouse of his,****]*** or, if the interest is paid less than 12 months after the date on which the loan is made, is so used within 12 months after that date; or

(b) is, in any period of 52 weeks comprising the time at which the interest is payable and falling wholly or partly within the year of assessment, let at a commercial rent for more than 26 weeks and, when not so let, either available for letting at such a rent or used as mentioned in paragraph (a) above or prevented from being so available or used by any works of construction or repair;

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and shall in a case within paragraph (a) above apply only within the limit imposed by section **[**[F611]356A or**]** 357.

[[F612](1A) Where, in the case of any loan—

(a) the condition specified in subsection (1)(a) above would not (apart from this subsection) be fulfilled with respect to any land, caravan or house-boat by reason of its having ceased at any time to be used by a particular person as his only or main residence; and

(b) the borrower's intention at that time was to take steps, before the end of the period of 12 months after the day on which it ceased to be so used, with a view to the disposal of that land, caravan or house-boat,

that condition shall be treated in relation to interest on that loan as continuing to be fulfilled with respect to that land, caravan or house-boat (as well as with respect to any other land, caravan or house-boat with respect to which it is in fact fulfilled) from that time until the end of that period or (if sooner) the abandonment by the borrower of his intention to dispose of the land, caravan or house-boat in question.

(1B) Where—

(a) subsection (1A) above has effect in the case of any loan ("the first loan") so that the condition specified in subsection (1)(a) above is treated in relation to any person as fulfilled with respect to any land, caravan or house-boat, and

(b) there is another loan raised by the borrower to defray money to be applied as mentioned in section 354(1) with a view to the use of any other land, caravan or house-boat as the borrower's only or main residence,

interest on the other loan shall be treated as eligible for relief to the same extent (if any) as if no interest were payable on the first loan.**]**

(2) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1) **[**[F613]or (1A)**]** above shall have effect as if for the references to 12 months there were substituted references to such longer period as meets the circumstances of that case.

[[F614](2A) Section 354 shall not apply by virtue of subsection (1)(a) above where the interest is paid on a home improvement loan unless the loan was made before 6th April 1988.

(2B) In subsection (2A) above "home improvement loan" means—

(a) a loan to defray money applied in improving or developing land or buildings on land, otherwise than by the erection of a new building (which is not part of an existing residence) on land which immediately before the improvement or development began had no building on it, or

(b) a loan replacing (whether directly or indirectly) a loan within paragraph (a) above.

(2C) Where it is proved by written evidence that a loan made on or after 6th April 1988 was made in pursuance of an offer made by the lender before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, the loan shall be deemed for the purposes of subsection (2A) above to have been made before that date**]**.

(3) *The land, caravan or house-boat does not fall within subsection* (1)(a)*above by reason of its being used as the only or main residence of a dependent relative of the borrower unless it is provided rent-free and without any other consideration*[F615].

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(4) [M966]Relief under section 353 for interest eligible for it by virtue of section 354 in a case where it is eligible only because the land, caravan or house-boat referred to in it falls under subsection (1)(b) above shall be given only against income from the letting of that or any other land, caravan or house-boat, but may, if and to the extent that such income for the year of assessment is insufficient, be given against such income for the following year, and so on, provided the first-mentioned land, caravan or house-boat continues to fall under that subsection.

(5) [M967]Subsection (1)(a) of section 354 shall not apply—

(a) where the seller and purchaser are husband and wife and either sells to the other, or

(b) where the purchaser, or the wife or husband of the purchaser, has since 15th April 1969 disposed of an estate or interest in the land, or the property in the caravan or house-boat, in question, and it appears that the main purpose of the disposal and purchase was to obtain relief in respect of interest on the loan, or

(c) where the purchasers are the trustees of a settlement, and the seller is the settlor, or the wife or husband of the settlor, and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan, or

(d) where the purchaser is directly or indirectly purchasing from a person who is connected with him, and the price substantially exceeds the value of what is acquired;

and subsection (1)(b) of that section shall not apply where the person spending the money is connected with the person who directly or indirectly receives the money, and the money substantially exceeds the value of the work done.

For the purposes of this subsection—

(i) references to a husband and wife are references to a husband and his wife living with him; and

(ii) one person is connected with another if he is so connected within the terms of section 839.

Textual Amendments

F610 *Words which cease to have effect in relation to payments of interest made on or after* 6*April* 1988—*see* 1988(F) s.44(1)(2).

F611 1988(F) s.42(3)(a).

F612 s. 355(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(1)(5)(6)**

F613 Words in s. 355(2) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(2)(5)**

F614 1988(F) s.43*in relation to payments on or after* 6*April* 1988.

F615 *Repealed by* 1988(F) ss.44*and* 148*and* Sch.14 Part IV.

Modifications etc. (not altering text)

C313 S. 355(1A) modified (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(5)(6)**

C314 *See reference to home improvement loans in* 1988(F) s.43(3).

Marginal Citations

M965 Source-1974 Sch.1 4(1)-(3)

M966 Source-1974 Sch.1 7; 1977 Sch.8 9

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M967 Source-1972 Sch.9 8

356 Job-related accommodation.

(1) [M968]Section 355(1) shall not prevent relief being given under section 353 in a case where the land, caravan or house-boat in question—

(a) is, at the time the interest is paid, used by the borrower as a residence or, if it is paid less than 12 months after the date on which the loan is made, is so used by him within 12 months after that date; or

(b) is intended at that time to be used in due course as his only or main residence;

and at that time he resides in living accommodation which is for him job-related.

[[F616](1A) Subsection (1) above shall not apply where the interest is paid on a home improvement loan (as defined in section 355(2B)) unless the loan was made before 6th April 1988; and section 355(2C) shall have effect for the purposes of this subsection as for those of section 355(2A).**]**

(2) A borrower for whom there are two or more properties falling within subsection (1) above may not by virtue of this section claim relief for any period under section 353 in respect of more than one of them.

(3) Subject to subsections (4) and (5) below, living accommodation is job-related for a person if—

(a) it is provided for him by reason of his employment, or for his spouse by reason of her employment, in any of the following cases—

(i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;

(ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

(iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements; or

(b) [M969]under a contract entered into at arm's length and requiring him or his spouse to carry on a particular trade, profession or vocation, he or his spouse is bound—

(i) to carry on that trade, profession or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and

(ii) to live either on those premises or on other premises provided by that other person.

(4) [M970]If the living accommodation is provided by a company and the employee is a director of that or an associated company, subsection (3)(a)(i) or (ii) above shall not apply unless—

(a) the company of which the employee is a director is one in which he or she has no material interest; and

(b) either—

(i) the employment is as a full-time working director, or

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(ii) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or

(iii) the company is established for charitable purposes only.

(5) [M971]Subsection (3)(b) above does not apply if the living accommodation concerned is in whole or in part provided by—

(a) a company in which the borrower or his spouse has a material interest; or

(b) any person or persons together with whom the borrower or his spouse carries on a trade or business in partnership.

(6) [M972]For the purposes of this section—

(a) a company is an associated company of another if one of them has control of the other or both are under the control of the same person; and

(b) "employment", "director", "full-time working director", "material interest" and "control", in relation to a body corporate, have the same meanings as they have for the purposes of Chapter II of Part V.

Textual Amendments

F616 1988(F) s.43*in relation to payments on or after* 6*April* 1988.

Modifications etc. (not altering text)

C315 S. 356(3)(b)(5) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 222(9)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M968 Source-1974 Sch.1 4A(1)-(3); 1977 s.36(1)
M969 Source-1974 Sch.1 4A(3A); 1984 s.25
M970 Source-1974 Sch.1 4A(4), (5); 1977 s.36(1)
M971 Source-1974 Sch.1 4A(3B); 1984 s.25
M972 Source-1974 Sch.1 4A(6)

[[F617]356A Limit on relief for home loans: residence basis.

(1) Where all the qualifying interest payable for any period in relation to a residence is payable by one person, it shall be eligible for relief only to the extent that the amount on which it is payable does not exceed the qualifying maximum during the period.

(2) Where qualifying interest is payable for any period in relation to a residence by more than one person, the interest paid by each of them shall be eligible for relief only to the extent that the amount on which it is payable by him does not exceed the sharer's limit for the period in his case.

(3) Subject to the following provisions of this section and section 356B, in this section and section 356B "the sharer's limit", in relation to a person by whom qualifying interest is payable for a period in relation to a residence, means the amount arrived at by dividing the amount of the qualifying maximum during the period by the number of persons by whom qualifying interest is payable for the period in relation to the residence.

(4) Subsection (5) below applies where—

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(a) in the case of any person by whom qualifying interest is payable for any period in relation to a residence the sharer's limit for the period exceeds the amount on which the interest is payable by him, and

(b) the amount which (apart from that subsection) would be the sharer's limit for the period in the case of any other person by whom qualifying interest is payable for the period in relation to the residence falls short of the amount on which qualifying interest is so payable by him.

(5) Where this subsection applies—

(a) the sharer's limit for the period in the case of the person mentioned in subsection 4(a) above shall be reduced by the amount of the excess, and

(b) the sharer's limit for the period in the case of any person such as is mentioned in subsection (4)(b) above shall be increased in accordance with subsections (6) to (8) below.

(6) Where there is only one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer's limit in his case shall be increased by the amount of the excess.

(7) Where there is more than one other person by whom qualifying interest is payable for the period in relation to the residence, the sharer's limit in the case of each of them shall be increased by such part of the excess as bears to the whole of it the same proportion as any shortfall in his case bears to the aggregate of any shortfalls in the case of each of them.

(8) In subsection (7) above "shortfall" means the amount by which what would be the sharer's limit in the case of a person (apart from subsection (5) above) falls short of the amount on which qualifying interest is payable by him.**]**

Textual Amendments

F617 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s.42(1)(4)**

[[F618]356B Residence basis: married couples.

(1) A husband and wife who are not separated may jointly elect—

(a) that qualifying interest payable or paid by one of them for a year of assessment (or a period within a year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections 353 to 356A and 369 to 379 as payable or paid by the other, and

(b) that the sharer's limit under section 356A for the year (or period) in the case of one of them shall be reduced by such amount as may be specified in the election and the sharer's limit under that section for the year (or period) in the case of the other shall be correspondingly increased.

(2) An election under subsection (1) above—

(a) shall be made before the end of the period of twelve months beginning with the end of the first year of assessment for which it is made or such longer period as the Board may in any particular case allow,

(b) shall, subject to subsection (4) below, have effect not only for the year of assessment for which it is made but also for subsequent years of assessment, and

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(c) shall be in such form, and be made in such manner, as the Board may prescribe.

(3) Where a husband and wife have made an election under subsection (1) above for any year of assessment either of them may give, for any subsequent year, a notice to withdraw that election; and, if he or she does so, the election shall not have effect (in relation to either of them) for the year for which the notice is given or any subsequent year.

(4) A notice of withdrawal under subsection (3) above—

(a) shall be in such form, and be given in such manner, as the Board may prescribe,

(b) shall not be given after the end of the period of twelve months beginning with the end of the year of assessment for which it is given or such longer period as the Board may in any particular case allow, and

(c) shall not prejudice the making of a fresh election for any subsequent year.

(5) Where—

(a) a husband and wife are not separated,

(b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and

(c) the wife pays interest in relation to some other residence used or to be used as her only or main residence,

the residence which was purchased first shall be treated for the purposes of sections 355(1)(a) and 356 as used or to be used as the only or main residence of both of them and the other residence shall be treated as used or to be used as the only or main residence of neither.**]**

Textual Amendments

F618 1988(F) s.35*and* Sch.3 para.14*for* 1990-91*and subsequent years. Previously*

"356B.—(1) Subject to subsections (2) and (4) below, qualifying interest payable or paid by a married woman who is not separated from her husband shall be treated for the purposes of sections 353 to 356A and 369 to 379 as payable or paid by her husband (and not by her). (2) Where—(a) qualifying interest is payable, or treated by subsection (1) above as payable, for a period in relation to a residence by a married man who is not separated from his wife, and (b) qualifying interest is also payable for the period in relation to the residence by one or more persons other than the man and his wife, then for the purposes of section 356A(2) and (3) qualifying interest shall be treated as payable by the wife for the period in relation to the residence (whether or not it actually is). (3) The application of subsection (2) above in the case of a husband and wife shall not give rise to a separate sharer's limit for the period in question in the case of the wife; but the limit arrived at under subsection (3) of section 356A for the period in the case of the husband shall be increased by the amount which (apart from this subsection) would be the limit arrived at under that subsection in the case of the wife. (4) Where an application under section 283 or an election under section 287 is in force in relation to a husband and wife for a year of assessment, subsections (1) to (3) above shall not apply in relation to them for the year but they may jointly elect—(a) that qualifying interest payable or paid by one of them for the year (or a period within the year), or such part of that interest as may be specified in the election, shall be treated for the purposes of sections 353 to 356A and 369 to 379 (and section 287(7)) as payable or paid by the other, and (b) that the sharer's limit under section 356A for the year (or period) in the case of one of them shall be reduced by such amount as may be specified in the election and the sharer's limit under that section for the year (or period) in the case of the other shall be correspondingly increased. (5) An election under subsection (4) above—(a) shall be made before the end of the period of twelve months beginning with the end of the first year of assessment for which it is made or such longer period as the

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Board may in any particular case allow, (b) shall, subject to subsection (6) below, have effect if made for the year 1988-89 not only for that year but also for the year 1989-90, and (c) shall be in such form, and be made in such manner, as the Board may prescribe. (6) Where a husband and wife have made an election under subsection (4) above for the year 1988-89 they may give, for the year 1989-90, a notice to withdraw that election; and, if they do so, the election shall not have effect for the year 1989-90. (7) A notice of withdrawal under subsection (6) above—(a) shall be in such form, and be given in such manner, as the Board may prescribe, (b) shall not be given after 5th April 1991 or such later date as the Board may in any particular case allow, and (c) shall not prejudice the making of a fresh election for 1989-90. (8) Where—(a) a husband and wife are not separated, (b) the husband pays interest in relation to a residence used or to be used as his only or main residence, and (c) his wife pays interest in relation to some other residence used or to be used as her only or main residence, the residence which was purchased first shall be treated for the purposes of sections 355(1)(a) and 356 as used or to be used as the only or main residence of both of them and the other residence shall be treated as used or to be used as the only or main residence of neither (and subsequently modified by S.I. 1992/511, reg. 9, **Sch.2**."

Modifications etc. (not altering text)

C316 S. 365B(2)(4) modified (9.3.1995 with effect in accordance with regs. 14(2), 15(2) of the modifying Regulations) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), **regs. 1(1)** 14(1), 15(1), Sch.

C317 S. 356B(2)(4) modified (5.4.1994 with effect in accordance with reg. 1(1)(2) of the modifying Regulations) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), reg. 9, **Sch. 2**

C318 S. 356B(2)(4) applied (with modifications) (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**

C319 S. 365B(4) modified (with effect in accordance with regs. 14(2), 15(2)) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), **reg. 1(1)** 14(1), 15(1), Sch.

C320 S. 356B(4) modified (with effect in accordance with reg. 1(1)(2)of the amending Regulations) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **Sch. 2**, reg. 1(1)

[F619356C Payments to which sections 356A and 356B apply.

(1) Subject to subsection (2) below, sections 356A and 356B shall have effect with respect to payments of qualifying interest made on or after 1st August 1988.

(2) Subject to subsection (5) below, those sections shall not have effect with respect to a payment of qualifying interest made by a person in relation to a residence if—
- (a) the payment is made under a loan made before 1st August 1988,
- (b) qualifying interest was payable in relation to the residence for 1st August 1988 by someone other than the person making the payment or his spouse,
- (c) qualifying interest has been payable in relation to the residence by the person making the payment or his spouse throughout the time beginning with 1st August 1988 and ending with the date of the payment, and
- (d) someone other than the person making the payment or his spouse owns an estate or interest or property in the residence at each point during that time and at each such point at least one such person is a person by whom qualifying interest is payable in relation to the residence at some point during that time.

(3) For the purposes of subsection (2) above a loan made on or after 1st August 1988 shall be treated as made before that date if it is proved by written evidence—
- (a) that the loan was made in pursuance of an offer made before that date and that the offer either was in writing or was evidenced by a note or memorandum made by the lender before that date, and

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(b) that the loan was used to defray money applied in pursuance of a binding contract entered into before that date;

and where a payment is made under such a loan the references in subsection (2) above to 1st August 1988 shall be treated as references to the first day for which qualifying interest is payable in relation to the residence under the loan (or where there is more than one such loan the latest such day).

(4) Subject to subsection (5) below, where by virtue of subsection (2) above sections 356A and 356B do not have effect with respect to payments of qualifying interest made by a person for any period in relation to a residence under one loan those sections shall not have effect with respect to payments of qualifying interest for that period in relation to the residence made by that person or his spouse under any other loan.

(5) Where all the persons by whom qualifying interest is payable in relation to a residence have made a joint election for the purpose, sections 356A and 356B shall have effect with respect to all payments of qualifying interest made by any person in relation to the residence notwithstanding that they would otherwise be payments with respect to which those sections would not have effect.

(6) An election under subsection (5) above—

(a) shall have effect for the period in which it is made and subsequent periods,

(b) shall be irrevocable, and

(c) shall be in such form, and be made in such manner, as the Board may prescribe.

(7) Sections 356A and 356B shall not have effect with respect to payments of qualifying interest if the interest is qualifying interest only by reason of its being paid in relation to a residence used or to be used as the only or main residence of a dependent relative or former or separated spouse of the person by whom the payment is made.

(8) In this section references to a spouse do not include references to a separated spouse.**]**

Textual Amendments

F619 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s.42(1)(4)**

356D Provisions supplementary to sections 356A to 356C.

(1) In sections 356A to 356C and this section "qualifying interest" means interest which (apart from those sections or section 357) is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).

(2) In sections 356A to 356C and this section "residence" means a building, or part of a building, occupied or intended to be occupied as a separate residence, or a caravan or house-boat; but a building, or part of a building, which is designed for permanent use as a single residence shall be treated as a single residence notwithstanding that it is temporarily divided into two or more parts which are occupied or intended to be occupied as separate residences.

(3) In sections 356A to 356C and this section "period", with respect to qualifying interest payable by a person in relation to a residence, means a period commencing with—

(a) any day which is the first day for which qualifying interest is payable in relation to the residence by that or any other person (whether or not qualifying

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interest was payable by any person in relation to the residence for any earlier day),

(b) any day immediately following a day which is the last day for which qualifying interest is payable in relation to the residence by any other person (whether or not qualifying interest is payable by any person in relation to the residence for any later day), or

(c) the first day of a year of assessment,

and ending with either the day immediately preceding the next day such as is mentioned in paragraph (a), (b) or (c) above or (if sooner) the day which is the last day for which qualifying interest is payable in relation to the residence by that person.

(4) In section 356A references to the qualifying maximum during a period are references to the qualifying maximum for the year of assessment in which the period falls.

(5) Where because of section 356A the full amount of qualifying interest paid by a person for a period is not eligible for relief, the part of that interest that is eligible for relief shall be such as bears to the whole of it the same proportion as the part of the amount on which qualifying interest is payable by him for the period that does not exceed the limit under that section in his case bears to the whole of that amount.

(6) Where a person pays qualifying interest on more than one loan, the limit under section 356A in his case shall have effect **[**[F620]so that, in determining what (if any) part of the amount on which qualifying interest is payable is the part exceeding the limit, interest on a later loan shall be eligible for relief only to the extent that the whole amount of the limit has not been used in relation to any earlier loan or loans.**]**

(7) For the purposes of subsection (6) above, where interest is paid on more than one loan made simultaneously to one person it shall be treated as paid on one loan.

(8) Subject to section 356B, where a loan is made jointly to more than one person by whom qualifying interest is payable in relation to a residence under the loan, the amount on which qualifying interest is payable in relation to the residence under the loan by each of the persons shall be treated for the purposes of section 356A as being such amount as is produced by dividing the whole of the amount on which qualifying interest is payable in relation to the residence under the loan by the number of persons by whom qualifying interest is so payable.

[F621](9) . . . . . .

(10) In determining whether the amount on which interest is payable exceeds any limit under section 356A, no account shall be taken of so much (if any) of that amount as consists of interest which has been added to capital and which does not exceed £1,000.

Textual Amendments

F620 Words in s. 356D(6) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 3**

F621 S. 356D(9) repealed (27.7.1993 in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, ss. 57, 213, **Sch. 23 Pt.III**

357 Limit on amount of loan eligible for relief by virtue of section 354.

(1) **[**[F622M973]Subject to subsection (1A) below, where section 356A does not have effect with respect to a payment of interest because of section 356C(2) or (7) and the payment is of interest**]** on a loan ("the limited loan") which (apart from this subsection) is

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eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1) **[**[F622]the payment of interest**]** shall be so eligible for relief only to the extent that the amount on which it is payable does not exceed the following limit, that is to say, the qualifying maximum for the year of assessment reduced by the amount on which interest is payable by the borrower under any earlier loans so eligible for relief, so that—

(a) if the amount on which interest is payable under the limited loan exceeds the limit, so much only of that interest is eligible for relief as bears to the whole of that interest the same proportion as that part of that amount which does not exceed the limit bears to the whole of that amount; and

(b) if the amount on which interest is payable under any earlier loans is equal to or exceeds the qualifying maximum for the year of assessment, none of the interest on the limited loan is eligible for relief.

[[F623](1A) Where section 356A does not have effect with respect to a payment of interest made by a person in relation to land, or a caravan or house-boat, used or to be used as his only or main residence because of section 356C(2), subsection (1) above shall have effect with respect to the payment of interest as if the reference to the qualifying maximum for the year of assessment were a reference to the amount specified in subsection (1B) below.

(1B) The amount referred to in subsection (1A) above is the lesser of £30,000 and the amount on which interest was payable by the person in relation to the land, caravan or house-boat immediately before 1st August 1988.

(1C) Where subsection (2) of section 356C applies in the case of a person by virtue of subsection (3) of that section, for the purposes of subsection (1B) above the amount on which interest is payable by him under the loan referred to in section 356C(3) for the first day for which interest is so payable shall be treated as the amount on which interest is payable by him under the loan immediately before 1st August 1988.**]**

(2) [M974]Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person, not being the borrower's husband or wife, then, if—

(a) the land, caravan or house-boat concerned is used as the main or only residence of that other person,*or of a dependent relative or former or separated spouse of his*[F624], and

(i) that other person owns an estate or interest in the land or the property in the caravan or house-boat, and

(ii) that other person pays part of the interest payable on the loan; or

(b) that other person falls within sub-paragraphs (i) and (ii) of paragraph (a) above and is by virtue of section 356 entitled to claim relief under section 353 in respect of that part of the interest,

the amount on which interest is payable under the loan shall be treated for the purposes of this section as being such part only of that amount as bears to the whole thereof the same proportion as the amount of interest paid by the borrower bears to the whole of the interest paid on the loan.

(3) [M975]For the purposes of this section—

(a) any interest payable on a loan made to the borrower's husband or wife shall be treated as payable on a loan made to the borrower; and

(b) where interest is payable on more than one loan made or treated as made to the borrower and the loans were made simultaneously it shall be treated as payable on one loan.

[F625](4) . . . . . .

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(5) [M976]References in this section to the borrower's husband or wife do not include references to a separated husband or wife.

(6) [M977]In determining whether the amount on which interest is payable under a loan exceeds the limit in subsection (1) above, no account shall be taken of so much (if any) of that amount as consists of interest which has been added to capital and does not exceed £1000.

Textual Amendments

F622 1988(F) s.42(2)(a), (4)*on and after* 1*August* 1988.*Previously*
"Interest"
in first place.

F623 1988(F) s.42(2)(b), (4)*on and after* 1*August* 1988.

F624 *Words which cease to have effect in relation to payments of interest made on or after* 6*April* 1988—*see* 1988(F) s.44(1), (2).

F625 S. 357(4) repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, ss. 57(4)(b)(5), 213, **Sch. 23 Pt. III**

Modifications etc. (not altering text)

C321 *See* s.338—*companies.*

Marginal Citations

M973 Source-1974 Sch.1 5(1), (2)(a); 1977 Sch.8 8(2); 1984 s.22(1)(a), (b)

M974 Source-1974 Sch.1 5(3); 1977 Sch.8 8(3)

M975 Source-1974 Sch.1 5(4)

M976 Source-1974 Sch.1 5(5)

M977 Source-1974 Sch.1 5(6); 1982 s.25(2)

[[F626]357A Substitution of security.

(1) Subject to subsection (9) below, this section applies where—

(a) on or after 16th March 1993 a person purchases an estate or interest in land or the property in a caravan or house-boat (the new estate, interest or property), and

(b) a security substitution arrangement takes effect on or after that date in connection with the purchase.

(2) Subsection (3) below applies where—

(a) the arrangement mentioned in subsection (1) above relates to one existing loan only, and

(b) no other security substitution arrangement takes effect at the same time in connection with the purchase of the new estate, interest or property.

(3) As regards interest paid on the loan after the time the new estate, interest or property became security for the loan, the loan shall be treated for the purposes of sections 353 to 379 (other than this section and sections 357B and 357C) as if—

(a) it had been made at that time, and

(b) so much of it as was then outstanding and did not exceed the relevant amount had been used at that time to defray money applied in purchasing the new estate, interest or property.

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(4) Subsection (5) below applies where either—

(a) the arrangement mentioned in subsection (1) above relates to two or more existing loans, or

(b) two or more security substitution arrangements take effect at the same time in connection with the purchase of the new estate, interest or property.

(5) As regards interest paid on the loans after the time the new estate, interest or property became security for the loans, the loans shall be treated for the purposes of sections 353 to 379 (other than this section and sections 357B and 357C) as if—

(a) they had been made at that time, and

(b) they had been used at that time to defray money applied in purchasing the new estate, interest or property;

but in any case where at that time the aggregate of the amounts of the loans outstanding exceeded the relevant amount, the loans shall be treated as mentioned in paragraph (b) above only to the extent that the aggregate did not exceed the relevant amount.

(6) For the purposes of this section the relevant amount is—

(a) where there is no loan falling within subsection (7) below, an amount equal to the purchase price of the new estate, interest or property;

(b) where there is one loan falling within that subsection, an amount equal to the difference between the purchase price of the new estate, interest or property and the amount of that loan;

(c) where there are two or more loans falling within that subsection, an amount equal to the difference between the purchase price of the new estate, interest or property and the total of the amounts of those loans.

(7) A loan falls within this subsection if—

(a) it is at the relevant time, or was before the relevant time, actually used to any extent to defray money applied in purchasing the new estate, interest or property, or

(b) by virtue of an earlier security substitution arrangement, it is treated to any extent as if before the relevant time it had been used to defray money so applied;

but a loan does not fall within this subsection unless interest on the loan is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).

(8) For the purposes of subsection (7) above the relevant time is the time when under the arrangement mentioned in subsection (1) above the new estate, interest or property becomes security for the existing loan or loans.

(9) This section does not apply in relation to a security substitution arrangement if, as regards the new estate, interest or property—

(a) there is at least one loan falling within subsection (7) above, and

(b) the amount of that loan or (if there is more than one) the total of the amounts of those loans is the same as the purchase price of the new estate, interest or property.

(10) For the purposes of subsections (6) and (9) above the amount of a loan is its amount when made, except that where—

(a) a loan falls within subsection (7) above by virtue of the fact that it is or was partly used to defray money applied in purchasing the new estate, interest or property, or

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(b) a loan falls within that subsection by virtue of the fact that it is treated as if it had been partly so used,

the amount of the loan shall be taken for the purposes of subsections (6) and (9) above to be the amount of the part so used or (as the case may be) treated as so used.**]**

Textual Amendments

F626 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 56**

357B [F627]Treatment of loans following security substitution.

(1) This section applies where—

(a) by virtue of section 357A a loan is treated to any extent as having been used at a particular time to defray money applied in purchasing the new estate, interest or property,

(b) after that time a loan (a new loan) is actually used to any extent to defray money applied in purchasing the new estate, interest or property, and

(c) interest on the new loan is (or would be apart from this section) eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).

(2) Subject to subsection (4) below, as regards interest paid on the new loan after the time it is used as mentioned in subsection (1)(b) above (the material time), such part of the loan as was actually used to defray money applied in purchasing the new estate, interest or property shall be treated for the purposes of sections 353 to 379 as having been so used only to the extent that the amount of that part does not exceed the applicable amount.

(3) Subsection (4) below applies in a case where—

(a) two or more new loans are simultaneously used to any extent as mentioned in subsection (1)(b) above, and

(b) interest on each of them is or would be eligible for relief as mentioned in subsection (1)(c) above.

(4) As regards interest paid on the new loans after the material time, such parts of the loans as were actually used to defray money applied in purchasing the new estate, interest or property shall be treated for the purposes of sections 353 to 379 as having been so used only to the extent that the aggregate of the amounts of those parts does not exceed the applicable amount.

(5) For the purposes of this section the applicable amount is the difference between—

(a) the purchase price of the new estate, interest or property, and

(b) the amount of any relevant loan or, if there is more than one, the total amounts of the relevant loans.

(6) For the purposes of subsection (5) above a relevant loan is a loan which—

(a) before the material time was actually used to any extent to defray money applied in purchasing the new estate, interest or property, or

(b) by virtue of section 357A, is treated to any extent as if before the material time it had been used to defray money so applied;

but a loan is not a relevant loan unless interest on it is eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).

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(7) For the purposes of subsection (5) above the amount of a relevant loan is its amount when made, except that where—

(a) a loan is a relevant loan by virtue of the fact that it was partly used to defray money applied in purchasing the new estate, interest or property, or

(b) a loan is a relevant loan by virtue of the fact that it is treated as if it had been partly so used,

the amount of the loan shall be taken for the purposes of that subsection to be the amount of the part so used or (as the case may be) treated as so used.

Textual Amendments

F627 SS. 357A-357C inserted (27.7.1993) by 1993 c. 34, **s. 56**

357C [F628]Substitution of security: supplemental.

(1) An arrangement is a security substitution arrangement for the purposes of section 357A if—

(a) under the arrangement the new estate, interest or property becomes security for an existing loan or existing loans,

(b) under the arrangement an estate or interest in land, or the property in a caravan or house-boat, ceases to be security for the loan or loans,

(c) the estate, interest or property mentioned in paragraph (b) above was not absorbed into, or given up to obtain, the new estate, interest or property,

(d) the loan or (as the case may be) at least one of the loans is a qualifying loan, and

(e) the circumstances are such that, had the loan or loans been used to defray money applied in purchasing the new estate, interest or property, interest on the loan or (as the case may be) on each of the loans would have been eligible for relief under section 353 by virtue of section 355(1)(a) or 356(1).

(2) For the purposes of subsection (1) above a loan is a qualifying loan if, immediately before the arrangement took effect, interest on the loan was eligible for relief under section 353 by virtue of section 355(1)(a) or section 356(1).

(3) In a case where—

(a) paragraphs (a) to (d) of subsection (1) above apply in relation to an arrangement,

(b) the arrangement relates to two or more loans, and

(c) one or more of the loans is not a qualifying loan for the purposes of subsection (1) above,

any loan which is not a qualifying loan shall be ignored in applying subsection (1)(e) above.

(4) Where a security substitution arrangement relates to two or more loans and one or more of them is not a qualifying loan for the purposes of subsection (1) above, any loan which is not a qualifying loan—

(a) shall be left out of account in determining for the purposes of section 357A the number of existing loans to which the arrangement relates;

(b) shall not be treated as mentioned in section 357A(3) or (5);

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(c) shall be left out of account in calculating for the purposes of section 357A(5) the aggregate of the amounts of the loans outstanding at the time the new estate, interest or property became security for them.

(5) Subsection (6) below applies where—

(a) the purchase mentioned in subsection (1) of section 357A is made jointly by the person mentioned in that subsection (the relevant person) and another person or other persons, and

(b) any of the money applied in the purchase is attributable to the relevant person and not to the other person or, as the case may be, attributable to the relevant person and not to all the other persons.

(6) In relation to the relevant person—

(a) the references in sections 357A and 357B to the new estate, interest or property shall be treated as references to his share of the new estate, interest or property, and

(b) the references in sections 357A and 357B to the purchase price of the new estate, interest or property shall be treated as references to so much of the money applied in purchasing the estate, interest or property as is attributable to him.

(7) In determining for the purposes of this section and sections 357A and 357B whether interest is, was or would have been eligible for relief under section 353, section 353(2) shall be disregarded.

Textual Amendments

F628 Ss. 357A-357C inserted (27.7.1993) by 1993 c. 34, **s.56**

358 Relief where borrower deceased.

M978(1) Where any interest paid by persons as the personal representatives of a deceased person or as the trustees of a settlement made by his will would, on the assumptions required by this section, be eligible for relief under section 353 by virtue of section 354 above and, in a case where subsection (3) below applies, one of the conditions in subsection (4) below is satisfied, that interest shall be so eligible notwithstanding sections 354 to 357.

(2) For the purposes of subsection (1) above it shall be assumed that the deceased would have survived and been the borrower.

(3) If, at his death,—

(a) the land, caravan or house-boat concerned was used as his only or main residence, or

(b) it was used by him as a residence or was intended to be used in due course as his only or main residence and, in either case, he resided in job-related living accommodation;

that shall be assumed for the purposes of subsection (1) above to have continued to be the case.

(4) The conditions referred to in subsection (1) above are—

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(a) that, at the time the interest is paid, the land, caravan or house-boat concerned is used as the only or main residence of the deceased's widow or widower ***[***[F629]*or of any dependent relative of the deceased****]***;

(b) that, at that time, it is used by the deceased's widow or widower as a residence or is intended to be used in due course as his or her only or main residence and, in either case, he or she resides in job-related living accommodation.

(5) In this section "personal representatives" has the meaning given by section 701; and subsections (3) to (6) of section 356 apply in relation to this section as they apply in relation to that.

Textual Amendments

F629 *Words which cease to have effect in relation to certain payments of interest made on or after 6April* 1988—*see* 1988(F) s.44(4).

Marginal Citations

M978 Source-1974 Sch.1 8; 1977 Sch.8 10

359 Loan to buy machinery or plant.

(1) [M979]Where an individual is a member of a partnership which, under section 44 of the 1968 Act, is entitled to a capital allowance or liable to a balancing charge for any year of assessment in respect of machinery or plant belonging to the individual, any interest paid by him in the basis period (as defined in section 72 of that Act) for that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant is eligible for relief under section 353, except interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.

(2) [M980]Where the machinery or plant is in use partly for the purposes of the trade, profession or vocation carried on by the partnership and partly for other purposes, such part only of the interest is eligible for relief under section 353 as is just and reasonable to attribute to the purposes of the trade, profession or vocation, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

(3) [M981]Where the holder of an office or employment—

(a) is under **[**[F630]Part II of the 1990 Act**]** entitled to a capital allowance or liable to a balancing charge, (or would be so entitled or liable but for some contribution made by the employer), for any year of assessment in respect of machinery or plant belonging to him and in use for the purposes of the office or employment; and

(b) pays interest in that year on a loan to defray money applied as capital expenditure on the provision of that machinery or plant;

the interest so paid is eligible for relief under section 353 unless it is interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.

(4) [M982]Where the machinery or plant is in use partly for the purposes of the office or employment and partly for other purposes, such part only of the interest is eligible for relief under section 353 as it is just and reasonable to attribute to the purposes

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of the office or employment, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

Textual Amendments

F630 1990(C) s.164*and* Sch.1 para.8(12).*Previously*
"Chapter II of Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971".

Marginal Citations

M979 Source-1972 Sch.9 10; 1974 Sch.1 1
M980 Source-1972 Sch.9 11; 1974 Sch.1 1
M981 Source-1972 Sch.9 12; 1974 Sch. 1 1
M982 Source-1972 Sch.9 13; 1974 Sch.1 1

360 Loan to buy interest in close company.

(1) [M983]Subject to the following provisions of this section and sections 361 to 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring any part of the ordinary share capital of a close company **[**[F631]complying with section 13A(2)**]**; or

(b) in lending money to such a close company which is used wholly and exclusively for the purposes of the business of the company or of any associated company of it which is a close company satisfying any of those conditions; or

(c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and either the conditions stated in subsection (2) below or those stated in subsection (3) below are satisfied.

(2) [M984]The conditions first referred to in subsection (1) above are—

(a) that, when the interest is paid, the company continues to **[**[F631]comply with section 13A(2)**]** and the individual has a material interest in the company; and

(b) that he shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1); and

(c) that, if the company exists wholly or mainly for the purpose of holding investments or other property, no property held by the company is used as a residence by the individual;

but the condition in paragraph (c) above shall not apply in a case where the individual has worked for the greater part of his time in the actual management or conduct of the business of the company, or of an associated company of the company.

(3) [M985]The conditions secondly referred to in subsection (1) above are—

(a) that, when the interest is paid, the company continues to **[**[F632]comply with section 13A(2)**]** and the individual holds any part of the ordinary share capital of the company; and

(b) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his

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time in the actual management or conduct of the company or of an associated company of the company; and

(c) that he shows in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

[[F633](3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's husband or wife, makes a claim for relief in respect of them under Chapter III of Part VII.**]**

[[F634](4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning.**]**

Textual Amendments

F631 1989 s.107*and* Sch.12 para.12—*in relation to interest paid on or after* 27*July* 1989. 1988 s.424(4)*continues to have effect for purposes of* s.360*in relation to interest paid before* 27*July* 1989.*Previously*
"satisfying any of the conditions of section 424(4)"
in subs.1(a)*and*
"satisfy any of the conditions of section 424(4)"
in subs.2(a).

F632 1989 s.107*and* Sch.12 para.12—*in relation to interest paid on or after* 27*July* 1989. 1988 s.424(4)*continues to have effect for purposes of* s.360*in relation to interest paid before* 27*July* 1989.*Previously*
"satisfy any of the conditions of section 424(4)".

F633 1989 s.47.

F634 1989 s.48(1).*Previously*
"(4) In this section expressions to which a meaning is assigned by Part XI have that meaning, but—(a) in relation to any loan made after 5th April 1987, paragraph 39 of Schedule 9 shall have effect for determining whether the interest on the loan is eligible for relief under section 353 by virtue of this section; and (b) in relation to any loan made before 14th November 1986, section 417 shall have effect subject to the following modifications—(i) in subsection (3)(c) for the words following "deceased person" there shall be substituted the words "subject to subsection (3A) below, any other person interested therein"; and (ii) after subsection (3) there shall be added— "(3A) Subsection (3)(c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company; and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded."".

Modifications etc. (not altering text)

C322 *See* 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

Marginal Citations

M983 Source-1974 Sch.1 9(1); 1982 s.49(2)

M984 Source-1974 Sch.1 10(1); 1980 s.28(1)(b), (c); 1982 s.49(3)

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M985 Source-1974 Sch.1 10(2); 1982 s.49(3)

[F635 360A Meaning of "material interest" in section 360.

(1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest [F636 in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or

(b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.]

(2) Subject to the following provisions of this section, in subsection (1) above "associate", in relation to an individual, means—

(a) any relative or partner of the individual;

(b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor ("settlement" and "settlor" having the same meaning as in section 681(4)); and

(c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.

(3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—

(a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and

(b) any rights exercisable by those trustees by virtue of that interest.

(4) In relation to any loan made on or after the day on which the Finance Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.

(5) In subsection (4) above "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.

(6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company.

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(7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.

(9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or

(b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

(10) In this section **[**[F637]"participator" has the meaning given by section 417(1) and**]**"relative" means husband or wife, parent or remoter forebear, child or remoter issue or brother or sister.**]**

Textual Amendments

F635 S. 360A inserted by Finance Act 1989 (c. 26), **s. 48(2)**

F636 1989 s.107*and* Sch.12 para.13(2)*in relation to accounting periods beginning after* 31*March* 1989.*For accounting periods beginning on or before* 31*March* 1989,*the following wording applies:*
"in a company—(a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.".

F637 1989 s.107*and* Sch.12 para.13(3)*in relation to accounting periods beginning after* 31*March* 1989.

Modifications etc. (not altering text)

C323 27*July* 1989.

C324 27*July* 1989.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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361 Loan to buy interest in co-operative or employee-controlled company.

(1) [M986]Subject to the following provisions of this section and sections 363 and 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring a share or shares in a body which is a co-operative as defined by section 363(5); or

(b) in lending money to any such body which is used wholly and exclusively for the purposes of the business of that body or of a subsidiary of that body; or

(c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions in subsection (2) below are satisfied.

(2) [M987]The conditions referred to in subsection (1) above are—

(a) that the loan was made after 10th March 1981;

(b) that, when the interest is paid, the body continues to be a co-operative; and

(c) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time as an employee of the body or of a subsidiary of the body; and

(d) that he shows that in that period he has not recovered any capital from the body apart from any taken into account under section 363(1).

(3) [M988]Subject to sections 362 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring any part of the ordinary share capital of an employee-controlled company; or

(b) in paying off another loan, interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions stated in subsection (4) below are satisfied.

(4) [M989]The conditions referred to in subsection (3) above are that—

(a) the company is, throughout the period beginning with the date on which the shares are acquired and ending with the date on which the interest is paid—

(i) an unquoted company resident in the United Kingdom and not resident elsewhere; and

(ii) a trading company or the holding company of a trading group;

(b) the shares are acquired before, or not later than 12 months after, the date on which the company first becomes an employee-controlled company;

(c) during the year of assessment in which the interest is paid the company either—

(i) first becomes an employee-controlled company; or

(ii) is such a company throughout a period of at least nine months;

(d) the individual or his spouse is a full-time employee of the company throughout the period beginning with the date on which the proceeds of the loan are applied and ending with the date on which the interest is paid or, if at that date he has ceased to be such an employee, ending with whichever is the later of—

(i) the date on which he ceased to be such an employee;

(ii) the date 12 months before the payment of the interest; and

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(e) the individual shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

(5) For the purposes of this section a company is employee-controlled at any time when more than 50 per cent.—

(a) of the issued ordinary share capital of the company, and

(b) of the voting power in the company,

is beneficially owned by persons who, or whose spouses, are full-time employees of the company.

(6) Where an individual owns beneficially, or he and his spouse together own beneficially, more than 10 per cent. of the issued ordinary share capital of, or voting power in, a company, the excess shall be treated for the purposes of subsection (5) above as being owned by an individual who is neither a full-time employee of the company nor the spouse of such an employee.

(7) [M990]Where an individual and his spouse are both full-time employees of the company, subsection (6) above shall apply in relation to them with the omission of the words "or he and his spouse together own beneficially".

(8) [M991]In this section—

"full-time employee", in relation to a company, means a person who works for the greater part of his time as an employee or director of the company or of a 51 per cent. subsidiary of the company;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members taken together consists wholly or mainly of the carrying on of a trade or trades, and for this purpose "group" means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

"unquoted company" means a company none of whose shares are listed in the Official List of the Stock Exchange.

Modifications etc. (not altering text)

C325 *See* 1988(F) Sch.6 para.3(3)*—disallowance of interest relief in respect of occupation of commercial woodlands.*

C326 *See* 1988(F) s.35*and* Sch.3 para.15*for changes applicable in respect of payments of interest made on or after* 6*April* 1990.

C327 *See* 1988(F) s.35*and* Sch.3 para.15*for changes applicable in respect of payments of interest made on or after* 6*April* 1990.

Marginal Citations

M986 Source-1974 Sch.1 10A(1); 1981 s.25(3)

M987 Source-1974 Sch.1 10B; 1981 s.25(3), (6)

M988 Source-1974 Sch.1 10C; 1983 s.24(1)

M989 Source-1974 Sch.1 10D(1)-(3); 1983 s.24(1); 1984 s.24(2), (3)

M990 Source-1974 Sch.1 10D(3A); 1983 s.24(1); 1984 s.24(4)

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M991 Source-1974 Sch.1 10D(4); 1983 s.24(1)

362 Loan to buy into partnership.

(1) [M992]Subject to sections 363 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in purchasing a share in a partnership; or

(b) in contributing money to a partnership by way of capital or premium, or in advancing money to a partnership, where the money contributed or advanced is used wholly for the purposes of the trade, profession or vocation carried on by the partnership; or

(c) in paying off another loan interest on which would have been eligible for relief under that section had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and the conditions stated in subsection (2) below are satisfied.

(2) [M993]The conditions referred to in subsection (1) above are—

(a) that, throughout the period from the application of the proceeds of the loan until the interest was paid, the individual has been a member of the partnership otherwise than as a limited partner; and

(b) that he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under section 363(1).

Modifications etc. (not altering text)

C328 *See* 1988(F) Sch.6 para.3(3)*—disallowance of interest relief in respect of occupation of commercial woodlands.*

Marginal Citations

M992 Source-1974 Sch.1 11(1)

M993 Source-1974 Sch.1 12; 1981 s.25(2)

363 Provisions supplementary to sections 360 to 362.

(1) [M994]If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the close company, co-operative, employee-controlled company or partnership without using that amount in repayment of the loan, he shall be treated for the purposes of sections 353, 360, 361 and 362 as if he had at that time repaid that amount out of the loan, so that out of the interest otherwise eligible for relief (or, where section 367(4) applies, out of the proportion so eligible) and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

(2) [M995]The individual shall be treated as having recovered an amount of capital from the close company, co-operative, employee-controlled company or partnership if—

(a) he receives consideration of that amount or value for the sale, exchange or assignment of any part of the ordinary share capital of the company or of his share or shares in the co-operative or of his interest in the partnership, or of any consideration of that amount or value by way of repayment of any part of that ordinary share capital or of his share or shares in the co-operative; or

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(b) the close company, co-operative, employee-controlled company or partnership repays that amount of a loan or advance from him or the partnership returns that amount of capital to him; or

(c) he receives consideration of that amount or value for assigning any debt due to him from the close company, co-operative, employee-controlled company or partnership;

and where a sale or assignment is not a bargain made at arm's length, the sale or assignment shall be deemed to be for a consideration of an amount equal to the market value of what is disposed of.

(3) [M996]In the application of this section to Scotland for the word "assignment" wherever it occurs there shall be substituted the word " assignation ".

(4) [M997]Section 360, or, as the case may be, 361(2) or (4) or 362(2) and subsections (1) to (3) above, shall apply to a loan within section 360(1)(c), 361(1)(c) or (3)(b) or 362(1)(c) as if it, and any loan it replaces, were one loan, and so that—

(a) references to the application of the proceeds of the loan were references to the application of the proceeds of the original loan; and

(b) any restriction under subsection (1) above which applies to any loan which has been replaced shall apply to the loan which replaces it.

(5) [M998]In this section and sections 361 and 362—

"co-operative" means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the [M999]Industrial Common Ownership Act 1976; and

"subsidiary" has the same meaning as for the purposes of section 2 of that Act.

Marginal Citations

M994 Source-1974 Sch.1 13; 1981 s.25(4); 1983 s.24(2)(a)
M995 Source-1974 Sch.1 14(1); 1981 s.25(4); 1983 s.24(2)(a)
M996 Source-1974 Sch.1 14(2)
M997 Source-1974 Sch.1 15; 1981 s.25(4); 1983 s.24(2)(b)
M998 Source-1974 Sch.1 10A(2); 1981 s.25(3)
M999 1976 c.78.

364 Loan to pay inheritance tax.

(1) [M1000]Interest is eligible for relief under section 353 if it is interest on a loan to the personal representatives of a deceased person, the proceeds of which are applied—

(a) in paying, before the grant of representation or confirmation, capital transfer tax or inheritance tax payable on the delivery of the personal representatives' account and attributable to the value of personal property to which the deceased was beneficially entitled immediately before his death and which vests in the personal representatives or would vest in them if the property were situated in the United Kingdom; or

(b) in paying off another loan interest on which would have been eligible for that relief by virtue of this section if the loan had not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

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and the interest is paid in respect of a period ending within one year from the making of the loan within paragraph (a) above.

(2) [M1001]If or to the extent that any relief in respect of interest eligible for it under subsection (1) above cannot be given against income of the year in which the interest is paid because of an insufficiency of income in that year, it may instead be given against income of the preceding year of assessment, and so on; and if or to the extent that it cannot be so given it may instead be given against income of the year following that in which the interest is paid, and so on.

(3) [M1002]Sufficient evidence of the amount of capital transfer tax or inheritance tax paid as mentioned in subsection (1)(a) above and of any statements relevant to its computation may be given by the production of a document purporting to be a certificate from the Board.

(4) For the purposes of subsections (1) to (3) above—
- (a) references to capital transfer tax or inheritance tax include any interest payable on that tax; and
- (b) references to interest in respect of a period ending within a given time apply whether or not interest continues to run after that time.

Marginal Citations
M1000 Source-1974 Sch.1 17(1); 1975 Sch.12 19(2); 1986 s.100
M1001 Source-1974 Sch.1 18
M1002 Source-1974 Sch.1 20, 21; 1975 Sch.12 19(3), (4); 1986 s.100

365 Loan to buy life annuity.

[M1003](1) Subject to the following provisions of this section, interest is eligible for relief under section 353 if it is interest on a loan in respect of which the following conditions are satisfied—
- (a) that the loan was made as part of a scheme under which not less than nine-tenths of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons ("the annuitants") who include the person to whom the loan was made;
- (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65 years;
- (c) that the loan was secured on land in the United Kingdom or the Republic of Ireland and the person to whom it was made or one of the annuitants owns an estate or interest in that land; and
- (d) that, if the loan was made after 26th March 1974, the person to whom it was made or each of the annuitants uses the land on which it was secured as his only or main residence at the time the interest is paid.

[[F638](1A) Where, in the case of any loan—
- (a) the condition specified in subsection (1)(d) above would not (apart from this subsection) be fulfilled with respect to any land by reason of its having ceased at any time to be used by a particular person as his only or main residence; and
- (b) the intention at that time of the person to whom the loan was made, or of each of the annuitants owning an estate or interest in that land, was to take steps,

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before the end of the period of 12 months after the day on which it ceased to be so used, with a view to the disposal of his estate or interest,

that condition shall be treated in relation to interest on that loan as continuing to be fulfilled with respect to the land from that time until the end of that period or (if sooner) the abandonment by that person or any of those annuitants of his intention to dispose of his estate or interest.

(1B) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1A) above shall have effect as if for the reference to 12 months there were substituted a reference to such longer period as meets the circumstances of that case.**]**

(2) Interest is not eligible for relief by virtue of this section unless it is payable by the person to whom the loan was made or by one of the annuitants.

(3) If the loan was made after 26th March 1974 interest on it is eligible for relief by virtue of this section only to the extent that the amount on which it is payable does not exceed the qualifying maximum for the year of assessment; and if the interest is payable by two or more persons the interest payable by each of them is so eligible only to the extent that the amount on which it is payable does not exceed such amount as bears to the qualifying maximum for the year of assessment the same proportion as the interest payable by him bears to the interest payable by both or all of them.

Textual Amendments

F638 S. 365(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by Finance Act 1993 (c. 34), **s. 57(3)(5)(6)**

Modifications etc. (not altering text)

C329 S. 365(1A) modified (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(5)(6)**

Marginal Citations

M1003 Source-1974 Sch.1 24; 1984 s.22(3)

366 Information.

(1) [M1004]A person who claims relief under section 353 in respect of any payment of interest shall furnish to the inspector a statement in writing by the person to whom the payment is made, showing—

(a) the date when the debt was incurred;

(b) the amount of the debt when incurred;

(c) the interest paid in the year of assessment for which the claim is made (or, in the case of relief by virtue of section 355(4) or 364(2), the year of assessment for which the claim would be made but for an insufficiency of income); and

(d) the name and address of the debtor.

(2) [M1005]Where any such interest as is mentioned in section 353 is paid, the person to whom it is paid shall, if the person who pays it so requests in writing, furnish him with such statement as regards that interest as is mentioned in subsection (1) above; and the duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.

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(3) Subsections (1) and (2) above do not apply to interest paid to a building society, or to a local authority.

Marginal Citations

M1004 Source-1972 Sch.10 7; 1974 Sch.1 25(1)

M1005 Source-1972 Sch.10 8, 9

367 Provisions supplementary to sections 354 to 366.

(1) In sections 354 to 366 as they apply throughout the United Kingdom and in relation to the Republic of Ireland—

"caravan" has the meaning given by section 29(1) of the [M1006]Caravan Sites and Control of Development Act 1960;

[M1007] "dependent relative" means, in relation to any person, a relative of his, or of his spouse, who is incapacitated by old age or infirmity from maintaining himself, or the mother of that person, or of his spouse, if the mother is widowed or living apart from her husband, or, in consequence of dissolution or annulment of marriage, a single woman;

"house-boat" means a boat or similar structure designed or adapted for use as a place of permanent habitation;

[F639] . . .

"separated" means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent; and

"street works" means any works for the sewering, levelling, paving, metalling, flagging, channelling and making good of a road, and includes the provision of proper means for lighting a road.

(2) [M1008]Sections 354(1) and 360 to 364 do not apply to a loan unless it is made—

(a) in connection with the application of money, and

(b) on the occasion of, or within what is in the circumstances a reasonable time from, the application of the money;

and those sections do not apply to a loan the proceeds of which are applied for some other purpose before being applied as mentioned in those sections.

(3) [M1009]For the purposes of sections 354 to 364, the giving of credit for any money due from the purchaser under any sale shall be treated as the making of a loan to defray money applied by him in making the purchase.

(4) [M1010]Where part only of a debt fulfils the conditions required under sections 354 to 364 for interest on the debt to be eligible for relief under section 353, such proportion of the interest shall be treated as eligible for relief under that section as is equal to the portion of the debt fulfilling those conditions at the time of the application of the money in question.

(5) [M1011]In sections **[**[F640]356A to 357**]** and 365(3) references to the qualifying maximum for the year of assessment are references to such sum as Parliament may determine for the purpose for that year.

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Textual Amendments

F639 In s. 367(1): definition of "large caravan" repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19**, Pt. V, Note 6 (for year 1991-92 and subsequent years of assessment)

F640 Words in s. 367(5) substituted by Finance Act 1988 (c. 39), **s. 42(3)(b)**.

Modifications etc. (not altering text)

C330 *The definition in* s.29(1)*reads as follows:*

" "caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or(b) any tent."

C331 S. 367(5): £30,000 specified (1988-89) by Finance Act 1988 (c. 39), **s. 41**
S. 367(5): £30,000 specified (1989-90) by Finance Act 1989 (c. 26), **s. 46**
S. 367(5): £30,000 specified (1990-91) by Finance Act 1990 (c. 29), **s. 71**
S. 367(5): £30,000 specified (1991-92) by Finance Act 1991 (c. 31), **s. 26**
S. 367(5): £30,000 specified (1992-93) by Finance Act 1992 (c. 20), **s. 10(4)** (with s. 10(5))
S. 367(5): £30,000 specified (1993-94) by Finance Act 1993 (c. 34), **s. 55**
S. 367(5): £30,000 specified (1994-95, 1995-96) by Finance Act 1994 (c. 9), **s. 80**
S. 367(5): £30,000 specified (1996-97) by Finance Act 1996 (c. 8), **s. 76**
S. 367(5): £30,000 specified (1997-98) by Finance Act 1997 (c. 16), **s. 57**
S. 367(5): £30,000 specified (1998-99) by Finance (No. 2) Act 1997 (c. 58), **s. 16**
S. 367(5): £30,000 specified (1999-2000) by Finance Act 1999 (c. 16), **s. 37**

Marginal Citations

M1006 1960 c. 62.
M1007 Source-1972 Sch.9 5A, 9; 1974 Sch.1 3, 4(4)
M1008 Source-1972 Sch.9 2; 1974 Sch.1 23
M1009 Source-1972 Sch.9 14; 1974 Sch.1 23
M1010 Source-1972 Sch.9 15; 1974 Sch.1 1, 23
M1011 Source-1972 Sch.9 5(1A); 1984 s.22(1)(c)

VALID FROM 01/04/2010

[F641 367A Alternative finance arrangements

(1) Sections 353 and 365 have effect as if—

(a) purchase and resale arrangements involved the making of a loan, and

(b) alternative finance return were interest.

(2) Section 366 has effect accordingly.

(3) In this section—

"alternative finance return" has the meaning given in sections 564I to 564L of ITA 2007, and

"purchase and resale arrangements" means arrangements to which section 564C of ITA 2007 applies.**]**

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Textual Amendments

F641 S. 367A inserted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 2 para. 47** (with Sch. 9)

368 Exclusion of double relief etc.

M1012 (1) Interest in respect of which relief is given under section 353 shall not be allowable as a deduction for any other purpose of the Income Tax Acts.

(2) Relief shall not be given under section 353 against income chargeable to corporation tax, and shall not be given against any other income of a company, except where both of the following conditions are satisfied, that is to say—

(a) that the company is not resident in the United Kingdom; and

(b) that the interest cannot be taken into account in computing corporation tax chargeable on the company.

(3) Where interest on any debt or liability is taken into account in the computation of profits or gains or losses for the purposes of Case I or II of Schedule D no relief shall be given under section 353—

(a) in respect of the payment of that interest; or

(b) in respect of interest on the same debt or liability which is paid in any year of assessment for which that computation is relevant.

(4) Where relief is given under section 353 in respect of the interest paid in any year of assessment on any debt or liability—

(a) that interest shall not be taken into account in the computation of profits or gains or losses for the purposes of Case I or II of Schedule D for any year of assessment; and

(b) interest on that debt or liability shall not be taken into account in that computation for any year of assessment for which the interest so paid could have been taken into account but for the relief.

(5) For the purposes of subsections (3) and (4) above, all interest capable of being taken into account in such a computation as is mentioned in those subsections which is payable by any person on money advanced to him on current account, whether advanced on one or more accounts or by the same or separate banks or other persons, shall be treated as interest payable on the same debt.

(6) References in subsections (3) and (4) above to relief given or an amount taken into account are references to relief given or an amount taken into account on a claim or in an assessment which has been finally determined.

Marginal Citations

M1012 Source-1972 Sch.10 1-6

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Mortgage interest relief at source

369 Mortgage interest payable under deduction of tax.

(1) [M1013]If a person who is a qualifying borrower makes a payment of relevant loan interest to which this section applies, he shall be entitled, on making the payment, to deduct and retain out of it a sum equal to income tax thereon at the basic rate for the year of assessment in which the payment becomes due.

(2) Where a sum is deducted under subsection (1) above from a payment of relevant loan interest—

(a) the person to whom the payment is made shall allow the deduction on receipt of the residue;

(b) the borrower shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and

(c) the sum deducted shall be treated as income tax paid by the person to whom the payment is made.

(3) **[**[F642M1014]Subject to subsection (5A) below**]** where payments of relevant loan interest to which this section applies become due in any year, the borrower shall be charged with tax at the basic rate for that year on an amount of income equal, subject to subsection (4) below, to the deduction which, in computing his total income **[**[F643](otherwise than for the purposes of excess liability)**]**, falls to be made on account of those payments.

[[F644](3A) In computing for the purposes of excess liability the total income of a person for any year of assessment, no deduction shall be allowed in respect of any amount of relevant loan interest to which this section applies.

(3B) In this section "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F645]not chargeable at the lower rate**]**[F646]by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]**,to the exclusion of any higher rate.

(4) In any case where—

(a) payments of relevant loan interest to which this section applies become due in any year; and

(b) the total income of the borrower for that year is such that he cannot benefit from any or, as the case may be, the full amount of the relevant personal reliefs to which he is entitled;

so much of that full amount as cannot be deducted from his total income shall be deducted from the amount of income on which he is chargeable to tax by virtue of subsection (3) above.

(5) In subsection (4) above "relevant personal relief" means any relief to which the borrower concerned is entitled under Chapter I of Part VII other than—

(a) relief under section 266 which is given either by deduction by virtue of subsection (5) of that section or in accordance with paragraph 6 of Schedule 14; and

(b) relief under section 273;

and for the purposes of subsection (4) above the full amount of those reliefs means the amount of them determined without regard to section 276.

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[[F647](5A) In any case where—

(a) payments of relevant loan interest to which this section applies become due in any year, and

(b) the notional lower rate income of the borrower for that year exceeds the actual lower rate income of the borrower for that year,

the borrower shall be charged with tax at the lower rate (rather than the basic rate) for that year on so much of the income on which he is chargeable to tax by virtue of subsection (3) above as is equal to the excess.

(5B) For the purposes of subsection (5A) above—

(a) the notional lower rate income of a borrower for a year is the amount of his total income for the year which would be chargeable at the lower rate if the relevant deduction were not made;

(b) the actual lower rate income of a borrower for a year is the amount of his total income for the year which is actually chargeable at the lower rate;

and the relevant deduction is the deduction which, in computing the borrower's total income otherwise than for the purposes of excess liability, falls to be made on account of the payments referred to in subsection (5A)(a) above.**]**

(6) [M1015]Any person by whom a payment of relevant loan interest to which this section applies is received shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (2)(c) above is treated as income tax paid by him; and any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of relevant loan interest to which it relates.

[[F648](7) The following provisions of the Management Act, namely—

(a) section 29(3)(c) (excessive relief),

(b) section 30 (tax repaid in error etc.),

(c) section 88 (interest), and

(d) section 95 (incorrect return or accounts),

shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable in accordance with regulations made by virtue of subsection (6) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid as a relief which was not due.**]**

Textual Amendments

F642 Words in s. 369(3) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(5)(7)**.

F643 Words in s. 369(3) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 27(2)(4)(7)**

F644 S. 369(3A)(3B) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 27(2)(4)(7)**

F645 Words in s. 369(3B) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**.

F646 Words in 369(3B) substituted (27.7.1993 with effect for 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

F647 S. 369(5A)(5B) inserted (16.7.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(5)(7)**.

F648 S. 369(7) inserted (27.7.1993) by 1993 c. 34, **s. 58(1)(2)**

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Modifications etc. (not altering text)

C332 *See* S.I. 1988 No.1347 (*in* Part III Vol.5)*in respect of housing associations.*

Marginal Citations

M1013 Source-1982 s.26(1), (2)
M1014 Source-1982 s.26(4)-(6)
M1015 Source-1982 s.26(7)

370 Relevant loan interest.

(1) [M1016]Subject to this section and sections **[**[F649]372**]** to 376, in this Part "relevant loan interest" means interest which is paid and payable in the United Kingdom to a qualifying lender and to which subsection (2) or (3) below applies.

(2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2)—

(a) it is interest falling within section 354(1) or 365; and

(b) apart from section 74(o) and, where applicable, section **[**[F650]356A,**]** 357 or 365(3), the whole of the interest either would be eligible for relief under section 353 or would be taken into account in a computation of profits or gains or losses for the purposes of Case I, II or VI of Schedule D for any year of assessment; and

(c) except in the case of interest falling within section 365, at the time the interest is paid, the condition in either section 355(1) or 356(1) is fulfilled with respect to the land, caravan or house-boat to which the loan concerned relates.

(3) This subsection applies to interest which is payable on a loan—

(a) in respect of which there was in force on 31st March 1983—

(i) an option notice given under section 24(2) of the [M1017]Housing Subsidies Act 1967 (option mortgages) other than one falling within section 27(3)(b) of the Finance Act 1982; or

(ii) an option notice given under Article 142(2) of the [M1018]Housing (Northern Ireland) Order 1981 (option mortgages in Northern Ireland) other than one falling within section 27(4)(b) of the Finance Act 1982; and

(b) which relates to a dwelling in respect of which, at the time the interest is paid, the condition in section 355(1) is fulfilled.

(4) [M1019]Subsection (2) above does not apply to interest payable on a loan the only security for which is a contract of insurance on human life or a contract to pay an annuity on human life.

(5) [M1020]In determining whether subsection (2) above applies to any interest, sections 354(1) and 365 shall each have effect as if the words "or the Republic of Ireland" were omitted.

(6) In determining whether subsection (2)(c) above applies to any interest, section 355(1) shall have effect as if—

(a) in paragraph (a) after the word "used", where it first occurs, there were inserted the words " wholly or to a substantial extent "; and

(b) paragraph (b) and the word "or" immediately preceding it were omitted.

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[[F651]and section 355(1A) shall have effect as if after the word "used" in paragraph (a) there were inserted the words "wholly or to a substantial extent".**]**

(7) In determining for the purposes of subsection (3)(b) above whether the condition in section 355(1) is for the time being fulfilled with respect to any dwelling—

(a) subsection (1) of that section shall have effect as if for the words from "section 354" to "used" (where it first occurs) there were substituted the words " interest shall not be relevant loan interest for the purposes of section 369 unless the dwelling to which the loan relates is at the time the interest is paid used wholly or partly " and paragraph (b) and the word "or" immediately preceding it were omitted; and

[[F652](aa) subsections (1A) and (1B) of that section shall have effect as if—

(i) after the word "used" in paragraph (a) of subsection (1A) there were inserted the words "wholly or partly";

(ii) for the words "subsection (1)(a)", wherever they occur, there were substituted the words "subsection (1)";

(iii) for the words "land, caravan or house-boat", wherever they occur without being immediately preceded by the word "other", there were substituted the word "dwelling"; and

(iv) for the words "other land, caravan or house-boat", wherever they occur, there were substituted the words "land, caravan or house-boat"; and**]**

(b) subsection (3) of that section shall have effect as if for "land, caravan or house-boat" there were substituted " dwelling ".

Textual Amendments

F649 Words in s. 370(1) substituted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(4)(c)(5)**

F650 1988(F) s.42(3)(c).

F651 Words in s. 370(6) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(4)(d)(5)**

F652 S. 370(7)(aa) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by 1993 c. 34, **s. 57(4)(e)(5)**

Modifications etc. (not altering text)

C333 *See* S.I. 1988 No.1347 (in Part III Vol.5)*in respect of housing associations.*

C334 *See* Part II Vol.5 (1989*edition*).

Marginal Citations

M1016 Source-1982 Sch.7 2(1)-(3)

M1017 1967 c. 29.

M1018 S.I. 1981/156 (N.I.3).

M1019 Source-1982 Sch.7 2(7)

M1020 Source-1982 Sch.7 3(1)-(3)

[F653]371 Second loans.

. . . . . .

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Textual Amendments

F653 S. 371 repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by Finance Act 1993 (c. 34), ss. 57, 213, **Sch. 23 Pt.III**

372 Home improvement loans.

M1021 (1) Notwithstanding anything in section 370(2), interest on a home improvement loan (other than interest to which section 370(3) applies) is not relevant loan interest unless—

(a) the qualifying lender to whom the interest is payable is a building society or a local authority or the Northern Ireland Housing Executive; or

(b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have those home improvement loans in respect of which he is the lender and which were made after such date as he may specify in the notice brought within the tax deduction scheme.

(2) A qualifying lender may not specify a date in a notice under subsection (1) above which is earlier than the earliest date on which paragraph 2 of Schedule 7 to the Finance Act 1982 applied, or, if that paragraph did not apply, section 370 applies to interest on any loan (whether or not a home improvement loan) made by him.

(3) In this section "home improvement loan" means a loan made to defray money applied wholly in improving or developing land or buildings on land or in paying off another loan which was itself to defray money so applied.

(4) Section 354(2) shall apply for the purposes of this section as it applies for the purposes of sections 354 and 355.

Marginal Citations

M1021 Source-1978 Sch.7 4; 1983 s.17(1)

373 Loans in excess of the qualifying maximum, and joint borrowers.

(1) M1022 The provisions of this section have effect in relation to a loan where, by virtue of section **[**F654 356A, section**]** 357(1) or section 365(3), only part of the interest on the loan would (apart from section 353(2)) be eligible for relief under section 353; and in this section any such loan is referred to as a "limited loan".

(2) None of the interest on a limited loan is relevant loan interest unless—

(a) the loan is made on or after 6th April 1987; or

(b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have limited loans of a description which includes that limited loan brought within the tax deduction scheme.

(3) If in a case where subsection (2) above applies **[**F654 section 356D(6) or**]** section 357(1) requires an earlier loan to be taken into account for the purpose of determining that part of the limited loan interest on which would (apart from section 353(2)) be eligible for

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relief under section 353, none of the interest on the limited loan is relevant loan interest unless that earlier loan was made by the same qualifying lender as the limited loan.

(4) [M1023]The reference in subsection (1) above to a loan only part of the interest on which would (apart from section 353(2)) be eligible for relief under section 353 includes a reference to each of two or more loans if, by virtue of **[**[F654]section 356D(7) or**]** subsection (3)(b) of section 357, the interest on the loans falls to be treated for the purposes of that section as payable on one loan; but, notwithstanding that each of those loans is accordingly a limited loan for the purposes of this section, none of the interest on any of them is relevant loan interest unless each of the loans was made by the same qualifying lender.

(5) [M1024]Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled and, if subsection (3) or (4) above also applies, the condition in that subsection is also fulfilled only so much of the interest as (apart from section 353(2)) would be eligible for relief under section 353 is relevant loan interest.

(6) [M1025]Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person who is not the borrower's husband or wife, the interest on the loan is not relevant loan interest unless—

(a) each of the persons to whom the loan was made is a qualifying borrower; and

(b) in relation to each of them considered separately, the whole of that interest is relevant loan interest, in accordance with sections 370 to 372 and this section.

(7) In subsection (6) above references to the borrower's husband or wife do not include references to a separated husband or wife, and for this purpose "separated" has the meaning given by section 367(1).

Textual Amendments

F654 1988(F) s.42(3)(d).

Modifications etc. (not altering text)

C335 *See* S.I. 1988 No.1347 (*in* Part III Vol.5)*re housing associations.*

Marginal Citations

M1022 Source-1982 Sch.7 5(1)-(3); 1985 s.37(2)
M1023 Source-1982 Sch.7 5(3A); 1983 s.17(2)
M1024 Source-1982 Sch.7 5(4); 1983 s.17(2); 1985 s.37(3)
M1025 Source-1982 Sch.7 6(1), (2)

374 Conditions for application of section 369.

(1) [M1026]Section 369 does not apply to any relevant loan interest unless—

(a) in the case of a loan of a description specified by regulations for the purposes of this paragraph, the borrower or, in the case of joint borrowers, each of them has given notice to the lender in the prescribed form certifying—

(i) that he is a qualifying borrower; and

(ii) that the interest is relevant loan interest; and

(iii) such other matters as may be prescribed; or

(b) the Board have given notice to the lender and the borrower that the interest may be paid under deduction of tax; or

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(c) it is interest to which section 370(3) applies; or

(d) [M1027]the loan to which the interest relates is of a description specified by regulations for the purposes of this paragraph and was made—

(i) if sub-paragraph (2) of paragraph 2 of Schedule 7 to the Finance Act 1982 applied to interest on the loan which became due on or after a date earlier than 6th April 1983, being a date specified by the Board in pursuance of sub-paragraph (5) of that paragraph, before that earlier date; or

(ii) if the qualifying lender is a building society or a local authority, before 1st April 1983; or

(iii) if sub-paragraphs (i) and (ii) above do not apply and the interest falls within section 370(2), before 6th April 1983.

(2) [M1028]Where notice has been given as mentioned in paragraph (a) or (b) of subsection (1) above, section 369 applies to any relevant loan interest to which the notice relates and which becomes due on or after the relevant date, as defined by subsection (3) below; and in a case falling within paragraph (c) or (d) of subsection (1) above, section 369 applies to the relevant loan interest referred to in that paragraph.

(3) In subsection (2) above "the relevant date" means—

(a) in the case of a notice under subsection (1)(a) above, the date the notice is given, and

(b) in the case of a notice under subsection (1)(b) above, a date specified in the notice as being the relevant date (which may be earlier than the date so specified as the date from which the interest may be paid under deduction of tax).

Modifications etc. (not altering text)

C336 *See* S.I. 1988 No.1347 (*in* Part III Vol.5)*re housing associations.*

Marginal Citations

M1026 Source-1982 Sch.7 7(1)(a)-(c)

M1027 Source-1982 Sch.7 7(1)(d), (4), (5)

M1028 Source-1982 Sch.7 7(2)(3)

VALID FROM 01/05/1995

[F655374A Interest which never has been relevant loan interest etc.

(1) This section applies where, in the case of any loan, interest on the loan never has been relevant loan interest or the borrower never has been a qualifying borrower.

(2) Without prejudice to subsection (3) below, in relation to a payment of interest—

(a) as respects which either of the conditions mentioned in paragraphs (a) and (b) of section 374(1) is fulfilled, and

(b) from which a deduction was made as mentioned in section 369(1),

section 369 shall have effect as if the payment of interest were a payment of relevant loan interest made by a qualifying borrower.

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(3) Nothing in subsection (2) above shall be taken as regards the borrower as entitling him to make any deduction or to retain any amount deducted and, accordingly, where any amount has been deducted, he shall be liable to make good that amount and an officer of the Board may make such assessments as may in his judgment be required for recovering that amount.

(4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to income tax for the year of assessment in which the deduction was made and as if—

(a) the assessment were among those specified in section 55(1) of that Act (recovery of tax not postponed);

(b) the assessment were made for the purpose of making good to the Crown a loss of tax wholly attributable to such a failure or error as is mentioned in subsection (1) of section 88 of that Act (interest on tax recovered to make good loss due to taxpayer's fault); and

(c) for the purposes of that section the date when the tax ought to have been paid were the 1st December following the year of assessment.

(5) If the borrower fraudulently or negligently makes any false statement or representation in connection with the making of any deduction, he shall be liable to a penalty not exceeding the amount deducted.**]**

Textual Amendments

F655 S. 374A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 112(1)**

375 Interest ceasing to be relevant loan interest, etc.

(1) [M1029]If at any time—

(a) the interest on a loan ceases to be relevant loan interest; or

(b) a person making payments of relevant loan interest ceases to be a qualifying borrower;

the borrower shall give notice of the fact to the lender.

(2) Without prejudice to subsection (3) below, in relation to a payment of interest—

(a) which is due after the time referred to in subsection (1) above and before the date on which notice is given under that subsection, and

(b) from which a deduction was made as mentioned in section 369(1),

section 369 shall have effect as if the payment were a payment of relevant loan interest made by a qualifying borrower.

(3) Nothing in subsection (2) above entitles the borrower to any relief from tax or other benefit and, accordingly, where the amount of any such relief or other benefit which is allowed by virtue of that subsection exceeds that which ought to have been allowed, he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.

(4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to tax for the year of assessment in which the relief was given and as if—

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(a) the assessment were among those specified in sections 55(1) (recovery of tax not postponed) and 86(2) (interest on overdue tax) of that Act; and

(b) the sum charged by the assessment were tax specified in paragraph 3 of the Table in section 86(4) of that Act (reckonable date).

(5) [M1030]If, as a result of receiving a notice under subsection (1) above or otherwise, a qualifying lender has reason to believe that any interest is no longer relevant loan interest or that a borrower is no longer a qualifying borrower, the lender shall furnish the Board with such information as is in his possession with respect to those matters.

(6) [M1031]Where it appears to the Board that any of the provisions of sections 370 to 373 is not or may not be fulfilled with respect to any interest, or that a qualifying borrower has or may have ceased to be a qualifying borrower, they shall give notice of that fact to the lender and the borrower specifying the description of relevant loan interest concerned or, as the case may be, that the borrower has or may have ceased to be a qualifying borrower.

(7) Section 369 shall not apply to any payment of relevant loan interest of a description to which a notice under subsection (6) above relates and which becomes due or is made after such date as may be specified in the notice and before such date as may be specified in a further notice given by the Board to the lender and the borrower.

(8) [M1032]In any case where—

(a) section 369 applies to any relevant loan interest by virtue of a notice under section 374(1)(b), and

(b) the relevant date specified in the notice is earlier than the date from which the interest begins to be paid under deduction of tax, and

(c) a payment of that interest was made on or after the relevant date but not under deduction of tax,

regulations may provide for a sum to be paid by the Board of an amount equal to that which the borrower would have been able to deduct from that payment by virtue of section 369 if it had been made after the relevant date.

(9) [M1033]No obligation as to secrecy imposed by statute or otherwise on persons employed in relation to Inland Revenue shall prevent information relating to any loan in respect of which an option notice has been given as mentioned in section 370(3)(a) from being disclosed to the Secretary of State or the Department of the Environment for Northern Ireland, or to an officer of either of them authorised to receive such information, in connection with the exercise by the Secretary of State or that Department of any of his or its functions in relation to any such loan.

(10) Subsection (9) above extends only to disclosure by or under the authority of the Inland Revenue; and information which is disclosed to any person by virtue of that subsection shall not be further disclosed to any other person unless—

(a) it could have been disclosed to that other person in accordance with that subsection; or

(b) the disclosure is made for the purposes of any civil or criminal proceedings concerned with the loan to which the disclosure relates.

Marginal Citations

M1029 Source-1982 Sch.7 8

M1030 Source-1982 Sch.7 9(1)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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M1031 Source-1982 Sch.7 10(1), (2)
M1032 Source-1982 Sch.7 11
M1033 Source-1982 Sch.7 12

VALID FROM 01/05/1995

[F656 375A Option to deduct interest for the purposes of Schedule A.

(1) If an individual who is a qualifying borrower with respect to any interest on a loan which is relevant loan interest—
  (a) is carrying on or proposing to carry on a Schedule A business, and
  (b) gives notice to the Board that deductions are to be made in respect of payments of interest on that loan in computing the profits or gains of that business,

then (subject to the following provisions of this section) section 369 shall not apply to any payment of interest on that loan which becomes due or is made on or after such date as may be specified for the purposes of this subsection in the notice.

(2) A notice specifying a date for the purposes of subsection (1) above—
  (a) may be given at any time before the end of the period of twenty-two months beginning with the end of the year of assessment in which that date falls, but
  (b) once given, shall not be withdrawn.

(3) Where notice is given to the Board under subsection (1) above, the Board shall give notice to the lender and the borrower specifying a date, not being a date before either—
  (a) the date specified for the purposes of that subsection, or
  (b) the date on which the notice under this subsection is given to the lender,

as the date on or after which payments of interest on the loan are to be treated in relation to the lender as payments of interest to which section 369 does not apply.

(4) Subsections (2) and (3) of section 375 shall have effect in relation to any period between—
  (a) the beginning of any date specified for the purposes of subsection (1) above, and
  (b) the date specified in that case in the notice given under subsection (3) above,

as they apply, in the case of any relevant loan interest, in relation to the period between the time when the borrower ceases to be a qualifying borrower and the date on which he gives notice of that fact to the lender.

(5) Where a notice under subsection (1) above has taken effect in relation to payments of interest on any loan, section 369 shall not again apply to payments of interest on that loan except where they become due after such time as may be specified in a further notice given by the Board for the purposes of this subsection to the lender and the borrower.

(6) A notice under subsection (5) above shall not specify a time for the purposes of that subsection which falls before the time when the Schedule A business in question is permanently discontinued or, as the case may be, when the proposal to carry it on is finally abandoned.**]**

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Textual Amendments

F656 S. 375A inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 18**

376 Qualifying borrowers and qualifying lenders.

(1) [M1034]Subject to subsection (2) below, an individual is a qualifying borrower with respect to the interest on any loan.

(2) In relation to interest paid at a time when the borrower or the borrower's husband or wife holds an office or employment in respect of the emoluments of which he or she would but for some special exemption or immunity from tax be chargeable to tax under Case I, II or III of Schedule E, the borrower is not a qualifying borrower.

(3) In subsection (2) above references to the borrower's husband or wife do not include references to a separated husband or wife, and for this purpose "separated" has the meaning given by section 367(1).

(4) [M1035]The following bodies are qualifying lenders:—

(a) a building society;
(b) a local authority;
(c) the Bank of England;
(d) the Post Office;
(e) a company which is authorised under section 3 or 4 of the [M1036]Insurance Companies Act 1982 to carry on in the United Kingdom any of the classes of business specified in Schedule 1 to that Act;
(f) any company to which property and rights belonging to a trustee savings bank were transferred by section 3 of the [M1037]Trustee Savings Bank Act 1985;
[[F657](g) a friendly society;**]**
(h) a development corporation within the meaning of the [M1038]New Towns Act 1981 or the [M1039]New Towns (Scotland) Act 1968;
(j) the Commission for the New Towns;
(k) the Housing Corporation;
[(ka) Housing for Wales**]**
(l) the Northern Ireland Housing Executive;
(m) the Scottish Special Housing Association;
(n) the Development Board for Rural Wales;
(o) the Church of England Pensions Board;
(p) any of the following which is prescribed under subsection (5) below, namely, an institution authorised under the [M1040]Banking Act 1987, a company which is authorised as mentioned in paragraph (e) above to carry on in the United Kingdom any of the classes of business specified in Schedule 2 to the Insurance Companies Act 1982, and a 90 per cent. subsidiary of any such institution or company or of a company within paragraph (e) above and any other body whose activities and objects appear to the Treasury to qualify it for inclusion in this paragraph.

[[F658](4A) In subsection (4)(g) above, "friendly society" means—

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(a) a friendly society within the meaning of the Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act), or

(b) a registered branch within the meaning of that Act (including any branch that by virtue of section 96(3) of that Act is to be treated as a registered branch within the meaning of that Act).**]**

(5) [M1041]The Treasury may by order prescribe for the purposes of subsection (4) above generally or in relation to any specified description of loan any of the bodies referred to in paragraph (p) of subsection (4) above; and a body which is prescribed by such an order shall become a qualifying lender generally or, as the case may be, in relation to such description of loan as is specified in the order with effect from such date as may be so specified.

(6) [M1042]Without prejudice to subsection (4) above, in relation to interest to which section 370(3) applies, the person who, as a qualifying lender for the purposes of Part II of the [M1043]Housing Subsidies Act 1967 or Part VIII of the [M1044]Housing (Northern Ireland) Order 1981, was the lender in relation to the loan referred to in section 370(3) shall also be a qualifying lender.

Textual Amendments

F657 S. 376(4)(g) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(2), **22**; S.I. 1993/236, **art.2**

F658 S. 376(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(3), **22**; S.I. 1993/236, **art. 2**

Modifications etc. (not altering text)

C337 *For orders see* Part III Vol.5 (*under* "Interest Relief: qualifying lenders").

Marginal Citations

M1034 Source-1982 Sch.7 13
M1035 Source-1982 Sch.7 14(1); 1983 s.17(3)
M1036 1982 c. 50.
M1037 1985 c. 50.
M1038 1981 c.64.
M1039 1968 c. 16.
M1040 1987 c. 22.
M1041 Source-1982 Sch.7 14(2); 1983 s.17(4); 1985 s.37(4)
M1042 Source-1982 Sch.7 15
M1043 1967 c. 29.
M1044 S.I. 1981/156 (N.I.3).

VALID FROM 03/05/1994

[F659376A The register of qualifying lenders.

(1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).

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(2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.

(3) The registration of any body may be varied by the Board—

(a) where it is general, by providing for it to be in relation to a specified description of loan, or

(b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,

and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.

(4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.

(5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.

(6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board's decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.**]**

Textual Amendments

F659 S. 376A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 142(2)**

377 Variation of terms of repayment of certain loans.

(1) [M1045]If relevant loan interest payable by a qualifying borrower—

(a) is payable under a loan agreement requiring combined payments, and

(b) is payable to a qualifying lender who, in accordance with subsection **[**[F660](8)**]** below, is specified for the purposes of this section, and

(c) is interest on a loan made before 1st April 1983, or if it is interest in respect of which the Board notified an earlier date to the lender under paragraph 2(5) of Schedule 7 to the Finance Act 1982, before that earlier date,

then, subject to subsection (2) below, the terms of repayment are by virtue of this section varied in accordance with subsection (3) below.

(2) Subsection (1) above does not apply to any combined payments unless—

(a) the qualifying lender concerned has, in accordance with regulations, given notice to the qualifying borrower that this section is to apply to combined payments which the borrower is required to make under the loan agreement; and

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(b) the qualifying borrower has not, in accordance with regulations, given notice to the qualifying lender that he wishes to continue with combined payments which, allowing for any sums he is entitled to deduct by virtue of section 369, do not exceed the combined payments which he would have been required to make but for the provisions of that section.

(3) Where subsection (1) applies, the amount of any combined payment payable by the qualifying borrower concerned which includes a payment of relevant loan interest shall be determined by the lender so as to secure, so far as practicable—

(a) that the principal and interest are repaid over the period which is for the time being agreed between the lender and the borrower; and

(b) that, unless there is a change in that period or in the basic rate of income tax or in the rate of interest charged by the lender, the amount of each net payment due from the borrower to the lender will be of the same amount;

and for the purposes of paragraph (b) above "net payment" means a payment which, so far as it is a payment of interest, consists of interest from which the sum provided for by section 369(1) has been deducted.

(4) [M1046]Where the qualifying borrower gives a notice under subsection (2)(b) above, the amount of any combined payment payable by him which includes a payment of relevant loan interest and the period over which the principal and interest on the loan are to be repaid shall be determined by the lender so as to secure, so far as practicable, that, unless there is a change in the basic rate of income tax or in the rate of interest charged by the lender—

(a) the amount of each net payment as defined in subsection (3) above which is due from the borrower to the lender will be of the same amount; and

(b) the amount of each such payment does not exceed what, apart from section 369, would have been the amount of the combined payment payable by the borrower on the effective date of the notice under subsection (2)(a) above, less tax at the basic rate for the year of assessment in which that effective date falls on so much of that combined payment as would have consisted of interest.

(5) [M1047]Nothing in this section or in the loan agreement shall prevent the borrower from making, at such time or times as he chooses, additional repayments of capital of any amount so as to secure that the principal and interest on the loan are repaid within a period which is not shorter than that referred to in subsection (3)(a) above.

(6) [M1048]For the purposes of subsection (4)(b) above the effective date of a notice under subsection (2)(a) above is the date which, in accordance with regulations, is the due date for the first combined payment which, in consequence of that notice and the notice under subsection (2)(b) above, is a net payment for the purposes of subsection (3)(b) above.

(7) [M1049]The repeal by this Act of section 28 of the Finance Act 1982 shall not affect the variation of any agreement in pursuance of that section before 26th July 1984 and accordingly, where the borrower gave a notice under subsection (2)(b) of that section, the maximum amount of any combined payment payable under the agreement as so varied which includes a payment of relevant loan interest shall continue to be the amount which would, apart from section 369, have been the first combined payment payable by the borrower after the date referred to in subsection (1)(c) above less tax at the basic rate for the year 1983-84 on so much of that combined payment as would have consisted of interest (subject to any change in the basic rate of income tax or

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in the rate of interest charged by the lender); and subsection (5) above shall apply in relation to any agreement as so varied.

(8) [M1050]A building society is by virtue of this subsection specified for the purposes of this section; and the Treasury may by order specify any other qualifying lender or class of qualifying lender for the purposes of this section.

(9) The giving of a notice under subsection (2)(a) or (b) above does not affect the right of the qualifying lender and the qualifying borrower to vary, by agreement, the terms on which interest or capital or both is to be repaid.

(10) In this section—

"loan agreement" means an agreement governing the terms of payment of interest and repayment of capital of a loan the interest on which is relevant loan interest; and

"combined payment" means one of a number of regular payments which are attributable in part to repayment of capital and in part to payment of interest.

Textual Amendments

F660 1990 s.89*and* Sch.14 para.6 (*correction of errors*)*—deemed always to have had effect. Previously* "(5)".

Modifications etc. (not altering text)

C338 S. 377 modified (3.5.1994) by Finance Act 1994 (c. 9), **s. 81(8)**

Marginal Citations

M1045 Source-1982 s.28(1)-(3)
M1046 Source-1982 s.28(4); 1984 s.23(2)
M1047 Source-1984 s.28(4)
M1048 Source-1982 s.28(4A); 1984 s.23(3)
M1049 Source-1982 s.28(4)
M1050 Source-1982 s.28(5)-(7)

378 Supplementary regulations.

[M1051](1) The Treasury may by regulations make provision for the application of sections 369 to 377 in relation to—

(a) a housing association which is for the time being approved for the purposes of section 488 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that association on land in the United Kingdom; and

(b) a self-build society which is for the time being approved for the purposes of section 489 and which borrows or has borrowed from a qualifying lender on the security of a freehold or leasehold estate of that society on land in the United Kingdom.

(2) Regulations under subsection (1) above—

(a) may contain such modifications of the provisions of sections 369 to 377, and

(b) may make the application of any of those provisions subject to such special conditions,

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as appear to the Treasury to be appropriate.

(3) The Board may by regulations make provision—

(a) for the purposes of any provision of sections 369 to 377 which relates to any matter or thing to be specified by or done in accordance with regulations;

(b) for the application of those sections in relation to loan interest paid by personal representatives and trustees;

(c) with respect to the furnishing of information by borrowers or lenders, including, in the case of lenders, the inspection of books, documents and other records on behalf of the Board;

(d) for, and with respect to, appeals to the General Commissioners or the Special Commissioners against the refusal of the Board to issue a notice under section 374(1)(b) or the issue of a notice under section 375(6) or (7); and

(e) generally for giving effect to sections 369 to 377.

(4) In this section—

(a) references to a self-build society are references to a self-build society within the meaning of Part I of the [M1052]Housing Associations Act 1985 or, in Northern Ireland, Part VII of the [M1053]Housing (Northern Ireland) Order 1981; and

(b) in its application to Scotland—

(i) "a freehold or leasehold estate" means any interest in land, and

(ii) any reference to a loan on the security of such an estate is a reference to a loan upon a heritable security within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Modifications etc. (not altering text)

C339 *See* S.I. 1983 No.368 (*in* Part III Vol.5)—*housing associations.*

Marginal Citations

M1051 Source-1982 s.29; 1984 s.56(2)

M1052 1985 c. 69.

M1053 S.I. 1981/156 (N.I.3).

379

In sections 369 to 378—

"prescribed", except in section 376(4) and (5), means prescribed by the Board;

"qualifying borrower" has the meaning given by section 376(1) to (3);

"qualifying lender" has the meaning given by section 376(4) to (6);

"regulations", except in sections 378(1) and (2), means regulations made by the Board under section 378;

"relevant loan interest" has the meaning given by section 370(1).

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PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER I

LOSS RELIEF: INCOME TAX

VALID FROM 01/05/1995

Schedule A losses

379A Schedule A losses.

(1) Subject to the following provisions of this section, where for any year of assessment any person sustains any loss in a Schedule A business carried on by him either solely or in partnership—

(a) the loss shall be carried forward to the following year of assessment and, to the extent that it does not exceed them, set against any profits or gains of that business for the year to which it is carried forward; and

(b) where there are no profits or gains for the following year or the profits or gains for that year are exceeded by the amount of the loss, the loss or, as the case may be, the remainder of it shall be so carried forward to the next following year, and so on.

(2) Subsection (3) below shall apply where a loss is sustained in a Schedule A business for any year of assessment ("the year of the loss") and one or both of the following conditions is satisfied, that is to say—

(a) the amount of the relevant capital allowances treated as expenses of that business in computing that loss exceeds, by any amount ("the net capital allowances"), the amount of any charges under the 1990 Act which are treated as receipts of that business in computing that loss;

(b) the Schedule A business has been carried on in relation to land that consists of or includes an agricultural estate to which allowable agricultural expenses deducted in computing that loss are attributable;

and the relevant capital allowances for the purposes of this subsection are allowances under the 1990 Act other than the whole or, as the case may be, a proportionate part of any allowances made in accordance with section 32(1B) of this Act in respect of expenditure on the provision of machinery or plant which is let, for the whole or a part of the year in question, to a person who does not use it or uses it for purposes other than those of a trade.

(3) Where the person carrying on the Schedule A business in a case to which this subsection applies makes a claim, in relation to the year of the loss or the year following that year, for relief under this subsection in respect of the loss—

(a) relief from income tax may be given, for the year to which the claim relates, on an amount of that person's income for that year which is equal to the amount of relief available for that year in respect of the loss; and

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(b) the loss which is to be or has been carried forward under subsection (1) above shall be treated as reduced (if necessary to nil) by an amount equal to the amount on which relief is given;

but a claim for relief under this subsection shall not be made after the end of twelve months from the 31st January next following the end of the year to which it relates and shall be accompanied by all such amendments as may be required by virtue of paragraph (b) above of any self-assessment previously made by the claimant under section 9 of the Management Act.

(4) Subject to subsection (5) below, the reference in subsection (3) above to the amount of the relief available for any year in respect of a loss is a reference to whichever is the smallest of the following amounts, that is to say—

(a) the amount of the relievable income for the year to which the claim relates;

(b) the loss sustained in the Schedule A business in the year of the loss; and

(c) the amount which, according to whether one or both of the conditions mentioned in subsection (2) above is satisfied in relation to the year of the loss, is equal—

(i) to the net capital allowances,

(ii) to the amount of the allowable agricultural expenses for the year of the loss, or

(iii) to the sum of the net capital allowances and the amount of those expenses.

(5) Where relief under subsection (3) above is given in respect of a loss in relation to either of the years in relation to which relief may be claimed in respect of that loss, relief shall not be available in respect of the same loss for the other year except, in a case where the relief already given is of an amount determined in accordance with subsection (4)(a) above, to the extent that the smaller of the amounts applicable by virtue of subsection (4)(b) and (c) above exceeds the amount of relief already given.

(6) For the purposes of subsection (4)(a) above the amount of relievable income for any year, in relation to any person, shall be equal to the amount of his income for that year—

(a) after effect has been given to subsection (1) above in relation to any amount carried forward to that year in respect of a loss sustained in any year before the year of the loss, and

(b) in the case of a claim under subsection (3) above in relation to the year of the loss, after effect has been given to any claim under that subsection in respect of a loss sustained in the preceding year.

(7) For the purposes of this section the loss sustained in any Schedule A business shall be computed in like manner as the profits or gains arising or accruing from such a business are computed under the provisions of the Income Tax Acts applicable to Schedule A.

(8) In this section "allowable agricultural expenses", in relation to an agricultural estate, means any disbursements or expenses attributable to the estate which are deductible in respect of maintenance, repairs, insurance or management of the estate and otherwise than in respect of the interest payable on any loan.

(9) For the purposes of this section the amount of any disbursements or expenses attributable to an agricultural estate shall be determined as if—

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(a) disbursements and expenses were to be disregarded to the extent that they would not have been attributable to the estate if it did not include the parts of it used wholly for purposes other than purposes of husbandry, and

(b) disbursements and expenses in respect of parts of the estate used partly for purposes of husbandry and partly for other purposes were to be reduced to an extent corresponding to the extent to which those parts were used for other purposes.

(10) In this section—

"agricultural estate" means any land (including any houses or other buildings) which is managed as one estate and which consists of or includes any agricultural land; and

"agricultural land" means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry.

Modifications etc. (not altering text)

C340 S. 379A restricted (1.5.1995) by Finance Act 1995 (c. 4), **s. 41(8)**

C341 S. 379A(1) applied (with effect in accordance with s. 39(4)(5) of the affecting Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 19(2)(3)**

C342 S. 379A(3) applied (with effect in accordance with s. 39(4)(5) of the modifying Act) Finance Act 1995 (c. 4), **Sch. 6 para. 19(4)**

VALID FROM 31/07/1998

[F661 379B Losses from overseas property business.

The provisions of section 379A apply in relation to an overseas property business as they apply in relation to a Schedule A business.**]**

Textual Amendments

F661 S. 379B inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 27** (with Sch. 5 para. 73)

Trade etc. losses

380 Set-off against general income.

(1) M1054 Where any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within two years after the year of assessment, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.

(2) M1055 Subject to section 492(2), relief may be given under subsection (1) above in respect of a person's loss sustained in the last preceding year of assessment in any trade, profession, vocation or employment still carried on by him in the year for which the claim is made, in so far as relief in respect of that loss has not already been

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given under that subsection or otherwise; and where relief is claimed by virtue of this subsection it shall be given in priority to any relief under that subsection in respect of a loss sustained in the year for which the relief is claimed.

(3) [M1056]Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113(1) as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately afterwards, it shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of subsection (2) above, except as respects the computation of profits or gains and losses.

[F662](4) [M1057]This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under **[**[F663]paragraph 4 of Schedule 6 to the Finance Act 1988**]** to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

Textual Amendments

F662 *See* 1988(F) s.148*and* Sch.14 Part V*regarding repeal of* s.380(4)*from* 6*April* 1993.

F663 1988(F) Sch.6 para.8*from* 15*March* 1988.*Previously*
"section 54".

Modifications etc. (not altering text)

C343 S. 380(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**

C344 S. 380 amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 171** (3), 184(3)

C345 S. 380(1) applied with modifications (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**

C346 S. 380(1) modified (for the year of assessment 1988-89 only) by S.I. 1991/851, reg. 9, **Sch.2**.
S. 380(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, **Sch.2**.

C347 *Treatment of oil extraction activities—see* Oil Taxation Acts.

C348 *See*—1990(C) s.142—*restriction of set off of first-year allowances.*

Marginal Citations

M1054 Source—1970 s.168(1)

M1055 Source—1970 s.168(2)

M1056 Source—1970 s.168(6)

M1057 Source—1970 s.168(8)

381 Further relief for individuals for losses in early years of trade.

(1) [M1058]Where an individual carrying on a trade sustains a loss in the trade in—

(a) the year of assessment in which it is first carried on by him; or

(b) any of the next three years of assessment;

he may, by notice given within two years after the year of assessment in which the loss is sustained, make a claim for relief under this section.

(2) [M1059]Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on an amount of the claimant's income equal to the amount of the loss, being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.

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(3) [M1060]Relief shall not be given for the same loss or the same portion of a loss both under subsection (1) above and under any other provision of the Income Tax Acts.

(4) [M1061]Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless it is shown that the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.

(5) Relief shall not be given under subsection (1) above in respect of a loss sustained by an individual in a trade if—

(a) at the time when it is first carried on by him he is married to and living with another individual who has previously carried on the trade; and

(b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.

(6) For the purposes of this section an individual carries on a trade whether he does so solely or in partnership; and (except as respects the computation of profits or gains and losses) an individual continues to carry on the same trade notwithstanding a change in the persons engaged in carrying it on if he is engaged in carrying it on immediately before and immediately after the change.

(7) [M1062]This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

Modifications etc. (not altering text)

C349 S. 381(1) modified (with effect in accordance with reg. 1(1)(2) of the amending Regulation) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **reg. 9 Sch. 2**

C350 S. 381(1) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch.2**.
S. 381(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, **Sch.2**.

C351 S. 381(1) applied with modification (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**

C352 *See* S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen.*

C353 *See* 1990(C) s.142—*restriction of set-off of first-year allowances.*

Marginal Citations

M1058 Source—1978 s.30(1)
M1059 Source—1978 s.30(2)
M1060 Source—1978 s.30(3)
M1061 Source—1978 s.30(4)-(6)
M1062 Source—1978 s.30(10)

382 Provisions supplementary to sections 380 and 381.

(1) [M1063]*A claim for relief under section* 380*or* 381*may require that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband.*

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(2) [M1064]*Subject to any requirement under subsection* (1)*above, relief under section* 380*or* 381*shall be given in respect of a loss sustained by any person by treating the loss as reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the other income of the wife or husband*[F664].

For the purposes of this subsection "income of the corresponding class" means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession, vocation or employment would have been that person's earned or unearned income.

(3) [M1065]Where relief under section 380 or 381 has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.

(4) For the purposes of sections 380 and 381, the amount of a loss sustained in a trade, (including the occupation of woodlands in a case where section 380(4) applies), profession or vocation shall be computed in like manner as the profits or gains arising or accruing from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.

Textual Amendments

F664 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C354 S. 382(3) amended by Finance Act 1991 (c. 31, SIF 63:1), **s. 72(8)(9)**

Marginal Citations

M1063 Source—1970 s.168(3); 1971 s.16(2)(a); 1978 s.30(7)(a)
M1064 Source—1970 s.168(4); 1978 s.30(7)(a)
M1065 Source—1970 s.168(5), (7), (8); 1978 s.30(7)(a); 1987 Sch.15 2(11)

383 Extension of right of set-off to capital allowances.

(1) [M1066]Subject to the provisions of this section, any claim made under section 380 or 381 for relief in respect of a loss sustained by the claimant in any trade in any year of assessment ("the year of loss") may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that apart from those allowances the claimant has not sustained a loss in the trade in the year of loss.

(2) Capital allowances for any year of assessment shall be taken into account by virtue of this section only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this subsection, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried

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forward to that year and would, without the balancing charges, be non-effective in that year.

(3) [M1067]In the case of a claim under section 380, where the capital allowances taken into account by virtue of this section are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of section 380(2)) relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.

(4) [M1068]In the case of a claim under section 381, where the capital allowances taken into account by virtue of this section are those for the year of loss, relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in that year.

(5) [M1069]For the purposes of this section—

(a) where the end of the basis period for a year of assessment (as defined in **[**[F665]section 160 of the 1990 Act)**]** falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year;

(b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under **[**[F665]section 140(4) of the 1990 Act**]**);

(c) any reference to an amount of capital allowances non-effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year; and

(d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.

(6) [M1070]Where, on a claim made by virtue of this section, relief is not given under section 380 or 381 for the full amount of the loss determined as mentioned in subsection (1) above, the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.

(7) [M1071]Subject to subsection (8) below, where for any year of assessment relief is given under section 380 or 381 by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with **[**[F666]section 140(2) of the 1990 Act)**]** a deduction in respect thereof had been allowed in taxing the trade for that year, or—

(a) where relief is given under section 380, in the case of allowances for the following year, in taxing the trade for that following year;

(b) where relief is given under section 381, in the case of allowances for any later year, in taxing the trade for that later year;

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and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.

(8) [M1072]Where in any year of assessment a trade is permanently discontinued, or is treated for the purposes of section 113 as permanently discontinued, and, immediately before the discontinuance, the trade was being carried on in partnership, then, notwithstanding subsection (7) above, for the purposes of any claim for relief made by virtue of section 385(5)(c) or 388 and relating to that discontinuance, effect shall not be deemed to have been given either—

(a) to any part of the capital allowances falling to be made in taxing the trade for that year by reason of relief given under section 380 or 381 by reference to those allowances; or

(b) to any part of the capital allowances falling to be made in taxing the trade for the preceding year by reason of relief so given by reference to them, in so far as that relief must be referred to the part of the allowances apportionable to the part of the year within 12 months of the discontinuance on an apportionment made by reference to the comparative lengths of the two parts of the year;

but where the same partner claims relief both under section 380 or 381 and under section 385(5) or 388 in respect of the same allowances, the total amount for which relief is to be given to him by reference thereto shall not exceed the greater of the amounts for which, apart from any deficiency of income, relief might have been given under either section separately, and the total amount for which relief is to be given to all the partners under those sections in respect of any allowances shall not in any event exceed the amount of the allowances to which effect has not been given apart from those sections.

(9) [M1073]Where a person claiming relief under section 380 or 381 has, since the end, where the claim is under section 380, of the year for which the claim is made, or, where the claim is under section 381, of the year of loss, carried on the trade in question in partnership, effect shall not be given to this section in relation to that claim except with the written consent of, or of the personal representatives of, every other person who has been engaged in carrying on the trade between the end of that year and the making of the claim.

(10) [M1074]Where the claim is for a loss sustained before an event treated as the permanent discontinuance of the trade, subsection (9) above shall not require the consent of any person as having been so engaged since that discontinuance, or as the personal representative of such a person.

(11) Relief from tax may be given by virtue of this section by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that person accordingly.

(12) [M1075]This section applies (with any necessary adaptations)—

(a) in the case of a claim under section 380, in relation to a profession, vocation or employment and in relation to the occupation of woodlands the profits or

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gains of which are assessable under Schedule D by virtue of an election under **[**[F667]paragraph 4 of Schedule 6 to the Finance Act 1988**]**; and

(b) in relation to a claim under section 381, in relation to a profession or vocation,

as it applies in relation to a trade.

Textual Amendments

F665 1990(C) s.164*and* Sch.1 para.8(13)(a).*Previously*
"section 72 of the 1968 Act"
and
"section 70(4) of the 1968 Act"
respectively.

F666 1990(C) s.164*and* Sch.1 para.8(13)(b).*Previously*
"section 70(2) of the 1968 Act".

F667 1988(F) Sch.6 para.8*from* 15*March* 1988.*Previously*
"section 54";*and see* 1988(F) Sch.14 Part V*for repeals from* 6*April* 1993.

Modifications etc. (not altering text)

C355 *See* 1990(C) ss.30-31 (ships)—*carry-forward does not include postponement under* ss.30-31.

C356 S. 383(6)-(8) amended by Finance Act 1991 (c. 31, SIF 63:1), **s. 72(8)(9)**

Marginal Citations

M1066 Source—1970 s.169(1), (2); 1978 s.30(7)(a)
M1067 Source—1970 s.169(3)
M1068 Source—1970 s.169(3); 1978 s.30(7)(a), (8)(a)
M1069 Source—1970 s.169(4); 1978 s.30(7)(a)
M1070 Source—1970 s.169(5)
M1071 Source—1970 s.169(6); 1978 s.30(7)(a), (8)(b)
M1072 Source—1970 s.169(7); 1978 s.30(7)(a)
M1073 Source—1970 s.169(8); 1978 s.30(7)(a), (8)(c)
M1074 Source—1970 s.169(8), (9)
M1075 Source—1970 s.169(10); 1978 s.30(10)

384 Restrictions on right of set-off.

(1) [M1076]Subject to subsection (2) below, a loss (including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss) shall not be available for relief under section 380 unless it is shown that, for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.

(2) Subsection (1) above shall not apply—

(a) to a loss made, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); or

(b) to an allowance in respect of expenditure incurred before 6th April 1960.

(3) [M1077]Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having

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been carried on throughout the year in the way in which it was being carried on by the end of the year.

(4) Subject to subsection (5) below, where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced, or discontinued, or both, in that year, subsections (1) to (3) above shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of that part of that year.

(5) Where in any year of assessment there is a change in the persons engaged in carrying on a trade, then, for the purposes of the application of subsections (1) to (4) above in the case of any person who, being engaged in carrying on the trade immediately before the change, continues to be so engaged immediately after it, the trade carried on by that person immediately before the change shall be treated as continuing to be carried on by him notwithstanding the change, whether or not it falls to be treated for any other purpose as having been discontinued on the change.

(6) [M1078]There shall be disregarded for the purposes of section 383 any allowances made to an individual under Chapter I of Part III of the Finance Act 1971 in respect of expenditure incurred on the provision of machinery or plant for leasing in the course of a trade unless—

(a) the trade is carried on by him (alone or in partnership) for a continuous period of at least six months in, or beginning or ending in, the year of the loss (as defined in section 383); and

(b) he devotes substantially the whole of his time to carrying it on (alone or in partnership) throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.

(7) [M1079]Subsection (6) above shall apply also to expenditure incurred by an individual on the provision for the purposes of a trade carried on by him (alone or in partnership) of an asset which is not to be leased if payments in the nature of royalties or licence fees are to accrue from rights granted by him in connection with that asset.

(8) [M1080]Where relief has been given in a case to which subsection (6) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.

(9) [M1081]For the purposes of subsection (1) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(10) Subsections (1) to (5) and (9) above—

(a) apply to professions and vocations as they apply to trades, with references to a commercial basis construed accordingly; and

(b) have effect without prejudice to section 397;

[[F668]and the Tax Acts shall have effect as if subsections (6) to (8) above were contained in Chapter V of Part II of the 1990 Act, and those subsections are without prejudice to section 142 of that Act.**]**

Textual Amendments

F668 1990(C) s.164*and* Sch.1 para.8(14).*Previously*
"and subsection (6) above is without prejudice to section 41 of the Finance Act 1976".

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Marginal Citations

M1076 Source—1970 s.170(1)
M1077 Source—1970 s.170(2)-(4)
M1078 Source—1980 s.70(1), (5)
M1079 Source—1980 s.70(2), (5)
M1080 Source—1980 s.70(4)
M1081 Source—1970 s.170(5)(6); 1980 s.70(6)

VALID FROM 22/03/2001

[F669 384A Restriction of set-off of allowances against general income

(1) Relief shall not be given to an individual under sections 380 and 381 by reference to a first-year allowance under Part 2 of the Capital Allowances Act (plant and machinery allowances) in the circumstances specified in subsection (2) or (4) below.

(2) The circumstances are that the allowance is in respect of expenditure incurred on the provision of plant or machinery for leasing in the course of a qualifying activity and—
  (a) at the time when the expenditure was incurred, the qualifying activity was carried on by the individual in question in partnership with a company (with or without other partners), or
  (b) a scheme has been effected or arrangements have been made (whether before or after that time) with a view to the qualifying activity being so carried on by that individual.

(3) For the purposes of subsection (2) above letting a ship on charter shall be regarded as leasing it if, apart from this subsection, it would not be so regarded.

(4) The circumstances are that the allowance is made in connection with—
  (a) a qualifying activity which at the time when the expenditure was incurred was carried on by the individual in partnership or which has subsequently been carried on by him in partnership or transferred to a person who was connected with him, or
  (b) an asset which after that time has been transferred by the individual to a person who was connected with him or, at a price lower than its market value, to any other person,

  and the condition in subsection (5) below is met.

(5) The condition is that a scheme has been effected or arrangements have been made (whether before or after the time referred to in subsection (4) above) such that the sole or main benefit that might be expected to accrue to the individual from the transaction under which the expenditure was incurred was the obtaining of a reduction in tax liability by means of relief under sections 380 and 381.

(6) Where relief has been given in circumstances in which subsection (1) applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.

(7) Section 839 (how to tell whether persons are connected) applies for the purposes of subsection (4) above.

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(8) Expressions used in this section and in Part 2 of the Capital Allowances Act have the same meaning as in that Part.**]**

Textual Amendments

F669 S. 384A inserted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 30** (with Sch. 3)

385 Carry-forward against subsequent profits.

(1) [M1082]Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given either under section 380 or under any other provision of those Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment.

(2) In the application of this section to a loss sustained by a partner in a partnership, "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed to income tax under Schedule D in respect of the trade, profession or vocation as he would be required to include in a return of his total income for that year.

(3) [M1083]Any relief under this section shall be given as far as possible from the first subsequent assessment, and so far as it cannot be so given, then from the next assessment, and so on.

(4) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the profits or gains of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends being interest or dividends—
   (a) on investments arising in that year, and
   (b) which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purposes of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts,

   shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under that Case in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

(5) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113 as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately thereafter, then—
   (a) the trade, profession or vocation carried on by him immediately before and that carried on immediately after the change shall, notwithstanding the

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discontinuance, be treated as the same for the purposes of this section, except as respects the computation of profits or gains and losses; and

(b) in respect of a loss sustained by him in the trade, profession or vocation in the part of that year before the change, relief shall be given under this section from the assessment relating to the part of the year after the change as if it were an assessment for a subsequent year; and

(c) for the purposes of this section, there shall be treated as a loss so sustained in the part of the year before the change his share of the non-effective amount (if any) of any capital allowances falling to be made in taxing the trade, profession or vocation for that part of that year.

For the purposes of paragraph (c) above—

(i) the persons engaged in carrying on the trade, profession or vocation immediately before the change shall be treated as entitled to capital allowances in the shares in which they are then entitled to the profits of the trade, profession or vocation, and

(ii) "the non-effective amount" means, in relation to any such allowances, the amount to which, because of an insufficiency of profits or gains, effect cannot be given in taxing the trade, profession or vocation.

[F670](6) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under **[**[F671]paragraph 4 of Schedule 6 to the Finance Act 1988**]** have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.

(7) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(8) So far as a claim under this section concerns the amount of the loss for any year of assessment it must be made within six years after the year of assessment in question, but the question whether any and if so how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

Textual Amendments

F670 *See* 1988(F) Sch.14 Part V—*repeal of* subs. (6)*from* 6*April* 1993.

F671 1988(F) Sch.6 para.6(8)*from* 15*March* 1988.*Previously* "section 54".

Modifications etc. (not altering text)

C357 S. 385(1) amended by Finance Act 1991 (c. 31, SIF 63:1), **s. 72(8)(9)**

Marginal Citations

M1082 Source—1970 s.171(1)

M1083 Source—1970 s.171(2)-(7)

386 Carry-forward where business transferred to a company.

(1) [M1084]Where—

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(a) a business carried on by any individual, or any individuals in partnership, has been transferred to a company in consideration solely or mainly of the allotment of shares in the company to that individual or those individuals; and

(b) in the case of any individual to whom, or to whose nominee or nominees, shares have been so allotted, his total income for any year of assessment throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise;

then, subject to subsection (2) below, section 385 (except subsection (5)) shall apply as if the income so derived were profits or gains on which that individual was assessed under Schedule D in respect of that business for that year.

(2) Where under section 385 as applied by subsection (1) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.

(3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and the business is carried on by the company, there were substituted a reference to the period from the date of the transfer to the following 5th April.

(4) Where a change to which subsection (5) of section 385 applies has occurred before a transfer to which this section applies, paragraph (a), but not paragraph (c), of that subsection shall for the purposes of this section apply in relation to the earlier change as it applies for the purposes of that section.

Marginal Citations

M1084 Source—1970 s.172

387 Carry-forward as losses of amounts taxed under section 350.

(1) [M1085]Subject to the provisions of this section, where under section 350 a person has been assessed to income tax in respect of a payment made wholly and exclusively for the purposes of a trade, profession or vocation, the amount on which tax has been paid under that assessment shall be treated for the purposes of sections 385 and 386 as though it were a loss sustained in that trade, profession or vocation, and relief in respect of the loss shall be allowed accordingly.

(2) Relief shall not be allowed by virtue of this section in respect of any payment, or part of a payment, which is not ultimately borne by the person assessed, or which is charged to capital.

(3) This section shall not apply—

(a) [M1086]to any payment falling within section 349(2);

(b) [M1087]to any payment falling within section 349 by virtue of section 43(1);

(c) to any such payment of rent as is referred to in section 120(4);

(d) to any capital sum paid in respect of any patent rights assessed under section 349(1) by virtue of section 524;

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(e) to any payment of, or on account of, copyright royalties to which section 536 applies **[**[F672]or royalties in respect of a right in a design to which section 537B applies**]**; or

(f) to any payment to which section 349(1) applies by virtue of section 737.

Textual Amendments

F672 Sch.7 para.36(4)Copyright, Designs and Patents Act 1988 (c.48)*from* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced.*)

Marginal Citations

M1085 Source—1970 s.173(1), (2)

M1086 Source—1970 s.173(3)(aa); 1970(F) Sch.4 9(6)

M1087 Source—1970 s.173(3)(a)-(c)

388 Carry-back of terminal losses.

(1) [M1088]Where a trade, profession or vocation is permanently discontinued in the year 1988-89 or any later year, and any person then carrying it on, either alone or in partnership, has sustained therein a loss to which this section applies ("a terminal loss"), that person may, subject to the provisions of this section and of section 389, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for the three years of assessment last preceding that in which the discontinuance occurs; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.

(2) Relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.

(3) [M1089]Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.

(4) Where—

(a) a claim under this section is made in respect of a terminal loss sustained in a trade, and

(b) relief cannot be given, or cannot be wholly given, against the profits or gains of the trade charged to income tax under Schedule D for any year because the amount of those profits or gains is insufficient,

any relevant interest or dividends arising in that year shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under Case I of Schedule D in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

For the purposes of this subsection "any relevant interest or dividends" means interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under Case I of Schedule D but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

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(5) The profits or gains on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those profits or gains applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax—

(a) could have been assessed to income tax under section 350, and

(b) if so assessed, could have been treated as a loss by virtue of section 387.

(6) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—

(a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued;

(b) the relevant capital allowances for that year of assessment;

(c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning 12 months before the discontinuance; and

(d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning 12 months before the discontinuance is of a year.

(7) In subsection (6) above "the relevant capital allowances" means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and for the purposes of paragraphs (a) and (c) of that subsection the amount of a loss shall, subject to the provisions of this section, be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

Modifications etc. (not altering text)

C358 *See* 1990(C) ss.30-31*(ships)—carry forward does not include postponement under* 1990(C) ss.30-31.

Marginal Citations

M1088 Source—1970 s.174(1)

M1089 Source—1970 s.174(2)-(6)

389 Supplementary provisions relating to carry-back of terminal losses.

(1) [M1090]Sections 387, 458 and 474 shall apply to the computation of losses, or of profit or loss, for any purpose of this section or section 388 as they apply to any such computation for the corresponding purposes of section 385.

(2) Where on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of **[**[F673]Part IV of the 1990 Act**]** , a claim for relief is made both under section 388

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above and **[**[F673]section 17(1) of the 1990 Act**]** (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under **[**[F673]section 17(1)**]** shall be left out of account for the purposes of section 388(6), but relief under section 388 shall be given in priority to relief under **[**[F673]section 17(1)**]**.

(3) Where a person claiming relief under section 388 on a discontinuance has, since the beginning of the third year of assessment preceding that in which the discontinuance occurs, carried on the trade, profession or vocation in partnership—

(a) in section 388(1) "the amount of profits or gains on which he has been charged to income tax" shall be taken to mean, in respect of any year or part of a year for which the partnership was assessed in respect of the trade, profession or vocation, such portion of the amount of the profits or gains on which the partnership has been, or is treated by virtue of section 388(5) as having been, charged to income tax in respect of it for that year or part of a year as would be required to be included in a return of his total income for that year;

(b) any reduction in the amount of his terminal loss which falls to be made under section 388(5) by reason of profits or gains having been applied by the partnership in any such year or part of a year in making any payment shall be limited to the same proportion of the profits or gains brought into charge which were so applied; and

(c) if he was carrying on the trade, profession or vocation immediately before the discontinuance, the amounts to be included in his terminal loss by virtue of section 388(6)(b) or (d) shall be such part only of the amounts therein mentioned (in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax) as would fall to his share on a division made according to the shares in which the partners were then entitled to the profits of the trade, profession or vocation.

(4) For all purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 113; but—

(a) a person who continues to be engaged in carrying it on immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance; and

(b) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which he was charged in respect of the same trade, profession or vocation for a period before a previous discontinuance, if he has been continuously engaged in carrying it on between the two discontinuances, and, in his case, if the previous discontinuance occurred within 12 months before the other—

(i) it shall be disregarded for the purposes of paragraphs (a) and (c) of section 388(6), except that those paragraphs shall be taken to include any amount on which relief could have been allowed to him as for a loss sustained before the previous discontinuance by virtue of section 385(5)(c), so far as it is referable to a period within those 12 months; and

(ii) paragraph (d) of section 388(6) shall be taken to include the whole amount of the allowances in question instead of the fraction there mentioned.

(5) Where a trade, profession or vocation is being carried on by any persons in partnership immediately before it is permanently discontinued, relief under section 388 given to one of them on the discontinuance shall not, in relation to a claim made by another of

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them by virtue of paragraph (c) of section 385(5), be taken to affect the non-effective amount of any allowances within the meaning of that paragraph.

(6) Subject to subsection (7) below, a claim for relief under section 388 may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade under **[**[F674]the 1990 Act except Parts III, IV, V (other than section 122) and VII**]**, being allowances which—

(a) fall to be made to the claimant by way of discharge or repayment of tax, and

(b) fall to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment,

shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section and section 388, shall be treated as a terminal loss so sustained), and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance.

(7) For the purposes of subsection (6) above—

(a) there shall be taken into account such fraction only of the allowances for the preceding year of assessment referred to in that subsection as the part of that year beginning 12 months before the discontinuance giving rise to the claim is of a year; and

(b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.

[F675](8) Where a person occupying woodlands has elected to be charged to income tax in respect thereof under Schedule D, this section and section 388 shall apply to a terminal loss sustained by him in the occupation of the woodlands as they apply to a terminal loss sustained in a trade.

Textual Amendments

F673 1990(C) s.164*and* Sch.1 para.8(15)(a).*Previously*
"Schedule 13 to the Finance Act 1986", "section 15(1) of the 1968 Act", "section 15(1)"
and
"section 15(1)"
respectively.

F674 1990(C) s.164*and* Sch.1 para.8(15)(b).*Previously*
"Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971".

F675 *See* 1988(F) Sch.14 Part V*for repeal of* subs. (8)*from* 6*April* 1993.

Marginal Citations

M1090 Source—1970 s.174(7)-(13); 1986 Sch.13 27; 1971 Sch.8 16

390 Treatment of interest as a loss for purposes of carry-forward and carry-back.

[M1091]Where—

(a) a payment of interest eligible for relief under section 353 is money wholly and exclusively laid out or expended for the purposes of a trade, profession or vocation the profits of which are chargeable to tax under Case I or II of Schedule D, and

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(b) full effect cannot be given to such relief in respect of the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made,

the amount unallowed may be carried forward to succeeding years of assessment as if it were a loss carried forward under section 385, or may be treated for the purposes of sections 388 and 389 as a loss sustained at the date of payment.

Marginal Citations

M1091 Source—1970 s.175; 1972 Sch.11 3; 1974 Sch.1 28

391 Losses from trade etc. carried on abroad.

(1) [M1092]Subject to the following provisions of this section, sections 380 to 386 and 388 and 389, so far as applicable, shall apply in relation to a loss incurred by any person in the carrying on of a trade, profession or vocation chargeable in accordance with section 65(3) as they apply to a loss incurred in a trade, profession or vocation chargeable to tax under Case I or II of Schedule D.

(2) [M1093]Relief shall not be given by virtue of subsection (1) above except on income falling within section 65(2) or (3), 192(2), (3) or (4) or 196.

Marginal Citations

M1092 Source—1974 s.23(2)(a); 1978 s.30(7)(b)

M1093 Source—1974 s.23(4); 1984 s.30(13)

Case VI losses

392 Case VI losses.

(1) [M1094]Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed to income tax in respect thereof under Case VI of Schedule D, he may make a claim requiring—

(a) that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under that Case, and

(b) that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed to income tax under that Case for any subsequent year of assessment.

(2) In the application of this section to a loss sustained by a partner in a partnership, "the amount of any profits or gains arising from any transaction in respect of which he is assessed" shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI of Schedule D in respect of any transaction as falls to be taken into account in computing his total income for that year.

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(3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any profits or gains arising from any transaction in respect of which he is assessed under Case VI of Schedule D for any year, and, so far as it cannot be so given, then from the next such assessment, and so on.

(4) This section does not apply to any loss sustained in a transaction falling within section 34, 35 or 36.

(5) So far as a claim under this section concerns the amount of the loss for any year of assessment, it must be made within six years after the year of assessment in question; but the question whether any and if so how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

Marginal Citations
M1094 Source—1970 s.176

CHAPTER II

LOSS RELIEF: CORPORATION TAX

Modifications etc. (not altering text)
C359 *See* s.434A—*limitations on loss relief for life assurance company.*

VALID FROM 31/07/1998

Losses from Schedule A business or overseas property business

392A Schedule A losses.

(1) Where a company incurs a Schedule A loss in an accounting period, the loss shall be set off for the purposes of corporation tax against the company's total profits for that period.

(2) To the extent that a company's Schedule A loss cannot be set off under subsection (1), it shall, if the company continues to carry on the Schedule A business in the succeeding accounting period, be carried forward to that period and be treated for the purposes of this section as a Schedule A loss of that period.

(3) Where an investment company ceases to carry on a Schedule A business but continues to be an investment company, any Schedule A loss that cannot be used under the preceding provisions shall be carried forward to the succeeding accounting period and be treated for the purposes of section 75 as if it had been disbursed as expenses of management for that period.

(4) In this section—

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(a) a "Schedule A loss" means a loss incurred by a company in a Schedule A business carried on by it; and

(b) "investment company" has the same meaning as in Part IV.

(5) The preceding provisions of this section apply to a Schedule A business only to the extent that it is carried on—

(a) on a commercial basis, or

(b) in the exercise of statutory functions.

(6) For the purposes of subsection (5)(a)—

(a) a business or part is not carried on on a commercial basis unless it is carried on with a view to making a profit, but if it is carried on so as to afford a reasonable expectation of profit it is treated as carried on with a view to making a profit; and

(b) if there is a change in the manner in which a business or part is carried on, it is treated as having been carried on throughout an accounting period in the way in which it was being carried on by the end of the period.

(7) In subsection (5)(b) "statutory functions" means functions conferred by or under any enactment (including an enactment contained in a local or private Act).

Modifications etc. (not altering text)

C360 S. 392A modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 17(1)** (with Sch. 22 para. 32)

392B Losses from overseas property business.

(1) Where in any accounting period a company incurs a loss in an overseas property business (whether carried on by it solely or in partnership)—

(a) the loss shall be carried forward to the succeeding accounting period and set against any profits of the business for that period,

(b) if there are no profits of the business for that period, or if the profits for that period are exceeded by the amount of the loss, the loss or the remainder of it shall be carried forward again and set against any profits of the business for the next succeeding accounting period,

and so on.

(2) Subsections (5) to (7) of section 392A apply in relation to relief under subsection (1) above and an overseas property business as they apply in relation to relief under section 392A(1) to (3) and a Schedule A business.

Modifications etc. (not altering text)

C361 S. 392B excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(5), **Sch. 17 para. 12(2)**

C362 S. 392B excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69X(5)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1**, 5)

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Trade etc. losses

393 Losses other than terminal losses.

(1) [M1095]Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under **[**[F676]section 393A(1)**]**, be relieved against income or profits of an earlier accounting period.

[F677](2) . . . . . .

[F677](3) . . . . . .

[F677](4) . . . . . .

[F677](4A) . . . . . .

[F677](4B) . . . . . .

[F677](5) . . . . . .

[F677](6) . . . . . .

(7) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.

(8) For the purposes of this section "trading income" means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where—

(a) in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or V of Schedule D, and

(b) in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient,

any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.

(9) Where in an accounting period the charges on income paid by a company—

(a) exceed the amount of the profits against which they are deductible, and

(b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,

then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.

(10) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

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(11) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years; [F678] . . ..

Textual Amendments

F676 Words in s. 393(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 8(a)**

F677 S. 393(2)-(6) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(2)(4)(5), 123, **Sch. 19** Pt. v Note 4

F678 Words in s. 393(11) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 8(b), **Sch. 19 Pt. V** Note 4

Modifications etc. (not altering text)

C363 S. 393 modified (with effect in accordance with s. 69(1) of the modifying Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 19** (with Sch. 20 para. 26)

C364 S. 393 modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 17(2)-(5)** (with Sch. 22 para. 32)

C365 S. 393 modified (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(2)**

C366 S. 393 modified (with effect in accordance with Sch. 13 para. 28 of the modifying Act) by Finance Act 2002 (c. 23), Sch. 13 paras. 13, 15(6), 16(5)(1)(a), **19**

C367 S. 393 modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 27(1)(b)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

C368 *See* 1990 s.99(2)*and* (4)*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C369 *See*Trustee Savings Banks Act 1985 (c.58) s.5*and* Sch.2 para.6(4)—*carry forward of losses where transfer to successor from existing bank under the* Trustee Savings Banks Act 1985.

C370 S. 393(1) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15**

C371 *See* 1990 s.99(2)*and* (4)*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

Marginal Citations

M1095 Source—1970 s.177(1)-(3)

[393A [F679] Losses: set off against profits of the same, or an earlier, accounting period.

(1) Subject to section 492(3), where in any accounting period ending on or after 1st April 1991 a company carrying on a trade incurs a loss in the trade, then, subject to subsection (3) below, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description)—

(a) of that accounting period, and

(b) if the company was then carrying on the trade and the claim so requires, of preceding accounting periods falling wholly or partly within the period specified in subsection (2) below;

and, subject to that subsection and to any relief for an earlier loss, the profits of any of those accounting periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.

(2) The period referred to in paragraph (b) of subsection (1) above is the period of three years immediately preceding the accounting period in which the loss is incurred; but

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the amount of the reduction that may be made under that subsection in the profits of an accounting period falling partly before the beginning of that period shall not exceed a part of those profits proportionate to the part of the accounting period falling within that period.

(3) Subsection (1) above shall not apply to trades falling within Case V of Schedule D; and a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless—

(a) the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or

(b) it is shown that for that accounting period the trade was being carried on on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part;

but this subsection is without prejudice to section 397.

(4) For the purposes of subsection (3) above—

(a) the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and

(b) where in an accounting period there is a change in the manner in which a trade is being carried on, it shall be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.

(5) A claim under subsection (1) above may require that capital allowances in respect of the trade, being allowances that fall—

(a) to be made to the company by way of discharge or repayment of tax, and

(b) to be so made for an accounting period ending on or after 1st April 1991,

shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax in respect of that, or any earlier, accounting period) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred.

(6) For the purposes of subsection (5) above, the allowances for any period shall not be treated as including amounts carried forward from an earlier period.

(7) Where a company ceases to carry on a trade, subsection (9) of section 393 shall apply in computing for the purposes of this section a loss in the trade in the accounting period in which the cessation occurs as it applies in computing a loss in an accounting period for the purposes of subsection (1) of that section.

(8) Relief shall not be given by virtue of subsection (1)(b) above in respect of a loss incurred in a trade so as to interfere with any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.

(9) For the purposes of this section—

(a) the amount of a loss incurred in a trade in an accounting period shall be computed in the same way as trading income from the trade in that period would have been computed;

(b) "trading income" means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; and

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(c) references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(10) A claim under subsection (1) above may only be made within the period of two years immediately following the accounting period in which the loss is incurred or within such further period as the Board may allow.

(11) In any case where—

(a) by virtue of section 62B of the 1990 Act (post-cessation abandonment expenditure related to offshore machinery or plant) the qualifying expenditure of the company for the chargeable period related to the cessation of its ring fence trade is treated as increased by any amount, or

(b) by virtue of section 109 of that Act (restoration expenditure incurred after cessation of trade of mineral extraction) any expenditure is treated as qualifying expenditure incurred by the company on the last day on which it carried on the trade,

then, in relation to any claim under subsection (1) above to the extent that it relates to an increase falling within paragraph (a) above or to expenditure falling within paragraph (b) above, subsection (10) above shall have effect with the substitution of "five years" for "two years".**]**

Textual Amendments

F679 S. 393A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 73(1)(4)(5)**

VALID FROM 21/07/2008

[F680 393B Losses of ring fence trade: set off against profits of an earlier accounting period

(1) This section applies if these conditions are met—

(a) a company makes a claim under section 393A(1) requiring that a loss incurred in a ring fence trade be set off against profits;

(b) section 393A(2A) applies in relation to that claim (three year set off period) by virtue of—

(i) section 393A(2B) (loss precedes cessation of trade), or

(ii) section 393A(2C) (loss arises in year when general decommissioning expenditure incurred); and

(c) the loss incurred in the ring fence trade that may be set off under section 393A ("L") exceeds the profits against which L may be set off under section 393A ("P").

(2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—

(a) falls wholly or partly before the three year set off period, and

(b) ends on or after 17 April 2002.

(3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—

(a) the amount by which L exceeds P, or

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(b) so much of that amount as cannot be relieved under this subsection against profits of the ring fence trade of a later accounting period.

(4) Subsection (3) is subject to subsection (5) in the case of an accounting period that falls partly (but not wholly) before the three year set off period.

(5) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls before the three year set off period.

(6) Subsection (3) is subject to subsection (7) in the case of an accounting period that begins before 17 April 2002 and ends on or after that date.

(7) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls after 16 April 2002.

(8) In this section—

"ring fence" has the same meaning as in section 162 of the Capital Allowances Act;

"three year set off period" means the period of three years that applies to the claim under section 393A(1) by virtue of section 393A(2A) and section 393A(2B) or (2C).**]**

Textual Amendments

F680 S. 393B inserted (with effect in accordance with s. 111(3) of the amending Act) by Finance Act 2008 (c. 9), **s. 111(1)**

[F681]394 Terminal losses.

. . . . . .

Textual Amendments

F681 S. 394 repealed by Finance Act 1991 (c. 31), ss. 73(2)(4)(5), 123, **Sch. 19 Pt. V**

395 Leasing contracts and company reconstructions.

(1) Subject to the provisions of this section, if— [M1096]

(a) under a contract entered into on or after 6th March 1973 a company ("the first company") incurs capital expenditure on the provision of machinery or plant which the first company lets to another person by another contract (a "leasing contract"); and

(b) apart from this subsection, the first company would be entitled **[**[F682]under section 393(1) or in pursuance of a claim under section 393A(1) to relief**]**in respect of losses incurred on the leasing contract; and

(c) in the accounting period for which a first-year allowance, **[**[F683]within the meaning of Part II of the 1990 Act**]**, in respect of the expenditure referred to in paragraph (a) above is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that

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accounting period, a successor company will be able to carry on any part of the first company's trade which consists of or includes the performance of all or any of the obligations which, apart from the arrangements, would be the first company's obligations under the leasing contract,

then, in the accounting period specified in paragraph (c) above and in any subsequent accounting period, the first company shall not be entitled [F684]. . . as mentioned in paragraph (b) above except in computing its profits (if any) arising under the leasing contract.

(2) For the purposes of this section a company is a successor of the first company if the circumstances are such that—

(a) section 343 applies in relation to the first company and the other company as the predecessor and the successor within the meaning of that section; or

(b) the two companies are connected with each other within the terms of section 839.

(3) For the purposes of this section losses incurred on a leasing contract and profits arising under such a contract shall be computed as if the performance of the leasing contract were a trade begun to be carried on by the first company, separately from any other trade which it may carry on, at the commencement of the letting under the leasing contract.

(4) In determining whether the first company would be entitled [F684]. . . as mentioned in subsection (1)(b) above, any losses incurred on the leasing contract shall be treated as incurred in a trade carried on by that company separately from any other trade which it may carry on.

(5) In this section "arrangements" means arrangements of any kind whether in writing or not.

Textual Amendments

F682 Words in s. 395(1)(b) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(a)**

F683 1990(C) s.164*and* Sch.1 para.8(17).*Previously*
"within the meaning of Chapter I of Part III of the Finance Act 1971".

F684 Words in s. 395(1) and (4): repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, **s. 213**,Sch. 23 Pt.III(11), note; omitted (27.7.1993) by virtue of 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(b)**

Marginal Citations

M1096 Source—1973 ss.30, 32(6)

Case VI losses

396 Case VI losses.

(1) [M1097]Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company's income

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in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.

(2) This section shall not apply to a loss incurred in a transaction falling within section 34, 35 or 36.

(3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years .

Modifications etc. (not altering text)

C372 S. 396 restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, **ss. 129(9)**, 165

C373 S. 396 modified (with application in accordance with Sch. 5 para. 72(2) of the modifying Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 72(1)**

C374 S. 396 modified by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 7A** (as inserted (28.10.2003 with effect in accordance with reg. 1(3) of the modifying S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Amendment No. 2) Regulations 2003 (S.I. 2003/2573), **reg. 8(1)**)

C375 *See* 1990 ss.99(3)*and* (4)*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10). S. 396(1) restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, **ss. 129(9)**, 165

Marginal Citations

M1097 Source—1970 s.179

CHAPTER III

LOSS RELIEF: MISCELLANEOUS PROVISIONS

397 Restriction of relief in case of farming and market gardening.

(1) [M1098]Any loss incurred in a trade of farming or market gardening shall be excluded from section 380 if in each of the prior five years a loss was incurred in carrying on that trade; and where a loss is so excluded any related capital allowance shall also be excluded from that section.

(2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 393(2) if a loss, computed without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.

(3) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance, if it is shown by the claimant—

(a) that the whole of the farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of

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profits in the future if they had been undertaken by a competent farmer or market gardener, but

(b) that, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.

(4) Subsections (1) and (2) above shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.

(5) In this section—

"basis year", in relation to any capital allowance, shall be construed in accordance with section 383(5)(a);

"chargeable period", in relation to a company, means any accounting period, or any basis period ending before its first accounting period, "basis period" having the meaning given by **[**[F685]section 160 of the 1990 Act**]**;

"prior five years"—

(a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and

(b) in relation to a loss incurred in a company's accounting period, means the last five years before the beginning of the accounting period;

"prior period of loss" means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and in applying this definition to a chargeable period of a company "losses" means losses computed without regard to capital allowances; and

"farming" and "market gardening" shall be construed in accordance with the definitions of those terms in section 832, but as if those definitions were not restricted to activities in the United Kingdom.

(6) For the purposes of this section, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.

(7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years or earlier, the rules applicable to Case I of Schedule D shall be applied; and in this section "loss computed without regard to capital allowances" means, in relation to a chargeable period of a company, a loss so ascertained, but so that, notwithstanding **[**[F686]section 144(2) of the 1990 Act**]**, no account shall be taken of any allowance or charge under any of the Capital Allowances Acts.

(8) Subsections (1) and (2) above shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection, a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.

(9) For the purposes of subsection (8) above a trade shall not be treated as discontinued if, under section 343(2), it is not to be treated as discontinued for the purpose of capital allowances and charges.

(10) Where at any time there has been a change in the persons engaged in carrying on a trade, this section shall, notwithstanding subsection (8) above, apply to any person

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who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if—

(a) a husband and his wife were the same person, and

(b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control;

and accordingly relief from income tax or from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's chargeable periods.

In this subsection "control" has the same meaning as in Part XI.

Textual Amendments

F685 1990(C) s.164*and* Sch.1 para.8(18)(a).*Previously* "section 72 of the 1968 Act".

F686 1990(C) s.164*and* Sch.1 para.8(18)(b).*Previously* "section 73(2) of the 1968 Act".

Marginal Citations

M1098 Source—1970 s.180; 1986 s.56(7) Sch.13 2(5)

398 Transactions in deposits with and without certificates or in debts.

[M1099]Where a person sustains a loss on the exercise or disposal of a right to receive any amount, being a right to which section 56(2) applies, in a case where—

(a) if a profit had arisen from that exercise or disposal, that profit would have been chargeable to tax by virtue of section 56(2), and

(b) he is chargeable to tax under Schedule C or D in respect of interest payable on that amount,

then the amount of that interest shall be included in the amounts against which **[**[F687]the amount of his loss may be set off in pursuance of a claim under section 392 or, as the case may be, against which the amount of his loss may be set off under section 396**]**.

Textual Amendments

F687 Words in s. 398 substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(4)**

Marginal Citations

M1099 Source—1973 s.26(2); 1974 s.30(2)

399 Dealings in commodity futures etc: withdrawal of loss relief.

(1) [M1100]If, apart from section **[**[F688]143(1) of the 1992 Act**]** or section 128 above, gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, then any loss arising in the course of that dealing shall not be allowable against profits or gains which are chargeable to tax under Schedule D.

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(2) [M1101]Relief shall not be given to any person under section 380, 381 or **[**[F689]393A(1)**]** in respect of a loss sustained in a trade of dealing in commodity futures if—

(a) the loss was sustained in a trade carried on in partnership and that person or one or more of the other partners was a company; and

(b) a scheme has been effected or arrangements have been made (whether by the partnership agreement or otherwise) such that the sole or main benefit that might be expected to accrue to that person from his interest in the partnership was the obtaining of a reduction in tax liability by means of any such relief.

(3) Where relief has been given in a case to which subsection (2) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.

(4) Subsection (2) above does not apply where the scheme was effected or the arrangements were made wholly before 6th April 1976.

(5) [M1102]In this section "commodity futures", "financial futures" and "qualifying options" have the same meanings as in section **[**[F690]143 of the 1992 Act**]**, and the reference in subsection (1) to a loss arising in the course of dealing in commodity or financial futures includes any loss which is regarded as arising in the course of such dealing by virtue of subsection **[**[F690]143(3)**]** of that section.

Textual Amendments

F688 Words in s. 399(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(19)(a)** (with ss. 60, 101(1), 171, 201(3)).

F689 Words in s. 399(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 11**

F690 Words in s. 399(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(19)(b)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M1100 Source—1985 s.72(1); 1987 (No.2) s.81(1)

M1101 Source—1978 s.31

M1102 Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

400 Write-off of government investment.

(1) [M1103]Where any amount of government investment in a body corporate is written-off on or after 6th April 1988, an amount equal to the amount written-off shall be set off against the body's tax losses as at the end of the accounting period ending last before the write-off date and, to the extent to which that amount exceeds those losses, against the body's tax losses as at the end of the next accounting period and so on.

(2) For the purposes of subsection (1) above a body's tax losses as at the end of an accounting period are—

(a) any losses which under section 393(1) are [F691]. . . available for relief against its trading income for the next accounting period;

(b) in the case of an investment company, any expenses of management or charges on income which under section 75(3) are available for carry forward to the next accounting period;

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(c) any allowances which under **[**[F692]section 145(2) of the 1990 Act**]**are available for carry forward to the next accounting period;

(d) any amount paid by way of charges on income so far as it exceeds the company's profit for the period and is not taken into account under 75(3) or 393(9); and

(e) any allowable losses available under **[**[F693]8 of the 1992 Act**]** so far as not allowed in that or a previous accounting period.

(3) The set off to be made under subsection (1) above for any accounting period shall be made first against the amounts in paragraphs (a) to (d) of subsection (2) above and, so far as it cannot be so made, against the amount in paragraph (e) of that subsection.

(4) For the purposes of subsection (1) above there shall be excluded from a body's tax losses as at the end of the accounting period ending last before the write-off date any amounts in respect of which a claim has been made before the write-off date under section **[**[F694]393A(1)**]**or 402 of this Act or **[**[F695]section 145(3) of the 1990 Act**]** but the body's tax losses as at the end of any subsequent accounting period shall be determined as if no such claim had been made on or after that date.

(5) Any amount that could be set off under subsection (1) above against a body's tax losses as at the end of an accounting period (or could be so set off if that body then had any such losses) may be set off against the tax losses of any other body corporate which at the end of that period is a member of the same group as the first-mentioned body, or partly against the tax losses of one member of that group and partly against those of the other or any of the others, as may be just and reasonable.

(6) Expenditure shall not be treated for the purposes of **[**[F696]section 153 of the 1990 Act**]** or section **[**[F697]50 of the 1992**]** Act as met by the Crown by reason only of the writing-off of any government investment in the body in question and a sum shall not by reason only of any such writing-off be treated as not having been deductible in computing the profits or gains of that body for the purposes of Case I or II of Schedule D.

(7) For the purposes of this section an amount of government investment in a body corporate is written-off—

(a) if its liability to repay any money lent to it out of public funds by a Minister of the Crown is extinguished;

(b) if any of its shares for which a Minister of the Crown has subscribed out of public funds are cancelled; or

(c) if its commencing capital debt is reduced otherwise than by being paid off or its public dividend capital is reduced otherwise than by being repaid (including, in either case, a reduction to nil);

and the amount written-off and the write-off date are the amount in respect of which the liability is extinguished and the date on which it is extinguished, the amount subscribed for the shares that are cancelled and the date of cancellation or the amount of reduction in the commencing capital debt or public dividend capital and the date of the reduction, as the case may be.

(8) In subsection (7) above "commencing capital debt" means any debt to a Minister of the Crown assumed as such under an enactment and "public dividend capital" means any amount paid by a Minister of the Crown under an enactment in which that amount is so described or under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.

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(9) This section shall not have effect in relation to any amount written-off if and to the extent to which it is replaced by money lent, or a payment made, out of public funds or by shares subscribed for, whether for money or money's worth, by a Minister of the Crown.

(10) In this section—

"body corporate" means any body corporate which is a company for the purposes of corporation tax;

"group" means a company having one or more 51 per cent. subsidiaries and that or those subsidiaries; and

"Minister of the Crown" includes a Northern Ireland department.

Textual Amendments

F691 Words in s. 400(2)(a); repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, s. 213, Sch. 14 para. 8(5), **Sch. 23 Pt. III** (11), note; omitted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 paras. 8(5)**

F692 1990(C) s.164*and* Sch.1 para.8(19)(a).*Previously*
"section 74(2) of the 1968 Act".

F693 Words in s. 400(2)(e) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(a)** (with ss. 60, 101(1), 171, 201(3)).

F694 Words in s. 400(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 12**

F695 1990(C) s.164*and* Sch.1 para.8(19)(b).*Previously*
"section 74(3) of the 1968 Act".

F696 1990(C) s.164*and* Sch.1 para.8(19)(c).*Previously*
"section 84 of the 1968 Act".

F697 Words in s. 400(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(b)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C376 S. 400 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 16**

C377 S. 400(1) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(1)**

C378 S. 400(1) excluded (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(2)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.

C379 S. 400(6) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(2)**

C380 S. 400(6) modified (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(3)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.

Marginal Citations

M1103 Source—1981 s.48

401 Relief for pre-trading expenditure.

(1) [M1104]Where a person incurs expenditure for the purposes of a trade, profession or vocation before the time when he begins to carry it on and the expenditure—

(a) is incurred not more than **[**[F698]seven**]** years before that time; and

(b) is not allowable as a deduction in computing his profits or gains from the trade, profession or vocation for the purposes of Case I or II of Schedule D but would have been so allowable if incurred after that time,

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the expenditure shall be treated for the purposes of corporation tax as incurred on the day on which the trade, profession or vocation is first carried on by him and for the purposes of relief under Chapter I of this Part as if it were the amount of a loss sustained by him in the trade, profession or vocation in the year of assessment in which it is set up and commenced.

[[F699](1A) Where—

(a) a company pays any charge on income at a time before it begins to carry on any trade, and

(b) the payment is made wholly and exclusively for the purposes of that trade,

that payment, to the extent that it is not deducted otherwise than by virtue of this section from any profits, shall be treated for the purposes of corporation tax as paid on the day on which the trade is first carried on by the company.**]**

(2) A claim for relief under the Income Tax Acts in respect of an amount treated as a loss by virtue of subsection (1) above shall be made separately from any claim for relief under those Acts in respect of any other loss.

Textual Amendments

F698 Word in s. 401(1) substituted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by virtue of s. 109(1)(4)

F699 S. 401(1A) inserted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by 1993 c. 34, **s. 109(2)(4)**

Marginal Citations

M1104 Source—1980 s.39(1), (2), (4); 1982 s.50

CHAPTER IV

GROUP RELIEF

Modifications etc. (not altering text)

C381 *See*—1988 s.434A—*limitations on group relief for life assurance company.*1989 s.102—*surrender of company tax refund etc. within group* (*from a day to be appointed not earlier than* 31*March* 1992).

402 Surrender of relief between members of groups and consortia.

(1) [M1105]Subject to and in accordance with this Chapter and section 492(8), relief for trading losses and other amounts eligible for relief from corporation tax may, in the cases set out in subsections (2) and (3) below, be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief".

(2) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.

A claim made by virtue of this subsection is referred to as a "group claim".

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(3) [M1106]Group relief shall also be available in the case of a surrendering company and a claimant company either where one of them is a member of a consortium and the other is—

(a) a trading company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company; or

(b) a trading company—

(i) which is a 90 per cent. subsidiary of a holding company which is owned by the consortium; and

(ii) which is not a 75 per cent. subsidiary of a company other than the holding company; or

(c) a holding company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company;

or, in accordance with section 406, where one of them is a member of a group of companies and the other is owned by a consortium and another company is a member of both the group and the consortium.

A claim made by virtue of this subsection is referred to as "a consortium claim".

(4) A consortium claim shall not be made [F700]. . . if a profit on a sale of the share capital of the other company or its holding company which the member owns would be treated as a trading receipt of that member.

(5) [M1107]Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.

(6) A payment for group relief—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

Textual Amendments

F700 Words in s. 402(4) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(a)(5), **Sch. 40 Pt. 2(11)**, Note 2

Modifications etc. (not altering text)

C382 S. 402(3) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **5(2)**

Marginal Citations

M1105 Source—1970 s.258(1)

M1106 Source—1970 s.258(2); 1981 s.40(2); 1985 Sch.9 5, 6

M1107 Source—1970 s.258(3), (4)

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403 Losses etc. which may be surrendered by way of group relief.

(1) [M1108]Subject to the provisions of this Chapter, if in any accounting period the surrendering company has incurred a loss, computed as for the purposes of section **[**[F701]393A(1)**]**, in carrying on a trade, the amount of the loss may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(2) Subsection (1) above shall not apply to so much of a loss as is excluded from **[**[F702]subsection (1) of section 393A by subsection (3) of that section**]** or by section 397.

(3) [M1109]Subject to the provisions of this Chapter, if for any accounting period any capital allowances fall to be made to the surrendering company which—

(a) are to be given by discharge or repayment of tax, and

(b) are to be available primarily against a specified class of income,

so much of the amount of those allowances (exclusive of any carried forward from an earlier period) as exceeds its income of the relevant class arising in that accounting period (before deduction of any losses of any other period or of any capital allowances) may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(4) Subject to the provisions of this Chapter, if for any accounting period the surrendering company (being an investment company) may under subsection (1) of section 75 deduct as expenses of management any amount disbursed for that accounting period, so much of that amount (exclusive of any amount deductible only by virtue of subsection (3) of that section) as exceeds the company's profits of that accounting period may be set off for purposes of corporation tax against the total profits of the claimant company (whether an investment company or not) for its corresponding accounting period.

(5) The surrendering company's profits of the period shall be determined for the purposes of subsection (4) above without any deduction under section 75 and without regard to any deduction falling to be made in respect of losses or allowances of any other period.

(6) References in subsections (4) and (5) above to section 75 do not include references to that section as applied by section 76 to companies carrying on life assurance business.

(7) Subject to the provisions of this Chapter and section 494(4), if in any accounting period the surrendering company has paid any amount by way of charges on income, so much of that amount as exceeds its profits of the period may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(8) The surrendering company's profits of the period shall be determined for the purposes of subsection (7) above without regard to any deduction falling to be made in respect of losses or allowances of any other period, or to expenses of management deductible only by virtue of section 75(3).

(9) [M1110]In applying any of the preceding subsections in the case of a consortium claim—

(a) where the claimant company is a member of a consortium, only a fraction of the loss referred to in subsection (1) above, or of the excess referred to in subsection (3), (4) or (7) above, as the case may be, may be set off under the subsection in question;

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(b) where the surrendering company is a member of a consortium that loss or excess shall not be set off under the subsection in question against more than a fraction of the total profits of the claimant company;

and that fraction shall be equal to that member's share in the consortium in the accounting period referred to in section 402(4), subject to any further reduction under section 408(2) and subject also to sections 405(4) and 406(2) and (6).

(10) [M1111]Where a company owned by a consortium—

(a) has in any relevant accounting period incurred such a loss as is referred to in subsection (1) above, and

(b) has profits (of whatever description) of that accounting period against which that loss could be set off under section **[**[F703]393A(1)**]**,

the amount of that loss which is available to any member of the consortium on a consortium claim shall be determined on the assumption that the company owned by the consortium has made a claim under section **[**[F703]393A(1)**]** requiring the loss to be so set off.

(11) Where the company referred to in subsection (10) above is a group/consortium company, the amount of the loss shall be determined under that subsection before any reduction is made under section 405(1) to (3).

Textual Amendments

F701 Words in s. 403(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 13(1)**

F702 Words in s. 403(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 13(2)**

F703 Words in s. 403(10) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 13(3)**

Modifications etc. (not altering text)

C383 S. 403(1) modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 8 para. 2(2)** (with Sch. 15)

C384 S. 403(1) modified (27.7.1993 with effect as mentioned in s. 165 of the amending Act) by 1993 c. 34, **ss. 131(3)**, 165

C385 *See*—1970(M) ss.41 A/B/C—*determinations of corporation tax in relation to accounting periods ending after the day to be appointed for the purposes of* 1988 s.10.1990(C) ss.30-31, 61—*circumstances when* s.403(3)*does not apply to postponed allowances.*

C386 *See* 1970(M) ss.41A/B/C—*determinations of corporation tax in relation to accounting periods ending after the day to be appointed for the purposes of* 1988 s.10.

Marginal Citations

M1108 Source—1970 s.259(1)

M1109 Source—1970 s.259(2)-(7)

M1110 Source—1970 s.259(8); 1981 s.40(3)

M1111 Source—1985 Sch.9 4

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VALID FROM 31/07/1998

[F704 403ZA Amounts eligible for group relief: trading losses.

(1) For the purposes of section 403 a trading loss means a loss incurred by the surrendering company in the surrender period in carrying on a trade, computed as for the purposes of section 393A(1).

(2) That section does not apply to a trading loss which would be excluded from section 393A(1) by—
  (a) section 393A(3) (foreign trades and certain trades not carried on with a view to gain), or
  (b) section 397 (farming and market gardening: restriction on loss relief).

(3) Where a company owned by a consortium—
  (a) has in any relevant accounting period incurred a trading loss, and
  (b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393A(1),

  the amount of the loss available to a member of the consortium on a consortium claim shall be determined on the assumption that the company has made a claim under section 393A(1) requiring the loss to be so set off.

(4) Where the company mentioned in subsection (3) is a group/consortium company, the amount of the loss available under that subsection shall be determined before any reduction is made under section 405(1) to (3).**]**

Textual Amendments

F704 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

VALID FROM 31/07/1998

[F704 403ZB Amounts eligible for group relief: excess capital allowances.

(1) For the purposes of section 403 excess capital allowances means capital allowances falling to be made to the surrendering company for the surrender period which—
  (a) are to be given by discharge or repayment of tax, and
  (b) are to be available primarily against a specified class of income,

  to the extent to which their amount exceeds the company's income of the relevant class arising in that period.

(2) In determining the amount of the allowances falling to be made for the surrender period, no account shall be taken of any allowances carried forward from an earlier period.

(3) The amount of the company's income of the relevant class means its amount before deduction of—
  (a) losses of any other period, or

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(b) capital allowances.**]**

Textual Amendments

F704 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

VALID FROM 31/07/1998

[F704 403ZA Amounts eligible for group relief: non-trading deficit on loan relationships.

(1) For the purposes of section 403 a non-trading deficit on its loan relationships means a deficit of the surrendering company to which section 83 of the M1112 Finance Act 1996 applies.

(2) Section 403 applies to such a deficit only to the extent that a claim is duly made under section 83(2) of the Finance Act 1996 for it to be treated as eligible for group relief.**]**

Textual Amendments

F704 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

Marginal Citations

M1112 1996 c.8.

VALID FROM 31/07/1998

[F704 403ZB Other amounts available by way of group relief.

(1) References in section 403 to charges on income, Schedule A losses and management expenses shall be construed as follows.

(2) Charges on income means the aggregate of the amounts paid by the surrendering company in the surrender period by way of charges on income.

(3) A Schedule A loss means a loss incurred by the surrendering company in the surrender period in a Schedule A business carried on by the company.

It does not include—

(a) an amount treated as such a loss by section 392A(2) (losses carried forward from earlier period), or

(b) a loss which would be excluded from section 392A by subsection (5) of that section (certain businesses not carried on with a view to gain).

(4) Management expenses means the aggregate of the amounts disbursed by the surrendering company for the surrender period which are deductible under section 75(1) (expenses of management of investment company).

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It does not include an amount deductible only by virtue of section 75(3) or 392A(3) (amounts carried forward from earlier periods).

(5) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.**]**

Textual Amendments

F704 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

VALID FROM 31/07/1998

[F704 403ZC Computation of gross profits.

(1) For the purposes of section 403 the surrendering company's gross profits of the surrender period means its profits for that period—

(a) without any deduction in respect of such losses, allowances and other amounts as are mentioned in paragraph (a) or (b) of subsection (1) of that section, and

(b) without any deduction falling to be made—

(i) in respect of losses, allowances or other amounts of any other period (whether or not of a description within subsection (1) of that section), or

(ii) by virtue of section 75(3) or 392A(3) (other amounts carried forward).

(2) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.**]**

Textual Amendments

F704 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

VALID FROM 31/07/1997

[F705 403A Limits on group relief.

(1) The amount which, on a claim for group relief, may be set off against the total profits of the claimant company for an accounting period ("the claim period"), and accordingly the amount to which any consent required in respect of that claim may relate, shall not exceed whichever is the smaller of the following amounts—

(a) the unused part of the surrenderable amount for the overlapping period; and

(b) the unrelieved part of the claimant company's total profits for the overlapping period.

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(2) For the purposes of any claim for group relief—

(a) the unused part of the surrenderable amount for the overlapping period is the surrenderable amount for that period reduced by the amount of any prior surrenders attributable to the overlapping period; and

(b) the unrelieved part of the claimant company's total profits for the overlapping period is the amount of its total profits for that period reduced by the amount of any previously claimed group relief attributable to the overlapping period.

(3) For the purposes of any claim for group relief—

(a) the surrenderable amount for the overlapping period is so much of the surrenderable amount for the accounting period of the surrendering company to which the claim relates as is attributable, on an apportionment in accordance with section 403B, to the overlapping period;

(b) the surrenderable amount for an accounting period of the surrendering company is the total amount for that accounting period of the losses and other amounts which (disregarding this section and section 403C) are available in that company's case for set off by way of group relief; and

(c) the amount of the claimant company's total profits for the overlapping period is so much of its total profits for the claim period as is attributable, on an apportionment in accordance with section 403B, to the overlapping period.

(4) In relation to any claim for group relief ("the relevant claim") the amount of the prior surrenders attributable to the period which is the overlapping period in the case of the relevant claim is equal to the aggregate amount (if any) produced by—

(a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—

(i) has been made before the relevant claim,

(ii) was made in respect of the whole or any part of the amount which, in relation to the relevant claim, is the surrenderable amount for the accounting period of the surrendering company to which the claim relates, and

(iii) has not been withdrawn;

(b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;

(c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—

(i) that period; and

(ii) the period which is the overlapping period in the case of the relevant claim;

and

(d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.

(5) In relation to any claim for group relief ("the relevant claim"), the amount of previously claimed group relief attributable to the period which is the overlapping period in the case of that claim is the aggregate amount produced by—

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(a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—
  (i) has been made before the relevant claim,
  (ii) was a claim to set off an amount by way of group relief against the claimant company's total profits for the period which, in relation to the relevant claim, is the claim period, and
  (iii) has not been withdrawn;

(b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;

(c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—
  (i) that period; and
  (ii) the period which is the overlapping period in the case of the relevant claim;

and

(d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.

(6) For the purposes of this section the amount of group relief allowable on any claim ("the finalised claim") shall fall to be determined as at the time when that claim ceases to be capable of being withdrawn as if—
  (a) every claim that became incapable of being withdrawn before that time were a claim made before the finalised claim; and
  (b) every claim that remains capable of being withdrawn at that time were a claim made after the finalised claim.

(7) Subject to subsection (6) above and without prejudice to any power to withdraw and resubmit claims, where (but for this subsection) more than one claim for group relief would be taken for the purposes of subsections (4) and (5) above to have been made at the same time, those claims shall be deemed, instead, to have been made—
  (a) in such order as the company or companies making them may, by notice to any officer of the Board, elect or, as the case may be, jointly elect; and
  (b) if there is no such election, in such order as an officer of the Board may direct.

(8) In this section "the overlapping period", in relation to a claim for group relief, means (subject to subsection (9) below and section 406(3) and (7)) the period which is common to both—
  (a) the claim period; and
  (b) the accounting period of the surrendering company to which the claim relates.

(9) For the purposes of this section any time in the period which, in relation to any claim for group relief, is common to both the accounting periods mentioned in subsection (8) above but which is a time when the qualifying conditions were not satisfied—
  (a) shall be treated as not comprised in the period which is the overlapping period in the case of that claim; and

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(b) shall be treated instead, in relation to each of those accounting periods, as if it constituted a part of that accounting period which was not common to both periods.

(10) For the purposes of subsection (9) above the qualifying conditions are satisfied in relation to any claim for group relief at the following times, that is to say—

(a) if the claim is a group claim, whenever the claimant company and the surrendering company are both members of the same group; and

(b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim are satisfied in the case of the claimant company and the surrendering company.**]**

Textual Amendments

F705 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

Modifications etc. (not altering text)

C387 S. 403A modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 179(4)** (as amended (with effect in accordance with Sch. 7 para. 9 of the 1997 amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**)

VALID FROM 31/07/1997

[F705 403B Apportionments under section 403A.

(1) Subject to subsection (2) below, where an apportionment falls to be made under section 403A for the purpose of determining how much of an amount for any period ("the first period") is attributable to any other period ("the second period") which comprises the whole or a part of the first period—

(a) the whole of that amount shall be attributed to the second period if the first and second periods begin and end at the same times; and

(b) in any other case, the apportionment shall be made on a time basis according to how much of the first period coincides with the second period.

(2) Where the circumstances of a particular case are such that the making on the time basis mentioned in subsection (1)(b) above of some or all of the apportionments to be made in that case would work in a manner that would be unjust or unreasonable in relation to any person, those apportionments shall be made instead (to the extent only that is necessary in order to avoid injustice and unreasonableness) in such other manner as may be just and reasonable.**]**

Textual Amendments

F705 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

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Modifications etc. (not altering text)

C388 S. 403B modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 179(4)** (as amended (with effect in accordance with Sch. 7 para. 9 of the 1997 amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**)

VALID FROM 31/07/1997

[F705[F706403C Amount of relief in consortium cases.

(1) In the case of a consortium claim the amount that may be set off against the total profits of the claimant company is limited by this section.

(2) Where the claimant company is a member of the consortium, the amount that may be set off against the total profits of that company for the overlapping period is limited to the relevant fraction of the surrenderable amount.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company;

(b) the percentage to which the claimant company is beneficially entitled of any profits available for distribution to equity holders of the surrendering company; and

(c) the percentage to which the claimant company would be beneficially entitled of any assets of the surrendering company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(3) Where the surrendering company is a member of the consortium, the amount that may be set off against the total profits of the claimant company for the overlapping period is limited to the relevant fraction of the claimant company's total profits for the overlapping period.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company;

(b) the percentage to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company; and

(c) the percentage to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(4) In any case where the claimant or surrendering company is a subsidiary of a holding company which is owned by a consortium, for the references in subsection (2) or (3) above to the claimant or surrendering company there shall be substituted references to the holding company.

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(5) Expressions used in this section and in section 403A have the same meanings in this section as in that section.

(6) Schedule 18 has effect for supplementing this section.**]]**

Textual Amendments

F705 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

F706 S. 403C substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(1)(5)**

VALID FROM 28/07/2000

[F707 403D Relief for or in respect of non-resident companies.

(1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—

(a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company's chargeable profits for that period for corporation tax purposes;

(b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and

(c) no part of—

(i) the loss or other amount, or

(ii) any amount brought into account in computing it,

corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.

(2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—

(a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and

(b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.

(3) In this section "non-UK profits", in relation to any person, means amounts which—

(a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and

(b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period,

or amounts taken into account in computing such amounts.

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(4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.

(5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—

(a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or

(b) an amount brought into account in computing the amount of any profits falling to be so excluded.

(6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.

(7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.

(8) In this section "double taxation arrangements" means any arrangements having effect by virtue of section 788.

(9) In this section "foreign tax" means any tax chargeable under the law of any territory outside the United Kingdom which—

(a) is charged on income and corresponds to United Kingdom income tax; or

(b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;

but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

(10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.**]**

Textual Amendments

F707 Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 4**

VALID FROM 28/07/2000

[F707 403E Relief for overseas losses of UK resident companies.

(1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief

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by any company resident in the United Kingdom ("the resident company"), a loss or other amount shall be treated as not so available in so far as it—

(a) is attributable to an overseas branch or agency of that company, and

(b) is a loss or other amount falling within subsection (2) below.

(2) Subject to subsection (3) below, a loss or other amount attributable to an overseas branch or agency falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that branch or agency is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.

(3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.

(4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas branch or agency of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company by way of group relief if the amount surrenderable by that company were computed—

(a) by reference only to that branch or agency, and

(b) by the application in relation to that branch or agency of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK branch or agency of a non-resident company.

(5) In subsection (4)(b) above the reference to the UK branch or agency of a non-resident company is a reference to any branch or agency through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.

(6) References in this section to an overseas branch or agency of a company are references to any branch or agency through which that company carries on a trade in a territory outside the United Kingdom.

(7) In this section "foreign tax" and "non-UK profits" have the same meaning as in section 403D.

(8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.**]**

Textual Amendments

F707 Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 4**

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VALID FROM 19/07/2006

[F708 403F Relief in respect of overseas losses of non-resident companies

(1) This section has effect for determining for the purposes of this Chapter the extent to which a loss or other amount is available for surrender by way of group relief by a non-resident company—
  (a) which is resident in an EEA territory, or
  (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,

  in a case where a group claim may be made as a result of the condition in section 402(2A) being satisfied.

(2) A loss or other amount is not available for surrender by way of group relief by the non-resident company except in so far as, in relation to the EEA territory, the amount meets—
  (a) the equivalence condition,
  (b) the EEA tax loss condition,
  (c) the qualifying loss condition, and
  (d) the precedence condition.

(3) Part 1 of Schedule 18A determines, in the case of any amount and any EEA territory, the extent to which those conditions are met.

(4) In so far as a loss or other amount meets those conditions, Part 2 of Schedule 18A applies—
  (a) for calculating the amount of the loss or other amount (if any) that is available for surrender by way of group relief, and
  (b) otherwise for making provision in relation to the application of this Chapter to the non-resident company.

(5) This section is subject to section 403G (unallowable overseas losses of non-resident companies).**]**

Textual Amendments

F708 S. 403F inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 4(1)**

VALID FROM 19/07/2006

[F709 403G Unallowable overseas losses of non-resident companies

(1) This section applies in the case of a loss or other amount arising to a non-resident company—
  (a) which is resident in any EEA territory, or
  (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,

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where the amount is not attributable for corporation tax purposes to any UK permanent establishment of the non-resident company.

(2) The amount is not available for surrender by way of group relief by the non-resident company in so far as conditions A and B are met.

(3) Condition A is that—

(a) the amount would not qualify for group relief but for any relevant arrangements, or

(b) the amount would not have arisen to the non-resident company but for any relevant arrangements.

(4) Condition B is that the main purpose, or one of the main purposes, of the relevant arrangements was to secure that the amount would qualify for group relief.

(5) In this section references to relevant arrangements, in relation to any amount, are to—

(a) arrangements made on or after 20th February 2006, or

(b) arrangements made before that date where the amount would (but for this section) first qualify for group relief on or after that date or (as the case may be) the amount arises on or after that date.

(6) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"UK permanent establishment", in relation to the non-resident company, means any permanent establishment through which it carries on a trade in the United Kingdom.**]**

Textual Amendments

F709 S. 403G inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 4(2)**

404 Limitation of group relief in relation to certain dual resident companies.

(1) [M1113]Notwithstanding any other provision of this Chapter, no loss or other amount shall be available for set off by way of group relief in accordance with section 403 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 begins on or after 1st April 1987.

(3) In Schedule 17—

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(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

(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 839;

(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 403(8); and

(ii) those charges include an amount which falls to be treated as a charge on income by virtue of section 78(2) or paragraph 5(2) of Schedule 4; and

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(iii) the paying of those charges by the company is its main activity or one of its main activities.

Modifications etc. (not altering text)

C389 *Definition applied for purposes of*—1970 s.273A—*transfer of U.K. branch or agency.*1970 s.276(1A)—*replacement of business assets by members of a group.*1990(C) s.161(2)—*interpretation.*

Marginal Citations

M1113 Source—1987 (No.2) s.63

405 Claims relating to losses etc. of members of both group and consortium.

(1) [M1114]For the purposes of a consortium claim in respect of the loss or other amount of any relevant accounting period of a group/consortium company, that loss or other amount shall be treated as reduced (or, as the case may be, extinguished) by first deducting therefrom the potential relief attributable to group claims.

(2) Subject to subsection (3) below, in relation to the loss or other amount of a relevant accounting period of a group/consortium company, the potential relief attributable to group claims is the aggregate amount of group relief that would be claimed if every company which, as a member of the same group of companies as the group/consortium company, could make a group claim in respect of that loss or other amount made such a claim for an amount which, when set against the claimant company's total profits for its corresponding accounting period, would equal those profits.

(3) Where for any accounting period another member of the group of companies of which the group/consortium company is a member has a loss or other amount available for relief and one or more group claims is or are in fact made in respect of that loss or other amount, account shall be taken of the relief so claimed before determining (in relation to the loss or other amount of the group/consortium company) the potential relief attributable to group claims under subsection (2) above.

(4) [M1115]In any case where—

(a) a consortium claim is made by a group/consortium company in respect of a loss or other amount of an accounting period of a member of the consortium, and

(b) the corresponding accounting period of the group/consortium company is a relevant accounting period,

the total profits of the corresponding accounting period of the group/consortium company against a fraction of which that loss or other amount may be set off (in accordance with section 403(9)(b)) shall be treated as reduced (or as the case may be extinguished) by deducting therefrom the potential relief available to the group/consortium company by way of group claims.

(5) Subject to subsection (6) below, in relation to a relevant accounting period of a group/consortium company, the potential relief available to the company by way of group claims is the maximum amount of group relief that could be claimed by the company for that accounting period on group claims relating to the losses or other amounts available for relief of other members of the group of companies of which the group/consortium company is a member.

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(6) Where another member of the group of companies of which the group/consortium company is a member in fact makes one or more group claims in respect of losses or other amounts of other members of the group, account shall be taken of the relief already claimed by that company in determining the potential relief available to the group/consortium company by way of group claims under subsection (5) above.

Marginal Citations

M1114 Source—1985 Sch.9 2

M1115 Source—1985 Sch.9 3

406 Claims relating to losses etc. of consortium company or group member.

(1) [M1116]In this section—

(a) "link company" means a company which is a member of a consortium and is also a member of a group of companies; and

(b) "consortium company", in relation to a link company, means a company owned by the consortium of which the link company is a member; and

(c) "group member", in relation to a link company, means a company which is a member of the group of which the link company is also a member but is not itself a member of the consortium of which the link company is a member.

(2) [M1117]Subject to subsections (3) and (4) below, where the link company could (disregarding any deficiency of profits) make a consortium claim in respect of the loss or other amount eligible for relief of a relevant accounting period of a consortium company, a group member may make any consortium claim which could be made by the link company; and the fraction which is appropriate under section 403(9) where a group member is the claimant company shall be the same as that which would be appropriate if the link company were the claimant company.

(3) A group member may not, by virtue of subsection (2) above, make a consortium claim in respect of the loss or other amount of any accounting period of a consortium company unless the claimant company was a member of the group concerned throughout the whole of the accounting period or, as the case may be, each accounting period of the link company which, if that company were making the claim, would be a corresponding accounting period in relation to that accounting period of the consortium company.

(4) The maximum amount of relief which, in the aggregate, may be claimed by group members and the link company by consortium claims relating to the loss or other amount of a relevant accounting period of a consortium company shall not exceed the relief which could have been claimed by the link company (disregarding any deficiency of profits) if subsections (2) and (3) above had not been enacted.

(5) [M1118]Subject to subsections (6) to (8) below, where a group member has for a relevant accounting period a loss or other amount available for relief, a consortium company may make any claim in respect of that loss or other amount which it could make if the group member were a member of the consortium at all times when the link company was such a member, but not at any other time.

(6) The fraction which is appropriate under section 403(9) in relation to a consortium claim made by virtue of subsection (5) above shall be the same as that which would

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be appropriate if the link company were the surrendering company, except that the **[**[F710]overlapping period in respect of which the relevant fraction**]** is to be ascertained shall be that of the group member which is in fact the surrendering company.

(7) A consortium company may not, by virtue of subsection (5) above, make a consortium claim in respect of the loss or other amount of any accounting period of a group member unless the group member was a member of the group in question throughout the whole of that accounting period.

(8) For any accounting period of a consortium company ("the claimant company's accounting period") the maximum amount of relief which, in the aggregate, may be claimed by that company by consortium claims relating to the losses or other amounts of accounting periods of the link company and group members shall not exceed that fraction of the total profits of the claimant company's accounting period which would be brought into account under section 403(9)(b) on a consortium claim in respect of which—

(a) the link company was the surrendering company; and

(b) the link company's accounting period was the same as the claimant company's accounting period.

Textual Amendments

F710 Words in s. 406(6) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(2)(5)**

Marginal Citations

M1116 Source—1985 Sch.9 5(1), 6(1)

M1117 Source—1985 Sch.9 5(2)-(4)

M1118 Source—1985 Sch.9 6(2)-(5)

407 Relationship between group relief and other relief.

(1) [M1119]Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period—

(a) before reduction by any relief derived from a subsequent accounting period, but

(b) [M1120]as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1)) determined on the assumption that the company makes all relevant claims under section **[**[F711]393A(1)**]**of this Act and **[**[F712]section 145(3) of the 1990 Act**]** (set-off of capital allowances against total profits).

(2) For the purposes of this section "relief derived from a subsequent accounting period" means—

(a) [M1121]relief under section **[**[F713]3 93A(1)(b)**]**in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and

(b) [M1122]relief under **[**[F712]section 145(3) of the 1990 Act**]** in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed; **[**[F714]and**]**

[[F715](c) relief under section 131(7) of the Finance Act 1993 in respect of the whole or part of a relievable amount for an accounting period after the accounting period the profits of which are being computed;

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and the reference in paragraph (c) above to a relievable amount shall be construed in accordance with section 131 of the Finance Act 1993.**]**

(3) [M1123]The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period.

Textual Amendments

F711 Words in s. 407(1)(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(1)**

F712 1990(C) s.164*and* Sch.1 para.8(20).*Previously*
"section 74(3) of the 1968 Act"
in both places.

F713 Words in s. 407(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(2)**

F714 Word in s. 407(2) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**

F715 S. 407(2)(c) and words inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**

Marginal Citations

M1119 Source—1970 s.260(1)

M1120 Source—1970 s.260(1), (2)

M1121 Source—1970 s.260(3)(a), (d)

M1122 Source—1970 s.260(3)(b)

M1123 Source—1970 s.260(4)

408 Corresponding accounting periods.

(1) [M1124]For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

(a) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity); and

(b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity);

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where—

A is the length of the period common to the two accounting periods;

B is the length of the accounting period of the surrendering company;

C is the length of the corresponding accounting period of the claimant company.

Marginal Citations

M1124 Source—1970 s.261

409 Companies joining or leaving group or consortium.

(1) [M1125]Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group, or fulfil the conditions for relief for a consortium, throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group, then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that—

(a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection); and

(b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and

(c) the amount of total profits for the true accounting period of the company against which group relief may be allowed in accordance with section 407(1) is also apportioned to the component accounting periods;

and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(3) Where the one company is the surrendering company and the other company is the claimant company—

(a) references in section 403 to accounting periods, to profits, and to losses, allowances, expenses of management or charges on income of the surrendering company shall be construed in accordance with subsection (2) above;

(b) references in subsection (1) above and section 408 to accounting periods shall be so construed (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);

(c) references in section 408 to profits, and amounts to be set off against the profits, shall be so construed (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).

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(4) Subsections (2) and (3) above shall apply with the necessary modifications where a company begins or ceases to fulfil the conditions for relief for a consortium, either as a surrendering company or as a claimant company, as it applies where two companies become or cease to be members of the same group except that, in a case where—

(a) the surrendering company is owned by a consortium and two or more members of the consortium claim relief in respect of losses or other amounts of the surrendering company, or

(b) the claimant company is owned by a consortium and claims relief in respect of losses or other amounts of two or more members of the consortium,

the basis of apportionment which is adopted under subsection (2) above in relation to the losses or other amounts or, as the case may be, the total profits of the true accounting period of the company owned by the consortium shall be the same on each of the claims.

(5) [M1126]In subsection (6) below—

"the primary claim" means a consortium claim made in respect of the loss or other amount of a relevant accounting period of a company owned by a consortium;

"the principal surrendering company" means that company; and

"the principal accounting period" means that accounting period.

(6) In any case where—

(a) the company making the primary claim or, if that claim is made by virtue of section 406(2), the company which is the link company for the purposes of that subsection was not a member of the consortium throughout the whole of the principal accounting period; and

(b) on or after the date on which the primary claim is made, a consortium claim is made which—

(i) is in respect of the loss or other amount of an accounting period of a surrendering company (being a company owned by the consortium referred to in paragraph (a) above, other than the principal surrendering company); and

(ii) is made by the company making the primary claim or, in a case where it or the primary claim is made by virtue of section 406(2), is made by any member of the group in question other than the company making the primary claim; and the accounting period to which the claim relates falls, in whole or in part, within the principal accounting period; and

(c) at any time during the principal accounting period the surrendering company is a member of the same group of companies as the principal surrendering company;

no relief shall be allowed on the primary claim, or, as the case may be, any relief which was so allowed shall be withdrawn.

(7) In any case where—

(a) [M1127]a company ("the principal claimant company") owned by a consortium makes a consortium claim ("the principal claim") in respect of the loss or other amount of an accounting period of a member of the consortium or, if the principal claim is made by virtue of section 406(5), of a company which, in relation to that member of the consortium, is a group member, within the meaning of that section; and

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(b) the member of the consortium concerned (whether as the surrendering company or the link company, within the meaning of section 406) was not a member of the consortium throughout the whole of that accounting period; and

(c) on or after the date on which the principal claim is made, a consortium claim is made—

(i) by a company, other than the principal claimant company, which is owned by the consortium and which is a member of the same group of companies as the principal claimant company; and

(ii) which relates to the loss or other amount of an accounting period of the consortium member referred to in paragraph (b) above or of a company which in relation to that consortium member is a group member, within the meaning of section 406;

and that accounting period falls, in whole or in part, in the accounting period referred to in paragraph (a) above;no relief shall be allowed on the principal claim or, as the case may be, any relief which was so allowed shall be withdrawn.

(8) [M1128]Where any relief which has been allowed is withdrawn by virtue of subsection (6) or (7) above, all such adjustments shall be made, whether by way of assessment or otherwise, as may be necessary in consequence of that withdrawal.

Modifications etc. (not altering text)

C390 S. 409(2) modified (6.3.1992 with effect as mentioned in ss. 180(1)(b) and 289(1)(2) of the amending Act and S.I. 1992/3066, **art. 2(2)(d)**) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 179(4)(a)**, 289 (with ss. 60, 101(1), 171, 201(3)).
S. 409(2) modified (27.7.1993 with effect as mentioned in s. 89(2) of the amending Act) by 1993 c. 34, **s. 89(1)(2)**

Marginal Citations

M1125 Source—1970 s.262; 1984 s.47(1)
M1126 Source—1985, Sch.9 7(1), (2)
M1127 Source—1985 Sch.9 8(1), (2)
M1128 Source—1985 Sch.9 7(3), 8(3)

410 Arrangements for transfer of company to another group or consortium.

(1) [M1129]If, apart from this section, two companies ("the first company" and "the second company") would be treated as members of the same group of companies and—

(a) in an accounting period one of the two companies has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and

(b) arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period—

(i) the first company or any successor of it could cease to be a member of the same group of companies as the second company and could become a member of the same group of companies as a third company; or

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(ii) any person has or could obtain, or any persons together have or could obtain, control of the first company but not of the second; or

(iii) a third company could begin to carry on the whole or any part of a trade which, at any time in that accounting period, is carried on by the first company and could do so either as a successor of the first company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the first company shall be treated as not being a member of the same group of companies as the second company.

(2) If a trading company is owned by a consortium or is a 90 per cent. subsidiary of a holding company which is owned by a consortium and—

(a) in any accounting period the trading company or a member of the consortium has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and

(b) arrangements are in existence by virtue of which—

(i) the trading company or any successor of it could, at some time during or after the expiry of that accounting period, become a 75 per cent. subsidiary of a third company; or

(ii) any person who owns, or any persons who together own, less than 50 per cent. of the ordinary share capital of the trading company has or together have, or could at some time during or after the expiry of that accounting period obtain, control of the trading company; or

(iii) any person, other than a holding company of which the trading company is a 90 per cent. subsidiary, either alone or together with connected persons, holds or could obtain, or controls or could control the exercise of not less than 75 per cent. of the votes which may be cast on a poll taken at a general meeting of that trading company in that accounting period or in any subsequent accounting period; or

(iv) a third company could begin to carry on, at some time during or after the expiry of that accounting period, the whole or any part of a trade which, at any time in that accounting period, is carried on by the trading company and could do so either as a successor of the trading company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the trading company shall be treated as though it did not (as the surrendering company or the claimant company) fall within section 402(3).

(3) In any case where a trading company is a 90 per cent. subsidiary of a holding company which is owned by a consortium, any reference in subsection (2) above to the trading company, other than a reference in paragraph (b)(iv), shall be construed as including a reference to the holding company.

(4) In this section "third company" means a company which, apart from any provision made by or under any such arrangements as are specified in paragraph (b) of either subsection (1) or subsection (2) above, is not a member of the same group of

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companies as the first company or, as the case may be, the trading company or the holding company to which subsection (2) above applies.

(5) In subsections (1) and (2) above—

"arrangements" means arrangements of any kind whether in writing or not;

"connected persons" shall be construed in accordance with section 839; and

"control" has the meaning assigned by section 840.

(6) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that—

(a) section 343 applies in relation to the two companies as the predecessor and the successor within the meaning of that section; or

(b) the two companies are connected with each other within the meaning of section 839.

(7) [M1130]Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting or as having at any time constituted an arrangement within the meaning of this section.

Modifications etc. (not altering text)

C391 S. 410(1)(2) restricted (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 20(1)** (with s. 43(6))

C392 S. 410 restricted (19.7.1995) by Crown Agents Act 1995 (c. 24) s. 7(2)

C393 S. 410 restricted (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 16** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C394 S. 410 restricted (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17**

C395 S. 410(1)(2) restricted (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 8(1)**

C396 *See* Trustee Savings Bank Act 1985 s.5*and* Sch.2 para.6(8)—s.410*not to apply to transfers effected by* s.3*of the* TSB Act 1985.

Marginal Citations

M1129 Source—1973 s.29, 32(6); 1981 s.40(6)

M1130 Source—1981 s.47

411 Exclusion of double allowances.

(1) [M1131]Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

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(3) [M1132]Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and—

(a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 409, and

(b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) [M1133]If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.

(5) For the purposes of subsection (3) above, there shall be left out of account a claim made by a company if—

(a) the claimant company joins or leaves a group of companies at the same time as the surrendering company; and

(b) both before and after that time either the claimant company is a 75 per cent. subsidiary of the surrendering company or the surrendering company is a 75 per cent. subsidiary of the claimant company or both companies are 75 per cent. subsidiaries of another company.

(6) [M1134]Subject to subsection (7) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and—

(a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 409, and

(b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(7) [M1135]If claims falling within subsection (6) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.

(8) For the purposes of subsection (6) above there shall be left out of account a claim made as respects a surrendering company if—

(a) the surrendering company joins or leaves the group of companies concerned at the same time as the claimant company; and

(b) both before and after that time either the surrendering company is a 75 per cent. subsidiary of the claimant company or the claimant company is a 75 per

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cent. subsidiary of the surrendering company or both companies are 75 per cent. subsidiaries of another company.

(9) [M1136]References in subsections (3) to (6) above to claims for group relief do not include references to consortium claims.

(10) [M1137]Without prejudice to the provisions of **[**[F716]section 161(5) of the 1990 Act**]**, any reference in **[**[F716]that Act, except parts III and VII,**]** to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

Textual Amendments

F716 1990(C) s.164*and* Sch.1 para.8(21).*Previously*
"section 87(3) of the 1968 Act"
and
"Part I of that Act"
respectively.

Marginal Citations

M1131 Source—1970 s.263(1),(2)
M1132 Source—1970 s.263(3); 1985 Sch.9 9
M1133 Source—1970 s.263(3A), (3B); 1985 Sch.9 10
M1134 Source—1970 s.263(4); 1985 Sch.9 11
M1135 Source—1970 s.263(4A)(4B); 1985 Sch.9 12
M1136 Source—1970 s.263(5); 1985 Sch.9 13
M1137 Source—1970 s.263(6)

VALID FROM 01/04/2009

[[F717]**411ZA No relief where deduction of relevant return under alternative finance arrangements disallowed**

(1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).

(2) The amount may not be surrendered by way of group relief.**]**

Textual Amendments

F717 S. 411ZA inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 124** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C397 S. 411ZA: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 521** (with Sch. 2 Pts. 1, 2, paras. 73-75)

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[F718 411A Group relief by way of substitution for loss relief.

(1) Group relief may be given in respect of a loss notwithstanding that relief has been given in respect of it under section 393(1).

(2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 393(1).

(3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the inspector notice of consent to surrender relating to the loss.

(4) For the purposes of this section relief under section 393(1) shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.]

Textual Amendments

F718 S. 411A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 1990 (c. 29), **s. 101(1)**

412 Claims and adjustments.

(1) M1138 A claim for group relief—

(a) need not be for the full amount available,

(b) shall require the consent of the surrendering company notified to the inspector in such form as the Board may require,

(c) must be made within two years from the end of the surrendering company's accounting period to which the claim relates.

(2) A consortium claim shall require the consent of each member of the consortium, notified to the inspector in such form as the Board may require, in addition to the consent of the surrendering company.

(3) If the inspector discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax under Case VI of Schedule D in the amount which ought in his opinion to be charged.

(4) Subsection (3) above is without prejudice to the making of an assessment under section 29(3)(c) of the Management Act and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

Modifications etc. (not altering text)

C398 1990 ss.100(2), (4)*and* 101*and* Sch.15*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C399 *See* 1990 s.96(6)—*group relief adjustments consequent upon determinations under* 1970(M) ss.41A/B.

Marginal Citations

M1138 Source—1970 s.264; 1981 s.40(4)

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413 Interpretation of Chapter IV.

(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) [M1139]In this Chapter—

"claimant company" has the meaning given by section 402(1);

"consortium claim" means a claim for group relief made by virtue of section 402(3);

"group claim" means a claim for group relief made by virtue of section 402(2);

"group/consortium company" means a company which is both a member of a group of companies and a company owned by a consortium;

"group relief" has the meaning given by section 402(1);

"relevant accounting period" means an accounting period beginning after 31st July 1985; and

"surrendering company" has the meaning given by section 402(1).

(3) [M1140]For the purposes of this Chapter—

(a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;

(b) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and

(c) "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) In applying for the purposes of this Chapter the definition of "75 per cent. subsidiary" in section 838, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) [F719]. . . in determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt;[F719]. . .

(c) [F719]. . . . . .

(6) [M1141]References to a company being owned by a consortium shall be construed in accordance with paragraph (a) below except for the purposes of the definition of "group consortium company" in subsection (2) above and of sections 403(10), 406(1)(b) and 409(5), (6) and (7), and for those purposes shall be construed in accordance with paragraph (b) below—

(a) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;

(b) a company is owned by a consortium if—

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(i) it is either such a trading company as is referred to in paragraph (a) or (b) of subsection (3) of section 402 or such a holding company as is referred to in paragraph (c) of that subsection, and

(ii) three-quarters or more of the ordinary share capital of the company or, in the case of a company within section 402(3)(b), of its holding company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;

and the companies which so own three-quarters or more of that ordinary share capital are in this Chapter called the members of the consortium.

(7) [M1142]Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—

(a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(8) [F720]. . . . . .

(9) [F720]. . . . . .

(10) Schedule 18 shall have effect for supplementing this section.

Textual Amendments

F719 S. 413(5)(c) and preceding word repealed (with efffect in accordance with Sch. 27 para. 6(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 27 para. 2(2), **Sch. 40 Pt. 2(11)**, Note 3

F720 S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), **Sch. 40 Pt. 2(11)**, Note 2

Modifications etc. (not altering text)

C400 S. 413(6)(a) applied (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17(7)**

Marginal Citations

M1139 Source—1970 s.258; 1985 Sch.9 1

M1140 Source—1970 s.258(5)-(7)

M1141 Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)

M1142 Source—1973 s.28(2)-(5); 1981 s.40(5)

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PART XI

CLOSE COMPANIES

CHAPTER I

INTERPRETATIVE PROVISIONS

414 Close companies.

(1) [M1143]For the purposes of the Tax Acts, a "close company" is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—

(a) to a company not resident in the United Kingdom;

(b) to a registered industrial and provident society within the meaning of section 486(12) or to a building society;

(c) to a company controlled by or on behalf of the Crown, and not otherwise a close company; or

(d) to a company falling within section 415 or subsection (5) below.

[[F721](2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—

(a) such rights as would, in the event of the winding-up of the company ("the relevant company") on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or

(b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.

(2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—

(a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and

(b) any part of those assets which he would be entitled to receive if—

(i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound up on the basis set out in this subsection, and

(ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

(2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to "the relevant company" shall have effect as references to the company concerned.

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(2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—

(a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and

(b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that sections.**]**

(3) [M1144]*In ascertaining under subsection* (2)*above whether any amount could be apportioned among five or fewer participators or among participators who are directors, account shall, in cases where an original apportionment and any sub-apportionment are involved, be taken only of persons among whom that amount could finally be apportioned as the result of the whole process of original apportionment and sub-apportionment and those persons shall be treated as participators or directors if they are participators or directors of any company in the case of which either an original apportionment or any sub-apportionment could be made*[F722].

(4) [M1145]For the purposes of this section—

(a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and

(b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.

(5) [M1146]A company is not to be treated as a close company—

(a) if—

(i) it is controlled by a company which is not a close company, or by two or more companies none of which is a close company; and

(ii) it cannot be treated as a close company except by taking as one of the five or fewer participators requisite for its being so treated a company which is not a close company;

(b) if it cannot be treated as a close company except by virtue of **[**[F723]paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs**]** to participators did not include loan creditors who are companies other than close companies.

(6) References in subsection (5) above to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.

(7) [M1147]If shares in any company ("the first company") are held on trust for an exempt approved scheme as defined in section 592, then, unless the scheme is established wholly or mainly for the benefit of persons who are, or are dependants of, directors or employees or past directors or employees of—

(a) the first company; or

(b) an associated company of the first company; or

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(c) a company which is under the control of any director or associate of a director of the first company or of two or more persons each of whom is such a director or associate; or

(d) a close company;

the persons holding the shares shall, for the purposes of subsection (5) above, be deemed to be the beneficial owners of the shares and, in that capacity, to be a company which is not a close company.

Textual Amendments

F721 1989 s. 104(1) from 1 April 1989. Previously "(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is a close company if-(a) on the assumtion that it is so, or (b) on the assumption that it and any other such company or companies are so, more than half of any any amount falling to be apportioned under section 423 in the case of the company (including any sum which has been apportioned to it, or could on either of those assumptions be apportioned to it, under that section) could be apportioned among five or fewer participators, or among participators who are directors.".

F722 Repealed by 1989 ss. 104(2) and 187 and Sch. 17 Part V from 1 April 1989

F723 1989 s.104(3)*from* 1*April* 1989.*Previously*
"paragraph (c) of section 416(2) and it would not be a close company if the reference in that paragraph".

Modifications etc. (not altering text)

C401 S. 414 modified by Finance Act 1996 (c. 8), **Sch. 13 para. 9A(4)** (as inserted (with effect in accordance with s. 104(5) of the 2002 amending Act) by Finance Act 2002 (c. 23), **s. 104(3)**)

C402 S. 414 modified by Finance Act 1996 (c. 8), **Sch. 9 para. 2(5)** (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 22(4)**)

C403 S. 414 applied (with modifications) (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 453**, 456(7) (with Sch. 2)

C404 *See* 1979(C) s.155(1)—*definition applied for purposes of capital gains.*

Marginal Citations

M1143 Source—1970 s.282(1)

M1144 Source—1970 s.282(2); 1972 Sch.17 1

M1145 Source—1970 s.282(3)

M1146 1970 s.282(4), (5); 1972 Sch.17 1

M1147 Source—1971 s.25(6)

415 Certain quoted companies not to be close companies.

(1) [M1148]Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—

(a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and

(b) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been quoted in the official list of a recognised stock exchange.

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(2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.

(3) For the purposes of subsection (1) above shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
   (a) fall within subsection (4) below, and
   (b) are not within the exceptions in subsection (5) below,

   and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.

(4) Shares shall fall within this subsection (as being beneficially held by the public)—
   (a) [M1149]if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
   (b) [M1150]if held on trust for an exempt approved scheme as defined in section 592, or
   (c) [M1151]If they are not comprised in a principal member's holding.

(5) [M1152]Shares shall not be deemed to be held by the public if they are held—
   (a) by any director or associate of a director of the company, or
   (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
   (c) by any associated company of the company, or
   (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

   References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.

(6) For the purposes of this section—
   (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
   (b) a principal member's holding consists of the shares which carry the voting power possessed by him.

(7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.

(8) In this section "shares" include stock.

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Marginal Citations

M1148 Source—1970 s.283(1)-(3)
M1149 Source—1970 s.283(4)(a)
M1150 Source—1970 s.283(4)(bb); 1970(F) Sch.5 Part III 12(3)
M1151 Source—1970 s.283(4)(c)
M1152 Source—1970 s.283(5)-(8)

416 Meaning of "associated company" and "control".

(1) [M1153]For the purposes of this Part,*except paragraphs* 2*and* 9(1)(a), (2)(a)*and* (3)(a)*of Schedule* 19 [F724], a company is to be treated as another's "associated company" at a given time if, at that time or at any other time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.

(2) [M1154]For the purposes of this Part, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(3) Where two or more persons together satisfy any of the conditions of subsection (2) above, they shall be taken to have control of the company.

(4) For the purposes of subsection (2) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(5) [M1155]For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

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Textual Amendments

F724 Words repealed by 1989 s. 187 and Sch. 17 Part v in relation to accounting periods beginning after 31 March 1989

Modifications etc. (not altering text)

C405 S. 416 applied (with modifications) by Finance Act 1991 (c. 31, SIF 63:1), s. 89(1), **Sch. 16 para. 10(9)**
S. 416 applied (with modifications) by Finance Act 1981 (c. 35, SIF 63:2), **s. 82A(11)(13)** (in relation to payments received on or after 19.3.1991) (as inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 91, **Sch. 18 para. 4**)

C406 S. 416 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 86(5), 288(1), 289, Sch. 5 paras. 2(8)(9), 8(8), **9(9)(10)** (with ss. 60, 101(1), 171, 201(3))
S. 416 applied (1.10.1992) by S.I. 1992/1725 (N.I. 15), **art. 62(4)**; S.R. 1992/402, **art. 2(a)**

C407 S. 416 applied (17.12.1996) by Housing Grants, Construction and Regeneration Act 1996 (c. 53), **ss. 54(2)**, 150(3); S.I. 1996/2842, **art. 3**

C408 S, 416 applied (N.I.) (1.10.2003 for specified purposes and 1.12.2003 otherwise) by The Housing (Northern Ireland) Order 2003 (S.I. 2003/412), **arts. 1(3)**, 85(2); S.R. 2003/270, art. 2(4), **Sch. 3**

C409 S. 416(2)-(6) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 184(1)(b)**, 289 (with ss. 60, 101(1), 171, 201(3))

C410 S. 416(2)-(6) applied (29.4.1996) by Finance Act 1996 (c. 8), **s. 87(6)** (with Schs. 10, 11)

C411 S. 416(2)-(6) applied (with effect in accordance with Sch. 9 para. 17(1) of the affecting Act) by Finance Act 1996 (c. 8) Sch. 9 para. 17(9)

C412 S. 416(2)-(5) applied (1.3.1996) by Gas Act 1995 (c. 45), **ss. 12(7)**, 18(4) (with Sch. 5 para. 1); S.I. 1996/218, **art. 3**

C413 S. 416(2)-(5) applied (10.6.1996) by The Gas (Northern Ireland) Order 1996 (S.I. 1996/275), **arts. 1(2)**, 39(7) (with art. 71); S.R. 1996/216, **art. 2** (with arts. 3, 4)

C414 S. 416(2)-(5) applied (with modifications) by Gas Act 1986 (c. 44), **s. 19E(4)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 2 para. 1**)

C415 S. 416(2)-(5) applied (with modifications) by Petroleum Act 1998 (c. 17), **s. 17E(7)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 4 para. 4**)

C416 S. 416(2)-(6) applied (with modifications) (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 8(2)-(5)**

C417 S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 20**; and s. 416(2)-(6) applied by that para. 20 as amended by Finance Act 2004 (c. 12), Sch. 20 paras. 4, **15**

C418 S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 33(5)**

C419 S. 416(2)-(6) applied by Finance Act 1996 (c. 8), **Sch.15 para. 11(2D)(a)** (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 41(2)**)

C420 S. 416(2)-(6) applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 59(4)**

C421 S. 416(2)-(6) applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 5 para. 10(3)** (as substituted (with effect in accordance with s. 96(6) of the 2004 amending Act) by Finance Act 2004 (c. 12), **s. 96(3)**)

C422 S. 416(2)-(6) applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **Sch. 11 para. 4(2)**; S.I. 2006/3240, **art. 2**

C423 S. 416(2)-(6) applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 784(6)** (with Sch. 2 Pts. 1, 2)

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Marginal Citations

M1153 Source—1970 s.302(1); 1972 Sch.24 21

M1154 Source—1970 s.302(2)-(4); 1972 Sch.17 5

M1155 Source—1970 s.302(5), (6)

417 Meaning of "participator", "associate", "director" and "loan creditor".

(1) [M1156]For the purposes of this Part, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any loan creditor of the company;

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing "distributions" without regard to section 418) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(2) The provisions of subsection (1) above are without prejudice to any particular provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

(3) [M1157] "associate" means, in relation to a participator—

(a) any relative or partner of the participator;

(b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor ("settlement" and "settlor" having here the same meaning as in section 681(4)); and

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and

(ii) if the participator is a company, any other company interested in those shares or obligations;

and has a corresponding meaning in relation to a person other than a participator.

(4) [M1158]In subsection (3) above "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

(5) For the purposes of this Part "director" includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—

(a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and

(b) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other

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indirect means, to control 20 per cent. or over of the ordinary share capital of the company.

(6) In subsection (5)(b) above the expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own.

(7) [M1159]Subject to subsection (9) below, for the purposes of this Part "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon);

or in respect of any redeemable loan capital issued by the company.

(8) [M1160]Subject to subsection (9) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (7) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.

(9) [M1161]A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

Modifications etc. (not altering text)

C424 *Definition of*
"participator",*excluding*
"loan creditor",*applied for purposes of* 1979(C) s.149 (*capital gains tax relief on disposals to employee trusts*).*Definition of*
"participator"
applied for purposes of—1988 s.168(11)—*directors etc.*1988 s.187(3)—*share option and profit sharing schemes.*1988 s.360A—*loan to buy interest in close company.*1989 Sch.5—*employee share ownership trusts.*

C425 In s. 417(1): definition of 'participator' applied by Finance Act 1991 (c. 31, SIF 63:1), s. 89, Sch. 16 paras. 4(10), 10(10), **11(11)**
and applied by Finance Act 1981 (c. 35, SIF 63:2), **s. 82A(12)(13)** (in relation to payments received on or after 19.3.1991) (as inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 91, **Sch. 18 para. 4**)

C426 *See* s.360(4)(b)*ante with regard to loans made before* 14*November* 1986.

C427 *Definition of*
"associate"
applied for purposes of:—1988 s.168 (Ch.II Part V) (*expenses of directors and others*).1988 s.312 (Ch.III Part VII) (*Business Expansion Scheme*).1989 Sch.5 para.16—*employee share ownership trusts.*

C428 *Definition applied for purposes of* 1988(F) s.131—*penalties; and* 1989 s.134—*non-payment of tax by non-residents.*

C429 *Definition applied for purposes of* 1989 Sch.12 Pt.I—*close companies: administrative provisions.*

Marginal Citations

M1156 Source—1970 s.303(1), (2)

M1157 Source—1970 s.303(3); 1970(F) Sch.5 Part III 12(4); 1987 s.37(1)

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M1158 Source—1970 s.303(4)-(6)
M1159 Source—1970 s.303(7)
M1160 Source—1970 s.303(8); 1972 Sch.17 7
M1161 Source—1970 s.303(7)

Additional matters to be treated as distributions

418 "Distribution" to include certain expenses of close companies.

(1) [M1162]Subject to such exceptions as are mentioned in section 209(1), in the Corporation Tax Acts "distribution", in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by subsection (2) below.

(2) [M1163]Subject to subsection (3) below, where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator.

(3) Subsection (2) above shall not apply to expense incurred in or in connection with the provision—
- (a) [M1164]for a person employed in **[**[F725]employment to which Chapter II of Part V applies**]** of such benefits as are mentioned in any of sections 154 to 165; or
- (b) [M1165]of living accommodation for any person if the accommodation is (within the meaning of section 145) provided by reason of his employment; or
- (c) [M1166]for the spouse, children or dependants of a person employed by the company of any pension, annuity, lump sum, gratuity or other like benefit to be given on that person's death or retirement.

(4) [M1167]The amount of the expense to be taken into account under subsection (2) above as a distribution shall be the same as would under Chapter II of Part V be the cash equivalent of the resultant benefit to the participator.

(5) [M1168]Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
- (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and
- (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.

(6) The question whether one body corporate is a subsidiary of another for the purposes of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
- (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or
- (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

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(7) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

(8) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

Textual Amendments

F725 1989 s.53(2)(f).*Previously*
"director's or higher-paid employment (within the meaning of section 167)".

Marginal Citations

M1162 Source—1970 s.284(1)
M1163 Source—1970 s.284(2)
M1164 Source—1970 s.284(2)(a); 1976 Sch.9 15
M1165 Source—1970 s.284(2)(aa); 1980 s.51(4)
M1166 Source—1970 s.284(2)(b); 1976 Sch.9 15; 1977 s.35(4)
M1167 Source—1970 s.284(3); 1976 Sch.9 16
M1168 Source—1970 s.284(4)-(7)

CHAPTER II

CHARGES TO TAX IN CONNECTION WITH LOANS

Modifications etc. (not altering text)

C430 *See* 1989 s.107*and* Sch.12*—close companies: administrative provisions.*

419 Loans to participators etc.

(1) [M1169]Subject to the following provisions of this section and section 420, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to such proportion of the amount of the loan or advance as corresponds to the rate of advance corporation tax in force for the financial year in which the loan or advance is made.

In relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose

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of this provision, this subsection shall have effect with the substitution for "assessed on and recoverable" of " due ".

(2) [M1170]For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—

(a) that person incurs a debt to the close company; or

(b) a debt due from that person to a third party is assigned to the close company;

and then the close company shall be regarded as making a loan of an amount equal to the debt.

(3) [M1171]Tax shall be assessable by virtue of this section whether or not the whole or any part of the loan or advance in question has been repaid at the time of the assessment; and tax assessed by virtue of this section shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

The preceding provisions of this subsection shall not apply in relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, but in relation to any such loan or advance tax due by virtue of this section shall be due and payable within 14 days after the end of the accounting period in which the loan or advance was made.

(4) [M1172]Where a close company has made a loan or advance which gave rise to a charge to tax on the company under subsection (1) above and the loan or advance or any part of it is repaid to the company, relief shall be given from that tax, or a proportionate part of it, by discharge or repayment.

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the financial year in which the repayment is made.

(5) [M1173]Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—

(a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and

(b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to him.

(6) In subsections (1) and (5)(b) above the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in the United Kingdom.

(7) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

Subordinate Legislation Made

P4 S. 419(1)(3): 30.9.1993 appointed for the purposes of s. 419(1)(3) by S.I. 1992/3066, **art. 2(2)(b)**

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Modifications etc. (not altering text)

C431 *See* 1970(M) s.109*—application of* s.419*to corporation tax enactments generally.*

Marginal Citations

M1169 Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)
M1170 Source—1970 s.286(2)
M1171 Source—1970 s.286(4); 1986 s.43(1); 1987 (No.2) s.90(3)
M1172 Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44
M1173 Source—1970 s.286(7)-(9)

420 Exceptions from section 419.

(1) [M1174]Section 419(2)(a) shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

(2) [M1175]Section 419(1) shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—

(a) neither the amount of the loan, nor that amount when taken together with any other outstanding loans which—

(i) were made by the close company or any of its associated companies to the borrower*or the wife or husband of the borrower*[F726] ; and

(ii) if made before 31st March 1971, were made for the purpose of purchasing a dwelling which was or was to be the borrower's only or main residence;

exceeds £15,000 and the outstanding loans falling within sub-paragraph (ii) above do not together exceed £10,000; and

(b) the borrower works full-time for the close company or any of its associated companies; and

(c) the borrower does not have a material interest in the close company or in any associated company of the close company;

but if the borrower acquires such a material interest at a time when the whole or part of any such loan made after 30th March 1971 remains outstanding the close company shall be regarded as making to him at that time a loan of an amount equal to the sum outstanding.

Section 168(11) shall apply for the purpose of determining whether a person has, for the purpose of this subsection, a material interest in a company, but with the omission of the words following "417(3)".

Textual Amendments

F726 Words omitted where the loan first mentioned in s. 420(2) is made on or after 6 April 1990-see 1988(F) s. 35 and Sch. 3 para. 16.

Marginal Citations

M1174 Source—1970 s.286(2)
M1175 Source—1970 s.286(3), (9); 1971 s.25(5); 1972 Sch.17 3(3)

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421 Taxation of borrower when loan under section 419 released etc

(1) Subject to the following provisions of this section, where a company is assessed or liable to be assessed under section 419 in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, then—

(a) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to the amount so released or written off shall be treated as income received by him after deduction of income tax **[**[F727]at the lower rate**]**from a corresponding gross amount;

(b) no repayment of income tax shall be made in respect of that income and no assessment shall be made on him in respect of income tax at the **[**[F728]lower rate**]** on that income;

(c) the income included by virtue of paragraph (a) above in his total income **[**[F729]shall be treated as income **[**[F730]to which (without prejudice to paragraph (b) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F, but, notwithstanding the preceding provisions of this subsection**]**, shall be treated**]** for the purposes of sections 348 and 349(1) as not brought into charge to income tax;

(d) for the purpose of determining whether any or what amount of tax is, by virtue of paragraph (a) above, to be taken into account as having been deducted from a gross amount in the case of an individual whose total income is reduced by any deductions so much only of that gross amount shall be taken into account as is part of his total income as so reduced.

(2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative, within the meaning of Part XVI, the amount treated as received by him shall accordingly be included for the purposes of that Part in the aggregate income of the estate) and subsection (1) above shall apply accordingly with the necessary modifications.

(3) [M1176]This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 677, except so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (6) of that section).

(4) This section shall be construed as one with section 419.

Textual Amendments

F727 Words in s. 421(1)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(4)(a)(5)**

F728 Words in s. 421(1)(b) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(4)(b)(5)**

F729 Words in s. 421(1)(c) substituted (16.7.1992 with effect as mentioned in s. 19(7)) by Finance (No. 2) Act 1992 (c. 48), **s. 19(6)(7)**

F730 Words in s. 421(1)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(4)(c)(5)**

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Marginal Citations

M1176 Source—1970 s.287(3), (4)

422 Extension of section 419 to loans by companies controlled by close companies.

(1) Subject to subsection (4) below, where a company which is controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419, that section and section 420 shall apply as if the loan had been made by the close company.

(2) [M1177]Subject to subsection (4) below, where a company which is not controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419 and a close company subsequently acquires control of it, that section and section 420 shall apply as if the loan had been made by the close company immediately after the time when it acquired control.

(3) Where two or more close companies together control the company that makes or has made the loan, subsections (1) and (2) above shall have effect—

(a) as if each of them controlled that company; and

(b) as if the loan had been made by each of those close companies,

but the loan shall be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in the company that makes or has made the loan.

(4) Subsections (1) and (2) above do not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by him) as a result of which there is a connection—

(a) between the making of the loan and the acquisition of control; or

(b) between the making of the loan and the provision by the close company of funds for the company making the loan;

and the close company shall be regarded as providing funds for the company making the loan if it directly or indirectly makes any payment or transfers any property to, or releases or satisfies (in whole or in part) a liability of, the company making the loan.

(5) Where, by virtue of this section, sections 419 and 420 have effect as if a loan made by one company had been made by another, any question under those sections or section 421 whether—

(a) the company making the loan did so otherwise than in the ordinary course of a business carried on by it which includes the lending of money;

(b) the loan or any part of it has been repaid to the company;

(c) the company has released or written off the whole or part of the debt in respect of the loan,

shall be determined by reference to the company that makes the loan.

(6) This section shall be construed as one with section 419 and section 420 and in this section—

(a) "loan" includes advance; and

(b) references to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan by virtue of section 419(2).

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Marginal Citations

M117 Source—1970 s.287A 1976 s.44(2)

[[F731]CHAPTER III

APPORTIONMENT OF UNDISTRIBUTED INCOME ETC.]

Textual Amendments

F731 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F732]423 Apportionment of certain income, deductions and interest.

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Textual Amendments

F732 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F733]424 Exclusions from section 423.

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Textual Amendments

F733 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F734]425 Manner of apportionment.

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Textual Amendments

F734 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F735]426 Charge to income tax where apportionment is to an individual.

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Textual Amendments

F735 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F736]427 Reduction of charge under section 426 in certain cases.

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Textual Amendments

F736 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F737]428 Increase of apportioned sum etc. by reference to ACT.

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Textual Amendments

F737 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F738]429 Payment and collection of income tax.

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Textual Amendments

F738 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

[F739]430 Consequences of apportionment: ACT.

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Textual Amendments

F739 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

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PART XII

SPECIAL CLASSES OF COMPANIES AND BUSINESSES

CHAPTER I

INSURANCE COMPANIES, UNDERWRITERS AND CAPITAL REDEMPTION BUSINESS

Modifications etc. (not altering text)

C432 Definitions in Pt. XII Chapter I (ss. 431-458) applied by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 16(7), **18**

C433 Pt. XII Chapter I (ss. 431-458) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 212(7)(b)**, 289 (with ss. 60, 101(1), 171, 201(3))

Insurance companies: general

Modifications etc. (not altering text)

C434 See 1989 ss.82-92 for changes made by Finance Act 1989 and 1990 ss.41-48 for changes made by Finance Act 1990.

431 Interpretative provisions relating to insurance companies.

(1) [M1178]This section has effect for the interpretation of this Chapter.

(2) [M1179]Unless the context otherwise requires—

"annuity business" means the business of granting annuities on human life;

"general annuity business" means any annuity business which is not pension business **[**[F740]or overseas life assurance business**]**, and "pension business" shall be construed in accordance with subsections (3) and (4) below;

"annuity fund" means, where an annuity fund is not kept separately from the life assurance fund of an insurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns;

[[F741]"basic life assurance business" means life assurance business other than general business, pension business and overseas life assurance business;

[[F742]"basic life assurance and general annuity business" means life assurance business other than pension business and overseas life assurance business;**]**

"closing" and "opening", in relation to a period of account, refer respectively to the position at the end and at the beginning of the period and, in relation to an accounting period, refer respectively to the position at the end and at the beginning of the period of account in which the accounting period falls;

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"closing liabilities" includes liabilities assumed at the end of the period of account concerned in consequence of the declaration of reversionary bonuses or a reduction in premiums;

"industrial assurance business" has the same meaning as in the [M1180]Insurance Companies Act 1982;]

"insurance company" means a company to which Part II of the Insurance Companies Act 1982 applies;

[[F743]"investment reserve", in relation to an insurance company, means the excess of the value of the assets of the company's long term business fund over the liabilities of the long term business;

"liabilities", in relation to an insurance company, means the liabilities of the company estimated as for the purposes of its periodical return (excluding any that have fallen due or been reinsured and any not arising under or in connection with policies or contracts effected as part of the company's insurance business);]

"life assurance business" includes annuity business;

[[F744]"linked assets" means assets of an insurance company which are identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined;

"long term business" has the meaning given by section 1(1) of the Insurance Companies Act 1982;

"long term business fund" means the fund maintained by an insurance company in respect of its long term business or, where the company carried on both ordinary long term business and industrial assurance business, either or both (as the context may require) of the two funds so maintained;]

"offshore income gain" has the same meaning as in Chapter V of Part XVII;

[[F745]"ordinary long term business" and "ordinary life assurance business" means respectively long term business and life assurance business that is not industrial assurance business;

"overseas life assurance business"—

(a) in the case of life assurance business other than reinsurance business, means business with a policy holder or annuitant not residing in the United Kingdom the policy or contract for which was effected at or through a branch or agency outside the United Kingdom where life assurance business is carried on; and

(b) in the case of reinsurance business, means business the contract for which was effected at or through a branch or agency outside the United Kingdom where none, or no significant part, of the reinsurance business carried on relates to life assurance business with policy holders or annuitants residing in the United Kingdom;

"overseas life assurance fund" shall be construed in accordance with Schedule 19AA;]

"overseas life insurance company" means an insurance company [[F746]not resident in]the United Kingdom but carrying on life assurance business through a branch or agency in the United Kingdom; and

"periodical return", in relation to an insurance company, means a return deposited with the Secretary of State under Part II of the Insurance Companies Act 1982.

[[F747]"UK distribution income" has the meaning given by section 444D(4);]

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[[F748]"*policy holders' fraction*" *and* "*shareholders' fraction*" *shall be construed in accordance with section* 89*of the Finance Act* 1989.**]**

[[F749]"value", in relation to assets of an insurance company, means the value of the assets as taken into account for the purposes of the company's periodical return;

"with-profits liabilities" means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus;**]**

[[F750](2A) Linked assets shall be taken to be linked solely to long term business of a particular category if, and only if, all (or all but an insignificant proportion) of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category.**]**

(3) [M1181]Subject to section 439, any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

(a) referring to pension business any premiums falling within subsection (4) below, together with the incomings, outgoings and liabilities referable to those premiums and the policies and contracts under which they are or have been paid;

(b) allocating to general annuity business all other annuity business **[**[F751]that is not overseas life assurance business**]**;

and references to "pension fund" and "general annuity fund" shall be construed accordingly, whether or not any such funds are kept separate from the insurance company's life assurance fund.

(4) The premiums to be referred to pension business are those payable under contracts falling within one or other of the following descriptions, that is to say—

(a) [M1182]any contract with an individual who is, or would but for an insufficiency of profits or gains be, chargeable to income tax in respect of relevant earnings (as defined in section 623(1) and (2)) from a trade, profession, vocation, office or employment carried on or held by him (being a contract approved by the Board under section 620), or any substituted contract within the meaning of section 622(3);

(b) [M1183]any contract (including a contract of insurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme as defined in Chapter I of Part XIV, being a contract so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

(c) [M1184]any contract made under approved personal pension arrangements within the meaning of Chapter IV of Part XIV;

(d) any annuity contract entered into for the purposes of—

(i) [M1185]a scheme which is approved or is being considered for approval under Chapter I of Part XIV;

[[F752](ii) a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV;**]** or

(iii) a fund to which section 608 applies,

being a contract which is approved by the Board and made with the persons having the management of the scheme or fund (or those persons and a member

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of or contributor to the scheme or fund) and by means of which relevant benefits as defined by section 612(1) (but no other benefits) are secured;

(e) any annuity contract approved by the Board which is entered into in substitution for a contract within paragraph (d) above;

(f) [M1186]any contract with the trustees or other persons having the management of a scheme approved under section 620 or, subject to subsection (5) below, of a superannuation fund which was approved under section 208 of the 1970 Act, being a contract which—

(i) was entered into for the purposes only of that scheme or fund or, in the case of a fund part only of which was approved under section 208, for the purposes only of that part of that fund, and

(ii) (in the case of a contract entered into or varied after 1st August 1956) is so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme or fund (or the relevant part of the fund).

(5) **[**[F753] Subsection (4)(f) **]** above shall not apply to premiums payable under a contract where the fund in question was approved under section 208 of the 1970 Act unless—

(a) immediately before 6th April 1980 premiums paid under the contract with the trustees or other persons having the management of the fund fell within section 323(4) of that Act (premiums referable to pension business); and

(b) the terms on which benefits are payable from the fund have not been altered since that time; and

(c) section 608 applies to the fund.

(6) [M1187]In subsections (3) to (5) above "premium" includes any consideration for an annuity.

Textual Amendments

F740 1990 s.41*and* Sch.6 para.1(2)(a)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F741 1990 s.41*and* Sch.6 para.1(2)(b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F742 In s. 431(2): definition of "basic life assurance and general annuity business" inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 2**

F743 1990 s.41*and* Sch.6 para.1(2)(b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F744 1990 s.41*and* Sch.6 para.1(2)(b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F745 1990 s.41*and* Sch.6 para.1(2)(b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F746 Words in the definition in s. 431(2) substituted (27.7.1993 as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **s. 103(1)(3)(4)**

F747 Definition in s. 431(2) inserted (27.7.1993 with effect in relation to accounting periods beginning after 31.12.1992) by 1993 c. 34, **s. 99(2)(3)**

F748 1989 s.84*and* Sch.8 para.1—*with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).*Repealed by* 1990 s.132*and* Sch.19 Part IV—*repeal deemed always to have had effect.*

F749 1990 s.41*and* Sch.6 para.1(2)(b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

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F750 1990 s.41*and* Sch.6 para.1(3)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F751 1990 s.41*and* Sch.6 para.1(4)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.

F752 1989 s.75*and* Sch.6 paras.2*and* 18(1)*—deemed to have come into force on* 14*March* 1989.*Previously* "a statutory scheme as defined by section 612(1);".

F753 Words in s. 431(5) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 4**

Modifications etc. (not altering text)

C435 S. 431(2) modified (31.7.1992 with effect as mentioned in reg. 1 of the modifying S.I.) by S.I. 1992/1655, **regs. 1**, 5 (as amended (31.12.1993) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1**, 5, 6; and as further amended (19.3.1997) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1997 (S.I. 1997/471), **regs. 1**, 6)

C436 *For application of definition see*—1975 (No.2) s.58(10)*—disposal of shares and securities.*1988 Sch.19 para.5(3)*—distributable income.*

Marginal Citations

M1178 Source—1970 s.323(1); 1973 s.40(7); 1982 s.58(7)
M1179 Source—1970 s.323(2); 1970(F) Sch.5 Pt.III 11(4)
M1180 1982 c. 50.
M1181 Source—1970 s.323(3); 1970(F) Sch.5 Pt.III 11(5); 1981 s.41
M1182 Source—1970 s.323(4)(a); 1970(F) Sch.5 Part III 11(3); 1978 s.26(5)
M1183 Source—1970 s.323(4)(aa); 1970(F) Sch.5 Part III 11(1)
M1184 Source—1970 s.323(4)(ab); 1987 (No.2) s.39(3)
M1185 Source—1970 s.323(4)(ac), (ad); 1987 (No.2) Sch.3 16
M1186 Source—1970 s.323(4)(b)
M1187 Source—1970 s.323(4)

VALID FROM 21/07/2008

[F754 431ZA Election that assets not be foreign business assets

(1) An insurance company may, in its company tax return for the first accounting period of the company beginning on or after 1 January 2008 in which any of the assets of the company's long-term insurance fund would (apart from this section) be foreign business assets, elect that none of the assets of the company's long-term insurance fund are to be regarded for the purposes of this Act as being foreign business assets.

(2) The election has effect for that accounting period and all subsequent accounting periods of the company.

(3) An election under subsection (1) is irrevocable.]

Textual Amendments

F754 S. 431ZA inserted (with effect in accordance with Sch. 17 para. 10(6)(7) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 10(2)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F755 431A Amendment of Chapter etc.

Where it is expedient to do so in consequence of the exercise of any power under the M1188 Insurance Companies Act 1982, the Treasury may by order amend the provisions of this Chapter and any other provision of the Tax Acts so far as relating to insurance companies.]

Textual Amendments

F755 S. 431A inserted (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 2, **11(2)** (with Sch. 6 para. 12)

Marginal Citations

M1188 1982 c. 50.

VALID FROM 03/05/1994

[F756 431AA Relevant benefits for purposes of section 431(4)(d) and (e).

(1) Subsection (2) below applies where—
  (a) section 431(4)(d)(i) applies, or
  (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(i).

(2) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme approved under Chapter I of Part XIV, and for this purpose—
  (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.

(3) Subsection (4) below applies where—
  (a) subsection 431(4)(d)(ii) applies, or
  (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a scheme falling within section 431(4)(d)(ii).

(4) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV, and for this purpose—
  (a) a hypothetical scheme (rather than any particular scheme) is to be taken, and
  (b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.

(5) Subsection (6) below applies where—
  (a) section 431(4)(d)(iii) applies, or
  (b) section 431(4)(e) applies and the contract within section 431(4)(d) was entered into for the purposes of a fund falling within section 431(4)(d)(iii).

(6) In such a case, relevant benefits fall within this section if they correspond with benefits that could be provided by a fund to which section 608 applies, and for this purpose—
  (a) a hypothetical fund (rather than any particular fund) is to be taken, and

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(b) benefits provided by a fund directly (rather than by means of an annuity contract) are to be taken.**]**

Textual Amendments

F756 S. 431AA inserted (with application in accordance with s. 143(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 143(4)**

432 Separation of different classes of business.

(1) [M1189]Where an insurance company carries on life assurance business in conjunction with insurance business of any other class, the life assurance business shall, for the purposes of the Corporation Tax Acts, be treated as a separate business from any other class of business carried on by the company.

(2) Where an insurance company carries on both ordinary life assurance business and **[**[F757]industrial assurance**]** business, the business of each such class shall, for the purposes of the Corporation Tax Acts, be treated as though it were a separate business, and section 76 **[**[F757]and where appropriate the provisions of this chapter**]** shall apply separately to each such class of business.

Textual Amendments

F757 1990 s.41*and* Sch.6 para.3(a), (b)*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"industrial life assurance"
in subs.(2)*line* 2.

Marginal Citations

M1189 Source—1970 s.307

[[F758]432A Apportionment of income and gains.

(1) This section has effect where—

(a) an insurance company carries on in any period both ordinary long term business and industrial assurance business, or life assurance business and other long term business, or more than one class of life assurance business, and

(b) it is necessary for the purposes of the Corporation Tax Acts to determine in relation to the period what parts of—

(i) income arising from the assets of the company's long term business fund, or

(ii) gains or losses accruing on the disposal of such assets, are referable to any of the categories of business in question.

(2) The classes of life assurance business referred to in subsection (1) above are—

(a) pension business;

[F759](b) . . . . . .

(c) overseas life assurance business; and

[F759](d) . . . . . .

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[[F760](e) basic life assurance and general annuity business.**]**

(3) Income arising from, and gains or losses accruing on the disposal of, assets linked solely to ordinary long term business, industrial assurance business, life assurance business, long term business other than life assurance business, pension business or **[**[F761]basic life assurance and general annuity business**]** shall be referable to the category of business concerned.

(4) Income arising from, and gains or losses accruing on the disposal of, assets of the overseas life assurance fund (and no other assets) shall be referable to overseas life assurance business.

(5) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of any income, gains or losses not directly referable to any of the appropriate categories of business.

(6) For the purposes of subsection (5) above "the relevant fraction", in relation to a category of business, is the fraction of which—

(a) the numerator is the aggregate of—

(i) the mean of the opening and closing liabilities of the category, reduced by the mean of the opening and closing values of any assets directly referable to the category, and

(ii) the mean of the appropriate parts of the opening and closing amounts of the investment reserve; and

(b) the denominator is the aggregate of—

(i) the mean of the opening and closing liabilities of the long term business, reduced by the mean of the opening and closing values of any assets directly referable to any of the appropriate categories of business, and

(ii) the mean of the opening and closing amounts of the investment reserve.

(7) For the purposes of subsections (5) and (6) above—

(a) references to appropriate categories of business—

(i) where the category of business in question is ordinary long term business or industrial assurance business, are references to those categories of business;

(ii) where the category of business in question is life assurance business or long term business other than life assurance business, are references to those categories of business; and

(iii) where the category of business in question is pension business, **[**[F762]or basic life assurance and general annuity business**]**, are references to **[**[F763]those categories of business**]**; and

(b) income, gains or losses are directly referable to a category of business if referable to the category by virtue of subsection (3) above and assets are directly referable to a category of business if income arising from the assets is, and gains or losses accruing on the disposal of the assets are, so referable.

(8) In subsection (6) above "appropriate part", in relation to the investment reserve, means—

(a) where all of the liabilities of the long term business are linked liabilities, the part of that reserve which bears to the whole the same proportion as the amount

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of the liabilities of the category of business in question bears to the whole amount of the liabilities of the long term business,

(b) where any of the liabilities of the long term business are not linked liabilities but none (or none but an insignificant proportion) are with-profits liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of the category of business in question which are not linked liabilities bears to the whole amount of the liabilities of the long term business which are not linked liabilities, and

(c) in any other case, the part of that reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of the category of business in question bears to the whole amount of the with-profits liabilities of the long term business;

and in this subsection "linked liabilities" means liabilities in respect of benefits to be determined by reference to the value of linked assets.

(9) Where the category of business in question is a class of life assurance business, for the purposes of this section—

(a) "liabilities" does not include liabilities of the overseas life assurance business; and

(b) assets of the overseas life assurance fund and liabilities of the overseas life assurance business shall be left out of account in determining the investment reserve.

[F764](10) . . . . . .]

Textual Amendments

F758 1990 s.41 and Sch. 6 para. 4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12

F759 S. 432A(2)(b)(d) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 3(1), 18, **Sch. 19 Pt. V**, Note 3

F760 S. 432A(2)(e) added (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(1), **18**

F761 Words in s. 432A(3) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(2), **18**

F762 Words in s. 432A(7)(a)(iii) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(3)(a), **18**

F763 Words in s. 432A(7)(a)(iii) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(3)(b), **18**

F764 S. 432A(10) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, ss. 91(2)(a), 213, **Sch. 23 Pt.III** (8), note

Modifications etc. (not altering text)

C437 S. 432A modified (3.5.1994) by Finance Act 1994, (c. 9), Sch. 18 para 1(4), s. 169

C438 S. 432A modified by S.I. 1992/1655, **reg. 8**, as amended (with effect in accordance with reg. 1(2)(3) of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **reg. 7**, 1(1)

C439 S. 432A modified by S.I. 1992/1655, **reg. 7**, as amended (with effect in accordance with reg. 1(2)(3) of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **reg. 5**, 1(1)

C440 S. 432A modified (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1**, 6(1), 7(1), 8(1)

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C441 Definition employed for purposes of 1990 s. 46 — annual deemed disposal of holdings of unit trusts etc. by insurance companies

C442 S. 432A(8)(9) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 212(6)**, 289, (with ss. 60, 101(1), 171, 201(3))

432B [[F765]Apportionment of receipts brought into account.

(1) This section and sections 432C to 432E have effect where it is necessary in accordance with section 83 of the Finance Act 1989 to determine what parts of any items brought into account in the revenue account prepared for the purposes of the [M1190]Insurance Companies Act 1982 are referable to life assurance business or any class of life assurance business.

(2) Where in addition to the revenue account prepared for the purposes of the Insurance Companies Act 1982 in respect of the whole of any business carried on by a company there are prepared for the purposes of that Act revenue accounts relating to parts of the business, amounts referred to in sections 432C to 432E shall, so far as they relate to those parts, be ascertained by reference to the latter accounts rather than by reference to the former.

(3) Sections 432C and 432D apply where the business with which an account is concerned ("the relevant business") relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus; and section 432E applies where the relevant business relates wholly or partly to other policies or contracts.]

Textual Amendments

F765 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

Modifications etc. (not altering text)

C443 S. 432B modified by S.I. 1992/1655, **reg. 9**, as amended (with effect in accordance with reg. 1(2)(3) of the amending instrument) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **reg. 8**, 1(1)

C444 ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S. I. 1992/1655, **regs. 1**,10

C445 S. 432B modified (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1**, 9(1)

Marginal Citations

M1190 1982 c. 50.

432C [[F766]Section 432B apportionment: income of non-participating funds.

(1) To the extent that the amount brought into account as income is attributable to assets linked solely to life assurance business, pension business or **[**[F767]basic life assurance and general annuity business**]**, it shall be referable to the category of business concerned.

(2) To the extent that that amount is attributable to assets of the overseas life assurance fund, it shall be referable to overseas life assurance business.

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(3) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of so much of the amount brought into account as income as is not directly referable to any of the appropriate categories of business.

(4) For the purposes of subsection (3) above "the relevant fraction", in relation to a category of business, is the fraction of which—

(a) the numerator is the mean of the opening and closing liabilities of the relevant business so far as referable to the category, reduced by the mean of the opening and closing values of any assets of the relevant business directly referable to the category; and

(b) the denominator is the mean of the opening and closing liabilities of the relevant business, reduced by the mean of the opening and closing values of any assets of the relevant business directly referable to any of the appropriate categories of business.

(5) For the purposes of subsections (3) and (4) above—

(a) references to appropriate categories of business—

(i) where the category of business in question is life assurance business, are references to that category of business and long term business other than life assurance business; and

(ii) where the category of business in question is pension business, **[**[F768]or basic life assurance and general annuity business**]**, are references to **[**[F769]those categories of business**]**; and

(b) the part of the amount brought into account as income which is directly referable to a category of business is the part referable to the category by virtue of subsection (1) above and assets are directly referable to a category of business if such part of the amount brought into account as income as is attributable to them is so referable.

(6) Where the category of business in question is a class of life assurance business, for the purposes of this section "liabilities" does not include liabilities of the overseas life assurance business.]

Textual Amendments

F766 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

F767 Words in s. 432C(1) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(4), **18**

F768 Words in s. 432C(5)(a)(ii) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(5)(a), **18**

F769 Words in s. 432C(5)(a)(ii) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(5)(b), **18**

Modifications etc. (not altering text)

C446 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 110**

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432D [[F770]Section 432B apportionment: value of non-participating funds.

(1) To the extent that the amount brought into account as the increase or decrease in the value of assets is attributable to assets linked solely to life assurance business, pension business or **[**[F771]basic life assurance and general annuity business**]**, or to assets of the overseas life assurance fund which are linked solely to overseas life assurance business, it shall be referable to the category of business concerned.

(2) There shall be referable to any category of business the relevant fraction of the amount brought into account as the increase or decrease in the value of assets except so far as the amount is attributable to assets which are directly referable to any of the appropriate categories of business.

(3) Subsections (4) and (5) (but not (6)) of section 432C shall apply for the purposes of this section as if—
   (a) each of the references to a subsection of that section were a reference to the corresponding subsection of this section, and
   (b) in subsection (5)—
      (i) a reference to overseas life assurance business were included after each of the references to pension business in paragraph (a)(ii), and
      (ii) each of the references in paragraph (b) to income were a reference to the increase or decrease in the value of assets.]

Textual Amendments

F770 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

F771 Words in s. 432D(1) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 3(6), **18**

Modifications etc. (not altering text)

C447 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S. I. 1992/1655, **regs. 1**,10

432E [[F772]Section 432B apportionment: participating funds.

(1) The part of the net amount of the items referred to in subsection (1) of section 83 of the Finance Act 1989 (that is to say the income referred to in paragraph (a) of that subsection increased or reduced by the increase or reduction in the value referred to in paragraph (b)) which is referable to a particular category of business shall be—
   (a) the amount determined in accordance with subsection (2) below, or
   (b) the amount determined in accordance with subsection (3) below,

   whichever is the greater.

(2) For the purposes of subsection (1) above there shall be determined the amount which is such as to secure—
   (a) in a case where the relevant business is mutual business, that

$$CAS = CS$$

,and

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(b) in any other case, that

$$\mathrm{CS} - \mathrm{CAS} = \left(S - \mathrm{AS}\right) \times \frac{\mathrm{CAS}}{\mathrm{AS}}$$

where—

S is the surplus of the relevant business;

AS is so much of that surplus as is allocated to persons entitled to the benefits provided for by the policies or contracts to which the relevant business relates;

CAS is so much of the surplus so allocated as is attributable to policies or contracts of the category of business concerned; and

CS is so much of the surplus of the relevant business as would remain if the relevant business were confined to business of the category concerned.

(3) For the purposes of subsection (1) above there shall also be determined the aggregate of—

(a) the applicable percentage of what is left of the mean of the opening and closing liabilities of the relevant business so far as referable to the category of business concerned after deducting from it the mean of the opening and closing values of any assets of the relevant business linked solely to that category of business, and

(b) the part of the net amount mentioned in subsection (1) above that is attributable to assets linked solely to that category of business.

(4) For the purposes of subsection (3) above "the applicable percentage", in any case, is such percentage as may be determined for that case by or in accordance with an order made by the Treasury.

(5) Where the part of the net amount referable to a particular category or categories of business ("the subsection (3) category or categories") is the amount determined in accordance with subsection (3) above, the amount determined in accordance with subsection (2) above in relation to any other category ("the relevant category") shall be reduced by—

$$\frac{\mathrm{XY}}{Z}$$

where—

X is the excess of the amount determined in accordance with subsection (3) above in the case of the subsection (3) category (or each of them) over the amount determined in its case (or the case of each of them) in accordance with subsection (2) above;

Y is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the relevant category; and

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Z is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the category (or each of the categories) which is not a subsection (3) category.

(6) Where the category of business concerned is overseas life assurance business—

(a) if the part of the income brought into account that is attributable to assets of the overseas life assurance fund not linked solely to overseas life assurance business is greater than the amount arrived at under subsection (3)(a) above, this section shall have effect as if that part of that income were the amount so arrived at; and

(b) the amount which, apart from this paragraph, would be the part of the net amount referable to that category of business shall be—

(i) reduced by the part of the net amount attributable to distributions of companies resident in the United Kingdom relating to assets of the company's overseas life assurance fund, and

(ii) increased by the amount which is income of the relevant business by virtue of section 441A.

Textual Amendments

F772 1990 s.41 and Sch.6 para.4 on and after 1 January 1990 subject to the commencement provisions of paras.11 and 12.

Modifications etc. (not altering text)

C448 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1**,10

C449 *For orders see* Part III Vol.5 (*under* "*Life assurance apportionment of participating funds: applicable percentage*").

433 Profits reserved for policy holders and annuitants.

[M1191] Where the profits of an insurance company in respect of its life assurance business are, for the purposes of this Act, computed in accordance with the provisions of this Act applicable to Case I*of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy holders or annuitants cease at any time to be so reserved and are not allocated to or expended on behalf of policy holders or annuitants, those profits shall be treated as profits of the company for the accounting period in which they ceased to be so reserved.* [F773]

Textual Amendments

F773 *Repealed by* 1989 ss.84*and* 187*and* Schs.8 para.2*and* 17 Part IV *—deemed to have come into force on* 14*March* 1989.*For effect see* s.84(6).

Marginal Citations

M1191 Source—1970 s.309

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434 Franked investment income etc.

(1) [M1192]Section 208 shall not prevent franked investment income of a company resident in the United Kingdom which carries on life assurance business from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D.

(2) In ascertaining for the purposes of section 393 or **[**[F774]393A(1)**]** whether and to what extent a company has incurred a loss on its life assurance business, any profits derived from the investments of its life assurance fund (including franked investment income of a company so resident) shall be treated as part of the profits of that business.

[[F775](3) Subject to sections 437 and 438, the **[**[F776]policy holders' share**]** of the franked investment income from investments held in connection with a company's life assurance business shall not be used under Chapter V of Part VI to frank distributions made by the company and, accordingly, for the purposes of that Chapter (other than the application of franked investment income under section 241), in relation to any unrelieved income of a company falling within subsection (1) above, the surplus of franked investment income for any accounting period means the aggregate of—

(a) the **[**[F776]policy holders' share**]** of that franked investment income **[**[F777]from investments held in connection with the company's life assurance business**]**; and

(b) the amount determined under section 241(3) on the basis that the reference therein to franked investment income is a reference **[**[F778]to that income excluding the amount within paragraph (a) above**]**.

(3A) The policy holders' **[**[F779]share**]** of the franked investment income from investments held in connection with a company's life assurance business shall be left out of account in determining, under subsection (7) of section 13, the franked investment income forming part of the company's profits for the purposes of that section.**]**

(4) [M1193]*Subject to subsection* (5)*below, the specified part shall be, in the case of any unrelieved income, the same fraction of it as the fraction which, on a computation of the profits of the company in respect of its life assurance business in accordance with the provisions applicable to Case* I*of Schedule D* (*whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods*),*would be connoted by the words in section* 433 "*such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants*". [F780]

(5) *If the income exceeds the profits as computed in accordance with the provisions applicable to Case* I*of Schedule D other than section 433, the specified part shall be that fraction of the income so far as not exceeding the profits, together with the amount of the excess*. [F780]

(6) [M1194]For the purposes of section 239 the profits charged to corporation tax for any accounting period (as defined in subsection (6) of that section) shall be reduced by deducting **[**[F781]the policy holders' share of the relevant profits**]**.

[[F782](6A) For the purposes of this section—

(a) "the policy holders' share" of any franked investment income is so much of that income as is not the shareholders' share within the meaning of section 89 of the Finance Act 1989, and

(b) "the policy holders' share of the relevant profits" has the same meaning as in section 88 of that Act.**]**

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(7) [M1195]For the purposes of subsection **[**[F783](3)**]** above "unrelieved income" means income which has not been excluded from charge to tax by virtue of any provision and against which **[**[F784]disregarding relief under section 242**]** no relief has been allowed by deduction or set-off.

(8) [M1196]Where subsection (3) or (6) above would deny to a company any relief to which it would have been entitled if it had been charged to tax in respect of its life assurance business under Case I of Schedule D, corresponding relief shall be afforded to the company by repayment of, or set-off against, corporation tax or by payment of tax credit comprised in franked investment income from investments held in connection with that business.

Textual Amendments

F774 Words in s. 434(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para.15**

F775 1989 s.84*and* Sch.8 para.3(1),*and subject to* s.84(6),*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).*Previously*
"(3) Any such part of the franked investment income from investments held in connection with a company's life assurance business as is specified in subsection (4) below ("the specified part") shall not be used under Chapter V of Part VI to frank distributions made by the company.".

F776 1990 s.45(4)(a).*Previously*
"policy holders' fraction".

F777 1990 s.45(4)(b).

F778 1990 s.45(4)(c).*Previously*
"only to the shareholders' fraction of that income.".

F779 1990 s.45(5).*Previously*
"fraction".

F780 *Repealed by* 1989 ss.84*and* 187*and* Sch.8 para.3(2)*and* Sch.17 Part IV*with respect to accounting periods beginning on or after* 1*January* 1990.

F781 1990 s.45(6).*Previously*
"therefrom [the policyholders' fraction thereof (1989 s.84*and* Sch.8 para.3(3),*and subject to* s.84(6),*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).*Previously*
"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 433 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.".)].".

F782 1990 s.45(7).

F783 1989 s.84*and* Sch.8 para.3(4),*and subject to* s.84(6),*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).*Previously*
"(4)."

F784 1989 s.84*and* Sch.8 paras.3(4), 4,*respectively and subject to* s.84(6),*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).

Modifications etc. (not altering text)

C450 S. 434 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

C451 S. 434(2) restricted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 65(2)(a)(5)(6)**

Marginal Citations

M1192 Source—1970 s.308(1), (2)

M1193 Source—1970 s.310(6)

M1194 Source—1972 Sch.18 2(4); 1987 (No.2) s.75(1)(b)

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M1195 Source—1970 s.310(7); 1984 s.18(5)
M1196 Source—1972 Sch.18 2(5)

[F785 434A Limitations on loss relief and group relief.

(1) In the case of a company carrying on life assurance business, no relief shall be allowable under Chapter II (loss relief) or Chapter IV (group relief) of Part X against the policy holders' **[**F786 share**]** of the relevant profits for any accounting period.

(2) For the purposes of subsection (1) above, **[**F786 "the policy holders' share of the relevant profits" has the same meaning as in section 88 of the Finance Act 1989.**]]**

Textual Amendments

F785 1989 s.84 *and* Sch.8 paras.3(4), 4, *respectively and subject to* s.84(6), *has effect with respect to accounting periods beginning on or after* 1 *January* 1990 (*including the* 1990 *component period*).

F786 1990 s.45(8). *Previously*
"fraction"
and
"the relevant profits of a company for an accounting period are the total profits of its life assurance business, less any deduction due under section 76, but before allowing any relief under Chapter II or Chapter IV of Part X"
respectively.

435 Taxation of gains reserved for policy holders and annuitants.

(1) M1197 *This section has effect in relation to any accounting period of an insurance company carrying on life assurance business and for the purposes of this section—*

(a) *the life assurance gains are such part of the amount to be included, in accordance with section* 345, *in the company's total profits as is attributable to gains from investments held in connection with the company's life assurance business;*

(b) *the policy holders' share of the life assurance gains or of the relevant reliefs is 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* 433, *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; and*

(c) *the relevant reliefs are such of the sums to be deducted from or set off against the company's profits as are deducted from or set off against the life assurance gains.*

(2) M1198 *Corporation tax charged on so much of the policy holders' share of the life assurance gains as remains after setting against it the amounts referred to in subsection* (3)(c) *below shall be calculated on the basis of a rate of corporation tax of* 30 *per cent.*

(3) *For the purposes of this section there shall be ascertained the policy holders' share and the remainder* ("*the residual part*") *of the life assurance gains and of the relevant reliefs; and—*

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(a) *the residual part of the relevant reliefs shall be set against the residual part of those gains; and*

(b) *if the residual part of the relevant reliefs exceeds the residual part of those gains, the excess* (*or so much of it as does not, together with the policy holders' share of the relevant reliefs, exceed the policy holders' share of those gains*)*shall be added to the policy holders' share of the relevant reliefs; and*

(c) *the policy holders' share of the relevant reliefs, with any addition made under paragraph* (b)*above, shall be set against the policy holders' share of the life assurance gains*. [F787]

Textual Amendments

F787 *Repealed by* 1989 ss.84*and* 187*and* Schs.8 para.5*and* 17 Part IV,*and subject to* s.84(6)*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).

Marginal Citations

M1197 Source—1974 s.26(1), (4)

M1198 Source—1974 s.26(2), (3); 1987 (No.2) s.75(2), (3)

436 Annuity business and pension business: separate charge on profits.

(1) [M1199]Subject to the provisions of this section, profits arising to an insurance company from [F788] . . . pension business shall be treated as income within Schedule D, and be chargeable under Case VI of that Schedule, and for that purpose—

(a) **[**[F789]that business**]** shall be treated separately, and

(b) subject to paragraph (a) above, and to subsection (3) below, the profits therefrom shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(2) Subsection (1) above shall not apply to an insurance company charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its ordinary life assurance business.

(3) [M1200]In making the computation referred to in subsection (1) above—

(a) **[**[F790]sections 82 and 83 of the Finance Act 1989**]**shall apply with the necessary modifications and in particular with the omission of all references to policy holders (other than holders of policies referable to pension business) **[**[F791]and of the words "tax or" in section 82(1)(a)**]**;

(b) *no deduction shall be allowed in respect of any expenses of management deductible under section* 76; [F792]

(c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from pension business [F793] . . .in any previous accounting period or year of assessment;

(d) where the computation in question is of profits arising to an insurance company from pension business—

[[F794](i) group income so far as referable to pension business shall be deducted from the receipts to be taken into account,**]**

(ii) annuities shall be deductible notwithstanding section 337(2);

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and the company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to pension business; and

(e) distributions which are not qualifying distributions shall not be taken into account where the computation in question is of the profits arising to an insurance company or overseas life insurance company from [F795] . . . pension business.

(4) [M1201]Section 396 shall not be taken to apply to a loss incurred by a company on its [F796] . . . pension business.

(5) [M1202]Nothing in section 128 or 399(1) shall affect the operation of this section.

Textual Amendments

F788 Words in s. 436(1) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, 123, Sch. 7 paras. 4(1)(a), 18, **Sch. 19 Pt.V** Note 3

F789 Words in s. 436(1)(a) substituted (for accounting periods beginning on or after 1. 1. 1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 4(1)(b), **18**

F790 1989 s.84*and* Sch.8 para.6*and, subject to* s.84(6)*deemed to have come into force on* 14*March* 1989.*Previously*
"section 433".

F791 1990 s.43(2).*Subject to* 1989 s.84(6)*this amendment has effect with respect to accounting periods beginning on or after* 1*January* 1990.

F792 *Words repealed by* 1989 ss.87(4)*and* 187*and* Sch.17 Part IV*with respect to accounting periods beginning on or after* 1*January* 1990. (See 1989 s.87(5)*in relation to straddling periods*).

F793 Words in s. 436(3)(c) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(2)(a), **18** Sch. 19 Pt. V, Note 3

F794 1990 s.41*and* Sch.6 para.5*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"(i) group income shall be not be taken into account as part of those profits, and".

F795 Words in s. 436(3)(e) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(2)(b), 18, **Sch. 19 Pt. V**, Note 3

F796 Words in s. 436(4) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(3), 18, **Sch. 19 Pt. V**, Note 3

Modifications etc. (not altering text)

C452 *See also* 1989 s.43—*certain Sch.D computations involving emoluments.*

Marginal Citations

M1199 Source—1970 s.312(1); 1970(F) Sch.5 Part III 11(3)

M1200 Source—1970 s.312(2), 314(5); 1970(F) Sch.5 Part III 11(6)(a)(b); 1972 Sch.18 5(1)(a)

M1201 Source—1970 s.312(3); 1970(F) Sch.5 Part III 11(3)

M1202 Source—1985 s.72(7)

437 General annuity business.

[[F797](1A) In the case of a company carrying on basic life assurance and general annuity business, the new annuities paid in any accounting period by the company shall be regarded as charges on income only to the extent that they do not exceed the income limit for that accounting period.

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(1B) Subsection (1A) above shall not apply to an insurance company charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business.

(1C) For the purposes of this section—

(a) "new annuity" means any annuity, so far as paid under a contract made by an insurance company in an accounting period beginning on or after 1st January 1992 and so far as referable to the company's basic life assurance and general annuity business;

(b) "the income limit" for an accounting period of an insurance company is the difference between—

(i) the total amount of the new annuities paid by the company in that accounting period; and

(ii) the total of the capital elements contained in the new annuities so paid; and

(c) the capital element contained in an annuity shall be determined in accordance with Chapter V of Part XIV, but for this purpose—

(i) it is immaterial whether or not an annuitant claims any relief to which he is entitled under that Chapter; and

(ii) where, by virtue of subsection (2) of section 657, section 656 does not apply to an annuity, the annuity shall be treated as containing the capital element that it would have contained apart from that subsection.

(1D) In any case where—

(a) a payment in respect of an annuity is made by an insurance company under a group annuity contract made in an accounting period beginning before 1st January 1992,

(b) the company's liabilities first include an amount in respect of that annuity in an accounting period beginning on or after that date, and

(c) the company's liability in respect of that annuity is referable to its basic life assurance and general annuity business,

the payment shall be treated for the purposes of this section, other than this subsection, as if the group annuity contract had been made in an accounting period beginning on or after 1st January 1992 (and, accordingly, as payment of a new annuity).

(1E) In any case where—

(a) a payment in respect of an annuity is made by a reinsurer under a reinsurance treaty made in an accounting period beginning before 1st January 1992,

(b) the reinsurer's liabilities first include an amount in respect of that annuity in an accounting period beginning on or after that date, and

(c) the reinsurer's liability in respect of that annuity is referable to its basic life assurance and general annuity business,

the payment shall, as respects the reinsurer, be treated for the purposes of this section, other than this subsection, as if the reinsurance treaty had been made in an accounting period beginning on or after 1st January 1992 (and, accordingly, as payment of a new annuity).

(1F) In this section—

"group annuity contract" means a contract between an insurance company and some other person under which the company undertakes to become liable

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to pay annuities to or in respect of such persons as may subsequently be specified or otherwise ascertained under or in accordance with the contract (whether or not annuities under the contract are also payable to or in respect of persons who are specified or ascertained at the time the contract is made);

"reinsurance treaty" means a contract under which one insurance company is obliged to cede, and another (in this section referred to as a "reinsurer") to accept, the whole or part of a risk of a class or description to which the contract relates.**]**

[F798](2) . . . . . .

[F798](3) . . . . . .

[F798](4) . . . . . .

[F798](5) . . . . . .

(6) A company which is not resident in the United Kingdom but carries on through a branch or agency there any general annuity business shall not be entitled to treat any part of the annuities paid by it which are referable to that business as paid out of profits or gains brought into charge to income tax.

Textual Amendments

F797 S. 437(1A)-(1F) substituted (for accounting periods beginning on or after 1.1.1992) for s. 437(1) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 5, **18**

F798 S. 437(2)-(5) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(4), 18, **Sch. 19 Pt. V**, Note 3

438 Pension business: exemption from tax.

(1) [M1203]Exemption from corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company's life assurance fund and separate annuity fund, if any, as is referable to pension business.

(2) [M1204]The exemption from tax conferred by subsection (1) above shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.

(3) [M1205]Subject to subsection (6) below, the exclusion by section 208 from the charge to corporation tax of franked investment income shall not prevent such income being taken into account as part of the profits in computing under section 436 income from pension business.

(4) [M1206]If in the case of any company the income referred to in subsection (1) above includes a distribution in respect of which the company is entitled to a tax credit, the company may, subject to subsections (5) and (6) below, claim to have the amount of that credit paid to it.

(5) If the company is resident in the United Kingdom (so that the distribution and the tax credit in question constitute franked investment income of that company), no franked investment income comprising any tax credit which is paid under subsection (4) above shall, subject to subsection (6) below, be used under Chapter V of Part VI to frank the company's distributions.

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(6) [M1207]If for any accounting period there is, apart from this subsection, a profit arising to an insurance company from pension business and computed under section 436, and the company so elects as respects all or any part of its **[**[F799]relevant**]** franked investment income arising in that period, being an amount of franked investment income not exceeding the amount of that profit, subsections (3) to (5) above shall not apply to the franked investment income to which the election relates.

[[F800](6A) In subsection (6) above "relevant franked investment income" means the shareholders' share of franked investment income within subsection (1) above, and for this purpose "shareholders' share" has the same meaning as for the purposes of section 89 of the Finance Act 1989.**]**

(7) An election under subsection (6) above shall be made by notice given to the inspector not later than two years after the end of the accounting period to which the election relates or within such longer period as the Board may by notice allow.

(8) [M1208]Nothing in sections 431(4)(c) or 643(2) of this Act or section **[**[F801]271(1)(h) of the 1992 Act**]** shall be construed as affording relief in respect of any sums to be brought into account under this section.

Textual Amendments

F799 1990 s.45(9).

F800 1990 s.45(9).

F801 Words in s. 438(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(21)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C453 S. 438 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

C454 S. 438(5) amended (27.7.1993) by 1993 c. 34, **s. 78(7)**

Marginal Citations

M1203 Source—1970 s.314(1); 1970(F) Sch.5 Part III 11(3), (6)(c)

M1204 Source—1970 s.314(2)

M1205 Source—1970 s.314(3)(a); 1970(F) Sch.5 Part III 11(3)

M1206 Source—1972 Sch.18 4(1), (2)

M1207 Source—1970 s.314(4); 1970(F) Sch.5 Part III 11(3); 1972 Sch.18 4(2)

M1208 Source—1987 (No.2) s.39(3)

[438A [F802]**Pension business: payments on account of tax credits and deducted tax.**

Schedule 19AB shall have effect.**]**

Textual Amendments

F802 S. 438A inserted (2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), **s. 49(1)**; S.I. 1992/1746, **art.2**

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439 Restricted government securities.

[[F803](1) For the purposes of this Chapter restricted government securities shall be treated as linked solely to pension business.

(2) In this section**]**

"restricted government securities" means, subject to the following provisions of this section, government securities issued on the condition that, except in such circumstances as may be specified in the conditions of issue, they are to be held by insurance companies against and applied solely towards meeting pension business liabilities.

(6) [M1209]Subject to subsection (7) below, the following Treasury Stock, namely—

(a) 2 per cent. Index-linked Treasury Stock 1996;

(b) 2 per cent. Index-linked Treasury Stock 2006;

(c) 2 per cent. Index-linked Treasury Stock 2011;

are not restricted government securities for the purposes of this section.

(7) If any of the index-linked stock referred to in subsection (6) above was on 27th March 1982 held by an insurance company against and applied solely towards meeting the liabilities of the company's pension business, then—

(a) [M1210]if and so long as the stock continues to be so held by that company, it shall continue to be treated as restricted government securities for the purposes of this section; and

(b) [M1211]if the stock ceases to be restricted government securities otherwise than by virtue of being actually disposed of or redeemed, on the day on which it so ceases the stock shall be deemed for the purposes of corporation tax, including (*subject to subsection* (8)*below*) [F804] corporation tax on chargeable gains, to have been disposed of and immediately re-acquired at its market value on that date.

(8) [M1212]*For the purposes of sections* 67*and* 68*of the* 1979*Act* (*gilt-edged securities*)—

(a) *in ascertaining the date on which securities were acquired, no account shall be taken of any deemed disposal and reacquisition resulting from subsection* (7)(b)*above; and*

(b) *so long as any index-linked stock continues, by virtue of subsection* (7)(a)*above, to be treated as restricted government securities for the purposes of this section, it shall be regarded as being stock of a different kind from the index-linked stock referred to in subsection* (6)*above which is not so treated.* [F804]

Textual Amendments

F803 1990 s.41*and* Sch.6 para.7*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*

"(1) This section applies where for any accounting period—(a) any division falls to be made between the pension business and any other kind of long-term business of an insurance company, and (b) any of the income or gains or losses of the company for that period relate to restricted government securities; and where this section applies section 431(3) shall have effect subject to the provisions of this section. (2) All income, gains or losses of the company which relate to restricted government securities shall be referred to its pension business. (3) Where the division of the other income, gains or losses of the company is made by reference to the liabilities at any time in the accounting period which are referable

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to pension business or to two or more kinds of business including pension business, those liabilities shall be treated as reduced by the appropriate amount. (4) In subsection (3) above "the appropriate amount" means—(a) in a case in which the total liabilities of the company at the time in question which are referable to long-term business are less than the market value at that time of the investments and deposits held by the company relating to all such business, such proportion of the market value of the restricted government securities held by the company at that time as those liabilities bear to the market value of those investments and deposits, and (b) in any other case, the market value of the restricted government securities at that time. (5) In this section— "long-term business" has the same meaning as in section 1(1) of the Insurance Companies Act 1982;".

F804 *Repealed by* 1990 s.132*and* Sch.19 Part IV.

Marginal Citations

M1209 Source—1982 s.58(1), (3)
M1210 Source—1982 s.58(4)
M1211 Source—1982 s.58(5)
M1212 Source—1982 s.58(6)

[F805 440 Transfers of assets etc.

(1) If at any time an asset (or a part of an asset) held by an insurance company ceases to be within one of the categories set out in subsection (4) below and comes within another of those categories, the company shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) for a consideration equal to its market value at that time.

(2) Where—

(a) an asset is acquired by a company as part of the transfer to it of the whole or part of the business of an insurance company ("the transfer") in accordance with a scheme sanctioned by a court under section 49 of the M1213 Insurance Companies Act 1982, and

(b) the asset (or part of it) is within one of the categories set out in subsection (4) below immediately before the acquisition and is within another of those categories immediately afterwards,

the transferor shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) immediately before the acquisition for a consideration equal to its market value at that time.

(3) Where, apart from this subsection, section **[**F806 171 or 173 the 1992 Act**]** (transfers within a group) would apply to a disposal or acquisition by an insurance company of an asset (or part of an asset) which, immediately before the disposal or (as the case may be) immediately after the acquisition, is within one of the categories set out in paragraphs (a) to (d) subsection (4) below, that section shall not apply to the disposal or acquisition.

(4) The categories referred to in subsections (1) to (3) above are—

F807 **[** (a) assets linked solely to basic life assurance and general annuity business;**]**

(b) assets linked solely to pension business;

(c) assets of the overseas life assurance fund;

(d) assets of the long term business fund not within any of the preceding paragraphs;

(e) other assets.

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(5) In this section "market value" has the same meaning as in the **[**[F808]1992**]** Act.**]**

Textual Amendments

F805 S. 440 substituted by Finance Act 1990 (c. 26, SIF 63:1), s. 41, **Sch.6 para. 8***on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.*But not to affect the operation of the original* s.440*before* 20*March* 1990*or of* subs.(6)*and* (7)*of that section in relation to the disposal of an asset which has not been deemed to be disposed of before the day of the disposal.*

F806 Words in s. 440(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(22)(a)** (with ss. 60, 101(1), 171, 201(3))

F807 S. 440(4)(a) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 6(1), **18**

F808 Words in s. 440(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(22)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C455 S. 440(1) excluded (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 6(4)**

C456 S. 440(2) modified (with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **regs. 4**, 5

C457 S. 440(4) modified (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 11(1), 12(1) (as amended (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 5)

C458 *See* 1990 s.41*and* Sch.6 para.12(2)—subs.(d)*omitted for period* 1*January* 1990*to* 19*March* 1990*inclusive.*

C459 S. 440(4)(d) excluded (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 13 (as substituted (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 9)

Marginal Citations

M1213 1982 c. 50.

440A **[**[F809]**Securities.**

(1) Subsection (2) below applies where the assets of an insurance company include securities of a class all of which would apart from this section be regarded for the purposes of corporation tax on chargeable gains as one holding.

(2) Where this subsection applies—

(a) so many of the securities as are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies **[**[F810]or annuity contracts**]** the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of **[**[F811]basic life assurance and general annuity business**]** shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,

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(b) so many of the securities as are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of pension business shall be treated for those purposes as a separate holding linked solely to that business,

(c) so many of the securities as are included in the overseas life assurance fund shall be treated for those purposes as a separate holding which is an asset of that fund,

(d) so many of the securities as are included in the company's long term business fund but do not fall within any of the preceding paragraphs shall be treated for those purposes as a separate holding which is an asset of that fund (but not of any of the descriptions mentioned in those paragraphs, and

(e) any remaining securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.

(3) Subsection (2) above also applies where the assets of an insurance company include securities of a class and apart from this section some of them would be regarded as a 1982 holding, and the rest as a new holding, for the purposes of corporation tax on chargeable gains.

(4) In a case within subsection (3) above—

(a) the reference in any paragraph of subsection (2) above to a separate holding shall be construed, where necessary, as a reference to a separate 1982 holding and a separate new holding, and

(b) the questions whether such a construction is necessary in the case of any paragraph and, if it is, how many securities falling within the paragraph constitute each of the two holdings shall be determined in accordance with paragraph 12 of Schedule 6 to the Finance Act 1990 and the identification rules applying on any subsequent acquisitions and disposals.

(5) Section **[**[F812]105 of the 1992 Act**]** shall have effect where subsection (2) above applies as if securities regarded as included in different holdings by virtue of that subsection were securities of different kinds.

[[F813](6) In this section—

"1982 holding" has the same meaning as in section 109 of the 1992 Act;

"new holding" has the meaning as in section 104(3) of that Act ; and

"securities" means shares, or securities of a company, and any other assets where they are of a nature to be dealt in without identifying the particular assets disposed or acquired.**]**

Textual Amendments

F809 See commentary text for s.440 (F588) above.

F810 Words in s. 440A(2)(a) inserted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 6(2)(a), **18**

F811 Words in s. 440A(2)(a) substituted (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 6(2)(b), **18**

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F812 Words in s. 440A(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(23)(a)** (with ss. 60, 101(1), 171, 201(3))

F813 S. 440A(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(23)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C460 S. 440A(2) modified (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 14, 15 (as amended (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 5)

C461 S. 440A(2) modified (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 16 (as substituted (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 10)

C462 *See* 1990 s.41*and* Sch.6 para.12(2)—subs.(d)*omitted for period* 1*January* 1990*to* 19*March* 1990*inclusive.*

C463 *See* 1990 s.41*and* Sch.6 para.12(1), (3), (4), (6), (7)*and* (10)—*application and commencement provisions for*
"1982 holdings"
and
"new holdings".

[F814 441 Overseas life assurance business.

(1) This section and section 441A shall apply for an accounting period of an insurance company resident in the United Kingdom if during the period the company carries on overseas life assurance business.

(2) Subject to the provisions of this section and section 441A, profits arising to the company from the overseas life assurance business shall be treated as income within Schedule D, and the chargeable under Case VI of that Schedule, and for that purpose—
  (a) that business shall be treated separately, and
  (b) subject to paragraph (a) above, the profits from it shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (2) above shall not apply if the company is charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business.

(4) In making the computation referred to in subsection (2) above—
  (a) sections 82(1), (2) and (4) and 83 of the Finance Act 1989 shall apply with the necessary modifications and in particular with the omission of the words "tax or" in section 82(1)(a), and
  (b) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from overseas life assurance business in any previous accounting period beginning on or after 1st January 1990.

(5) Section 396 shall not be taken to apply to a loss incurred by a company on overseas life assurance business.

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(6) Nothing in section 128 or 399(1) shall affect the operation of this section.

(7) Notwithstanding section 337(2), there shall be deductible in computing the profits arising to a company from overseas life assurance business—

(a) interest payable by the company under a liability of the long term business, so far as referable to overseas life assurance business, and

(b) annuities payable by the company, so far as so referable.

(8) Gains accruing on the disposal by a company of assets of its overseas life assurance fund shall not be chargeable gains.]**]**

Textual Amendments

F814 1990 s.42*and* Sch.7 para.3*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*

"Foreign life assurance funds.**441.**—(1) Corporation tax under Cases IV and V on income arising from investments of the foreign life assurance fund of an insurance company shall be computed as in the case mentioned in section 65(4), that is to say, by reference to the amount of income received in the United Kingdom; and this subsection shall apply notwithstanding that that section relates only to income tax. (2) Where any of the following securities, namely—(a) securities issued by the Treasury with the condition that the interest thereon shall not be liable to income tax so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom; or (b) securities issued by the Treasury with the condition that—(i) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax, and (ii) so long as the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future; or (c) securities to which section 581 applies; for the time being form part of the investments of the foreign life assurance fund of an insurance company, the income arising from those securities, if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to tax. (3) Where any income arising abroad from the investments of the foreign life assurance fund of an insurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities as are mentioned in subsection (2) above, that income shall not be liable to tax and any tax paid thereon shall, if necessary, be repaid to the company on the making of a claim. (4) Any securities issued by the Treasury in pursuance of the power conferred by section 60(1) of the Finance Act 1940 with a modified form of the condition specified in subsection (2)(b) above shall, save in so far as the terms of the issue otherwise provide, be deemed for the purposes of subsections (2) and (3) above to be such securities as are mentioned in subsection (2) above. (5) Where income arising from the investments of the foreign life assurance fund of an insurance company has been relieved from tax in pursuance of the provisions of this section, a corresponding reduction shall be made—(a) in the relief granted under section 76 in respect of expenses of management; and (b) in any amount on which [in respect of general annuity business only (1989 s.84*and* Sch.8 para.7,*and subject to* s.84(6),*has effect with respect to accounting periods beginning on or after* 1*January* 1990 (*including the* 1990*component period*).)] the company is chargeable to tax by virtue of section 436. (6) In this section "foreign life assurance fund"—(a) means any fund representing the amount of the liability of an insurance company in respect of its life assurance business with policy holders and annuitants residing outside the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom; and (b) where such a fund is not kept separately from the life assurance fund, means such part of the life assurance fund as represents the liability of the company under such policies and contracts, such liability being estimated in the same manner as it is estimated for the purpose of the company's periodical return. (7) Where this section

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has effect in relation to income arising from investments of any part of an insurance company's life assurance fund, it shall have the like effect in relation to chargeable gains accruing from the disposal of any such investments, and losses so accruing shall not be allowable losses. (8) For the purposes of this section, an offshore income gain accruing to an insurance company carrying on life assurance business shall, if it accrues in respect of investments held in connection with that business, be treated as if it were income from investments held in connection with that business. (9) Where any payment is made by the Export Credits Guarantee Department—(a) under any agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the Export Guarantees and Overseas Investment Act 1978, and (b) in respect of any income—(i) which cannot be transferred to the United Kingdom, and (ii) which arises from investments of the foreign life assurance fund of an insurance company, then, to the extent of the payment, this section shall apply in relation to the income as if it had been received in the United Kingdom (and accordingly cannot be received again in the United Kingdom)".

441A [F815Section 441: distributions.

(1) Section 208 shall not apply to a distribution in respect of any asset of an insurance company's overseas life assurance fund.

(2) Subject to subsection (3) below, an insurance company shall not be entitled under section 231 to a tax credit in respect of such a distribution.

(3) A company shall be entitled to such a tax credit if and to the extent that, were the recipient an individual resident in the territory in which the relevant branch or agency is situated, he would be entitled to the credit under arrangements having effect by virtue of section 788.

(4) For the purposes of subsection (3) above the relevant branch or agency, in the case of a tax credit in respect of a distribution, is—
   (a) where the relevant asset is linked solely to overseas life assurance business—
      (i) the branch or agency at or through which the company has effected policies or contracts the benefits under which are to be determined by reference to the value of the asset, or
      (ii) in a case where there is more than one such branch or agency, the branches to which different parts of it are allocated by the company in accordance with subsection (5) below;
   (b) subject to paragraph (a) above, where the management of the relevant asset is under the control of a person whose normal place of work is at a branch or agency, that branch or agency; and
   (c) in any other case, the branch or agency to which it is allocated by the company.

(5) Where policies or contracts the benefits under which are to be determined by reference to the value of an asset within subsection (4)(a) above have been effected at or through more than one branch or agency, different parts of the asset shall be allocated to them so as to secure as far as practicable that the part allocated to each is proportionate to the part of the liabilities in respect of those benefits represented by liabilities under policies or contracts effected at or through it.

(6) Where the overseas life assurance business carried on at or through a branch or agency in a territory includes—
   (a) reinsurance business which consists of the reinsurance of liabilities of a person resident in another territory, or
   (b) retrocession business,

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the amount of any tax credit in relation to which the branch or agency is the relevant branch or agency shall be reduced by the proportion which the liabilities of that reinsurance business bear to all the liabilities of the overseas life assurance business carried on at or through the branch or agency.

(7) Where a company is entitled to an amount of tax credit by virtue of this section the company may claim to have that amount paid to it.

(8) No franked investment income shall be used under Chapter V of Part VI of this Act to frank a company's distributions if the tax credit (or any part of the tax credit) comprised in it is payable to the company under subsection (7) above.

Textual Amendments

F815 See commentary text for s. 441 (F589) above.

Modifications etc. (not altering text)

C464 S. 441A(8) amended (27.7.1993) by 1993 c. 34, **s. 78(7)**

442 Overseas business of U.K. companies.

(1) [M1214]Subsections (2) and (3) below apply where a company resident in the United Kingdom carries on insurance business outside the United Kingdom through a branch or agency and—

(a) that business, or part of it, together with the whole assets of the company used for the purposes of that business or part (or together with the whole of those assets other than cash), is transferred to a company not resident in the United Kingdom;

(b) the business or part is so transferred wholly or partly in exchange for shares, or for shares and loan stock, issued by the transferee company to the transferor company; and

(c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company.

(2) In making any computation in accordance with the provisions of this Act applicable to Case I of Schedule D of the profits or losses of the transferor company for the accounting period in which the transfer occurs, there shall be disregarded any profit or loss in respect of any asset transferred which, apart from this subsection, would fall to be taken into account in making that computation.

(3) Where by virtue of subsection (2) above any profit or loss is disregarded in making any computation otherwise than for the purposes of section 76(2) the profit or loss shall be treated for the purposes of the **[**[F816]1992 Act**]**as a chargeable gain or allowable loss accruing to the transferor company on the transfer.

(4) Where at any time a company resident in the United Kingdom—

(a) which carries on insurance business wholly outside the United Kingdom, and

(b) the whole or part of whose ordinary share capital is beneficially owned by one or more companies resident in the United Kingdom,

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ceases to be resident in the United Kingdom, the profits or losses of the company in respect of that business for the accounting period ending at that time shall be computed for tax purposes without regard to the whole, or, as the case may be, a corresponding part of any profit or loss in respect of any asset which, apart from this subsection, would fall to be calculated in accordance with section 100(1)(b) and taken into account in making that computation.

Textual Amendments

F816 Words in s. 442(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(24)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C465 S. 442(3) excluded (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), **s. 269C(8)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s.48**)

Marginal Citations

M1214 Source—1977 s.45(1)—(4); 1979(C) Sch.7

443 Life policies carrying rights not in money.

M1215 Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets, and the disposal of them to him, shall be deemed to be for a consideration equal to the market value of the assets for the purposes of computing income in accordance with Case I or VI of Schedule D.

Marginal Citations

M1215 Source—1970 s.321(1)(b), (2)

444 Life policies issued before 5th August 1965.

(1) M1216 This section applies in relation to policies of life assurance issued before 5th August 1965 by a company carrying on life assurance business, being policies which—

(a) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but

(b) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.

(2) Where—

(a) the investments of the company's life assurance fund, so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and

(b) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a

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chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,

then the company shall be entitled as against the person receiving the benefits to retain out of those benefits a part not exceeding in amount or value corporation tax, at the rate specified in subsection (3) below, in respect of the chargeable gain referred to in paragraph (b) above, computed without regard to any amount retained under this subsection.

(3) The amount to be retained under subsection (2) above shall, subject to subsection (4) below, be computed by reference to the rate of corporation tax for the time being in force or, if no rate of corporation tax has yet been fixed for the financial year, the rate last in force.

(4) In so far as the chargeable gain represents or would represent a gain belonging or allocated to, or reserved for, policy holders, the amount to be retained shall be computed by reference to a rate of tax not exceeding 37.5 per cent.

Marginal Citations

M1216 Source—1970 s.322

[F817 444A Transfers of business.

(1) Subject to the following provisions of this section, this section applies where there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under section 49 of the M1217 Insurance Companies Act 1982.

(2) Any expenses of management which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been deductible by the transferor under sections 75 and 76 in computing profits for an accounting period following the period which ends with the day on which the transfer takes place shall, instead, be treated as expenses of management of the transferee (and deductible in accordance with those sections, as modified in the case of acquisition expenses by section 86(6) to (9) of the Finance Act 1989 and in the case of expenses to which subsection (6) or (7) of section 87 of that Act applies by that subsection).

(3) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer)—

(a) would have been available under section 436(3)(c) to be set off against profits of the transferor for the accounting period following that which ends with the day on which transfer takes place, or

(b) where in connection with the transfer the transferor also transfers the whole or part of any overseas life assurance business, would have been so available under section 441(4)(b),

shall, instead, be treated as a loss of the transferee (and available to be set off against profits of the same class of business as that in which it arose).

(4) Where acquisition expenses are treated as expenses of management of the transferee by virtue of subsection (2) above, the amount deductible for the first accounting period

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of the transferee ending after the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

(5) Where the transfer is of part only of the transferor's long term business, subsection (2) or (3) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.

(6) Any question arising as to the operation of subsection (5) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

(7) Subject to subsection (8) below, this section shall not apply unless the transfer is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.

(8) Subsection (7) above shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the transferee, notified the transferee that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any scheme or arrangements such as are mentioned in that subsection; and subsections (2) to (5) of section **[**[F818]138 of the 1992 Act**]**shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F817 1990 s.48*and* Sch.9 para.4*in relation to transfer of business on or after* 1*January* 1990.

F818 Words in s. 444A(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(25)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C466 S. 444A(1) modified (with effect in accordance with reg. 1 of the amending Regulations) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 4(2)(b)**

Marginal Citations

M12171982 c. 50.

VALID FROM 01/05/1995

[[F819]Classes of life assurance business]

Textual Amendments

F819 Ss. 431B-431F and cross-heading inserted (with effect in accordance with Sch. 8 paras. 55, 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 2**

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431B Meaning of "pension business".

(1) In this Chapter "pension business" means so much of a company's life assurance business as is referable to contracts of the following descriptions or to the reinsurance of liabilities under such contracts.

(2) The descriptions of contracts are—

(a) any contract with an individual who is, or would but for an insufficiency of profits or gains be, chargeable to income tax in respect of relevant earnings (as defined in section 623(1) and (2)) from a trade, profession, vocation, office or employment carried on or held by him, being a contract approved by the Board under section 620 or a substituted contract within the meaning of section 622(3);

(b) any contract (including a contract of insurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme as defined in Chapter I of Part XIV, being a contract so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

(c) any contract made under approved personal pension arrangements within the meaning of Chapter IV of Part XIV;

(d) any annuity contract entered into for the purposes of—

(i) a scheme which is approved or is being considered for approval under Chapter I of Part XIV;

(ii) a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV; or

(iii) a fund to which section 608 applies,

being a contract which is made with the persons having the management of the scheme or fund, or those persons and a member of or contributor to the scheme or fund, and by means of which relevant benefits (see subsections (3) and (4) below), and no other benefits, are secured;

(e) any annuity contract which is entered into in substitution for a contract within paragraph (d) above and by means of which relevant benefits (see subsections (3) and (4) below), and no other benefits, are secured;

(f) any contract with the trustees or other persons having the management of a scheme approved under section 620 or, subject to subsection (5) below, of a superannuation fund which was approved under section 208 of the 1970 Act, being a contract which—

(i) was entered into for the purposes only of that scheme or fund or, in the case of a fund part only of which was approved under section 208, for the purposes only of that part of that fund, and

(ii) (in the case of a contract entered into or varied after 1st August 1956) is so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme or fund (or the relevant part of the fund).

(3) For the purposes of subsection (2)(d) and (e) above "relevant benefits" means relevant benefits as defined by section 612(1) which correspond—

(a) where subsection (2)(d)(i) above applies, or subsection (2)(e) above applies and the contract within subsection (2)(d) was entered into for the purposes

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of a scheme falling within subsection (2)(d)(i), with benefits that could be provided by a scheme approved under Chapter I of Part XIV;

(b) where subsection (2)(d)(ii) above applies, or subsection (2)(e) above applies and the contract within subsection (2)(d) was entered into for the purposes of a scheme falling within subsection (2)(d)(ii), with benefits that could be provided by a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV;

(c) where subsection (2)(d)(iii) above applies, or subsection (2)(e) above applies and the contract within subsection (2)(d) was entered into for the purposes of a fund falling within subsection (2)(d)(iii), with benefits that could be provided by a fund to which section 608 applies.

(4) For the purposes of subsection (3)(a), (b) or (c) above a hypothetical scheme or fund (rather than any particular scheme or fund), and benefits provided by a scheme or fund directly (rather than by means of an annuity contract), shall be taken.

(5) Subsection (2)(f) above shall not apply to a contract where the fund in question was approved under section 208 of the 1970 Act unless—

(a) immediately before 6th April 1980 premiums paid under the contract with the trustees or other persons having the management of the fund fell within section 323(4) of that Act (premiums referable to pension business); and

(b) the terms on which benefits are payable from the fund have not been altered since that time; and

(c) section 608 applies to the fund.

(6) In subsection (5) above "premium" includes any consideration for an annuity.

Modifications etc. (not altering text)

C467 S. 431B modified (23.3.1999 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), **regs. 3**, 6

VALID FROM 19/07/2007

[F820 431BA Meaning of "child trust fund business"

(1) In this Chapter "child trust fund business" means so much of a company's life assurance business as is referable to child trust fund policies (but not including the reinsurance of such business).

(2) In this section "child trust fund policy" means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).]

Textual Amendments

F820 Ss. 431BA, 431BB inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 8** (with Sch. 7 Pt. 2)

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VALID FROM 19/07/2007

[F820 431BB Meaning of "individual savings account business"

(1) In this Chapter "individual savings account business" means so much of a company's life assurance business as is referable to individual savings account policies (but not including the reinsurance of such business).

(2) In this section "individual savings account policy" means a policy of life insurance which is an investment of a kind specified in regulations made by virtue of section 695(1) of ITTOIA 2005.**]**

Textual Amendments

F820 Ss. 431BA, 431BB inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 8** (with Sch. 7 Pt. 2)

431C Meaning of "life reinsurance business".

(1) In this Chapter "life reinsurance business" means reinsurance of life assurance business other than pension business or business of any description excluded from this section by regulations made by the Board.

(2) Regulations under subsection (1) above may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

Modifications etc. (not altering text)

C468 S. 431C modified (with effect in accordance with reg. 1 of the affecting S.I.) by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 11** (as amended by: S.I. 1996/1621, **regs. 1**, 5; S.I. 2003/2573, **regs. 1(1)(2)**, 10; S.I. 2007/2087, **regs. 1(1)(2)**, 6)

C469 S. 431C(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 8

C470 S. 431C(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 6; S.I. 2004/3369, **art. 2(1)**

431D Meaning of "overseas life assurance business".

(1) In this Chapter "overseas life assurance business" means life assurance business, other than pension business or life reinsurance business, which—

(a) in the case of life assurance business other than reinsurance business, is business with a policy holder or annuitant not residing in the United Kingdom, and

(b) in the case of reinsurance business, is—

(i) reinsurance of life assurance business with a policy holder or annuitant not residing in the United Kingdom, or

(ii) reinsurance of business within sub-paragraph (i) above or this sub-paragraph.

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(2) Subject to subsections (5) and (7) below, in subsection (1) above the references to life assurance business with a policy holder or annuitant do not include life assurance business with a person who is an individual if—

(a) the policy holder or annuitant is not beneficially entitled to the rights conferred by the policy or contract for the business, or

(b) any benefits under the policy or contract for the business are or will be payable to a person other than the policy holder or annuitant (or his personal representatives) or to a number of persons not including him (or them).

(3) For the purposes of subsection (2) above any nomination by a policy holder or annuitant of an individual or individuals as the recipient or recipients of benefits payable on death shall be disregarded.

(4) Subject to subsections (5) and (7) below, in subsection (1) above the references to life assurance business with a policy holder or annuitant do not include life assurance business with a person who is not an individual.

(5) Subsections (2) and (4) above do not apply if—

(a) the rights conferred by the policy or contract for the business are held subject to a trust,

(b) the settlor does not reside in the United Kingdom, and

(c) each beneficiary is either an individual not residing in the United Kingdom or a charity.

(6) In subsection (5) above—

(a) "settlor" means the person, or (where more than one) each of the persons, by whom the trust was directly or indirectly created (and for this purpose a person shall, in particular, be regarded as having created the trust if he provided or undertook to provide funds directly or indirectly for the purposes of the trust or made with any other person a reciprocal arrangement for that other person to create the trust),

(b) "beneficiary" means any person who is, or will or may become, entitled to any benefit under the trust (including any person who may become so entitled on the exercise of a discretion by the trustees of the trust), and

(c) "charity" means a person or body of persons established for charitable purposes only;

and for the purpose of that subsection an individual who is a trustee (of any trust) shall not be regarded as an individual.

(7) Subsections (2) and (4) above do not apply if the policy or contract for the business was effected solely to provide benefits for or in respect of—

(a) persons all, or all but an insignificant number, of whom are relevant overseas employees, or

(b) spouses, widows, widowers, children or dependants of such persons.

(8) In subsection (7) above "relevant overseas employees" means persons who are not residing in the United Kingdom and are—

(a) employees of the policy holder or annuitant,

(b) employees of a person connected with the policy holder or annuitant, or

(c) employees in respect of whose employment there is established a superannuation fund to which section 615(3) applies;

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and section 839 applies for the purposes of this subsection.

Modifications etc. (not altering text)

C471 S. 431D(2)-(8) excluded (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 55(2)(3)**,

C472 S. 431D(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 8

431E Overseas life assurance business: regulations.

(1) The Board may by regulations make provision for giving effect to section 431D.

(2) Such regulations may, in particular—

(a) provide that, in such circumstances as may be prescribed, any prescribed issue as to whether business is or is not overseas life assurance business (or overseas life assurance business of a particular kind) shall be determined by reference to such matters (including the giving of certificates or undertakings, the giving or possession of information or the making of declarations) as may be prescribed,

(b) require companies to obtain certificates, undertakings, information or declarations from policy holders or annuitants, or from trustees or other companies, for the purposes of the regulations,

(c) make provision for dealing with cases where any issue such as is mentioned in paragraph (a) above is (for any reason) wrongly determined, including provision allowing for the imposition of charges to tax (with or without limits on time) on the insurance company concerned or on the policy holders or annuitants concerned,

(d) require companies to supply information and make available books, documents and other records for inspection on behalf of the Board, and

(e) make provision (including provision imposing penalties) for contravention of, or non-compliance with, the regulations.

(3) The regulations may—

(a) make different provision for different cases, and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

VALID FROM 19/07/2007

[F821 431EMeaning of "gross roll-up business"

In this Chapter "gross roll-up business" means business of any of the following kinds—

(a) pension business;

(b) child trust fund business;

(c) individual savings account business;

(d) life reinsurance business; and

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(e) overseas life assurance business.]

Textual Amendments

F821 S. 431EA inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 10** (with Sch. 7 Pt. 2)

431F Meaning of "basic life assurance and general annuity business".

In this Chapter "basic life assurance and general annuity business" means life assurance business (including reinsurance business) other than pension business, life reinsurance business or overseas life assurance business.

Modifications etc. (not altering text)

C473 S. 431F modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 9

C474 S. 431F modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 7; S.I. 2004/3369, **art. 2(1)**

VALID FROM 01/05/1995

[F822 Separation of different categories of business]

Textual Amendments

F822 Cross-heading before s. 432 inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(2)** (with Sch. 8 para. 55(2))

VALID FROM 19/07/2007

[F823 431C Company carrying on life assurance business

(1) This section applies in relation to an insurance company which carries on life assurance business (whether or not it also carries on insurance business of any other kind).

(2) Subject as follows, the profits of the life assurance business for any accounting period shall be charged to tax under the I minus E basis.

(3) Where in the case of an insurance company for an accounting period either—

(a) all of its life assurance business is reinsurance business and none of that business is of a type excluded from this subsection by regulations made by the Board, or

(b) all, or substantially all, of its life assurance business is gross roll-up business,

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the profits of that business for the accounting period shall be charged to tax in accordance with Case I of Schedule D and not otherwise.

(4) Where—

(a) the profits of the life assurance business of an insurance company for any accounting period are charged to tax under the I minus E basis, and

(b) had those profits been charged to tax in accordance with Case I of Schedule D, a loss would have arisen to the company from that business for the period,

the loss (after being reduced in accordance with section 434A(2)(a)) may be set-off under section 393A or section 403(1).

(5) The application, in relation to the life assurance business of an insurance company, of any provision of Case I of Schedule D is not to be taken—

(a) to prevent the application of the I minus E basis in relation to that business of the company for any accounting period, or

(b) to affect the operation of the I minus E basis in relation to the that business of the company for any accounting period except as specifically provided by the Corporation Tax Acts.**]**

Textual Amendments

F823 Ss. 431G, 431H and preceding cross-heading substituted for s. 432 and preceding cross-heading (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 4** (with Sch. 8 Pt. 2)

Modifications etc. (not altering text)

C475 S. 431G modified by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 12** (as amended (13.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Amendment) Regulations 2007 (S.I. 2007/2087), **regs. 1(1)**, 8)

VALID FROM 19/07/2007

[F824 431H Company carrying on life assurance business and other insurance business

(1) This section applies in relation to an insurance company which carries on life assurance business and insurance business of any other kind.

(2) For the purposes of the Corporation Tax Acts—

(a) the life assurance business, and

(b) the other insurance business,

are to be treated as separate businesses.

(3) The profits of the other insurance business shall be charged to tax under Case I of Schedule D as the profits of a separate trade.

(4) But subsection (3) above does not apply where that business is mutual business.

(5) As to the profits of the life assurance business, see section 431G.**]**

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Textual Amendments

F824 Ss. 431G, 431H and preceding cross-heading substituted for s. 432 and preceding cross-heading (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 4** (with Sch. 8 Pt. 2)

Modifications etc. (not altering text)

C476 S. 431H modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 7A** (as inserted (14.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2007 (S.I. 2007/2134), **regs. 1(1)**, 7; and as amended by S.I. 2008/1937, **regs. 1(1)(2)**, 5)

VALID FROM 08/01/2007

[F825 432YA Long-term business other than life assurance business — adjustment consequent on change in Insurance Prudential Sourcebook

(1) This section applies in the case of—

(a) a company which is a non-profit company, or

(b) the non-profit fund of a company which is not a non-profit company,

if an amount (other than nil) is shown in paragraph 4(12) of Appendix 9.4 to the periodical return for the company for the first period of account which ends on or after 31st December 2006.

(2) In computing profits of long-term business which is not life assurance business in accordance with the provisions applicable to Case I of Schedule D an amount ("the relevant amount") shall be added—

(a) to the closing long term business provision of the company for the first period of account which ends on or after 31st December 2006, and

(b) to the opening long term business provision of the company for the next period of account.

(3) The relevant amount is, subject to subsection (4), the amount by which B exceeds A. Here—

A is the company's long term business provision in respect of business which is not life assurance business for the first period of account which ends on or after 31st December 2006, calculated after taking into account the company's ability to—

(a) make provision for non-attributable expenses by reference to a homogeneous risk group instead of by reference to individual policies or contracts;

(b) make provision for the voluntary discontinuance of policies or contracts using a prudent lapse rate assumption; and

(c) set negative liabilities against positive liabilities (subject to overall liabilities not being less than nil);

in accordance with the Insurance Prudential Sourcebook; and

B is the company's long term business provision for that period of account in respect of business which is not life assurance business, calculated without

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taking into account the matters referred to in paragraphs (a) to (c) of the definition of A.

(4) In a case falling within subsection (1)(b)—

(a) the relevant amount shall be reduced (but not below nil) by so much (if any) of the amount shown in paragraph 4(12) of Appendix 9.4 to the periodical return as is reflected in column 1 of line 51 of the Form 14 for that period of account relating to the non-profit fund in question; and

(b) the references in subsection (3) to long term business provision and to liabilities are respectively to long term business provision and to liabilities relating to the non-profit fund in question.

(5) In this section—

"long term business provision" has the same meaning as in Schedule 9A to the Companies Act 1985;

"non-profit company" has the meaning given in section 83YA(8) of the Finance Act 1989; and

"non-profit fund" has the same meaning as in the Insurance Prudential Sourcebook.**]**

Textual Amendments

F825 S. 432YA inserted (8.1.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment No. 2) Order 2006 (S.I. 2006/3387), **arts. 1(1)**, 2

[F826 432ZA Linked assets.

(1) In this Chapter "linked assets" means assets of an insurance company which are identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined.

(2) Linked assets shall be taken—

(a) to be linked to long term business of a particular category if the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category; and

(b) to be linked solely to long term business of a particular category if all (or all but an insignificant proportion) of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category.

(3) Where an asset is linked to more than one category of long term business, a part of the asset shall be taken to be linked to each category; and references in this Chapter to assets linked (but not solely linked) to any category of business shall be construed accordingly.

(4) Where subsection (3) above applies, the part of the asset linked to any category of business shall be a proportion determined as follows—

(a) where in the records of the company values are shown for the asset in funds referable to particular categories of business, the proportion shall be determined by reference to those values;

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(b) in any other case the proportion shall be equal to the proportion which the total of the linked liabilities of the company referable to that category of business bears to the total of the linked liabilities of the company referable to all the categories of business to which the asset is linked.

(5) For the purposes of sections 432A to 432F—

(a) income arising in any period from assets linked but not solely linked to a category of business,

(b) gains arising in any period from the disposal of such assets, and

(c) increases and decreases in the value of such assets,

shall be treated as arising to that category of business in the proportion which is the mean of the proportions determined under subsection (4) above at the beginning and end of the period.

(6) In this section "linked liabilities" means liabilities in respect of benefits to be determined by reference to the value of linked assets.

(7) In the case of a policy or contract the effecting of which constitutes a class of life assurance business the fact that it also constitutes long term business other than life assurance business shall be disregarded for the purposes of this section unless the benefits to be provided which constitute long term business other than life assurance business are to be determined by reference to the value of assets.**]**

Textual Amendments

F826 S. 432ZA inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 11(2)** (with Sch. 8 para. 55(2))

VALID FROM 31/07/1998

[F827 432AA Schedule A business or overseas property business.

(1) An insurance company is treated as carrying on separate Schedule A businesses, or overseas property businesses, in accordance with the following rules.

(2) The exploitation of land held as an asset of the company's long term business fund is treated as a separate business from the exploitation of land not so held.

(3) The exploitation of land held as an asset of the company's overseas life assurance fund is treated as a separate business from the exploitation of other land held as an asset of its long term business fund.

(4) The exploitation of land held as an asset linked to any of the following categories of business is regarded as a separate business—

(a) pension business;

(b) life reinsurance business;

(c) basic life assurance and general annuity business;

(d) long term business other than life assurance business.

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(5) Accordingly, the exploitation of land held as an asset of the company's long term business fund otherwise than as mentioned in subsection (3) or (4) is treated as a separate business from any other.

(6) In this section "land" means any estate, interest or rights in or over land.]

Textual Amendments

F827 Ss. 432AA, 432AB inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para 39** (with Sch. 5 para. 73)

Modifications etc. (not altering text)

C477 S. 432AA modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 13A** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 3)

C478 S. 432AA(4) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 11

VALID FROM 31/07/1998

[F827 432AB Losses from Schedule A business or overseas property business.

(1) This section applies to any loss arising in a Schedule A business or overseas property business.

(2) A loss arising from any category of business mentioned in section 432A(2) shall be apportioned under that section in the same way as income.

(3) So far as a loss is referable to basic life assurance and general annuity business, it shall be treated as if it were an amount of expenses of management under section 76 disbursed for the accounting period in which the loss arose.

(4) Where a company is treated under section 432AA as carrying on—
  (a) more than one Schedule A business, or
  (b) more than one overseas property business,

then, in relation to either kind of business, the reference in subsection (3) above to a loss referable to basic life assurance and general annuity business shall be construed as a reference to any aggregate net loss after setting the losses from those businesses which are so referable against any profits from those businesses that are so referable.

(5) The provisions of section 392A or 392B (loss relief) do not apply to a loss referable to life assurance business or any category of life assurance business.

(6) Where a company is treated under section 432AA as carrying on—
  (a) more than one Schedule A business, or
  (b) more than one overseas property business,

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and, in relation to either kind of business, there are losses and profits referable to business which is not life assurance business, those losses shall be set against those profits before being used under section 392A or 392B.**]**

Textual Amendments

F827 Ss. 432AA, 432AB inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para 39** (with Sch. 5 para. 73)

Modifications etc. (not altering text)

C479 S. 432AB modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 13B** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 3)

VALID FROM 08/04/2010

[F828 432CA Apportionment of asset value increase where line 51 amount decreases

(1) This section applies where—

(a) an insurance company is not a non-profit company in relation to a period of account ("the current period of account"),

(b) in the case of any business with which an account of the company for the current period of account is concerned ("the relevant business"), an amount is a relevant brought into account amount for that period of account (see subsection (2)),

(c) section 432C applies for determining the extent to which the relevant brought into account amount is referable to life assurance business or to gross roll-up business, and

(d) the line 51 reduction condition is met (see subsection (3)).

(2) An amount is a relevant brought into account amount for a period of account if—

(a) it is brought into account as mentioned in subsection (2)(b) of section 83 of the Finance Act 1989 (increases in value of non-linked assets) for that period,

(b) it is deemed to be brought into account for that period by subsection (2B) of that section in consequence of the transfer of non-linked assets, or

(c) it is taken into account under subsection (2) of that section for that period by virtue of section 444AB as being the relevant amount in relation to non-linked assets.

(3) The line 51 reduction condition is met if—

(a) the amount shown in column 1 of line 51 of Form 14 of the company's periodical return in respect of the relevant business for the current period of account, is less than

(b) the amount so shown for the period of account immediately before it;

and the amount of the difference is "the relevant reduction".

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(4) Section 432C applies in relation to so much of the relevant brought into account amount as does not exceed the relevant reduction ("the affected amount") as if it were brought into account as an increase in the value of assets in the case of the relevant business for the applicable appropriate period of account of the company.

(5) A period of account is an "appropriate period of account" if it ended before the current period of account and—

(a) the amount shown in column 1 of line 51 of Form 14 of the company's periodical return in respect of the relevant business for it, was more than

(b) the amount so shown for the period of account immediately before it;

and the amount of the difference is "the relevant increase."

(6) The "applicable" appropriate period of account is the one which ended most recently ("the most recent appropriate period of account").

(7) But if the relevant increase in the case of the most recent appropriate period of account is less than the affected amount, the most recent appropriate period of account is the applicable appropriate period of account in relation to only so much of the affected amount as does not exceed that relevant increase.

(8) In that case, the appropriate period of account which ended most recently before the most recent appropriate period of account is the applicable appropriate period of account in relation to so much of the remainder as does not exceed the relevant increase in the case of that appropriate period of account (and, where necessary, so on until the applicable appropriate period of account is established in relation to all of the affected amount or there are no more appropriate periods of account).

(9) If the current period of account is not the first in relation to which this section has applied in the case of the business concerned, the amount of the relevant increase in the case of any appropriate period of account ("the period in question") is to be treated as reduced by the relevant aggregate.

(10) The "relevant aggregate" is the aggregate of so much of the affected amount for any period or periods of account earlier than the current period of account as was an amount to which section 432C applied as if it were brought into account as mentioned in subsection (4) for the period in question.

(11) For the purposes of this section an insurance company which has elected under section 83YA(9) of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) to be treated as a non-profit company in relation to a period of account is to be regarded as a non-profit company in relation to the period of account.**]**

Textual Amendments

F828 S. 432CA inserted (with effect in accordance with s. 47(2)-(4) of the amending Act) by Finance Act 2010 (c. 13), **s. 47(1)**

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VALID FROM 27/07/2010

[F829 432CB Transfers of business involving excess assets

(1) This section applies where, under an insurance business transfer scheme, there is a transfer of long-term business—

(a) from a non-profit fund of an insurance company ("the transferor") which is not a non-profit company in relation to the relevant period of account,

(b) to another insurance company ("the transferee") to constitute or form part of a non-profit fund of the transferee ("the transferee's non-profit fund"),

("the transfer") and conditions A and B are met.

(2) Condition A is that the fair value of the assets transferred by the transfer exceeds by an amount ("the chargeable excess") the amount of the relevant liabilities transferred by the transfer.

For this purpose "relevant" liabilities are liabilities of a type shown (or treated as shown) in any of lines 14, 17, 21 to 23 and 31 to 38 of Form 14 of a periodical return of an insurance company.

(3) Condition B is that the main purpose, or one of the main purposes, of the transferor or the transferee (or both) in entering into any part of the transfer scheme arrangements is to secure a reduction in tax as a result of section 432C having effect in the case of the transferee, rather than the transferor, in relation to the business transferred by the transfer.

(4) The chargeable excess is to be brought into account by the transferor as mentioned in section 83(2)(b) of the Finance Act 1989 for the relevant period of account.

(5) Where there is no amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the first period of account of the transferee ending on or after the transfer date ("the first post-transfer period of account"), the chargeable excess is to be brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for the first post-transfer period of account.

(6) Where—

(a) there is an amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the first post-transfer period of account, and

(b) the amount so shown in column 1 of line 51 of Form 14 of the periodical return of the transferee for that period of account, or for any other period of account of the transferee ending after the transfer date, (an "affected period of account") is less than the total chargeable excess amount,

the relevant amount is to be brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for the affected period of account.

(7) For this purpose "the relevant amount" is the amount by which—

(a) the amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the affected period of account, is less than

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(b) the total chargeable excess amount less any amount brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for any earlier period of account by virtue of the operation of this section in relation to the transferee's non-profit fund.

(8) In subsections (6) and (7) "the total chargeable excess amount" means the aggregate of—

(a) the chargeable excess, and

(b) any amount which is the chargeable excess in relation to any other transfer of business to the transferee's non-profit fund.

(9) In this section "the relevant period of account" means—

(a) the period of account of the transferor ending immediately before the transfer date, or

(b) if no period of account of the transferor so ends, the period of account of the transferor covering the transfer date.

(10) In this section "the transfer scheme arrangements" means the insurance business transfer scheme and any relevant associated operations; and for this purpose "relevant associated operations" means—

(a) any other insurance business transfer scheme,

(b) any contract of reinsurance, or

(c) any reconstruction or amalgamation involving the transferor, a dependant of the transferor which is an insurance undertaking or the transferee,

which is effected in connection with the insurance business transfer scheme.

(11) In subsection (10)—

"dependant", and

"insurance undertaking",

have the same meaning as in the Insurance Prudential Sourcebook.

(12) In this section "the transfer date" means the date on which the insurance business transfer scheme takes effect.

(13) For the purposes of this section an insurance company which has elected under section 83YA(9) of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) to be treated as a non-profit company in relation to a period of account is to be regarded as a non-profit company in relation to the period of account.**]**

Textual Amendments

F829 S. 432CB inserted (with effect in accordance with s. 9(2) of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **s. 9(1)**

[F830 432F Section 432B apportionment: supplementary provisions.

(1) The provisions of this section provide for the reduction of the amount determined in accordance with section 432E(3) ("the subsection (3) figure") for an accounting

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period in which that amount exceeds, or would otherwise exceed, the amount determined in accordance with section 432E(2) ("the subsection (2) figure").

(2) For each category of business in relation to which section 432E falls to be applied there shall be determined for each accounting period the amount (if any) by which the subsection (2) figure, after making any reduction required by section 432E(5), exceeds the subsection (3) figure ("the subsection (2) excess").

(3) Where there is a subsection (2) excess, the amount shall be carried forward and if in any subsequent accounting period the subsection (3) figure exceeds, or would otherwise exceed, the subsection (2) figure, it shall be reduced by the amount or cumulative amount of subsection (2) excesses so far as not previously used under this subsection.

(4) Where in an accounting period that amount is greater than is required to bring the subsection (3) figure down to the subsection (2) figure, the balance shall be carried forward and aggregated with any subsequent subsection (2) excess for use in subsequent accounting periods.**]**

Textual Amendments

F830 S. 432F inserted (with effect in accordance with Sch. 8 para. 53 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(3)** (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C480 S. 432F(1) modified (20.3.1997 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 15; and that modifying reg. 15 is omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 11**

VALID FROM 01/01/2005

[F831 432G Section 432B: apportionment of business transfer-in

(1) This section applies where an amount falls within section 83(2)(e) of the Finance Act 1989.

(2) Where—

(a) this section applies, and

(b) it is necessary in accordance with section 83 to determine what part of a business transfer-in is referable to life assurance business or any category of life assurance business,

a business transfer-in shall be apportioned to the categories of business of the transferee in the proportions which the amount of the liabilities transferred for each of those categories bear to the whole of the liabilities transferred.**]**

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Textual Amendments

F831 S. 432G inserted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 4**

VALID FROM 01/05/1995

[F832 Miscellaneous provisions relating to life assurance business]

Textual Amendments

F832 Cross-heading before s. 434 inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(4)** (with Sch. 8 para. 55(2))

VALID FROM 21/07/2009

[F833 434AZA Reduced loss relief for additions to non-profit funds

(1) Where this section applies in the case of a company carrying on life assurance business, relief allowable under section 393A or Chapter 4 of Part 10 in respect of losses incurred by the company in the life assurance business in an accounting period is reduced in accordance with section 434AZB.

(2) This section applies in the case of a company where—

(a) there has been a relevant addition to one or more non-profit funds in a period of account ending no later than the accounting period ("the relevant period of account") (see subsection (3)),

(b) the company is not a non-profit company in relation to the relevant period of account and has not elected under subsection (9) of section 83YA of the Finance Act 1989 to be treated for the purposes of that section as if it were, and

(c) condition A or B is met,

and, if the relevant period of account is not the period of account ending with the accounting period ("the current period of account"), condition C is also met.

(3) For the purposes of subsection (2), there is a relevant addition to a non-profit fund in the relevant period of account if an amount is shown as a transfer from non-technical account in line 32 of the Form 58 of the non-profit fund in the periodical return for that period of account.

(4) Condition A is that there is a relevant book value election in relation to assets of a non-profit fund of the company.

(5) For the purposes of subsection (4), there is a relevant book value election in relation to assets of a non-profit fund if an amount is shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account.

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(6) Condition B is that the company is party to arrangements the main purpose, or one of the main purposes, of which is to reduce the relevant admissible value of assets of a non-profit fund of the company, other than any structural assets.

(7) For the purposes of subsection (6) (and section 434AZB), the "relevant admissible value" means the value reflected in line 89 of Form 13 of the periodical return for the current period of account.

(8) Condition C is that the surplus arising since the last valuation shown in line 34 of the Form 58 of the non-profit fund, or any of the non-profit funds, in relation to which condition A or B is met in the periodical return for the current period of account is a negative amount.**]**

Textual Amendments

F833 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

VALID FROM 21/07/2009

[F833 434AZB Conditions to non-profit funds: amount of loss reduction

(1) The amount of the relief allowable as mentioned in section 434AZA(1) is reduced by whichever of the following is the least—
  (a) the amount of the loss,
  (b) the amount specified in subsection (2), and
  (c) the amount specified in subsection (4).

(2) The amount mentioned in subsection (1)(b) is—
  (a) where only condition A in section 434AZA is met, the relevant amount relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant amounts relating to them,
  (b) where only condition B is met, the amount of the relevant reduction relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant reductions relating to them, and
  (c) where both condition A and condition B are met, the aggregate of the amounts in paragraphs (a) and (b).

(3) In subsection (2)—
  (a) "relevant amount", in relation to a non-profit fund, means the amount shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account (as reduced by any amount which has had effect to reduce relief for losses for a previous accounting period), and

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(b) "relevant reduction", in relation to a non-profit fund, means the reduction of the relevant admissible value of assets of the non-profit fund (other than structural assets) which is attributable to the arrangements (as so reduced).

(4) The amount mentioned in subsection (1)(c) is—

(a) if the relevant period of account is the current period of account, the amount referred to in section 434AZA(3) in the case of the non-profit fund, or of each of the non-profit funds, to which there has been a relevant addition in the relevant period of account, and

(b) otherwise, so much of the amount shown in line 31 of the Form 58 of the non-profit fund or non-profit funds in the periodical return for the current period of account as is attributable to the amount so referred to.**]**

Textual Amendments

F833 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

VALID FROM 21/07/2009

[F833 434AZC Sections 434AZA and 434AZB: supplementary

(1) For the purposes of sections 434AZA and 434AZB, a non-profit fund required to support a with-profits fund is to be treated as not being a non-profit fund.

(2) Sections 434AZA and 434AZB apply to a non-profit part of a with-profits fund as if references to something shown in the Form 14 or Form 58 of the non-profit fund in a periodical return were to what would be so shown if there were a Form 14 or Form 58 of the non-profit part of the with-profits fund in the periodical return.

(3) In sections 434AZA and 434AZB—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

"structural assets" has the same meaning as in section 83XA of the Finance Act 1989 (see subsection (3) of that section and any regulations made under it).**]**

Textual Amendments

F833 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

[F834 434B Treatment of interest and annuities.

(1) Where the profits or losses arising to an insurance company from its life assurance business, or any class of life assurance business, fall to be computed for any purpose in accordance with the provisions of this Act applicable to Case I of Schedule D, section 337(2)(b) shall not prevent the deduction of any interest or annuity payable

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by the company under a liability of its long term business so far as referable to its life assurance business or any class of that business.

(2) Nothing in subsection (1) above or in section 338(2) shall be construed as preventing any such interest or annuity as is mentioned in subsection (1) above, so far as referable to the company's basic life assurance and general annuity business, from being treated as a charge on income for the purposes of the computation of the profits or losses of that business otherwise than in accordance with Case I of Schedule D.**]**

Textual Amendments

F834 S. 434B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 21(1)** (with Sch. 8 para. 55(2))

[F835 434C Interest on repayment of advance corporation tax.

Section 826(1) applies in a case where a repayment falls to be made of advance corporation tax paid by a company carrying on life assurance business in respect of distributions made by it.

In relation to such a case the material date for the purposes of that section is that specified in subsection (2A) of that section.**]**

Textual Amendments

F835 S. 434C inserted (with effect in accordance with Sch. 8 paras. 54, 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 22** (with Sch. 8 para. 55(2))

[F836 434D Capital allowances: management assets.

(1) This section has effect with respect to the allowances and charges to be made under the 1990 Act in respect of "management assets", that is, assets provided for use or used for the management of life assurance business carried on by a company.

(2) No allowances or charges shall be made under that Act in respect of expenditure on management assets except under Part II (machinery and plant).

(3) Where the company is charged to tax under section 441 in respect of the profits of its overseas life assurance business for an accounting period—

(a) any allowance falling to be made under Part II of the 1990 Act in respect of expenditure on the provision outside the United Kingdom of machinery or plant for use for the management of that business shall be given effect by treating it as an expense of the business for that period; and

(b) any charge in respect of such expenditure falling to be so made shall be given effect by treating it as a receipt of the business for that period;

and sections 73, 144 and 145 of the 1990 Act do not apply.

(4) Allowances and charges falling to be made under Part II of the 1990 Act in respect of expenditure in respect of management assets not falling within subsection (3) above shall be apportioned between the different classes of life assurance business carried on by the company.

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The amount referable to any class of life assurance business shall be the relevant fraction of the amount of the allowance or charge, that is, the fraction of which—

(a) the numerator is the mean of the opening and closing liabilities of the class of life assurance concerned, and

(b) the denominator is the mean of the opening and closing liabilities of all the classes of life assurance business carried on by the company.

(5) Where the company is charged to tax under section 436, 439B or 441 in respect of the profits of its pension business, life reinsurance business or overseas life assurance business for an accounting period—

(a) any allowance falling to be made under Part II of the 1990 Act in respect of expenditure on the provision of machinery or plant for use for the management of that business shall be given effect by treating the relevant proportion of the allowance as an expense of that business for the purpose of calculating the Case VI profit for that period; and

(b) any charge in respect of such expenditure falling to be so made shall be given effect by treating the relevant proportion of the charge as a receipt of that business for that purpose.

(6) Where a company carries on basic life assurance and general annuity business and the profits arising from that business do not fall to be charged to tax in accordance with the provisions applicable to Case I of Schedule D—

(a) allowances falling to be given under Part II of the 1990 Act in respect of expenditure on management assets shall be treated as additional expenses of management within section 76; and

(b) any charge falling to be made under that Part in respect of such assets shall be chargeable to tax under Case VI of Schedule D.

(7) For the purposes of this section the purposes of the management of a business shall be taken to be those purposes expenditure on which would be treated as expenses of management within section 76.

(8) Expenditure to which this section applies shall not be taken into account otherwise than in accordance with this section.

This shall not be construed as preventing any allowance under Part II of the 1990 Act which falls to be given by virtue of this section from being taken into account—

(a) in any computation of profits for the purposes of section 89(7) of the Finance Act 1989, or

(b) in any computation for the purposes of section 76(2) of the tax that would have been paid if the company had been charged to tax under Case I of Schedule D in respect of its life assurance business.**]**

Textual Amendments

F836 Ss. 434D, 434E inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 23(1)** (with Sch. 8 para. 55(2))

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[F836 434E Capital allowances: investment assets.

(1) In this section "investment asset" means an asset held by a company for the purposes of its life assurance business otherwise than for the management of that business.

(2) The letting by a company of an investment asset shall be treated for the purposes of section 61 of the 1990 Act (machinery and plant on lease) as a letting otherwise than in the course of a trade.

(3) Any allowance under Part V of the 1990 Act (agricultural buildings, &c.) in respect of an investment asset shall be made by way of discharge or repayment of tax and shall be available primarily against agricultural income and income which is the subject of a balancing charge.

Effect shall be given to any balancing charge under that Part in respect of an investment asset by treating the amount on which the charge is to be made as agricultural income.

(4) Any allowance under the 1990 Act in respect of an investment asset shall be treated as referable to the category or categories of business to which income arising from the asset is or would be referable and shall be apportioned in accordance with section 432A in the same way as such income.

(5) No allowance under the 1990 Act in respect of an investment asset shall be taken into account—
- (a) in computing the profits of any class of life assurance business under section 436, 439B or 441, or
- (b) where the company is charged to tax in respect of its life assurance business under Case I of Schedule D, in computing the profits of that business.

(6) Where any allowance under the 1990 Act in respect of an investment asset falls to be taken into account (having regard to subsection (5) above), only such allowances as are referable to the company's basic life assurance and general annuity business shall be given effect under section 145(1) of that Act, and then only against income referable to that business; and section 145(3) shall not apply.**]**

Textual Amendments

F836 Ss. 434D, 434E inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 23(1)** (with Sch. 8 para. 55(2))

VALID FROM 19/07/2007

[F837 436A Gross roll-up business: separate charge on profits

(1) Profits arising to an insurance company from gross roll-up business—
- (a) are to be treated as income within Schedule D, and
- (b) are chargeable under Case VI of that Schedule.

(2) For that purpose—
- (a) the gross roll-up business is to be treated separately, and

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(b) the profits from it are to be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) In making that computation, sections 82 and 82B to **[**[F838]83ZA**]** of the Finance Act 1989 apply with the necessary modifications.

(4) If in any accounting period an insurance company incurs a loss, to be computed on the same basis as the profits, arising from its gross roll-up business—

(a) the loss must be set off against the amount of any profits chargeable under this section for any subsequent accounting period, and

(b) accordingly, the amount of the company's profits so charged in any such accounting period is to be treated as reduced by the amount of the loss or so much of that amount as cannot be relieved under this section against profits of an earlier accounting period.

(5) Section 396 does not apply to a loss incurred by an insurance company on its gross roll-up business.

(6) No loss to which section 396 applies may be set off under subsection (4) above against the amount of any profits chargeable under this section.

(7) This section does not apply in relation to an insurance company for an accounting period if the profits of its long-term business for the accounting period are charged to tax under Case I of Schedule D.**]**

Textual Amendments

F837 Ss. 436A, 436B inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 25** (with Sch. 7 Pt. 2)

F838 S. 436A(3): "83ZA" substituted for "83AB" (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 12**; S.I. 2008/379, **art. 2**

Modifications etc. (not altering text)

C481 S. 436A modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 13A** (as inserted (14.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2007 (S.I. 2007/2134), **regs. 1(1)**, 14)

VALID FROM 19/07/2007

[[F837]**436B Gains referable to gross roll-up business not to be chargeable gains**

(1) Gains referable to gross roll-up business are not chargeable gains.

(2) For the purposes of this section "gains referable to gross roll-up business" means gains which—

(a) accrue to an insurance company on the disposal by it of assets of its long-term insurance fund, and

(b) are referable (in accordance with section 432A) to gross roll-up business.**]**

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Textual Amendments

F837 Ss. 436A, 436B inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 25** (with Sch. 7 Pt. 2)

VALID FROM 19/03/1997

[F839 437A Meaning of "steep-reduction annuity" etc.

(1) For the purposes of section 437 an annuity is a steep-reduction annuity if—

(a) the amount of any payment in respect of the annuity (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives;

(b) the annuitant is entitled in respect of the annuity to payments of different amounts at different times; and

(c) those payments include a payment ("a reduced payment") of an amount which is substantially smaller than the amount of at least one of the earlier payments in respect of that annuity to which the annuitant is entitled.

(2) Where there are different intervals between payments to which an annuitant is entitled in respect of any annuity, the question whether or not the conditions in subsection (1)(b) and (c) above are satisfied in the case of that annuity shall be determined by assuming—

(a) that the annuitant's entitlement, after the first payment, to payments in respect of that annuity is an entitlement to payments at yearly intervals on the anniversary of the first payment; and

(b) that the amount to which the annuitant is assumed to be entitled on each such anniversary is equal to the annuitant's assumed entitlement for the year ending with that anniversary.

(3) For the purposes of subsection (2) above an annuitant's assumed entitlement for any year shall be determined as follows—

(a) the annuitant's entitlement to each payment in respect of the annuity shall be taken to accrue at a constant rate during the interval between the previous payment and that payment; and

(b) his assumed entitlement for any year shall be taken to be equal to the aggregate of the amounts which, in accordance with paragraph (a) above, are treated as accruing in that year.

(4) In the case of an annuity to which subsection (2) above applies, the reference in section 437(1CB)(a) to the making of a reduced payment shall be construed as if it were a reference to the making of a payment in respect of that annuity which (applying subsection (3)(a) above) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments in respect of that annuity is taken to accrue.

(5) Where—

(a) any question arises for the purposes of this section whether the amount of any payment in respect of any annuity—

(i) is substantially smaller than the amount of, or

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(ii) accrues at a rate substantially less than,

an earlier payment in respect of that annuity, and

(b) the annuitant or, as the case may be, every annuitant is an individual who is beneficially entitled to all the rights conferred on him as such an annuitant,

that question shall be determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of the occurrence of a death.

(6) Where the amount of any one or more of the payments to which an annuitant is entitled in respect of an annuity depends on any contingency, his entitlement to payments in respect of that annuity shall be determined for the purposes of section 437(1CA) to (1CC) and this section according to whatever (applying any relevant actuarial principles) is the most likely outcome in relation to that contingency.

(7) Where any agreement or arrangement has effect for varying the rights of an annuitant in relation to a payment in respect of any annuity, that payment shall be taken, for the purposes of section 437(1CA) to (1CC) and this section, to be a payment of the amount to which the annuitant is entitled in accordance with that agreement or arrangement.

(8) References in this section to a contingency include references to a contingency that consists wholly or partly in the exercise by any person of any option.**]**

Textual Amendments

F839 S. 437A inserted (with effect in accordance with s. 67(8) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(3)**

VALID FROM 06/04/2001

[[F840]438B Income or gains arising from property investment LLP

(1) Where an asset held by an insurance company as an asset of its long term business fund is held by the company as a member of a property investment LLP, the policy holders' share of any income arising from, or chargeable gains accruing on the disposal of, the asset which—

(a) is attributable to the company, and

(b) would otherwise be referable by virtue of section 432A to pension business,

shall be treated for the purposes of the Corporation Tax Acts as referable to basic life assurance and general annuity business.

(2) For the purposes of this section the property business of the insurance company for the purposes of which the asset is held shall be treated as a separate business.

"Property business" means a Schedule A business or overseas property business.

(3) Where (apart from this subsection) an insurance company would not be carrying on basic life assurance and general annuity business, it shall be treated as carrying on such business if any income or chargeable gains of the company are treated as referable to the business by virtue of subsection (1) above.

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(4) A company may be charged to tax by virtue of this section—

(a) notwithstanding section 439A, and

(b) whether or not the income or chargeable gains to which subsection (1) above applies is taken into account in computing the profits of the company for the purposes of any charge to tax in accordance with Case I of Schedule D.

(5) The policy holders' share of income or chargeable gains to which subsection (1) above applies—

(a) shall not be treated as relevant profits for the purposes of section 88 of the Finance Act 1989 (corporation tax on policy holders' fraction of profits), and

(b) shall not be treated as part of the BLAGAB profits for the purposes of section 88A of that Act (lower corporation tax rate on certain profits);

but the whole of the income or gains to which that subsection applies shall be chargeable to tax at the rate provided by section 88 of that Act.

(6) So far as income is brought into account as mentioned in section 83(2) of the Finance Act 1989, sections 432B to 432F (apportionment of receipts brought into account) have effect as if subsection (1) above did not apply.**]**

Textual Amendments

F840 Ss. 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 5**

VALID FROM 06/04/2001

[F840 438C Determination of policy holders' share for purposes of s.438B

(1) For the purposes of section 438B the policy holders' share of any income or chargeable gains to which subsection (1) of that section applies is what remains after deducting the shareholders' share.

(2) The shareholders' share is found by applying to the whole the fraction—

$$\frac{A}{B}$$

where—

A is the amount of the profits of the company for the period which are chargeable to tax under section 436; and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits (apart from premiums and sums received by virtue of a claim under a reinsurance contract), over

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(b) the amounts taken into account as expenses in computing those profits.

(3) Where there is no such excess as is mentioned in subsection (2) above, or where the profits are greater than any excess, the whole of the income or gains is treated as the shareholders' share.

(4) Subject to that, where there are no profits none of the income or gains is treated as the shareholders' share.**]**

Textual Amendments

F840 Ss. 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 5**

[F841 439A Taxation of pure reinsurance business.

If a company does not carry on life assurance business other than reinsurance business, and none of that business is of a type excluded from this section by regulations made by the Board, the profits of that business shall be charged to tax in accordance with Case I of Schedule D and not otherwise.**]**

Textual Amendments

F841 S. 439A inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 26** (with Sch. 8 para. 55(2))

[F842 439B Life reinsurance business: separate charge on profits.

(1) Where a company carries on life reinsurance business and the profits arising from that business are not charged to tax in accordance with the provisions applicable to Case I of Schedule D, then, subject as follows, those profits shall be treated as income within Schedule D and be chargeable to tax under Case VI of that Schedule, and for that purpose—

(a) that business shall be treated separately, and

(b) subject to paragraph (a) above, the profits from it shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(2) Subsection (1) above does not apply to so much of reinsurance business of any description excluded from that subsection by regulations made by the Board.

Regulations under this subsection may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

(3) In making the computation referred to in subsection (1) above—

(a) sections 82(1), (2) and (4) and 83 of the Finance Act 1989 shall apply with the necessary modifications and in particular with the omission of the words "tax or" in section 82(1)(a),

(b) section 83(3) of that Act shall not apply, and

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(c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from life reinsurance business in any previous accounting period beginning on or after 1st January 1995.

(4) Section 396 shall not be taken to apply to a loss incurred by a company on life reinsurance business.

(5) Nothing in section 128 or 399(1) shall affect the operation of this section.

(6) Gains accruing to a company which are referable to its life reinsurance business shall not be chargeable gains.

(7) In ascertaining whether or to what extent a company has incurred a loss on its life reinsurance business, franked investment income and foreign income dividends shall be taken into account (notwithstanding anything in section 208) as part of the profits of that business.**]**

Textual Amendments

F842 S. 439B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 27(1)** (with Sch. 8 para. 55(2))

[F843 440B Modifications where tax charged under Case I of Schedule D.

(1) The following provisions apply where the profits of a company's life assurance business are charged to tax in accordance with Case I of Schedule D.

(2) Section 438 applies as if in subsections (6), (6B) and (6E) for the reference to any profit arising to the company and computed under section 436 there were substituted a reference to the profit that would arise on a computation under section 436 if the profits of the company's life assurance business were not charged to tax under Case I of Schedule D.

(3) Section 440(1) and (2) apply as if the only categories set out in subsection (4) of that section were—

(a) assets of the long term business fund, and

(b) other assets.

(4) Section 440A applies as if for paragraphs (a) to (e) of subsection (2) there were substituted—

(") so many of the securities as are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of long term business, shall be treated for the purposes of corporation tax as a separate holding linked solely to that business, and

(b) any remaining securities shall be treated for those purposes as a separate holding which is not of the description mentioned in the preceding paragraph.".

(5) Section 212(1) of the 1992 Act does not apply, but without prejudice to the bringing into account of any amounts deferred under section 213(1) or 214A(2) of that Act from any accounting period beginning before 1st January 1995.**]**

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Textual Amendments

F843 S. 440B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(1)** (with Sch. 8 para. 55(2))

VALID FROM 19/07/2007

[F844 440C Modifications for change of tax basis

(1) Subsection (2) makes provision for a case where—

(a) subsection (4) of section 431G applies in relation to the profits of the life assurance business of an insurance company for any accounting period, but

(b) the profits of that business for a succeeding accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of subsection (3) of that section.

(2) The loss referred to in section 431G(4)(b) (less any loss for the same accounting period set off under section 436A for any intervening accounting period and any amount deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989) may be set off under section 393 against profits of that succeeding accounting period (without being reduced in accordance with section 434A(2)(a)).

(3) In determining whether any loss has been set off under section 436A for any intervening accounting period, or whether any amount has been deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989, losses of earlier accounting periods are to be assumed to be set off before those of later accounting periods.

(4) Subsection (5) makes provision for a case where—

(a) a loss arises to an insurance company for an accounting period for which the profits of its life assurance business fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(b),

(b) the profits of that business for a subsequent accounting period are charged to tax under the I minus E basis, and

(c) had those profits (instead) been charged to tax in accordance with Case I of Schedule D, any of that loss would have been available to be set off against them under section 393.

(5) The loss is to be treated for the purposes of the operation of section 436A in relation to the subsequent accounting period as if it were a loss arising from its gross roll-up business in the accounting period in which it arose.

(6) Subsections (7) and (8) make provision for a case where—

(a) the profits of the life assurance business of an insurance company for an accounting period are charged to tax under the I minus E basis,

(b) the profits of that business for its next accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and

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(c) that prevents the giving of relief in accordance with section 86(8) of the Finance Act 1989 (acquisition expenses relieved in fractions under section 76).

(7) Any relief which would have been so given in—

(a) the next accounting period, or

(b) any subsequent accounting period for which the profits of the company's life assurance business continue to be charged to tax in accordance with Case I of Schedule D,

may be given by set-off against any gains treated as accruing under section 213(1) of the 1992 Act at the end of the accounting period.

(8) But if the profits of the company's life assurance business for a subsequent accounting period are charged to tax under the I minus E basis, any relief not previously given under subsection (7) is to be treated for the purposes of the operation of section 76 in relation to the first subsequent accounting period for which profits are so charged as if it were an amount which is to be relieved under that section by virtue of section 86(8) and (9) of the Finance Act 1989.**]**

Textual Amendments

F844 S. 440C inserted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 9** (with Sch. 8 Pt. 2)

VALID FROM 27/12/2007

[F845 440D Modifications in relation to BLAGAB group reinsurers

Schedule 19ABA (which makes modifications of this Act in relation to BLAGAB group reinsurers) shall have effect.**]**

Textual Amendments

F845 S. 440D inserted (27.12.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/3430), **art. 3(2)**

[F846 441B Treatment of UK land.

(1) This section applies to land in the United Kingdom which—

(a) is held by a company as an asset linked to the company's overseas life assurance business, or

(b) is held by a company which is charged to tax under Case I of Schedule D in respect of its life assurance business as an asset by reference to the value of which benefits under any policy or contract are to be determined, where the policy or contract (or, in the case of a reinsurance contract, the underlying policy or contract) is held by a person not residing in the United Kingdom.

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(2) Income arising from land to which this section applies shall be treated for the purposes of this Chapter as referable to basic life assurance and general annuity business.

(3) Where (apart from this subsection) an insurance company would not be carrying on basic life assurance and general annuity business it shall be treated as carrying on such business if any income of the company is treated as referable to such business by subsection (2) above.

(4) A company may be charged to tax by virtue of this section—
- (a) notwithstanding section 439A, and
- (b) whether or not the income to which subsection (2) above relates is taken into account in computing the profits of the company for the purposes of any charge to tax in accordance with Case I of Schedule D.

(5) In this section "land" has the same meaning as in Schedule 19AA.**]**

Textual Amendments

F846 S. 441B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 32** (with Sch. 8 para. 55(2))

[F847 442A Taxation of investment return where risk reinsured.

(1) Where an insurance company reinsures any risk in respect of a policy or contract attributable to its basic life assurance and general annuity business, the investment return on the policy or contract shall be treated as accruing to the company over the period of the reinsurance arrangement and shall be charged to tax under Case VI of Schedule D.

(2) The Board may make provision by regulations as to the amount of investment return to be treated as accruing in each accounting period during which the reinsurance arrangement is in force.

(3) The regulations may, in particular, provide that the investment return to be treated as accruing to the company in respect of a policy or contract in any accounting period shall be calculated by reference to—
- (a) the aggregate of the sums paid by the company to the reinsurer during that accounting period and any earlier accounting periods by way of premium or otherwise;
- (b) the aggregate of the sums paid by the reinsurer to the company during that accounting period and any earlier accounting periods by way of commission or otherwise;
- (c) the aggregate amount of the net investment return treated as accruing to the company in any earlier accounting periods, that is to say, net of tax at such rate as may be prescribed; and
- (d) such percentage rate of return as may be prescribed.

(4) The regulations shall provide that the amount of investment return to be treated as accruing to the company in respect of a policy or contract in the final accounting period during which the policy or contract is in force is the amount, ascertained in accordance with regulations, by which the profit over the whole period during which

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the policy or contract, and the reinsurance arrangement, were in force exceeds the aggregate of the amounts treated as accruing in earlier accounting periods.

If that profit is less than the aggregate of the amounts treated as accruing in earlier accounting periods, the difference shall go to reduce the amounts treated by virtue of this section as arising in that accounting period from other policies or contracts, and if not fully so relieved may be carried forward and set against any such amounts in subsequent accounting periods.

(5) Regulations under this section—

(a) may exclude from the operation of this section such descriptions of insurance company, such descriptions of policies or contracts and such descriptions of reinsurance arrangements as may be prescribed;

(b) may make such supplementary provision as to the ascertainment of the investment return to be treated as accruing to the company as appears to the Board to be appropriate, including provision requiring payments made during an accounting period to be treated as made on such date or dates as may be prescribed; and

(c) may make different provision for different cases or descriptions of case.

(6) In this section "prescribed" means prescribed by regulations under this section.**]**

Textual Amendments

F847 S. 442A inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 34** (with Sch. 8 paras. 55(2), 57(2))

Modifications etc. (not altering text)

C482 S. 442A restricted (28.7.1995 with effect in accordance with reg. 1 of the affecting S.I.) by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **regs. 9**, 10

C483 S. 442A(1) modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 29

VALID FROM 19/02/2008

[F848 444AZA Transfers of life assurance business: Case VI losses of the transferor

(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in respect of that business under the I minus E basis,

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and

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(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits chargeable under section 436A (a "Case VI loss") shall instead be treated as a loss of the transferee (a "Case I loss") available to be set off against GRBP in relation to a period of account.

(3) For the purposes of subsection (2) above "GRBP", in relation to a period of account, is—

$$P \times \frac{GRBTL}{TL}$$

where—

P is the amount of such profits of the transferee's life assurance business for the period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable),

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of any Case VI loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.**]**

Textual Amendments

F848 Ss. 444AZA, 444AZB inserted (19.2.2008 with effect in accordance with art. 1(5) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 9**

VALID FROM 19/02/2008

[F848 444AZB Transfers of life assurance business: Case I losses of the transferor

(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

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(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3),

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax under the I minus E basis, and

(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) The relevant fraction of any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits of that business (a "Case I loss") shall instead be treated as a loss of the transferee (a "Case VI loss") available to be set off against the amount of such profits chargeable under section 436A for a period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable).

(3) For the purposes of subsection (2) above "the relevant fraction", in relation to a period of account, is—

$$\frac{GRBTL}{TL}$$

where—

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of the amount of any Case I loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.**]**

Textual Amendments

F848 Ss. 444AZA, 444AZB inserted (19.2.2008 with effect in accordance with art. 1(5) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 9**

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VALID FROM 10/07/2003

[F849 444AA Transfers of business: deemed periodical return

(1) This section applies where an insurance business transfer scheme has effect to transfer the whole of the long-term business of one person ("the transferor").

(2) Where the last period covered by a periodical return of the transferor ends otherwise than immediately before the transfer, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—
   (a) beginning immediately after the last period ending before the transfer which is covered by an actual periodical return of the transferor, and
   (b) ending immediately before the transfer,

   containing such entries as would have been included in an actual periodical return of the transferor covering that period (and so making that period a period of account of the transferor).

(3) Where the last period covered by a periodical return of the transferor (whether or not by virtue of subsection (2) above) ends immediately before the transfer, there is to be deemed for the relevant purpose to be a periodical return of the transferor—
   (a) covering the time of the transfer, and
   (b) containing such entries as would have been included in an actual periodical return covering the time of the transfer,

   (and so making the time of the transfer a period of account of the transferor for the relevant purpose).

(4) Where the last period covered by a periodical return of the transferor ends after the transfer, the periodical return covering that period is to be ignored for all purposes of corporation tax other than the relevant purpose.

(5) In this section "the relevant purpose" means determining for the purposes of section 83(2B) of the Finance Act 1989 whether a transfer is brought into account as part of total expenditure.

(6) For the purposes of this section "insurance business transfer scheme" includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).**]**

Textual Amendments

F849 S. 444AA inserted (with effect in accordance with Sch. 33 para. 18(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 18(1)**

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VALID FROM 10/07/2003

[F850 444AB Transfers of business: charge on transferor retaining assets

(1) This section applies where, immediately after an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to one or more others ("the transferee" or "the transferees"), the transferor—
  (a) does not carry on long-term business, but
  (b) holds assets which, immediately before the transfer, were assets of its long-term insurance fund.

(2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor during the accounting period beginning immediately after the day of the transfer.

(3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period ending with the day of the transfer, the taxable amount is the whole of the previously untaxed amount.

(4) Otherwise, the taxable amount is the non-BLAGAB fraction of the previously untaxed amount.

(5) The previously untaxed amount is the lesser of—
  (a) the fair value of such of the assets held by the transferor immediately after the transfer as were assets of its long-term insurance fund immediately before the transfer, and
  (b) the amount by which the fair value of the assets of the transferor's long-term insurance fund immediately before the transfer exceeds the amount of the relevant pre-transfer liabilities.

(6) In subsection (5) above "fair value", in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.

(7) Subject to subsection (8) below, the amount of the relevant pre-transfer liabilities is the aggregate of the amounts shown in column 1 of lines 14 and 49 of Form 14 in the periodical return of the transferor covering the period of account ending immediately before the transfer.

(8) If the amount of the liabilities transferred exceeds the value of the assets so transferred, as brought into account for the first period of account of the transferee (or any of the transferees) ending after the transfer, the amount of the relevant pre-transfer liabilities is the amount arrived at by deducting the excess from the aggregate of the amounts shown as mentioned in subsection (7) above.

(9) For the purposes of subsection (4) above the non-BLAGAB fraction of the previously untaxed amount is the fraction of which—
  (a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and
  (b) the denominator is the amount of the liabilities transferred.

(10) References in this section to assets held by the transferor after the transfer do not include any held on trust for the transferee or any of the transferees.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(11) For the purposes of this section "insurance business transfer scheme" includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).**]**

Textual Amendments

F850 S. 444AB inserted (with effect in accordance with Sch. 33 para. 19(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 19(1)**

VALID FROM 22/07/2004

[F851 444ABA Subsequent charge in certain cases within s.444AB

(1) This section applies where—

(a) section 444AB applies in relation to a transfer in the case of which there are retained liabilities, and

(b) in any accounting period of the transferor beginning after the day of the transfer there is a reduction in the amount of the retained liabilities occasioned otherwise than by the making of a payment in or towards their discharge.

(2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor in the accounting period in which the reduction occurs.

(3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period ending with the day of the transfer, the taxable amount is the whole amount of the reduction.

(4) Otherwise the taxable amount is the non-BLAGAB fraction of the amount of the reduction.

(5) The non-BLAGAB fraction of the amount of the reduction is the fraction of which—

(a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and

(b) the denominator is the amount of the liabilities transferred.

(6) Where in any accounting period of the transferor beginning after the transfer there is an increase in the amount of the retained liabilities, this section applies in relation to subsequent accounting periods of the transferor as if the amount of the retained liabilities were reduced by the amount of the increase.

(7) Where an amount is shown as post-transfer reduction liabilities in the transferor's accounts for any accounting period beginning after the transfer, this section applies as if the amount of the retained liabilities at the end of that accounting period (and the beginning of the next) were increased by the amount so shown.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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(8) In subsection (7) above "post-transfer reduction liabilities" means liabilities of the transferor to make payments to relevant persons which, in accordance with the terms of the insurance business transfer scheme, have arisen in consequence of a reduction in the amount of the retained liabilities at any time after the transfer.

(9) In subsection (8) above "relevant persons" means—

(a) if the transferor's life assurance business immediately before the transfer was mutual business, persons who were policy holders or annuitants, or members of the transferor, at that time, and

(b) in any other case, persons who were policy holders or annuitants at that time.**]**

Textual Amendments

F851 S. 444ABA inserted (with effect in accordance with Sch. 7 para. 3(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 7 para. 3(1)**

VALID FROM 16/12/2010

[F852 444ABA Non-profit fund transferred assets

(1) For the purposes of section 444AB the relevant amount in relation to assets that are non-profit fund transferred assets is—

$$FVA - (ABTO + TL)$$

where—

FVA is the fair value of the assets on the transfer date,

ABTO is any amount brought into account in respect of the assets as a business transfer-out and shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor for the period of account of the transferor including the transfer date, and

TL is the amount of any non-profit fund transferred liabilities which are shown (or treated as shown) in any of lines 17, 21 to 23 and 31 to 38, but not in line 61, in Form 14 in the periodical return for the period of account of the transferor ending (or treated as ending by section 444AA) immediately before the transfer date or, if there is no period of account of the transferor so ending (or treated as so ending), the amount of any liabilities which would be so shown if one did.

(2) In subsection (1) "non-profit fund transferred liabilities" means such of the liabilities of the transferor's long-term insurance fund as are transferred from the transferor to the transferee by the insurance business transfer scheme and were, immediately before their transfer, liabilities of a non-profit fund of the transferor.

(3) See section 444AA for the meaning of "the transfer date" in this section.**]**

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Textual Amendments

F852 S. 444ABAA inserted (with effect in accordance with s. 15(11) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **s. 15(10)**

VALID FROM 19/07/2007

[F853 444ABB Retained assets

(1) For the purposes of section 444AB the relevant amount in relation to assets that are retained assets is the lesser of FVA and UTA, where—

(a) FVA is the fair value of the assets on the transfer date, and

(b) UTA is the amount by which the fair value of the assets of the long-term insurance fund of the transferor immediately before the transfer date exceeds the amount shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor covering the transfer date.

(2) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F853 Ss. 444AB-444ABC substituted for ss. 444AB, 444ABA (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(1)**; S.I. 2008/379, **art. 2**

VALID FROM 19/02/2008

[F854 444ABC Transfers of business: election for transferee to pay tax of transferor

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If the transferor and the transferee jointly elect, the transferee (and not the transferor) is chargeable to any amount of additional corporation tax to which the transferor would otherwise be chargeable by virtue of section 444AB(4) in relation to relevant non-transferred assets.

(3) An election under subsection (2) above—

(a) is to be irrevocable, and

(b) is to be made by notice to an officer of Revenue and Customs no later than the end of the period of 90 days beginning with the day following the transfer date,

and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer. Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Where an election under subsection (2) above has been made, the transferor must inform the transferee of—
  (a) the amount of any additional corporation tax to which the transferor considers the election to apply, and
  (b) the day on which that tax is due and payable,
no later than the end of the period of 8 months beginning with the day following the transfer date.

(5) Tax chargeable on the transferee by virtue of an election under subsection (2) above—
  (a) is due in accordance with section 59D of the Management Act [M1218] on the day on which it would have been due if no election had been made, and
  (b) for the purposes of that section, is to be treated as tax payable by the transferor (and not as tax payable by the transferee).

(6) See section 444AA for the meaning of "the transfer date" in this section.]

Textual Amendments

F854 S. 444ABBA inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 14**

Marginal Citations

M1218 1970 c. 9

VALID FROM 19/07/2007

[F855 444ABC Transfer scheme transferring part of business: transferor

(1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person ("the transferor") to another person ("the transferee") and the condition in subsection (2) below is met.

(2) That condition is that any of the assets of the transferor's long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are not, immediately after their transfer—
  (a) if the transferee is an insurance company, assets of the transferee's long-term insurance fund, or
  (b) if the transferee is not an insurance company, assets of a with-profits fund of the transferee,
("relevant non-transferred assets").

(3) The relevant amount in relation to the relevant non-transferred assets (see subsection (4) below) is to be taken into account under section 83(2) of the Finance Act 1989 as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account covering the transfer date.

(4) The relevant amount in relation to the relevant non-transferred assets is—

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$$FVA - BTO$$

where

FVA is the fair value of the assets on the transfer date, and

BTO is any amount brought into account in respect of the assets as a business transfer-out.

(5) See section 444AA for the meaning of "the transfer date" in this section.]

Textual Amendments

F855 Ss. 444AB-444ABC substituted for ss. 444AB, 444ABA (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(1)**; S.I. 2008/379, **art. 2**

VALID FROM 19/07/2007

[F856 444ABD Transferor's period of account including transfer

(1) Any profits representing the amount by which—

(a) the value of the liabilities transferred by an insurance business transfer scheme, exceeds

(b) the value of the assets transferred by the insurance business transfer scheme shown (or treated as shown) in line 32 of the periodical return of the transferor for the period of account of the transferor including the transfer date,

are to be taken into account as profits of that period of account.

(2) See section 444AA for the meaning of "the transfer date" in this section.]

Textual Amendments

F856 S. 444ABD inserted (with effect in accordance with Sch. 9 para. 17(4) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 5**

VALID FROM 10/07/2003

444AC Transfers of business: modification of s.83(2) FA 1989

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If—

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(a) the element of the transferee's line 15 figure representing the transferor's long-term insurance fund, exceeds

(b) the amount of the liabilities to policy holders and annuitants transferred to the transferee,

the excess is not to be regarded as other income of the transferee for the purposes of section 83(2)(d) of the Finance Act 1989.

(3) In this section and section 444AD "the element of the transferee's line 15 figure representing the transferor's long-term insurance fund" means so much of—

(a) the amount which is brought into account by the transferee as other income in the period of account of the transferee in which the transfer takes place, as represents

(b) the assets transferred to the transferee.

VALID FROM 19/07/2007

[F857 444ACZA Transfer schemes transferring part of business: reduction in income of transferee

(1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person ("the transferor") to another person ("the transferee") and the condition in subsection (2) below is met.

(2) The condition is that the transferor did not carry on life assurance business that is mutual business during the period of account of the transferor covering the transfer date.

(3) The amount which (apart from this section) would be regarded as other income of the transferee for the purposes of section 83(2)(e) of the Finance Act 1989 for the period of account of the transferee which includes the transfer date is to be reduced by an amount equal to the transferred surplus.

(4) In subsection (4) above "the transferred surplus" means such part of the amount shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the last period of account of the transferor ending before the transfer date as it is just and reasonable to regard as being attributable to the transfer.

(5) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F857 Ss. 444AC, 444ACZA substituted for s. 444AC (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 6(1)**; S.I. 2008/379, **art. 2**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 20/07/2005

[F858 444AG Transfers of business: transferor shares are assets of transferee's long-term insurance fund etc

(1) This section applies where an insurance business transfer scheme (see section 444AC(11)) has effect to transfer long-term business from one company ("the transferor") to another ("the transferee").

(2) If—

(a) immediately before the transfer, the assets of the long-term insurance fund of the transferee comprise or include relevant shares or an interest in such shares, and

(b) the fair value (see section 444AC(11)) of the relevant shares, or of that interest, is reduced (whether or not to nil) as a result of the transfer,

an amount equal to that reduction in fair value is to be taken into account under section 83(2) of the Finance Act 1989 as a receipt of the transferee of the period of account of the transferee in which the transfer takes place.

(3) But if—

(a) the assets transferred to the transferee under the transfer comprise or include assets ("the relevant assets") which, immediately before the transfer,—

(i) were assets of the transferor, but

(ii) were not assets of the transferor's long-term insurance fund, and

(b) in respect of the transfer of the relevant assets, an amount is—

(i) brought into account by the transferee as other income of the transferee of the period of account of the transferee in which the transfer takes place, and

(ii) taken into account in computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of the transferee's life assurance business and any category of its life assurance business to which the amount is referable,

the amount taken into account under section 83(2) of the Finance Act 1989 by virtue of subsection (2) above shall be reduced (but not below nil) by an amount equal to the amount referred to in paragraph (b) above.

(4) In subsection (2) above "relevant shares" means—

(a) some or all of the shares in the transferor, or

(b) some or all of the shares in a company (whether or not an insurance company) which owns, directly or indirectly,—

(i) some or all of the shares in the transferor, or

(ii) an interest in some or all of those shares.

(5) In subsection (4) above "shares", in relation to a company, includes any interests in the company possessed by members of the company.**]**

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Textual Amendments

F858 S. 444ACA inserted (with effect in accordance with Sch. 9 para. 8(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 8(1)**

VALID FROM 10/07/2003

444AD Transfers of business: modification of s.83(2B) FA 1989

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If the transferor and the transferee jointly elect, section 83(2B) of the Finance Act 1989 does not apply to the transferor by reason of the transfer as respects so much of the value of the assets to which it would otherwise so apply as does not exceed the amount specified in subsection (4) below.

(3) An election under subsection (2) above—
- (a) is irrevocable, and
- (b) is to be made by notice to an officer of the Board no later than the end of the period of 28 days beginning with the day following that on which the transfer takes place;

and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer.

Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

(4) The amount referred to in subsection (2) above is the amount by which—
- (a) the fair value of the assets of the long-term insurance fund of the transferee immediately after the transfer, is greater than
- (b) the element of the transferee's line 15 figure representing the transferor's long-term insurance fund.

(5) In subsection (4) above "fair value", in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.

VALID FROM 10/07/2003

444AE Transfers of business: modification of s.83ZA FA 1989

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If a contingent loan made to the transferor (within the meaning of subsection (1) of section 83ZA of the Finance Act 1989) is transferred to the transferee, that section has effect as if—

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(a) the contingent loan had become repayable by the transferor immediately before the transfer, and

(b) the contingent loan were made to the transferee immediately after the transfer.

VALID FROM 19/07/2007

444AEA Transfer schemes: anti-avoidance rule

(1) This section applies where—

(a) as a result of the whole or any part of transfer scheme arrangements involving the transfer of long-term business from one person ("the transferor") to another ("the transferee") a Case I advantage is obtained by the transferor or the transferee (or by both), and

(b) the sole or main purpose, or one of the main purposes, of the whole or any part of the transfer scheme arrangements is the obtaining of that Case I advantage.

(2) In subsection (1) above "transfer scheme arrangements" means an insurance business transfer scheme ("the relevant transfer scheme") together with any relevant associated operations.

(3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AEB), the amount of the transferor's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account of the transferor covering the transfer date.

(4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AEC), the amount of the transferee's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the first period of account of the transferee ending after the transfer date.

(5) In this section and sections 444AEB and 444AEC "relevant associated operations", in relation to the relevant transfer scheme, means—

(a) any other insurance business transfer scheme,

(b) any contract of reinsurance,

(c) any reconstruction or amalgamation involving the transferor, a dependant of the transferor which is an insurance undertaking or the transferee, or

(d) any surplus-increasing transfer of assets,

which is effected in connection with the relevant transfer scheme.

(6) In subsection (5) above—

"dependant" and "insurance undertaking" have the same meaning as in the Insurance Prudential Sourcebook, and

"surplus-increasing transfer of assets" means a transfer of assets of the transferor's long-term insurance fund to the transferee which is not brought into account for any period of account of the transferee but increases the amount of total surplus shown in line 39 of Form 58 in any periodical return of the transferee.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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(7) See section 444AA for the meaning of "the transfer date" in this section.

VALID FROM 19/07/2007

444AEB Case I advantage: transferor

(1) A Case I advantage is obtained by the transferor if—
  (a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or
  (b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.

(2) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—
  (a) the amounts (if any) by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, and
  (b) the amounts (if any) by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.

(3) This section applies to a period of account if it is—
  (a) the period of account of the transferor covering the transfer date,
  (b) any earlier period of account of the transferor, or
  (c) where any relevant associated operations are effected in any later period of account, that period of account.

(4) In this section and section 444AEC "Case I profits" and "Case I losses" means profits and losses computed in accordance with the provisions of Case I of Schedule D.

(5) See section 444AA for the meaning of "the transfer date", and section 444AEA for the meaning of "relevant associated operations", in this section.

VALID FROM 19/07/2007

444AEC Case I advantage: transferee

(1) A Case I advantage is obtained by the transferee if—
  (a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or
  (b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.

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(2) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—
  (a) the amount by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, or
  (b) the amount by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.

(3) This section applies to a period of account if it is—
  (a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),
  (b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or
  (c) any intervening period of account.

(4) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations" and section 444AEB for the meaning of "Case I profits" and "Case I losses", in this section.

VALID FROM 19/02/2008

[F859 444AECA Effects of transfer scheme arrangements: anti-avoidance rule

(1) This section applies where—
  (a) as a result of any part of transfer scheme arrangements involving the transfer of long-term business from one person ("the transferor") to another ("the transferee") a Case I advantage is obtained by the transferor or the transferee (or by both), and
  (b) the sole or main purpose, or one of the main purposes, of that part of the transfer scheme arrangements is the obtaining of that Case I advantage.

(2) In subsection (1) above "transfer scheme arrangements" has the same meaning as in section 444AEA.

(3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AECB), the amount of the transferor's Case I advantage (see subsection (3) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor—
  (a) to the extent that the advantage is obtained by the transferor in the period of account covering the transfer date or any earlier period of account—
    (i) for the period of account of the transferor ending (or treated as ending) immediately before the transfer date, or
    (ii) where there is no such period, for the period of account of the transferor including the transfer date, and
  (b) to the extent that the advantage is obtained by the transferor in any later period of account of the transferor in which any relevant associated operations are effected, for that later period of account.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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(4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AECC), the amount of the transferee's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the period of account of the transferee in which the advantage is obtained by the transferee.

(5) See section 444AA for the meaning of "the transfer date", and section 444AEA for the meaning of "relevant associated operations", in this section.**]**

Textual Amendments

F859 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/02/2008

[F859 444AECB Effect of transfer scheme arrangements: Case I advantage transferor

(1) A Case I advantage is obtained by the transferor if—

(a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or

(b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater or the Case I losses to be less than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—

(a) the amounts (if any) by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, and

(b) the amounts (if any) by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—

(a) the period of account of the transferor covering the transfer date,

(b) any earlier period of account of the transferor, or

(c) where any relevant associated operations are effected in any later period of account, that period of account.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In this section and section 444AECC "the relevant part of the arrangements" means, in relation to a Case I advantage, the part of the transfer scheme arrangements as a result of which the Case I advantage is obtained.

(6) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations" and section 444AEB for the meaning of "Case I profits" and "Case I losses" and "the relevant time", in this section.**]**

Textual Amendments

F859 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/02/2008

[F859 444AEC Effects of transfer scheme arrangements: Case I advantage transferee

(1) A Case I advantage is obtained by the transferee if—
  (a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or
  (b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for the any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater, or the Case I losses to be less, than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—
  (a) the amount by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, or
  (b) the amount by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—
  (a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),
  (b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or
  (c) any intervening period of account.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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(5) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations", section 444AEB for the meaning of "Case I profits" and "Case I losses" and "the relevant time" and section 444AECB for the meaning of "the relevant part of the arrangements", in this section.**]**

Textual Amendments

F859 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/07/2007

444AEDClearance: no avoidance or group advantage

(1) Section 444AEA does not apply in relation to the transferor or the transferee if, on an application under this section, the Commissioners for Her Majesty's Revenue and Customs ("the HMRC Commissioners") have given a notice under subsection (2) below.

(2) A notice under this subsection is a notice stating that the HMRC Commissioners are satisfied—
   (a) that the obtaining of a Case I advantage by the applicant is not the sole or main purpose of the whole or any part of the transfer scheme arrangements, or
   (b) that the transferor and the transferee are members of the same group of companies and that there is no advantage to the group arising from any Case I advantage obtained by the transferor or by the transferee.

(3) For the purposes of this section there is no advantage to a group arising from any Case I advantage obtained by the transferor or by the transferee if—
   (a) as a result of transfer scheme arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group of companies, and
   (b) the amount (or aggregate amount) of that increase is not less than the reduction in the liability to corporation tax of the transferor or the transferee (or both) arising from the obtaining of the Case I advantage.

(4) An application under this section must be in writing and contain particulars of the transfer scheme arrangements.

(5) The HMRC Commissioners may by notice require the applicant to provide further particulars in order to enable them to determine the application.

(6) A requirement may be imposed under subsection (5) above within 30 days of the receipt of the application or of any further particulars required under that subsection.

(7) If a notice under subsection (5) above is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.

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(8) The HMRC Commissioners must give notice of their decision on an application under this section to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of that notice being complied with.

(9) If the HMRC Commissioners—

(a) give notice to the applicant under subsection (8) above that they are not satisfied as mentioned in subsection (2) above, or

(b) do not comply with subsection (8) above,

the applicant may require them to transmit the application to the Special Commissioners.

(10) A requirement under subsection (9) above must be imposed within 30 days of the giving of the notice or the failure to comply and must be accompanied by any notice given under subsection (5) above and further particulars provided pursuant to any such notice.

(11) Any notice given by the Special Commissioners has effect for the purposes of subsection (1) above as if it were given by the HMRC Commissioners.

(12) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners or the Special Commissioners, any resulting notice that they are satisfied as mentioned in subsection (2) above is void.

(13) For the purposes of this section two companies are members of the same group of companies if they are for the purposes of Chapter 4 of Part 10.

VALID FROM 19/07/2006

[F860 Surpluses of mutual and former mutual businesses

Textual Amendments

F860 Ss. 444AF-444AL and preceding cross-heading inserted (with effect in accordance with Sch. 11 para. 5(2)-(14) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 5(1)**

444AF Demutualisation surplus: life assurance business

(1) This section applies in relation to a period of account of an insurance company ("the relevant period") if—

(a) at any time in the relevant period the company carries on life assurance business that is not mutual business,

(b) the company has an amount of undistributed demutualisation surplus for the relevant period (see subsection (7)), and

(c) there is a reduction in the amount of the company's unappropriated surplus over the relevant period (see section 444AI).

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(2) Where this section applies in relation to the relevant period, there shall be deemed for the purposes of section 83(2) of the Finance Act 1989 to be brought into account for the relevant period as an increase in the value of the assets of the company's long-term insurance fund whichever of the following amounts is the smallest—
- (a) the amount of the reduction mentioned in subsection (1)(c) above;
- (b) the amount of the company's undistributed demutualisation surplus for the relevant period;
- (c) the amount of the company's relevant receipts reduction for the relevant period (see section 444AJ).

(3) If the company prepares for the relevant period one or more such separate revenue accounts as are mentioned in section 83A(2)(b) of the Finance Act 1989—
- (a) subsection (2) above shall apply separately in relation to each separate revenue account which is recognised for the purposes of section 83 of that Act; and
- (b) for that purpose, any amount that falls to be determined in order to determine—
  - (i) whether that subsection applies in relation to any such separate revenue account, and
  - (ii) if so, the amount to be brought into account under that subsection in relation to that account,

  shall be determined using only amounts or items which relate to the separate revenue account concerned.

(4) In applying subsection (2) above in relation to a revenue account or separate revenue account which—
- (a) is recognised for the purposes of section 83 of that Act, and
- (b) is one in relation to which sections 432C and 432D apply,

that subsection shall have effect as if for "smallest" there were substituted smaller and as if paragraph (c) were omitted.

(5) This section shall have effect—
- (a) for the purposes of computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of the company's life assurance business, and
- (b) for the purposes of so computing the profits of any category of the company's life assurance business chargeable to tax under Case VI of Schedule D.

(6) But for the purposes mentioned in subsection (5)(b) above, this section and section 444AG have effect subject to the modification in section 444AH; and the Corporation Tax Acts have effect accordingly (so that there may, in particular, be a difference between—
- (a) the amount deemed to be brought into account by virtue of subsection (2) above for a period of account for those purposes, and
- (b) the amount so deemed to be brought into account for that period of account for the purposes mentioned in subsection (5)(a) above).

(7) For the purposes of this section, the undistributed demutualisation surplus of an insurance company for the relevant period is—
- (a) an amount equal to (UDSP – AD + DTSI – DTSO); or
- (b) if that amount is a negative amount, nil.

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For this purpose—

UDSP is the undistributed demutualisation surplus of the company for the period of account immediately preceding the relevant period,

AD is any amount deemed under this section to be brought into account for the period of account immediately preceding the relevant period as an increase in the value of the assets of the company's long-term insurance fund,

DTSI is the total amount of any demutualisation transfer surpluses accruing to the company during the relevant period (see section 444AG),

DTSO is the total amount of any demutualisation transfer surpluses accruing to any other company (or companies) during the relevant period on a transfer (or transfers) of life assurance business by the company to that other company (or companies).

444AG Section 444AF: "demutualisation transfer surplus"

(1) For the purposes of section 444AF and this section, a demutualisation transfer surplus accrues to an insurance company where—

(a) life assurance business is transferred to the company by a person ("the transferor"),

(b) after the transfer, the company carries on the transferred business otherwise than as mutual business, and

(c) the condition in subsection (2) below is satisfied in relation to the transfer.

(2) The condition is that—

(a) immediately before the transfer, the transferor carried on the transferred business as mutual business, or

(b) where paragraph (a) above does not apply, some or all of the transferred business was carried on by an insurance company as mutual business at a time on or after 1st January 1990 and before the transfer ("former mutual business").

(3) The demutualisation transfer surplus accrues to the company on the date of the transfer.

(4) The amount of the demutualisation transfer surplus is given by subsection (5) or (6) below.

(5) Where subsection (2)(a) above applies, the amount of the demutualisation transfer surplus is—

(a) where the whole of the transferor's life assurance business was transferred to the company under the transfer, the aggregate of—

(i) the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer, and

(ii) the amount of any added surplus accruing to the company in connection with the transfer (see subsection (10));

(b) otherwise, a just and reasonable portion of that aggregate amount, having regard to how much of the transferor's life assurance business was transferred to the company under the transfer.

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(6) Where subsection (2)(b) above applies, the amount of the demutualisation transfer surplus is—
- (a) where the whole of the transferor's life assurance business was transferred to the company under the transfer and all of the transferred business is former mutual business, the former mutual surplus of the transferor on the transfer date (see subsection (7));
- (b) otherwise, so much of that former mutual surplus as it is just and reasonable to attribute to the company, having regard in particular to—
  - (i) how much of the transferor's life assurance business was transferred to the company under the transfer, and
  - (ii) how much of the transferred business is former mutual business.

(7) For the purposes of subsection (6) above, the former mutual surplus of the transferor on the transfer date is—
- (a) the amount given by subsection (8) below, or
- (b) if less, the amount given by subsection (9) below.

(8) The amount given by this subsection is the total amount of any demutualisation transfer surpluses accruing to the transferor—
- (a) on or after 1st January 1990, and
- (b) on or before the date of the transfer.

(9) The amount given by this subsection is the lowest amount of unappropriated surplus of the transferor at the end of any period of account ending—
- (a) on or after the date of the last occasion on which a demutualisation transfer surplus accrued to it as mentioned in subsection (8) above, and
- (b) on or before the date of the transfer.

(10) For the purposes of this section, added surplus accrues to the company in connection with the transfer if—
- (a) an amount of assets is received by the company in connection with the transfer, no later than six months after the date of the transfer,
- (b) the amount is not brought into account by the company,
- (c) the amount is added to the unappropriated surplus of the company, and
- (d) the amount does not derive from any unappropriated surplus of the transferor;

and the amount of the added surplus is the amount referred to in paragraphs (a) to (d) above.

444AH Modification of section 444AG etc for Case VI businesses

(1) The modification in this section has effect for the purposes mentioned in section 444AF(5)(b) only.

(2) In relation to any demutualisation transfer surplus accruing to a company in a post-2002 period of account—
- (a) the references in section 444AG(5) to the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer shall be taken to be references to—
  - (i) the amount of that unappropriated surplus, or

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(ii) if less, the unappropriated surplus of the transferor at the end of the period of account immediately preceding the first post-2002 period of account of the transferor; and

(b) the references in sections 444AF and 444AG to the amount of any demutualisation transfer surplus are to have effect accordingly.

(3) In this section "post-2002 period of account", in relation to an insurance company, means a period of account of the company beginning on or after 1st January 2003 and ending on or after 9th April 2003.

444AI Section 444AF: "reduction in company's unappropriated surplus"

(1) For the purposes of section 444AF—

(a) there is a reduction in the amount of the company's unappropriated surplus over the relevant period if CUS is less than (OUS + TSI – TSO);

(b) the amount of that reduction is the amount by which CUS is less than (OUS + TSI – TSO).

(2) In this section—

CUS is the amount of the company's unappropriated surplus at the end of the relevant period,

OUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the relevant period,

TSI is the total amount of any transfer surpluses accruing to the company during the relevant period (see subsections (3) to (7)),

TSO is the total amount of any transfer surpluses accruing to any other company (or companies) during the relevant period on a transfer (or transfers) of life assurance business by the company to that other company (or companies).

(3) For the purposes of this section, a transfer surplus accrues to an insurance company where life assurance business is transferred to the company by a person ("the transferor").

(4) The transfer surplus accrues to the company on the date of the transfer.

(5) The amount of the transfer surplus is equal to so much of the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer as is transferred to the company under the transfer.

(6) But if, immediately before the transfer, the transferor carried on the transferred business as mutual business, the amount of the transfer surplus is the aggregate of—

(a) the amount given by subsection (5) above, and

(b) the amount of any added surplus accruing to the company in connection with the transfer.

(7) Subsection (10) of section 444AG applies for the purposes of subsection (6) above as it applies for the purposes of that section.

444AJ Sections 444AF and 444AK: "relevant receipts reduction"

(1) For the purposes of sections 444AF and 444AK, the amount of the company's relevant receipts reduction for the relevant period is to be calculated by—

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(a) determining, in the case of each with-profits fund of the company, the amount given by subsection (2) or (6) below for the relevant period, and

(b) aggregating each of those amounts.

(2) The amount, in the case of a fund other than a policy holder participation fund, is—

(a) where the gross transfer to non-technical account for the fund for the relevant period (see subsections (3) and (4)) is greater than the post-policy holder surplus for the fund for the relevant period (see subsection (5)), the amount of the difference;

(b) otherwise, nil.

(3) In this section "the gross transfer to non-technical account" means the amount shown in line 13 of Form 58 for the fund.

(4) But if—

(a) there is a transfer from a with-profits fund of the company to another fund of the company ("the initial transfer") which is shown in (or included in an amount shown in) line 14 of Form 58 for the with-profits fund,

(b) there is a transfer from a fund of the company (whether or not the other fund mentioned in paragraph (a) above) to the non-technical account which is shown in (or included in an amount shown in) line 13 of Form 58 for that fund, and

(c) the transfer to the non-technical account can reasonably be regarded as connected with the initial transfer,

the amount of the gross transfer to non-technical account for the relevant period given by subsection (3) above in the case of the with-profits fund is to be increased by the amount transferred to the non-technical account.

(5) In this section "post-policy holder surplus" means an amount equal to—

$$SA - TAP$$

where—

SA is—

(a) the amount shown in line 34 of Form 58 for the fund (surplus arising since last valuation), or

(b) if that amount is a negative amount, nil;

TAP is the amount shown in line 46 of Form 58 for the fund (total allocated to policy holders).

(6) The amount, in the case of a policy holder participation fund, is—

(a) where TAP is greater than SA, the amount of the difference;

(b) otherwise, nil;

and for this purpose "SA" and "TAP" have the same meaning as in subsection (5) above.

(7) References in this section to Form 58 are references to that Form in the periodical return of the company for the relevant period.

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(8) In this section "policy holder participation fund" means a fund in the case of which an amount equal to the amount shown in line 34 of Form 58 for the fund is allocated to policy holders for the relevant period.

444AK Mutual surplus: Case VI categories of life assurance business

(1) This section applies if at any time in a period of account of an insurance company ("the relevant period")—
  (a) the company carries on life assurance business as mutual business, and
  (b) the company carries on one or more categories of life assurance business chargeable to tax under Case VI of Schedule D.

(2) If there is a reduction in the amount of the company's unappropriated surplus over the relevant period, there shall be deemed for the purposes of section 83(2) of the Finance Act 1989 to be brought into account for the relevant period as an increase in the value of the assets of the company's long-term insurance fund—
  (a) the amount of that reduction, or
  (b) if less, the amount of the company's relevant receipts reduction for the relevant period (see section 444AJ).

(3) But subsection (2) above shall have effect only for the purposes of computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits for the relevant period of any category of the company's life assurance business chargeable to tax under Case VI of Schedule D.

(4) If the company prepares for the relevant period one or more such separate revenue accounts as are mentioned in section 83A(2)(b) of the Finance Act 1989—
  (a) subsection (2) above shall apply separately in relation to each separate revenue account which is recognised for the purposes of section 83 of that Act; and
  (b) for that purpose, any amount that falls to be determined in order to determine—
    (i) whether that subsection applies in relation to any such separate revenue account, and
    (ii) if so, the amount to be brought into account under that subsection in relation to that account,

  shall be determined using only amounts or items which relate to the separate revenue account concerned.

(5) In applying subsection (2) above in relation to a revenue account or separate revenue account which—
  (a) is recognised for the purposes of section 83 of that Act, and
  (b) is one in relation to which sections 432C and 432D apply,

  that subsection shall have effect as if paragraph (b) and the word "or" before it were omitted.

(6) For the purposes of this section, there is a reduction in the amount of the company's unappropriated surplus over the relevant period if—
  (a) CUS is less than OUS, and
  (b) CUS is less than UUS.

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(7) The amount of that reduction is—

(a) the amount by which CUS is less than OUS, or

(b) if OUS is greater than UUS, the amount by which CUS is less than UUS.

(8) In this section—

CUS is the amount of the company's unappropriated surplus at the end of the relevant period,

OUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the relevant period,

UUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the first period of account of the company to begin on or after 1st January 2003 and to end on or after 9th April 2003.

444AL Interpretation of sections 444AF to 444AK

(1) This section applies for the purposes of sections 444AF to 444AK.

(2) References to mutual business, in relation to any time, include business which at that time is treated for the purposes of section 432E as mutual business.

(3) "Unappropriated surplus", in relation to a period of account of an insurance company, means an unappropriated surplus on valuation as shown in the periodical return of the company for the period of account.

(4) References to the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer are, where a period of account of the transferor does not end at that time, references to the unappropriated surplus on valuation that would have been shown in a periodical return of the transferor for that period had such a return been drawn up.**]**

[[F861] *Provisions applying in relation to overseas life insurance companies****]***

Textual Amendments

F861 S. 444B and cross heading inserted (27.7.1993) by 1993 c.34, **s. 97(1)**

[F862]444B Modification of Act in relation to overseas life insurance companies.

Schedule 19AC (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.

Textual Amendments

F862 S. 444B and cross heading inserted (27.7.1993) by 1993 c. 34, **s. 97(1)**

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[[F863]444CModification of section 440.

(1) Where the company mentioned in section 440(1) is an overseas life insurance company, section 440 shall have effect with the modifications in subsections (2) and (3) below.

(2) Subsection (4) shall be treated as if—
- (a) paragraph (c) were omitted;
- (b) in paragraphs (a), (b), (d) and (e), the words "UK assets" were substituted for the word "assets"; and
- (c) at the end there were inserted the following paragraphs—
  - (f) section 11C assets;
  - (g) non-UK assets."

(3) The following subsection shall be treated as inserted at the end of the section—

(6) For the purposes of this section—
- (a) UK assets are—
  - (i) section 11(2)(b) assets;
  - (ii) section 11(2)(c) assets; or
  - (iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;
- (b) section 11C assets are assets—
  - (i) (in a case where section 11C (other than subsection (9)) applies) of the relevant fund, other than UK assets; or
  - (ii) (in a case where that section including that subsection applies) of the relevant funds, other than UK assets;
- (c) non-UK assets are assets which are not UK assets or section 11C assets;

and any expression used in this subsection to which a meaning is given by section 11A has that meaning."

(4) Where one or each of the companies mentioned in section 440(2) is an overseas life insurance company, section 440(2)(b) and (4) shall have effect as if for "categories", in each place where the word occurs, there were substituted "paragraphs".

(5) Where the transferor company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately before the acquisition, with the modifications in subsections (2) and (3) above.

(6) Where the acquiring company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately after the acquisition, with the modifications in subsections (2) and (3) above.**]**

Textual Amendments

F863 S. 444C inserted (27.7.1993 with effect as mentioned in s. 98(2)(3) of the ameding Act) by 1993 c. 34, **s. 98(1)(2)(3)**

[[F864]444DQualifying distributions, tax credits, etc.

(1) Subsection (2) below applies where—

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(a) an overseas life insurance company receives a qualifying distribution made by a company resident in the United Kingdom; and

(b) the distribution (or part of the distribution)—

(i) would fall within paragraph (a), (aa) or (ab) of section 11(2) (as section 11(2) has effect by virtue of Schedule 19AC) but for the exclusion contained in that paragraph; and

(ii) is referable to life assurance business.

(2) Where this subsection applies the recipient shall be treated for the purposes of the Corporation Tax Acts as entitled to such a tax credit in respect of the distribution (or part of the distribution) as it would be entitled to under section 231 if it were resident in the United Kingdom.

(3) Where part only of a qualifying distribution would fall within paragraph (ab) of section 11(2) (as section 11(2) has effect by virtue of Schedule 19AC) but for the exclusion contained in that paragraph, the tax credit to which the recipient shall be treated as entitled by virtue of subsection (2) above is the proportionate part of the tax credit to which the recipient would be so treated as entitled in respect of the whole of the distribution.

(4) In this section "UK distribution income" means income of an overseas life insurance company which consists of a distribution (or part of a distribution) in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution (or part) and the amount of that credit).

(5) An overseas life insurance company may, on making a claim for the purpose, require that any UK distribution income for an accounting period shall for all or any of the purposes mentioned in subsection (6) below be treated as if it were a like amount of profits chargeable to corporation tax; and where it does so—

(a) the provisions mentioned in subsection (6) below shall apply to reduce the amount of the UK distribution income; and

(b) the company shall be entitled to have paid to it the amount of the tax credits comprised in the amount of UK distribution income which is so reduced.

(6) The purposes for which a claim may be made under subsection (5) above are those of—

(a) the setting of trading losses against total profits under section 393A(1);

(b) the deduction of charges on income under section 338 or paragraph 5 of Schedule 4;

(c) the deduction of expenses of management under section 76;

(d) the setting of certain capital allowances against total profits under section 145(3) of the 1990 Act.

(7) Subsections (3), (4) and (8) of section 242 shall apply for the purposes of a claim under subsection (5) above as they apply for the purposes of a claim under that section.**]**

Textual Amendments

F864 S. 444D inserted (27.7.1993 with effect for the accounting period beginning after 31.12.1992) by 1993 c. 34, **s. 99(1)(3)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F865 444E Income from investments attributable to BLAGAB, etc.

(1) In computing the income from the investments of an overseas life insurance company attributable to the basic life assurance and general annuity business of the branch or agency in the United Kingdom through which the company carries on life assurance business, any interest, dividends and other payments whatsoever to which section 48 or 123(4) extends shall be included notwithstanding the exemption from tax conferred by those sections.

(2) Where in computing the income referred to in subsection (1) above any interest on any securities issued by the Treasury is excluded by virtue of a condition of the issue of those securities regulating the treatment of the interest on them for tax purposes, the relief under section 76 shall be reduced so that it bears to the amount of relief which would be granted apart from this subsection the same proportion as the amount of that income excluding that interest bears to the amount of that income including that interest.**]**

Textual Amendments

F865 S. 444E inserted (27.7.1993 with effect for the accounting periods beginning after 31.12.1992) by 1993 c. 34, **s. 100(1)(3)**

VALID FROM 29/04/1996

[F866 Equalisation reserves

Textual Amendments

F866 Ss. 444BA-444BD and preceding cross-heading inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 166, **Sch. 32 para. 1**

444BA Equalisation reserves for general business.

(1) Subject to the following provisions of this section and to sections 444BB to 444BD, the rules in subsection (2) below shall apply in making any computation, for the purposes of Case I or V of Schedule D, of the profits or losses for any accounting period of an insurance company whose business has at any time been or included business in respect of which it was required, by virtue of section 34A regulations, to maintain an equalisation reserve.

(2) Those rules are—

(a) that amounts which, in accordance with section 34A regulations, are transferred into the equalisation reserve in respect of the company's business for the accounting period in question are to be deductible;

(b) that amounts which, in accordance with any such regulations, are transferred out of the reserve in respect of the company's business for that period are to be treated as receipts of that business; and

(c) that it must be assumed that all such transfers as are required by section 34A regulations to be made into or out of the reserve in respect of the company's business for any period are made as required.

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(3) Where an insurance company having any business in respect of which it is required, by virtue of section 34A regulations, to maintain an equalisation reserve ceases to trade—

(a) any balance which exists in the reserve at that time for the purposes of the Tax Acts shall be deemed to have been transferred out of the reserve immediately before the company ceases to trade; and

(b) that transfer out shall be deemed to be a transfer in respect of the company's business for the accounting period in which the company so ceases and to have been required by section 34A regulations.

(4) Where—

(a) an amount is transferred into an equalisation reserve in respect of the business of an insurance company for any accounting period,

(b) the rule in subsection (2)(a) above would apply to the transfer of that amount but for this subsection,

(c) that company by notice in writing to an officer of the Board makes an election in relation to that amount for the purposes of this subsection, and

(d) the notice of the election is given not more than two years after the end of that period,

the rule mentioned in subsection (2)(a) above shall not apply to that transfer of that amount and, instead, the amount transferred (the "unrelieved transfer") shall be carried forward for the purposes of subsection (5) below to the next accounting period and (subject to subsection (6) below) from accounting period to accounting period.

(5) Where—

(a) in accordance with section 34A regulations, a transfer is made out of an equalisation reserve in respect of an insurance company's business for any accounting period,

(b) the rule in subsection (2)(b) above would apply to the transfer but for this subsection, and

(c) the accounting period is one to which any amount representing one or more unrelieved transfers has been carried forward under subsection (4) above,

that rule mentioned in subsection (2)(b) above shall not apply to that transfer except to the extent (if any) that the amount of the transfer exceeds the aggregate of the amounts representing unrelieved transfers carried forward to that period.

(6) Where in the case of any company—

(a) any amount representing one or more unrelieved transfers is carried forward to an accounting period in accordance with subsection (4) above, and

(b) by virtue of subsection (5) above the rule in subsection (2)(b) above does not apply to an amount representing the whole or any part of any transfer out of an equalisation reserve in respect of the company's business for that period,

the amount mentioned in paragraph (a) above shall not be carried forward under subsection (4) above to the next accounting period except to the extent (if any) that it exceeds the amount mentioned in paragraph (b) above.

(7) To the extent that any actual or assumed transfer in accordance with section 34A regulations of any amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax purposes—

(a) the rule in subsection (2)(a) above shall not apply to that transfer; and

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(b) the making of that transfer shall be disregarded in determining, for the purposes of the Tax Acts, whether and to what extent there is subsequently any requirement to make a transfer into or out of the reserve in accordance with section 34A regulations;

and this subsection applies irrespective of whether the insurance company in question is a party to the arrangements.

(8) For the purposes of this section the transfer of an amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax purposes to the extent that the arrangements to which it is attributable are arrangements—

(a) the sole or main purpose of which is, or

(b) the sole or main benefit accruing from which might (but for subsection (7) above) be expected to be,

the reduction by virtue of this section of any liability to tax.

(9) Where—

(a) any transfer made into or out of an equalisation reserve maintained by an insurance company is made in accordance with section 34A regulations in respect of business carried on by that company over a period ("the equalisation period"), and

(b) parts of the equalisation period are in different accounting periods,

the amount transferred shall be apportioned for the purposes of this section between the different accounting periods in the proportions that correspond to the number of days in the equalisation period that are included in each of those accounting periods.

(10) The Treasury may by regulations provide in relation to any accounting periods ending on or after 1st April 1996 for specified transitional provisions contained in section 34A regulations to be disregarded for the purposes of the Tax Acts in determining how much is required, on any occasion, to be transferred into or out of any equalisation reserve in accordance with the regulations.

(11) In this section and sections 444BB to 444BD "section 34A regulations" means regulations made under section 34A of the [M1219]Insurance Companies Act 1982 (equalisation reserves in respect of general business).

Modifications etc. (not altering text)

C484 S. 444BA modified (23.12.1996 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991), **regs. 4-12**

Marginal Citations

M1219 1982 c. 50.

444BB Modification of s. 444BA for mutual or overseas business and for non-resident companies.

(1) The Treasury may by regulations make provision modifying section 444BA so as, in cases mentioned in subsection (2) below—

(a) to require—

(i) sums by reference to which the amount of any transfer into or out of an equalisation reserve falls to be computed, or

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(ii) the amount of any such transfer,

to be apportioned between different parts of the business carried on for any period by an insurance company; and

(b) to provide for the purposes of corporation tax for the amounts taken to be transferred into or out of an equalisation reserve to be computed disregarding any such sum or, as the case may be, any such part of a transfer as is attributed, in accordance with the regulations, to a part of the business described for the purpose in the regulations.

(2) Those cases are cases where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any period is carrying on, for the whole or any part of that period—

(a) any business the income and gains of which fall to be disregarded in making a computation of the company's profits in accordance with the rules applicable to Case I of Schedule D, or

(b) any business by reference to which double taxation relief is afforded in respect of any income or gains.

(3) Section 444BA shall have effect (subject to any regulations under subsection (1) above) in the case of an equalisation reserve maintained by an insurance company which—

(a) is not resident in the United Kingdom, and

(b) carries on business in the United Kingdom through a branch or agency,

only if such conditions as may be prescribed by regulations made by the Treasury are satisfied in relation to that company and in relation to transfers into or out of that reserve.

(4) Regulations under this section prescribing conditions subject to which section 444BA is to apply in the case of any equalisation reserve maintained by an insurance company may—

(a) contain conditions imposing requirements on the company to furnish the Board with information with respect to any matters to which the regulations relate, or to produce to the Board documents or records relating to any such matters; and

(b) provide that, where any prescribed condition is not, or ceases to be, satisfied in relation to the company or in relation to transfers into or out of that reserve, there is to be deemed for the purposes of the Tax Acts to have been a transfer out of that reserve of an amount determined under the regulations.

(5) Regulations under this section may—

(a) provide for apportionments under the regulations to be made in such manner, and by reference to such factors, as may be specified or described in the regulations;

(b) make different provision for different cases;

(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit;

(d) make provision having retrospective effect in relation to accounting periods beginning not more than one year before the time when the regulations are made;

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and the powers conferred by this section in relation to transfers into or out of any reserve shall be exercisable in relation to both actual and assumed transfers.

(6) In this section "double taxation relief" means—

(a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or

(b) unilateral relief under section 790(1) which takes that form;

and "double taxation arrangements" here means arrangements having effect by virtue of section 788.

444BC Modification of s. 444BA for non-annual accounting etc.

(1) The Treasury may by regulations make provision modifying the operation of section 444BA in relation to cases where an insurance company has, for the purpose of preparing the documents it is required to prepare for the purposes of section 17 of the [M1220]Insurance Companies Act 1982, applied for any period an accounting method described in paragraph 52 or 53 of Schedule 9A to the [M1221]Companies Act 1985 (accounting on a non-annual basis).

(2) Subsection (5) of section 444BB applies for the purposes of this section as it applies for the purposes of that section.

Marginal Citations

M1220 1982 c. 50.

M1221 1985 c. 6.

444BD Application of s. 444BA rules to other equalisation reserves.

(1) The Treasury may by regulations provide for section 444BA to have effect, in such cases and subject to such modifications as may be specified in the regulations, in relation to any equivalent reserves as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

(2) For the purposes of this section a reserve is an equivalent reserve if—

(a) it is maintained, otherwise than by virtue of section 34A regulations, either—

(i) by an EC company carrying on business in the United Kingdom through a branch or agency, or

(ii) in respect of any insurance business (within the meaning of the Insurance Companies Act 1982) which is carried on outside the United Kingdom by a company resident in the United Kingdom;

and

(b) the purpose for which, or the manner in which, it is maintained is such as to make it equivalent to an equalisation reserve maintained by virtue of section 34A regulations.

(3) For the purposes of this section a reserve is also an equivalent reserve if it is maintained in respect of any credit insurance business in accordance with requirements imposed either—

(a) by or under any enactment, or

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(b) under so much of the law of any territory as secures compliance with the requirements of Article 1 of the credit insurance directive (equalisation reserves for credit insurance).

(4) Without prejudice to the generality of subsection (1) above, the modifications made by virtue of that subsection may—

(a) provide for section 444BA to apply in the case of an equivalent reserve only where such conditions as may be specified in the regulations are satisfied in relation to the company maintaining the reserve or in relation to transfers made into or out of it; and

(b) contain any other provision corresponding to any provision which, in the case of a reserve maintained by virtue of section 34A regulations, may be made under sections 444BA to 444BC.

(5) Subsections (4) and (5) of section 444BB shall apply for the purposes of this section as they apply for the purposes of that section.

(6) Without prejudice to the generality of section 444BB(5), the transitional provision which by virtue of subsection (5) above may be contained in regulations under this section shall include—

(a) provision for treating the amount of any transfers made into or out of an equivalent reserve in respect of business carried on for any specified period as increased by the amount by which they would have been increased if no transfers into the reserve had been made in respect of business carried on for an earlier period; and

(b) provision for excluding from the rule in section 444BA(2)(b) so much of any amount transferred out of an equivalent reserve as represents, in pursuance of an apportionment made under the regulations, the transfer out of that reserve of amounts in respect of which there has been no entitlement to relief by virtue of section 444BA(2)(a).

(7) In this section—

"credit insurance business" means any insurance business falling within general business class 14 of Schedule 2 to the [M1222]Insurance Companies Act 1982 that is not reinsurance business;

"the credit insurance directive" means Council Directive 87/343/EEC of 22nd June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; and

"EC company" has the same meaning as in the [M1223]Insurance Companies Act 1982.**]**

Marginal Citations

M1222 1982 c. 50.

M1223 1982 c. 50.

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Provisions applying only to overseas life insurance companies

[F867]445 . . . . . .

Textual Amendments

F867 S. 445 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(a)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

446 Annuity business.

[F868](1) . . . . . .

[F869](2) . . . . . .

[F869](3) . . . . . .

[F870](4) . . . . . .

Textual Amendments

F868 S. 446(1) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(b)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

F869 S. 446(2)(3) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 para. 7(1)(b), **Sch. 19 Pt. V**, Note 3

F870 S. 446(4) repealed by Finance Act 1990 (c. 29, SIF 63:1), s. 132, **Sch. 19 Pt. IV**.

447

[F871](1) . . . . . .

[F871](2) . . . . . .

[F872](3) . . . . . .

[F871](4) . . . . . .

Textual Amendments

F871 S. 447(1)(2) and (4) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(c)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

F872 S. 447(3) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 7(3), 18, **Sch. 19 Pt. V**, Note 3

[F873]448 . . . . . .

Textual Amendments

F873 S. 448 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **ss. 103(2)**d), 213, Sch. 23 Pt.III (9), note

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[F874]449 . . . . . .

Textual Amendments

F874 S. 449 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **ss. 103(2)(e)**,213, Sch. 23 Pt. III (9), note

Underwriters

[F875]450 . . . . . .

Textual Amendments

F875 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12) notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

[F876]451 . . . . . .

Textual Amendments

F876 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the repealing Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes. 1 and 5

[F877]452 . . . . . .

Textual Amendments

F877 SS. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

[F878]453 . . . . . .

Textual Amendments

F878 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, **s. 213**, SCh. 23, Pt.III (12), notes 1 and 5)

[F879]454 . . . . . .

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Textual Amendments

F879 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** (12), notes 1 and 5

[F880]455 . . . . . .

Textual Amendments

F880 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

[F881]456 . . . . . .

Textual Amendments

F881 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** (12), notes 1 and 5

[F882]457 . . . . . .

Textual Amendments

F882 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

Capital redemption business

458 Capital redemption business.

(1) [M1224]Where any person carries on capital redemption business in conjunction with business of any other class, the capital redemption business shall, for the purposes of the Corporation Tax Acts (including the provisions about corporation tax on chargeable gains) and the Income Tax Acts, be treated as a separate business from any other class of business carried on by that person.

(2) In ascertaining whether and to what extent any person has incurred a loss on his capital redemption business for the purposes of section 380 or sections 393 and **[**[F883]393A(1)**]**—

(a) any profits derived from investments held in connection with the capital redemption business (including franked investment income of a company resident in the United Kingdom) shall be treated as part of the profits of that business, and

(b) in determining whether any, and if so what, relief can be given under section 385(4) in the case of capital redemption business, the loss which

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may be carried forward under subsection (1) of that section shall be similarly computed.

(3) In this section "capital redemption business" means the business (not being life assurance business or industrial assurance business) of effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future.

(4) This section shall not apply to any capital redemption business in so far as it consists of carrying out contracts of insurance effected before 1st January 1938.

Textual Amendments

F883 Words in s. 458(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 16**

Modifications etc. (not altering text)

C485 S. 458 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations

M1224 Source—1970 s.324

VALID FROM 29/04/1996

[F884 458A Capital redemption business: power to apply life assurance provisions.

(1) The Treasury may by regulations provide for the life assurance provisions of the Corporation Tax Acts to have effect in relation to companies carrying on capital redemption business as if capital redemption business were, or were a category of, life assurance business.

(2) Regulations under this section may provide that the provisions applied by the regulations are to have effect as respects capital redemption business with such modifications and exceptions as may be provided for in the regulations.

(3) Regulations under this section may—
- (a) make different provision for different cases;
- (b) include such incidental, supplemental, consequential and transitional provision (including provision modifying provisions of the Corporation Tax Acts other than the life assurance provisions) as the Treasury consider appropriate; and
- (c) include retrospective provision.

(4) In this section references to the life assurance provisions of the Corporation Tax Acts are references to the following—
- (a) the provisions of this Chapter so far as they relate to life assurance business or companies carrying on such business; and
- (b) any other provisions of the Corporation Tax Acts making separate provision by reference to whether or not the business of a company is or includes life assurance business or any category of insurance business that includes life assurance business.

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(5) In this section "capital redemption business" has the same meaning as in section 458.**]**

Textual Amendments

F884 S. 458A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 168(3)**

CHAPTER II

FRIENDLY SOCIETIES, TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Unregistered friendly societies

459 Exemption from tax.

[M1225]An unregistered friendly society **[**[F885](that is, a friendly society which is neither an incorporated friendly society nor a registered friendly society)**]** whose income does not exceed £160 a year shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains).

Textual Amendments

F885 Words in s. 459 inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.4**; S.I. 1993/236, **art.2**

Marginal Citations

M1225 Source—1970 s.331

Registered friendly societies

460 Exemption from tax in respect of life or endowment business.

(1) [M1226]Subject to subsection (2) below, a **[**[F886]friendly society**]** shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits arising from life or endowment business.

(2) Subsection (1) above—

(a) [M1227]shall not, subject to section 462, exempt a **[**[F887]registered friendly society**]** registered after 31st December 1957 which at any time in the period of three months ending 3rd May 1966 entered into any transaction in return for a single premium, being a transaction forming part of its life or endowment business;

[[F888](aa) shall not, subject to section 462, exempt an incorporated friendly society which, before its incorporation, was a registered friendly society such as is mentioned in paragraph (a) above;**]**

(b) [M1228]shall not apply to profits arising from pension business;

(c) [M1229]shall not apply to profits arising from life or endowment business consisting—

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[[F889](ai) where the profits relate to contracts made on or after the day on which the Finance Act 1991 was passed, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £200 or of the granting of annuities of annual amounts exceeding £156;**]**

(i) where the profits relate to contracts made after **[**[F890]31st August 1990 but before the day on which the Finance Act 1991 was passed**]**, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed **[**[F891]£150**]** or of the granting of annuities of annual amounts exceeding £156;

[[F892](ia) where the profits relate to contracts made after 31st August 1987 but before 1st September 1990, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £100 **[**[F893]or of the granting of annuities of annual amounts exceeding £156**]**.**]**

(ii) where the profits relate to contracts made after 13th March 1984 but before 1st September 1987, of the assurance of gross sums exceeding £750 or of the granting of annuities of annual amounts exceeding £156;

(iii) where the profits relate to contracts made before 14th March 1984, of the assurance of gross sums exceeding £500 or of the granting of annuities of annual amounts exceeding £104;

[[F894](ca) shall not apply to so much of the profits arising from life or endowment business as is attributable to contracts for the assurance of gross sums made on or after 20th March 1991 and expressed at the outset not to be made in the course of tax exempt life or endowment business; and**]**

(d) [M1230]as respects other life or endowment business ("tax exempt life or endowment business"), has effect subject to the following provisions of this Chapter.

(3) [M1231]In determining for the purposes **[**[F895]of **[**[F896]subsection (2)(c)(ai), (i) or (ia)**]]** above the total premiums payable in any period of 12 months—

(a) where those premiums are payable more frequently than annually, there shall be disregarded an amount equal to 10 per cent. of those premiums; and

(b) so much of any premium as is charged on the ground that an exceptional risk of death **[**[F897]or disability**]** is involved shall be disregarded;

and in applying the limit of £156 in **[**[F898]subsection (2)(c)(ai), (i) or (ia)**]** above, any bonus or addition declared upon an annuity shall be disregarded.

(4) In applying the limits referred to in subsection (2)(c)(ii) and (iii) above, any bonus or addition which either is declared upon an assurance of a gross sum or annuity or accrues upon such an assurance by reference to an increase in the value of any investments shall be disregarded.

[[F899](4A) Subsection (4B) below applies to contracts for the assurance of gross sums under tax exempt life or endowment business made after 31st August 1987 and before the day on which the Finance Act 1991 was passed.

(4B) Where the amount payable by way of premium under a contract to which this subsection applies is increased by virtue of a variation made in the period beginning with the day on which the Finance Act 1991 was passed and ending with 31st July

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1992, the contract shall be treated for the purposes of subsection (2)(c) above as made at the time of the variation.**]**

(5) [M1232]A **[**[F900]friendly society**]** is within this subsection if its rules make no provision for it to carry on life or endowment business consisting of the assurance of gross sums exceeding £2,000 or of the granting of annuities of annual amounts exceeding £416.

(6) [M1233]In the case of a **[**[F900]friendly society**]** within subsection (5) above—

(a) subsection (2)(c)(iii) above shall have effect with the substitution of references to £2,000 and £416 respectively for the references to £500 and £104; and

(b) references in this Chapter to tax exempt life or endowment business shall be construed accordingly.

(7) [M1234]Where at any time a **[**[F900]friendly society**]** within subsection (5) above amends its rules so as to cease to be within that subsection, any part of its life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

shall thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.

(8) Where at any time a **[**[F900]friendly society**]** not within subsection (5) above amends its rules so as to bring itself within that subsection, any part of its life or endowment business consisting of business which—

(a) related to contracts made before that time; and

(b) immediately before that time was not tax exempt life or endowment business,

shall thereafter continue not to be tax exempt life or endowment business for the purposes of this Chapter.

(9) Where at any time a **[**[F900]friendly society**]** not within subsection (5) above acquires by way of transfer of engagements or amalgamation from another **[**[F900]friendly society**]** any life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

that business shall thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.

(10) Where at any time a **[**[F900] friendly society**]** within subsection (5) above acquires by way of transfer of engagements or amalgamation from another **[**[F900]friendly society**]** any life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was not tax exempt life or endowment business,

that business shall thereafter continue not to be tax exempt life or endowment business for the purposes of this Chapter.

[[F901](10A) Where at any time there is a transfer of the whole or part of the long term business of an insurance company to a friendly society in accordance with a scheme sanctioned by a court under section 49 of the [M1235]Insurance Companies Act 1982, any life or endowment business which relates to contracts included in the transfer **[**[F902], other than any to which subsection (11) or (12) below applied immediately before the transfer had

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effect,**]** shall not thereafter be tax exempt life or endowment business for the purposes of this Chapter.**]**

(11) [M1236]Where at any time a **[**[F903]friendly society**]** ceases by virtue of section 84 of the [M1237]Friendly Societies Act 1974 or by virtue of **[**[F903]section 91 of the Friendly Societies Act 1992**]** (conversion into company) to be registered under **[**[F903]either of those Acts**]**, any part of its life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

shall **[**[F904]continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.**]**

(12) [M1238]For the purposes of the Corporation Tax Acts any part of a company's business which continues to be tax exempt life or endowment business by virtue of subsection (11) above shall be treated as a separate business from any other business carried on by the company.

Textual Amendments

F886 Words in s. 460(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(2)**; S.I. 1993/236, **art.2**

F887 Words in s. 460(2)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(3)(a)**; S.I. 1993/236, **art.2**

F888 S. 460(2)(aa) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(3)(b)**; S.I. 1993/236, **art.2**

F889 S. 460(2)(ai) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(3)**

F890 Words in s. 460(2)(c)(i) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(4)**

F891 1990 s.49(1)(a) Previously £100

F892 1990 s.49(1)(b).

F893 Words in s. 460(2)(c)(ia) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(5)**

F894 S. 460(2)(ca) and word "and" substituted for word "and" by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(6)**

F895 1990 s.49(2).*Previously*
"of subsection 2(c)(i)".

F896 Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(a)**

F897 Words in s. 460(3)(b) inserted (retrospectively) by Finance Act 2003 (c. 14), **s. 172(5)(6)**

F898 Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(b)**

F899 S. 460(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(8)**

F900 Words in s. 460(5)-(10) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(4)**; S.I. 1993/236, **art. 2**

F901 1990 s. 48 and Sch. 9 para. 6 in relation to transfers of business on or after 1 January 1990

F902 Words in s. 460(10A) inserted (retrospectively for specified purposes, and otherwise with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by Finance Act 2007 (c. 11), Sch. 12 paras. 1(2), **6(1)(3)**

F903 Words in s. 460(11) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(5)**; S.I. 1993/236, **art.2**

F904 Words in s. 460(11) substituted (retrospectively) by Finance Act 2007 (c. 11), Sch. 12 paras. 1(3), **6(1)**

Marginal Citations

M1226 Source—1970 s.332(1). 1974 s.27(1)(a)

M1227 Source—1970 s.333(1)

M1228 Source—1970 s.332(2)(aa); 1987 (No.2) Sch.2 2(1)

M1229 Source—1970 s.332(2)(a); 1984 s.73(2); 1987 s.30(2)

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M1230 Source—1970 s.332(2)(b)
M1231 Source—1970 s.332(3); 1987 s.30(3)
M1232 Source—1970 s.332(4); 1975 (No.2) s.52(1); 1980 s.57(1)
M1233 Source—1970 s.332(5); 1975 (No.2) s.52(1); 1984 s.73(3)
M1234 Source—1970 s.332(6)—(9); 1975 (No.2) s.52(1)
M1235 1982 c. 50.
M1236 Source—1970 s.332(10); 1976 s.48(1)
M1237 1974 c. 46.
M1238 Source—1970 s.332(12)(a); 1976 s.48(1)

461 Taxation in respect of other business.

(1) [M1239]Subject to the following provisions of this section, a registered friendly society other than a society to which subsection (2) below applies shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits other than those arising from life or endowment business.

(2) [M1240]This subsection applies to any society registered after 31st May 1973 unless—

(a) its business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by the registrar; or

(b) it was registered before 27th March 1974 and its rules limit the aggregate amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as the registrar may authorise for the purposes of this section;

and also applies to any society registered before 1st June 1973 with respect to which a direction under subsection (8) below is in force.

(3) [M1241]If a society to which subsection (2) above applies, after 26th March 1974 or such later date as may be specified in a direction under this section, makes a payment to a member in respect of his interest in the society and the payment is made otherwise than in the course of life or endowment business and exceeds the aggregate of any sums paid by him to the society by way of contributions or deposits, after deducting from that aggregate the amount of—

(a) any previous payment so made to him by the society after that date, and

(b) any earlier repayment of such sums paid by him,

the excess shall be treated for the purposes of corporation tax and income tax as a qualifying distribution.

(4) [M1242]Where a registered friendly society—

(a) at any time ceases by virtue of section 84 of the [M1243]Friendly Societies Act 1974 or by virtue of **[**[F905]section 91 of the Friendly Societies Act 1992**]** (conversion into company) to be registered under **[**[F906]either of those Acts**]**; and

(b) immediately before that time was exempt from income tax or corporation tax on profits arising from any business carried on by it other than life or endowment business,

the company into which the society is converted shall be so exempt on its profits arising from any part of that business which relates to contracts made before that time

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so long as there is no increase in the scale of benefits which it undertakes to provide in the course of carrying on that part of its business.

(5) For the purposes of the Corporation Tax Acts any part of a company's business in respect of the profits from which the company is exempt by virtue of subsection (4) above shall be treated as a separate business from any other business carried on by the company.

(6) [M1244]If—

(a) a friendly society registered before 1st June 1973 begins after 26th March 1974 to carry on business other than life or endowment business or, in the opinion of **[**[F907]the Commission**]**, begins to carry on business other than life or endowment business on an enlarged scale or of a new character; and

(b) it appears to **[**[F908]the Commission**]**, having regard to the restrictions imposed by this section on friendly societies registered later, that for the protection of the revenue it is expedient to do so;

[[F907]the Commission**]** may serve a notice on the society referring to the provisions of this subsection and stating that **[**[F907]the Commission**]** is considering the question whether, for the protection of the revenue, it is expedient to give a direction that subsection (2) above shall apply to the society as from the date of the notice.

(7) **[**The Commission**]** shall consider any representations or undertakings made or offered to **[**[F907]the Commission**]**by the society within the period of one month from service of the notice, and if the society so requests shall afford it an opportunity of being heard by **[**[F907]the Commission**]**not later than three weeks after the end of that period.

(8) If, after consideration of any such representations or undertakings, **[**[F907]the Commission**]** remains of the opinion that it is expedient to do so, **[**[F907]the Commission**]**shall direct that subsection (2) above shall apply to the society as from the date of the notice, but subject to any further direction given by **[**[F907]the Commission**]** cancelling that direction.

[[F909](8A) In this section "the Commission" means the Friendly Societies Commission.**]**

(9) A friendly society may, within one month from the giving of a direction under subsection (8) above, appeal against it to the court to which or person to whom it might appeal under section 92 of the Friendly Societies Act 1974 [F910] . . . against cancellation of its registration.

(10) For the purposes of this section a registered friendly society formed on the amalgamation of two or more friendly societies shall be treated as registered before 1st June 1973 if at the time of the amalgamation subsection (2) above did not apply to any of the societies amalgamated, but otherwise shall be treated as registered at that time.

Textual Amendments

F905 Words in s. 461(4)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 6**; S.I. 1993/236, **art. 2**

F906 Words in s. 461(4)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 6**; S.I. 1993/236, **art. 2**

F907 Words in s. 461(6)-(8) substituted (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 21 Pt. I para. 10(a)**(with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

F908 Words in s. 461(6)-(8) substituted (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 21 Pt. I para. 10(a)**(with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

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F909 S. 461(8A) inserted (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 21 Pt. I para. 10(b)**; S.I. 1993/16, art. 2, **Sch. 3**

F910 Words in s. 461(9) repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(1), **Sch. 22 Pt. I**; S.I. 1993/2213, **Sch. 6** APPENDIX

Marginal Citations

M1239 Source—1970 s.332(1); 1974 s.27(1)(a)

M1240 Source—1974 s.27(2)

M1241 Source—1974 s.27(1)(b)

M1242 Source—1970 s.332(11), (12)(b); 1976 s.48(1)

M1243 1974 c. 46.

M1244 Source—1974 s.27(3)—(7); 1985 s.41(10); 1987 Sch.15 6

[461A [F911]Taxation in respect of other business: incorporated friendly societies qualifying for exemption.

(1) For the purposes of sections 461B and 461C, a "qualifying society" is an incorporated friendly society which—

(a) immediately before its incorporation, was a registered friendly society to which section 461(2) did not apply,

(b) was formed otherwise than by the incorporation of a registered friendly society or the amalgamation of two or more friendly societies and satisfies subsection (2) below, or

(c) was formed by the amalgamation of two or more friendly societies and satisfies subsection (3) below,

and in respect of which no direction under section 461C(5) is in force.

(2) A society satisfies this subsection if its business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by the Friendly Societies Commission.

(3) If at the time of the amalgamation referred to in subsection (1)(c) above—

(a) section 461(2) applied to none of the registered friendly societies being amalgamated (if any), and

(b) all of the incorporated friendly societies being amalgamated (if any) were qualifying societies,

the society formed by the amalgamation satisfies this subsection.**]**

Textual Amendments

F911 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art.2**

[F912]461B Taxation in respect of other business: incorporated friendly societies etc.

(1) Subject to the following provisions of this section, a qualifying society shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits other than those arising from life or endowment business.

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(2) Subsection (1) above shall not apply to any profits arising or accruing to the society from, or by reason of its interest in, a body corporate which is a subsidiary (within the meaning of the Friendly Societies Act 1992) of the society or of which the society has joint control (within the meaning of that Act).

(3) If an incorporated friendly society which is not a qualifying society makes a payment to a member in respect of his interest in the society and the payment is made otherwise than in the course of life or endowment business and exceeds the aggregate of any sums paid by him to the society by way of contributions or deposits, after deducting from that aggregate the amount of—

(a) any previous payment so made to him by the society, and

(b) any earlier repayment of such sums paid by him,

the excess shall be treated for the purposes of corporation tax and income tax as a qualifying distribution.

(4) In relation to an incorporated friendly society which, immediately before its incorporation, was a registered friendly society to which section 461(2) applied—

(a) the references in subsection (3) above to sums paid to the society shall include sums paid to the registered friendly society,

(b) the reference in subsection (3)(a) above to any payment made by the society shall include any payment made by the registered friendly society after 26 March 1974 or such later date as was specified in any direction under section 461(8) relating to it, and

(c) the reference in subsection (3)(b) above to any repayment shall include any repayment made by the registered friendly society.

(5) Where a qualifying society at any time ceases by virtue of section 91 of the Friendly Societies Act 1992 (conversion into company) to be registered under that Act, the company into which the society is converted shall be exempt from income tax or corporation tax on its profits arising from any part of its business, other than life or endowment business, which relates to contracts made before that time.

(6) Subsection (5) above shall apply so long as there is no increase in the scale of benefits which the company undertakes to provide in the course of carrying on the relevant part of its business.

(7) Any part of a company's business to which an exemption under subsection (5) above relates shall be treated for the purposes of the Corporation Tax Acts as a separate business from any other business carried on by the company.

Textual Amendments

F912 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art. 2**

F913 461C Taxation in respect of other business: withdrawal of "qualifying" status from incorporated friendly society.

(1) Subject to subsection (2) below, subsections (3) to (5) below apply where a qualifying society—

(a) begins to carry on business other than life or endowment business, or

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(b) in the opinion of the Friendly Societies Commission, begins to carry on business other than life or endowment business on an enlarged scale or of a new character.

(2) Subsections (3) to (5) below do not apply if—

(a) the society's business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of section 461 or 461A by the Friendly Societies Commission, or

(b) the society's rules limit the aggregate amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as is authorised for the purposes of section 461.

(3) If it appears to the Commission, having regard to the restrictions imposed by section 461 on registered friendly societies registered after 31st May 1973, that for the protection of the revenue it is expedient to do so, the Commission may serve a notice on the society—

(a) referring to the provisions of this section, and

(b) stating that the Commission is considering the question whether, for the protection of the revenue, it is expedient to give a direction that the society shall cease to be a qualifying society as from the date of the notice.

(4) The Commission shall consider any representations or undertakings made or offered to the Commission by the society within the period of one month from service of the notice and, if the society so requests, shall afford it an opportunity of being heard by the Commission not later than three weeks after the end of that period.

(5) If, after consideration of any such representations or undertakings, the Commission remains of the opinion that it is expedient to do so, the Commission shall direct that the society shall cease to be a qualifying society as from the date of the notice, but subject to any further direction given by the Commission cancelling that direction.

(6) A friendly society may, within one month from the giving of a direction under subsection (5) above, appeal against it to a tribunal constituted in accordance with section 59(2) of the Friendly Societies Act 1992.

(7) The Treasury may by regulations provide for sections 58 to 61 of that Act to have effect in relation to appeals under subsection (6) above subject to such modifications as may be prescribed by the regulations.

Textual Amendments

F913 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art. 2**

VALID FROM 21/07/2008

[F914 461D Transfers of other business

(1) Where—

(a) at any time a friendly society ("the transferee") acquires by way of transfer of engagements or amalgamation from another friendly society ("the

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transferor") any business, other than life or endowment business, consisting of business which relates to contracts made before that time, and

(b) immediately before that time the transferor was exempt from corporation tax on profits arising from that business,

the transferee is so exempt after that time.

(2) But if during an accounting period of the transferee there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on that business, the transferee shall not be exempt from corporation tax by virtue of subsection (1) above for that or any subsequent accounting period.

(3) Where—

(a) at any time a friendly society ("the transferee") acquires by way of transfer of engagements or amalgamation from another friendly society ("the transferor") any business, other than life or endowment business, consisting of business which relates to contracts made before that time, and

(b) immediately before that time the transferor was not exempt from corporation tax on profits arising from that business,

the transferee is not so exempt after that time.

(4) The Treasury may by regulations provide that, where any business of a friendly society is exempt from corporation tax by virtue of subsection (1) above, or not so exempt by virtue of subsection (3) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.

(5) Regulations under subsection (4) above—

(a) may make different provision for different cases,

(b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and

(c) may include retrospective provision.**]**

Textual Amendments

F914 S. 461D inserted (with effect in accordance with Sch. 18 para. 3(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 18 para. 3(1)**

462 Conditions for tax exempt business.

(1) [M1245]Subject to subsections (2) to (4) below, section 460(1) shall not apply to so much of the profits arising from tax exempt life or endowment business as is attributable to a policy which, by virtue of paragraph 6(2) of Schedule 15—

(a) is not a qualifying policy; and

(b) would not be a qualifying policy if all policies with other friendly societies were left out of account.

(2) **[**[F915M1246]Section 460(2)(a) or (aa)**]** and subsection (1) above shall not withdraw exemption under section 460(1) for profits arising from any part of a life or endowment business relating to contracts made not later than 3rd May 1966.

(3) If, with respect to a policy issued in respect of an insurance made on or after 1st June 1984 and before 19th March 1985 for the assurance of a gross sum, there is or has

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been an infringement of any of the conditions in paragraph 3(2) to (11) of Schedule 15, section 460(1) shall not apply to so much as is attributable to that policy of the profits of the **[**[F916]friendly society or registered branch**]** concerned which arise from tax exempt life or endowment business.

(4) Nothing in subsection (3) above shall be taken to affect the status of a policy as a qualifying policy.

Textual Amendments

F915 Words in s. 462(2)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9** par. 8(2) S.I. 1993/236, **art.2**

F916 Words in s. 462(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 8(3) S.I**. 1993/236, art.2

Marginal Citations

M1245 Source—1970 s.334(1); 1985 s.41(6)

M1246 Source—1970 s.336; 1985 Sch.10 Part II

[462A [F917]Election as to tax exempt business.

(1) Where a registered friendly society has tax exempt life or endowment business which includes contracts—

(a) made before 20th March 1991, and

(b) expressed at the outset not to be made in the course of such business,

the society may by notice to the inspector elect that section 460(1) shall not apply to so much of the profits arising from such business as is attributable to such contracts.

(2) Where a registered friendly society has tax exempt life or endowment business which includes contracts falling within subsection (3) below, the society may by notice to the inspector elect that section 460(1) shall not apply to so much of the profits arising from such business as is attributable to such contracts.

(3) A contract falls within this subsection if—

(a) at the outset, it is neither expressed to be made in the course of tax exempt life or endowment business nor expressed not to be so made but is assumed by the society not to be so made, and

(b) the policy issued in pursuance of it falls within paragraph 21(1)(b) of Schedule 15.

(4) An election under subsection (2) above shall only be valid if the society satisfies the inspector (or the Commissioners on appeal) that it is possible to identify all the contracts to which the election relates.

(5) If the inspector decides that he is not satisfied as mentioned in subsection (4) above, he shall give notice of his decision to the society; and section 42(3), (4) and (9) of, and paragraph 1(1) to (1E) of Schedule 2 to, the Management Act shall apply in relation to such a decision as they apply in relation to a decision of an inspector on a claim.

(6) An election under subsection (1) or (2) above shall have effect for accounting periods ending on or after the day on which the Finance Act 1991 was passed.

(7) No election under subsection (1) or (2) above may be made after 31st July 1992.

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(8) Where a friendly society has made an election under subsection (1) or (2) above, then, for any accounting period for which the election has effect—

(a) section 460(1) shall apply to profits arising from life or endowment business which would have been included in the society's tax exempt life or endowment business had no account been taken of the contracts to which the election relates, and

(b) section 462(1), in its application to the society, shall have effect with the insertion after "societies" of "and all policies issued in pursuance of contracts to which an election under section 462A(1) or (2) relates".

[F918](9) If a friendly society which (or a branch of which) has made an election under subsection (1) or (2) above becomes an incorporated friendly society, the election shall have effect in relation to the incorporated friendly society as it had effect in relation to the society (or branch) which made the election (and accordingly, in relation to accounting periods of the incorporated friendly society, "the society" in subsection (8) (a) and (b) above shall be read as referring to the incorporated friendly society).**]**

Textual Amendments

F917 S. 462A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 2**

F918 S. 462A(9) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.9**; S.I. 1993/236, **art. 2**

463 Life or endowment business: application of the Corporation Tax Acts.

(1) [M1247]Subject to section 460(1), the Corporation Tax Acts shall apply to the life or endowment business carried on by **[**[F919]friendly societies**]** in the same way as they apply to mutual life assurance business carried on by insurance companies, so however that the Treasury may by regulations provide that those Acts as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations, and those regulations may in particular require any part of any business to be treated as a separate business.

[[F920](2) The provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the long term business of an insurance company shall apply in the same way—

(a) on the transfer of the whole or part of the business of a friendly society to another friendly society (and on the amalgamation of friendly societies), and

(b) on the transfer of the whole or part of the business of a friendly society to a company which is not a friendly society (and on the conversion of a friendly society into such a company),

so however that the Treasury may by regulations provide that those provisions as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations.

(3) The Treasury may by regulations provide that the provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the long term business of an insurance company to another company shall have effect where the transferee is a friendly society subject to such modifications and exceptions as may be prescribed by the regulations.

(4) Regulations under this section may make different provision for different cases and may include provision having retrospective effect.**]**

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Textual Amendments

F919 Words in s. 463(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.10**; S.I. 1993/236, **art.2**

F920 1990 s.50(2).

Modifications etc. (not altering text)

C486 *See* 1990 s.50(1)—s.463*was renumbered as* s.463(1).

C487 *For regulations see* Part III Vol.5 (*under* "*Friendly Societies*").

Marginal Citations

M1247 Source—1970 s.335(1)

464 Maximum benefits payable to members.

(1) [M1248]Subject to subsections (2) and (3) below, a member of a **[**[F921]friendly society or registered branch**]** shall not be entitled to have at any time outstanding contracts with any one or more such societies or branches (taking together all such societies or branches throughout the United Kingdom) for the assurance of—

(a) more than £750 by way of gross sum under tax exempt life or endowment business;

(b) more than £156 by way of annuity under tax exempt life or endowment business.

In any case where the member's outstanding contracts were all made before 14th March 1984 this subsection shall have effect with the substitution for "£750" and "£156" of " £2,000 " and " £416 " respectively.

(2) Subsection (1)(a) above shall not apply as respects sums assured under contracts made after 31st August 1987.

(3) With respect to contracts for the assurance of gross sums under tax exempt life or endowment business, a member of a **[**[F921]friendly society or registered branch**]** shall not be entitled to have outstanding with any one or more such societies or branches (taking together all such societies or branches throughout the United **[**[F922]Kingdom)—

[[F923](za) contracts under which the total premiums payable in any period of 12 months exceed £200; or**]**

(a) contracts **[**[F924]made before the day on which the Finance Act 1991 was passed and**]** under which the total premiums payable in any period of 12 months exceed £150; or

(b) contracts made before 1st September 1990 under which the total premiums payable in any period of 12 months exceed £100,

unless all those contracts were made before 1st September 1987.**]**

(4) In applying the **[**[F922]limits**]** in subsection (3) above, the premiums under any contract for an annuity which was made before 1st June 1984 by a new society shall be brought into account as if the contract were for the assurance of a gross sum.

[[F925](4A) Subsection (4B) below applies to contracts for the assurance of gross sums under tax exempt life or endowment business made after 31st August 1987 and before the day on which the Finance Act 1991 was passed.

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(4B) Where the amount payable by way of premium under a contract to which this subsection applies is increased by virtue of a variation made in the period beginning with the day on which the Finance Act 1991 was passed and ending with 31st July 1992, the contract shall be treated for the purposes of subsection (3) above as made at the time of the variation.**]**

(5) In applying the limits in this section there shall be disregarded—

(a) any bonus or addition which either is declared upon assurance of a gross sum or annuity or accrues upon such an assurance by reference to an increase in the value of any investments;

(b) any approved annuities as defined in section 620(9) or any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme as defined in **[**[F926]section 1 of the Pension Schemes Act 1993**]** are secured;

(c) any increase in a benefit under a friendly society contract, as defined in section 6 of the [M1249]Decimal Currency Act 1969, resulting from the adoption of a scheme prescribed or approved in pursuance of subsection (3) of that section; and

(d) so far as concerns the total premiums payable in any period of 12 months—

(i) 10 per cent. of the premiums payable under any contract under which the premiums are payable more frequently than annually; and

(ii) £10 of the premiums payable under any contract made before 1st September 1987 by a **[**[F927]friendly society other than**]** a new society; and

(iii) so much of any premium as is charged on the ground that an exceptional risk of death is involved.

(6) In applying the limits in this section in any case where a member has outstanding with one or more society or branch one or more contracts made after 13th March 1984 and one or more contracts made on or before that date, any contract for an annuity which was made before 1st June 1984 by a new society shall be regarded not only as a contract for the annual amount concerned but also as a contract for the assurance of a gross sum equal to 75 per cent. of the total premiums which would be payable under the contract if it were to run for its full term or, as the case may be, if the member concerned were to die at the age of 75 years.

(7) A **[**[F928]friendly society or registered branch**]** may require a member to make and sign a statutory declaration that the total amount assured under outstanding contracts entered into by that member with any one or more **[**[F928]friendly societies or registered branches**]** (taking together all such societies or branches throughout the United Kingdom) does not exceed the limits applicable by virtue of this section and that the total premiums under those contracts do not exceed those limits.

Textual Amendments

F921 Words in s. 464(1)(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(2)**; S.I. 1993/236, **art. 2**

F922 1990 s.49(3), (4) Previously "Kingdom) contracts under which the total premiums payable in any period of 12 months exceed £100 unless all those contracts were entered into before 1st September 1987" and "limit" respectively

F923 S. 464(3)(za) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(2)**

F924 Words in s. 464(3)(a) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(3)**

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F925 S. 464(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(4)**

F926 Words in s. 464(5)(b) substituted (7.2.1994) by 1993 c. 48, ss. 190, 193(2)(3), **Sch. 8 para. 20(1)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F927 Words in s. 464(5)(d)(ii) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(3)**; S.I. 1993/236, **art. 2**

F928 Words in s. 464(7) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(4)**; S. I. 1993/236, **art. 2**

Modifications etc. (not altering text)

C488 S. 464: power to amend conferred (7.2.1994) by 1993 c. 48, **ss. 162**, 193(2)(3) (with ss. 6(8), 164); S. I. 1994/86, **art. 2**

Marginal Citations

M1248 Source—FSA 1974 s.64(1), (2), (2A), (6); 1985 s.41(1), (2); 1984 s.73(5), (6); 1976/598; FSA 1984 s.2; 1987 s.30(4), (5), (7)

M1249 1969 c. 19.

465 Old societies.

(1) [M1250]In this section "old society" means a friendly society which is not a new society.

(2) This section applies if, on or after 19th March 1985, an old society—

(a) begins to carry on tax exempt life or endowment business; or

(b) in the opinion of the Board begins to carry on such business on an enlarged scale or of a new character.

(3) If it appears to the Board, having regard to the restrictions placed on qualifying policies issued by new societies by paragraphs 3(1)(b) [F929] . . . and 4(3)(b) of Schedule 15, that for the protection of the revenue it is expedient to do so, the Board may give a direction to the old society under subsection (4) below.

(4) A direction under this subsection is that (and has the effect that) the old society to which it is given is to be treated for the purposes of this Act as a new society with respect to business carried on after the date of the direction.

(5) An old society to which a direction is given may, within 30 days of the date on which it is given, appeal against the direction to the Special Commissioners on the ground that—

(a) it has not begun to carry on business as mentioned in subsection (2) above; or

(b) that the direction is not necessary for the protection of the revenue.

[[F930](6) If a registered friendly society in respect of which a direction is in force under subsection (4) above becomes an incorporated friendly society, the direction shall continue to have effect, so that the incorporated friendly society shall be treated for the purposes of this Act as a new society.**]**

Textual Amendments

F929 Words in s. 465(3) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 7

F930 S. 465(6) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.12** ; S.I. 1993/236, **art.2**

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Marginal Citations

M1250 Source—1985 Sch.10 Part III

[465A [F931]Assets of branch of registered friendly society to be treated as assets of society after incorporation.

(1) This section applies where any assets of a branch of a registered friendly society have been identified in a scheme under section 6(5) of the Friendly Societies Act 1992 (property, rights etc. excluded from transfer to the society on its incorporation).

(2) In relation to any time after the incorporation of the society, the assets shall be treated for the purposes of the Tax Acts as assets of the society (and, accordingly, any tax liability arising in respect of them shall be a liability of the society rather than of the branch).

(3) Where, by virtue of this section, tax in respect of any of the assets becomes chargeable on and is paid by the society, the society may recover from the trustees in whom those assets are vested the amount of the tax paid.**]**

Textual Amendments

F931 S. 465A inserted (19.12.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 para.13, **22**; S.I. 1993/236, **art.2**

466 Interpretation of Chapter II.

(1) [M1251]In this Chapter "life or endowment business" means any business within **[**[F932]class I, II, III or IV of Head A of Schedule 2 to the Friendly Societies Act 1992**]**, any pension business and any other life assurance business, but—

(a) shall not include the issue of a policy affording provision for sickness or other infirmity (whether bodily or mental) unless—

(i) it also affords assurance for a gross sum independent of sickness or other infirmity; and

(ii) not less than 60 per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity; and

(iii) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum;

(b) shall not include the assurance of any annuity the consideration for which consists of sums obtainable on the maturity, or on the surrender, of any other policy of assurance issued by the friendly society, being a policy of assurance forming part of the tax exempt life or endowment business of the friendly society.

(2) In this Chapter—

[[F933] "friendly society", without qualification, means (except in section 459) an incorporated friendly society or a registered friendly society;

"incorporated friendly society" means a society incorporated under the Friendly Societies Act 1992;**]**

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"life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life, not being industrial assurance business;

[[F934]"new society" means—

(a) a registered friendly society which was registered after 3rd May 1966 or which was registered in the period of three months ending on that date but which at no time earlier than that date carried on any life or endowment business, or

(b) an incorporated friendly society other than one which, before its incorporation, was a registered friendly society not within paragraph (a) above;**]**

"pension business" shall be construed in accordance with section 431;

"policy", in relation to life or endowment business, includes an instrument evidencing a contract to pay an annuity upon human life;

[[F935] "registered branch" means the same as in the Friendly Societies Act 1992 (and includes any branch that by virtue of section 96(3) of that Act is to be treated as a registered branch);

"registered friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society);**]**

[F936] . . .

"tax exempt life or endowment business" has, subject to subsections (7) to **[**[F937](10A)**]** of section 460, the meaning given by subsection (2)(d) of that section, that is to say, it means (subject to those subsections) life or endowment business other than business profits arising from which are excluded from subsection (1) of that section by subsection (2)(b) or (c) of that section (read, where appropriate, with subsection (6) of that section);

and references in sections 460 to 465 and this subsection to a friendly society **[**[F938]include, in the case of a registered friendly society, references to any branch of that society**]**.

(3) [M1252]It is hereby declared that for the purposes of this Chapter (except where provision to the contrary is made) a **[**[F939]friendly society**]** formed on the amalgamation of two or more friendly societies is to be treated as different from the amalgamated societies.

(4) A registered friendly society formed on the amalgamation of two or more friendly societies shall, for the purposes of this Chapter, be treated as registered not later than 3rd May 1966 if at the time of the amalgamation—

(a) all the friendly societies amalgamated were registered friendly societies eligible for the exemption conferred by section 460(1); and

(b) at least one of them was not a new society;

or, if the amalgamation took place before 19th March 1985, the society was treated as registered not later than 3rd May 1966 by virtue of the proviso to section 337(4) of the 1970 Act.

[[F940](5) An incorporated friendly society formed on the amalgamation of two or more friendly societies shall, for the purposes of this Chapter, be treated as a society which, before its incorporation, was a registered friendly society registered not later than 3rd May 1966 if at the time of the amalgamation—

(a) all the friendly societies amalgamated were registered friendly societies eligible for the exemption conferred by section 460(1); and

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(b) at least one of them was not a new society.**]**

Textual Amendments

F932 Words in s. 466(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(2)**; S.I. 1993/236, **art. 2**

F933 Definitions in s. 466(2) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(4)**; S.I. 1993/236, **art. 2**

F934 Definition in s. 466(2) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(5)**; S.I. 1993/236, **art. 2**

F935 Definitions in s. 466(2) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(6)**; S.I. 1993/236, **art. 2**

F936 Definition of "registrar" in s. 466(2) repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), **Sch. 22 Pt. I**; S.I. 1993/2213, **Sch.6** APPENDIX

F937 S. 466(2): word in definition of "tax exempt life or endowment business" substituted (retrospectively) by Finance Act 2007 (c. 11), Sch. 12 paras. 3, **6(1)**

F938 Words in s. 466(2) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(7)**; S.I. 1993/236, **art. 2**

F939 Words in s. 466(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14**(8; S.I. 1993/236, **art. 2**)

F940 S. 466(5) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(9)**; S.I. 1993/236, **art. 2**

Marginal Citations

M1251 Source—1970 ss.337(1)—(3), 335(5); 1974 s.27(8); 1985 s.41(7)(b)—(e); FSA 1974 s.64(8), Sch.9 23; 1987 (No.2) Sch.2 2(2); 1975 (No.2) s.52(2)

M1252 Source—1970 s.337(4); 1985 s.41(7)(e)

Trade unions and employers' associations

467 Exemption for trade unions and employers' associations.

(1) [M1253]A trade union which is precluded by Act of Parliament or by its rules from assuring to any person a sum exceeding **[**[F941]£4,000**]** by way of gross sum or **[**[F942]£825**]** by way of annuity shall on making a claim be entitled—

(a) to exemption from income tax and corporation tax in respect of its income which is not trading income and which is applicable and applied for the purpose of provident benefits;

(b) to exemption from tax in respect of chargeable gains which are applicable and applied for the purpose of provident benefits.

(2) In this section "provident benefits" includes any payment, expressly authorised by the rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the **[**[F943]spouse**]** of a member or as provision for the children of a deceased member.

(3) In determining for the purposes of this section whether a trade union is by Act of Parliament or its rules precluded from assuring to any person a sum exceeding

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[[F944]£825**]** by way of annuity, there shall be disregarded any approved annuities (as defined in section 620(9)).

[[F945](3A) The Treasury may by order substitute for any figure for the time being specified in this section such greater figure as may be specified in the order; and any amendment made in exercise of the power conferred by this subsection shall have effect in relation to such income or gains as may be specified in the order.**]**

(4) In this section "trade union" means—

(a) [M1254]any trade union the name of which is entered in the list of trade unions maintained by the **[**[F946]Certification Officer**]** under **[**[F947]section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992**]**;

(b) any employers' association the name of which is entered in the list of employers' associations maintained by the **[**[F946]Certification Officer**]** under **[**[F948]section 123 of the Trade Union and Labour Relations (Consolidation) Act 1992**]** and which on 30th September 1971 was a registered trade union for the purposes of section 338 of the 1970 Act;

[[F949](ba) any trade union the name of which is entered in the list of trade unions maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992;

(bb) any employers' association the name of which is entered in the list of employers' associations maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992 and which immediately before the coming into operation of that Article was a trade union for the purposes of this section; and**]**

(c) [M1255]the Police Federation for England and Wales, the Police Federation for Scotland, the Police Federation for Northern Ireland and any other organisation of persons in police service which has similar functions.

Textual Amendments

F941 Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(2)(a)**,(6)

F942 Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(2)(b)**,(6)

F943 1988(F) s.35*and* Sch.3 para.17*for chargeable period beginning on or after* 6*April* 1990.*Previously* "wife".

F944 Words in s. 467(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(3)(6)**

F945 S. 467(3A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(4)**

F946 Words in s. 467(4)(a)(b) substituted (*retrospectively*) by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(5)(a)**,(7)

F947 Words in s. 467(4)(a) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 37(a)**

F948 Words in s. 467(4)(b) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 37(b)**

F949 S. 467(4)(ba)(bb) substituted (1.7.1992) for s. 467(4)(ba) by S.I. 1992/808, **art. 2**; S.R. 1992/212, **art. 2(2)(a)**

Modifications etc. (not altering text)

C489 *See* 1970 s.338*for amounts applicable in earlier years.*

C490 *See*Employment Protection Act 1975 (c.71) ss.7, 125(1)*and* Sch.16 Part III para.1—*list now maintained by the Certification Officer.*

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Marginal Citations

M1253 Source—1970 s.338(1)—(3); 1982 s.36(1); 1974 s.28(1)(b); 1987 s.31

M1254 Source—1974 s.28(1)(a)

M1255 Source—1977 s.47

CHAPTER III

UNIT TRUST SCHEMES, DEALERS IN SECURITIES ETC.

Unit trust schemes

468 Authorised unit trusts.

(1) [M1256]In respect of income arising to the trustees of an authorised unit trust, and for the purposes of the provisions relating to relief for capital expenditure, the Tax Acts shall have effect as if—

(a) the trustees were a company resident in the United Kingdom; and

(b) the rights of the unit holders were shares in the company.

(2) The Tax Acts shall also have effect as if the aggregate amount shown in the accounts of the trust as income available for payment to unit holders or for investment were dividends on the shares referred to in subsection (1) above paid to them in proportion to their rights, the date of payment, in the case of income not paid to unit holders, being taken to be—

(a) the date or latest date provided by the terms of the authorised unit trust for any distribution in respect of the distribution period in question;

(b) if no date is so provided, the last day of the distribution period.

This subsection shall not apply to any authorised unit trust which is also an approved personal pension scheme (within the meaning of Chapter IV of Part XIV).

(3) References in the Corporation Tax Acts to a body corporate shall be construed in accordance with subsections (1) and (2) above, and section **[**[F950]234A**]** shall apply with any necessary modifications.

(4) Section 75 shall apply in relation to an authorised unit trust whether or not it is an investment company within the meaning of section 130; and sums periodically appropriated for managers' remuneration shall be treated for the purposes of section 75 as sums disbursed as expenses of management.

(5) Subsection (1) above shall not apply in relation to an authorised unit trust under the terms of which the funds of the trust cannot be invested in such a way that income can arise to the trustees which will be chargeable to tax in the hands of the trustees otherwise than—

(a) under Schedule C as profits arising from United Kingdom public revenue dividends, or

(b) under Case III of Schedule D;

and in this subsection "United Kingdom public revenue dividends" means public revenue dividends payable in the United Kingdom (whether they are also payable outside the United Kingdom or not) out of the public revenue of the United Kingdom.

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(6) In this section—

"authorised unit trust" means, as respects an accounting period, a unit trust scheme in the case of which an order under section 78 of the [M1257]Financial Services Act 1986 is in force during the whole or part of that accounting period;

"distribution period" means a period beginning on or after 1st April 1987 over which income from the investments subject to the trusts is aggregated for the purposes of ascertaining the amount available for distribution to unit holders;

"unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme; and

"unit trust scheme" has the same meaning as in section 469.

Textual Amendments

F950 Words in s. 468(3) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(3)(4)**

Modifications etc. (not altering text)

C491 *See*—1989 s.80—*subs.*(5)*not to apply to gilt unit trusts.*1990 ss.52(2), (3)*and* 132*and* Sch.19 Part IV—subs.(5)*not to apply as regards a distribution period beginning after* 31*December* 1990.*And see* 1990 s.52(3), (4)*for assessment of trustees' income under* Case III Sch.D*for the last distribution period.*

C492 *Definition employed for the purposes of* s.46(7)*—insurance companies: annual deemed disposal of holdings of unit trusts etc.*

Marginal Citations

M1256 Source—1970 ss.354, 358; 1980 s.60; 1987 s.38, 40(1); 1987 (No.2) s.40(1)

M1257 1986 c. 60.

[[F951]468AA Authorised unit trusts: futures and options.

(1) Trustees shall be exempt from tax under Case I of Schedule D in respect of income if—

(a) the income is derived from transactions relating to futures contracts or options contracts, and

(b) the trustees are trustees of a unit trust scheme which is an authorised unit trust as respects the accounting period in which the income is derived.

(2) For the purposes of subsection (1) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

(3) In this section—

"authorised unit trust" has the same meaning as in section 468, and

"unit trust scheme" has the same meaning as in section 469.**]**

Textual Amendments

F951 S. 468AA inserted by Finance Act 1990 (c. 29), **s. 81(1)(5)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C493 S. 468AA modified (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 1**, 9, 11

[F952 468A Certified unit trusts.

F953 . . . . . .]

Textual Amendments

F952 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F953 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

F954 468B Certified unit trusts: corporation tax.

F955 . . . . . .

Textual Amendments

F954 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F955 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

F956 468C Certified unit trusts: distributions.

F957 . . . . . .

Textual Amendments

F956 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F957 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F958 468D Funds of funds: distributions.

F959 . . . . . .]

Textual Amendments

F958 S. 468D inserted by Finance Act 1989 (c. 26), **s. 79**

F959 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F960 468E Authorised unit trusts: corporation tax.

(1) This section has effect as regards an accounting period of the trustees of an authorised unit trust ending after 31st December 1990.

(2) Subject to subsection (3) below, the rate of corporation tax [F961 shall be deemed to be 22.5 per cent. for the financial year 1993 and for subsequent financial years shall be

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deemed to be the rate at which income tax at the lower rate**]**is charged for the year of assessment which begins on 6th April in the financial year concerned.

(3) Where the period begins before 1st January 1991, subsection (2) above shall only apply for the purpose of computing corporation tax chargeable for so much of the period as falls in the financial year 1991 and subsection (4) below shall apply for the purpose of computing corporation tax chargeable for so much of the period as falls in the financial year 1990.

(4) So much of the period as falls after 31st December 1990 and before 1st April 1991 shall be deemed to fall in a financial year for which the rate of corporation tax is the rate at which income tax at the basic rate is charged for the year 1990-91.

(5) Subsections (3) and (4) above shall not apply where the authorised unit trust concerned is a certified unit trust as respects the period.

(6) Where the period begins after 31st December 1990, section 338 shall have effect as if any reference to interest of any description were a reference to interest of that description on borrowing of a relevant description.

(7) Where the authorised unit trust concerned is a certified unit trust as respects the period, subsection (6) above shall have effect without the words preceding "section 338".

(8) For the purposes of subsection (6) above borrowing is of a relevant description if it is borrowing in respect of which there has been no breach during the accounting period of the duties imposed on the manager of the scheme by regulations under section 81 of the [M1258]Financial Services Act 1986 with respect to borrowing by the trustees of the scheme.

(9) The Treasury may by regulations provide that for subsection (8) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of what constitutes borrowing of a relevant description for the purposes of subsection (6) above.

(10) Regulations under subsection (9) above may contain such supplementary, incidental, consequential or transitional provision as the Treasury think fit.

(11) In this section "certified unit trust" means, as respects an accounting period, a unit trust scheme in the case of which—

(a) an order under setion 78 of the Financial Services Act 1986 is in force during the whole or part of that accounting period, and

(b) a certificate under section 78(8) of that Act, certifying that the scheme complies with the conditions necessary for it to enjoy the rights conferred by the UCITS directive, has been issued before or at any time during that accounting period.

(12) In this section—

"authorised unit trust" has the same meaning as in section 468,

[M1259] "the UCITS directive" means the directive of the Council of the European Communities, dated 20th December 1985, on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (no.85/611/EEC), and

"unit trust scheme" has the same meaning as in section 469. **]]**

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Textual Amendments

F960 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

F961 Words in s. 468E(2) substituted (27.7.1993 with effect for the financial year 1993 and subsequent financial years) by 1993 c. 34, s. 79, Sch. 6 paras. 4, **25(2)**

Marginal Citations

M1258 1986 c. 60.

M1259 Source—O.J.85/L375/3.

VALID FROM 03/05/1994

[F962 468E Corporation tax: cases where lower rate applies.

(1) Where this subsection applies, the rate of corporation tax for the financial year shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in that financial year.

(2) Subsection (1) above only applies—
- (a) for the financial year 1994 and subsequent financial years; and
- (b) where, on a claim made within the period of twelve months from the end of the accounting period which or part of which falls in the financial year concerned, it is shown to the satisfaction of the inspector that throughout that accounting period the condition in subsection (3) below is fulfilled by the investments subject to the trusts of the authorised unit trust.

(3) The condition in this subsection is fulfilled by the investments if the market value of such of those investments as are qualifying investments does not exceed 60 per cent. of the market value of all those investments.

(4) For the purposes of subsection (3) above "qualifying investments" means any of the following investments—
- (a) any money placed at interest;
- (b) any security—
  - (i) including any loan stock or similar security whether of the Government of the United Kingdom or of any other government or of any public or local authority in the United Kingdom or elsewhere, or of any company, and whether secured or unsecured, but
  - (ii) excluding shares in a company;
- (c) any shares in a building society; and
- (d) an entitlement to a share in the investments subject to the trusts of another authorised unit trust, unless, throughout the relevant period, the condition in subsection (5) below is fulfilled by the investments subject to the trusts of that other authorised unit trust.

(5) The condition in this subsection is fulfilled by the investments if the market value of such of the investments as fall within paragraphs (a) to (c) of subsection (4) above does not exceed 60 per cent. of the market value of all those investments.

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(6) In subsection (4)(d) above "the relevant period" means the accounting period in relation to which by virtue of subsection (2)(b) above the question whether the entitlement is a "qualifying investment" falls to be determined.

(7) For the purposes of this section "investment" does not include cash awaiting investment.

(8) The Treasury may by order amend this section so as to extend or restrict the meaning of qualifying investments for the purposes of subsection (3) above.

(9) An order under subsection (8) above may contain such transitional provision as the Treasury think necessary or expedient.**]**

Textual Amendments

F962 S. 468EE inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 111(2)**

468F [F963]Authorised unit trusts: distributions.

(1) Subsection (2) below applies where—

(a) as regards a distribution period ending after 31st December 1990 a dividend is treated by virtue of section 468(2) as paid to a unit holder (whether or not income is in fact paid to the unit holder),

(b) the dividend is treated as paid by the trustees of a unit trust scheme which is an authorised unit trust as respects the accounting period in which the distribution period falls, and

(c) on the date of payment the unit holder is within the charge to corporation tax [F964] . . . .

(2) For the purpose of computing corporation tax chargeable in the case of the unit holder **[**[F965]the unfranked portion of the payment**]** shall be deemed—

(a) to be an annual payment, and not a dividend or other distribution, and

(b) to have been received by the unit holder after deduction of income tax at the **[**[F966]lower rate**]**, for the year of assessment in which the date of payment falls, from a corresponding gross amount.

[[F967](2A) For the purposes of subsection (2) above the unfranked portion of the payment shall be calculated according to the following formula—

$$U = \mathrm{Py}\frac{I-D}{I}$$

(2B) For the purposes of the formula in subsection (2A) above—

U is the unfranked portion of the payment;

P is the payment;

I is the gross amount of the income arising to the trustees in respect of the distribution period in question which has been brought into account in ascertaining the amount of income available for distribution to unit holders in respect of that period; and

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D is so much of I as represents franked investment income from the investments subject to the trusts.**]**

(3) Subsection (2) above shall have effect subject to the following provisions of this section and to section 468G.

(4) Subsection (2) above shall not apply where the rights in respect of which the dividend is treated as paid are held by the trustees of a unit trust scheme which is an authorised unit trust as respects the accounting period (of that scheme) in which the date of payment falls.

(5) Where the unit holder is on the date of payment the manager of the scheme, subsection (2) above shall not apply in so far as the rights in respect of which the dividend is treated as paid are rights held by him in the ordinary course of his business as manager of the scheme.

(6) Subsection (2) above shall not apply to so much of the payment as is attributable to income of the trustees arising before 1st January 1991.

(7) Subsection (6) above shall not apply where—

(a) the payment is treated as made as regards a distribution period falling in an accounting period as respects which the authorised unit trust is a certified unit trust, or

(b) the authorised unit trust is on the date of payment a fund of funds.

(8) In this section—

"authorised unit trust" has the same meaning as in section 468,

"certified unit trust" has the same meaning as in section 468E,

"distribution period" has the same meaning as in section 468,

. . . . . .

[F968]"fund of funds" means a unit trust scheme the sole object of which is to enable the unit holders to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in unit trust schemes, and

"unit trust scheme" has the same meaning as in section 469.]

Textual Amendments

F963 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

F964 Words in s. 468F(1)(c) repealed (with effect in accordance with s. 251(1)(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(2)(a), **Sch. 26 Pt 8(1)**, Note

F965 Words in s. 468F(2) substituted (27.7.1993 with effect where the date of payment is on or after 1st April 1993) by 1993 c. 34, s. 79, 79, Sch. 6 paras. 5(1)(a), **25(3)**

F966 Words in s. 468F(2)(b) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 5(1)(b), **25(3)**

F967 S. 468F(2A)(2B) inserted (27.7.1993 with effect where the date of payment is on or after 1st April 1993) by 1993 c. 34, s. 79, Sch. 6 paras. 5(2), **25(3)**

F968 S. 468F(8): definition of "dual resident" repealed (with effect in accordance with s. 251(1)(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(2)(b), **Sch. 26 Pt 8(1)**, Note

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468G [F969Dividends paid to investment trusts.

(1) Section 468F(2) shall not apply in a case where—

(a) the first condition set out below is fulfilled, and

(b) if one or more of the second to fourth conditions set out below applies, the condition (or each of the conditions) which applies is fulfilled.

(2) The first condition is that—

(a) the unit holder is a company which is an investment trust as respects the accounting period of the company that includes 20th March 1990, and

(b) immediately before the end of 20th March 1990, not less than 90 per cent. by value of the company's investments consisted of units in a unit trust scheme which (or units in different unit trust schemes each of which) was an authorised unit trust on 20th March 1990.

(3) The second condition applies if the date of payment is included in an accounting period of the company which falls after the company's accounting period that includes 20th March 1990; and the condition is that the company is an investment trust as respects—

(a) the accounting period of the company that includes the date of payment, and

(b) each (if any) accounting period of the company which falls after the company's accounting period that includes 20th March 1990 and before the company's accounting period that includes the date of payment.

(4) The third condition applies if the company makes an investment after 20th March 1990, and on or before the date of payment, in units in a unit trust scheme which is an authorised unit trust on the date of payment; and the condition is that, immediately before the end of the date of payment, each unit held by the company in a unit trust scheme which is an authorised unit trust on that date is a unit in a unit trust scheme—

(a) in which the company held units immediately before the end of 20th March 1990, and

(b) which was an authorised unit trust on 20th March 1990.

(5) The fourth condition applies if—

(a) the third condition applies, and

(b) immediately before the end of 20th March 1990 the company held units in more than one unit trust scheme which was an authorised unit trust on that date;

and the condition is that the investments made by the company after 20th March 1990, and on or before the date of payment, were made in accordance with the requirements applicable to the investment of funds of the company on 20th March 1990.

(6) For the purposes of this section—

(a) "authorised unit trust" has the same meaning as in section 468,

(b) "unit trust scheme" has the same meaning as in section 469, and

(c) a unit trust scheme is an authorised unit trust on a particular date if it is an authorised unit trust as respects the accounting period of the scheme that includes that date.

Textual Amendments

F969 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

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469 Other unit trusts.

(1) This section applies to—

(a) a [M1260]ny unit trust scheme that is not an authorised unit trust; and

(b) any authorised unit trust to which, by virtue of subsection (5) of section 468, that section does not apply,

except where the trustees of the scheme are not resident in the United Kingdom.

(2) Income arising to the trustees of the scheme shall be regarded for the purposes of the Tax Acts as income of the trustees (and not as income of the unit holders); and the trustees (and not the unit holders) shall be regarded as the persons to or on whom allowances or charges are to be made under the provisions of those Acts relating to relief for capital expenditure.

(3) For the purposes of the Tax Acts the unit holders shall be treated as receiving annual payments (made by the trustees under deduction of tax) in proportion to their rights.

This subsection shall not apply to any authorised unit trust which is also an approved personal pension scheme (within the meaning of Chapter IV of Part XIV).

(4) The total amount of those annual payments in respect of any distribution period shall be the amount which, after deducting income tax at the basic rate in force for the year of assessment in which the payments are treated as made, is equal to the aggregate amount shown in the accounts of the scheme as income available for payment to unit holders or for investment.

(5) The date on which the annual payments are treated as made shall be the date or latest date provided by the terms of the scheme for any distribution in respect of the distribution period in question, except that, if—

(a) the date so provided is more than 12 months after the end of the period; or

(b) no date is so provided,

the date on which the payments are treated as made shall be the last day of the period.

[[F970](5A) Subsection (5B) below applies where for any year of assessment—

(a) the trustees are (or, apart from this subsection, would be) chargeable under section 350 with tax on payments treated as made by them under subsection (3) above, and

(b) there is an uncredited surplus in the case of the scheme.

(5B) Where this subsection applies, the amount on which the trustees would otherwise be so chargeable shall be reduced—

(a) if the surplus is greater than that amount, to nil, or

(b) if it is not, by an amount equal to the surplus.

(5C) For the purposes of subsections (5A) and (5B) above whether there is an uncredited surplus for a year of assessment in the case of a scheme (and, if so, its amount) shall be ascertained by—

(a) determining, for each earlier year of assessment in which the income on which the trustees were chargeable to tax by virtue of subsection (2) above exceeded the amount treated by subsection (3) above as annual payments received by the unit holders, the amount of the excess,

(b) aggregating the amounts determined in the case of the scheme under paragraph (a) above, and

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(c) deducting from that aggregate the total of any reductions made in the case of the scheme under subsection (5B) above for earlier years of assessment.

(5D) The references in subsection (5C)(a) above to subsections (2) and (3) above include references to subsections (2) and (3) of section 354A of the 1970 Act.**]**

(6) In this section "distribution period" has the same meaning as in section 468, but—

(a) if the scheme does not make provision for distribution periods, then for the purposes of this section its distribution periods shall be taken to be successive periods of 12 months the first of which began with the day on which the scheme took effect; and

(b) if the scheme makes provision for distribution periods of more than 12 months, then for the purposes of this section each of those periods shall be taken to be divided into two (or more) distribution periods, the second succeeding the first after 12 months (and so on for any further periods).

(7) In this section "unit trust scheme" has the same meaning as in the [M1261]Financial Services Act 1986, except that the Treasury may by regulations provide that any scheme of a description specified in the regulations shall be treated as not being a unit trust scheme for the purposes of this section.

(8) Regulations under this section may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

(9) Sections 686 and 687 shall not apply to a scheme to which this section applies.

(10) Section 720(5) shall not apply in relation to profits or gains treated as received by the trustees of a scheme to which this section applies if or to the extent that those profits or gains represent accruals of interest (within the meaning of Chapter II of Part XVII) which are treated as income in the accounts of the scheme.

(11) This section shall have effect in relation to distribution periods beginning on or after 6th April 1987.

Textual Amendments

F970 1988(F) s.71.

Modifications etc. (not altering text)

C494 S. 469 extended (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 22(1)(2)**

C495 For regulations see Part III Vol. 5

Marginal Citations

M1260 Source—1970 s.354A; 1987 s.39; 1987 (No.2) s.40(1)

M1261 1986 c. 60.

470 Transitional provisions relating to unit trusts.

(1) Any transitional provisions contained in an order made under section 40(5) of the [M1262]Finance Act 1987 appointing a day for the coming into force of subsections (1) and (2) of that section and made in connection therewith shall after the coming into force of this section have effect for the purposes of this Act as they had effect for the purposes of that section, with such modifications if any as may be necessary.

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(2) If such an order as is mentioned in subsection (1) above has not been made before the coming into force of this Act, section 468 shall have effect with the substitution for the definition of "authorised unit trust" contained in subsection (6) of the following definition—

> "authorised unit trust" means, as respects any accounting period, a unit trust scheme in the case of which an order under section 17 of the [M1263]Prevention of Frauds (Investments) Act 1958 or under section 16 of the [M1264]Prevention of Frauds (Investments) Act (Northern Ireland) 1940 is in force during the whole or some part of that accounting period;

and sections 468 and 832 shall have effect with the omission of the definition of "unit trust scheme".

(3) If such an order as is mentioned in subsection (1) above has not been made before the coming into force of this Act, subsection (2) above shall cease to have effect on such day as the Board may by order appoint; and an order under this subsection may contain such transitional provisions as appear to the Board to be necessary or expedient.

Modifications etc. (not altering text)

C496 S.I. 1988 No.745 (*not reproduced*)—*appointed day* 29*April* 1988.

Marginal Citations

M1262 1987 s.40(5)
M1263 1958 c. 45.
M1264 1940 c. 9 (N.I.).

VALID FROM 03/05/1994

[F971 Distributions of authorised unit trusts: general

Textual Amendments

F971 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

468H Interpretation.

(1) This section has effect for the interpretation of sections 468I to 468R.

(2) The making of a distribution by an authorised unit trust to a unit holder includes investing an amount on behalf of the unit holder in respect of his accumulation units.

(3) In relation to an authorised unit trust—

(a) "distribution period" means a period by reference to which the total amount available for distribution to unit holders is ascertained; and

(b) "distribution accounts" means accounts showing how that total amount is computed.

(4) The distribution date for a distribution period of an authorised unit trust is—

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the date specified by or in accordance with the terms of the trust for any distribution for that distribution period; or

(b) if no date is so specified, the last day of that distribution period.

(5) In this Chapter references to foreign income dividends shall be construed in accordance with Chapter VA of Part VI.

(6) Sections 468I to 468R do not apply to an authorised unit trust which is also an approved personal pension scheme (within the meaning of Chapter IV of Part XIV).

468I Distribution accounts.

(1) The total amount shown in the distribution accounts as available for distribution to unit holders shall be shown as available for distribution in one of the ways set out below.

(2) It may be shown as available for distribution as dividends which are not foreign income dividends.

(3) It may be shown as available for distribution as foreign income dividends.

(4) It may be shown as available for distribution as yearly interest.

(5) It may be divided into—

(a) a part shown as available for distribution as dividends which are not foreign income dividends; and

(b) a part shown as available for distribution as foreign income dividends.

(6) Amounts deriving from income under Schedule A may not be included in any amount shown in the distribution accounts as available for distribution as yearly interest.

(7) Where distribution accounts show an amount as available for distribution to unit holders in the way set out in subsection (5) above there shall not be any discrimination between unit holders having accumulation units and other unit holders (or between unit holders on other grounds).

VALID FROM 03/05/1994

Dividend and foreign income distributions

468J Dividend distributions.

(1) Subsection (2) below applies where the total amount or a part of the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as dividends which are not foreign income dividends.

(2) The Tax Acts shall have effect as if the total amount or, as the case may be, the part were dividends on shares paid on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.

(3) The trustees of an authorised unit trust may not make an election under section 246A in respect of dividends paid by virtue of this section.

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(4) In the following provisions of this Chapter "a dividend distribution" means a dividend treated as paid by virtue of subsection (2) above.

468K Foreign income distributions.

(1) Subsection (2) below applies where the total amount or a part of the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as foreign income dividends.

(2) The Tax Acts shall have effect (subject to what follows) as if the total amount or, as the case may be, the part were foreign income dividends on shares paid on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.

(3) In relation to the paying of foreign income dividends by authorised unit trusts Chapter VA of Part VI shall have effect as if the following provisions were omitted—
   (a) sections 246A and 246B (provisions with respect to election to pay foreign income dividends);
   (b) sections 246K to 246M (special provisions for subsidiaries); and
   (c) sections 246S to 246W (international headquarters companies).

(4) In the following provisions of this Chapter "a foreign income distribution" means a foreign income dividend treated as paid by virtue of subsection (2) above.

VALID FROM 03/05/1994

Interest distributions

468L Interest distributions.

(1) Subsection (2) below applies where the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as yearly interest.

(2) The Tax Acts shall have effect (subject to what follows) as if the total amount were payments of yearly interest made on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.

(3) In the following provisions of this Chapter "an interest distribution" means a payment of yearly interest treated as made by virtue of subsection (2) above.

(4) The obligation under section 349(2) to deduct a sum in its application to an interest distribution is subject to sections 468M and 468N (and, in its application to an interest distribution to a unit holder in respect of his accumulation units, is an obligation to deduct a sum out of the amount being invested on the unit holder's behalf).

(5) Interest distributions shall not be a charge on income for the purposes of section 338(1) but any interest distributions for a distribution period which are interest distributions with respect to which the obligation under section 349(2) (if and to the extent that it applies) is complied with shall be allowed as a deduction

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against the profits of the authorised unit trust for the accounting period in which the last day of that distribution period falls.

(6) The deduction mentioned in subsection (5) above may be made—
- (a) in computing the total profits for the accounting period, after the deduction of any expenses deductible in computing profits apart from section 75 and either before or after the deduction under that section of sums disbursed as expenses of management; or
- (b) against total profits as reduced by any other relief from tax or against total profits not so reduced.

(7) Where in any accounting period the amount deductible by virtue of subsection (5) above exceeds the amount from which the deduction is made—
- (a) the excess may be carried forward to the succeeding accounting period; and
- (b) the amount so carried forward shall be treated as if it were deductible in that succeeding accounting period by virtue of subsection (5) above.

468M Deduction of tax (simple case).

(1) Subsection (2) below applies where—
- (a) an interest distribution is made for a distribution period to a unit holder; and
- (b) the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to unit holders derives from eligible income entirely.

(2) Where this subsection applies, the obligation to deduct under section 349(2) shall not apply to the interest distribution to the unit holder if the residence condition is on the distribution date fulfilled with respect to him.

(3) Section 468O makes provision with respect to the circumstances in which the residence condition is fulfilled with respect to a unit holder.

(4) Subject to subsection (5) below, in this Chapter "eligible income" means—
- (a) any interest on a security which falls within paragraph 5(5)(d) of Schedule 19AA;
- (b) any interest on a security which is a quoted Eurobond for the purposes of section 124;
- (c) any dividends falling within section 17(1)3;
- (d) any proceeds or other realisation falling within section 17(1)4;
- (e) any amount taxable by virtue of section 123;
- (f) any other amount, if it is not subject to income tax by deduction.

(5) "Eligible income" does not include—
- (a) franked investment income;
- (b) income under Schedule A;
- (c) any foreign income dividend;
- (d) any amount afforded relief from taxation imposed under the laws of a territory outside the United Kingdom under arrangements having effect by virtue of section 788 in relation to that territory.

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468N Deduction of tax (mixed funds).

(1) Subsection (2) below applies where—

(a) an interest distribution is made for a distribution period to a unit holder; and

(b) the gross income entered in the distribution accounts for the purposes of computing the total amount available for distribution to unit holders does not derive from eligible income entirely.

(2) Where this subsection applies, the obligation to deduct under section 349(2) shall not apply to the relevant amount of the interest distribution to the unit holder if the residence condition is on the distribution date fulfilled with respect to him.

(3) Section 468O makes provision with respect to the circumstances in which the residence condition is fulfilled with respect to a unit holder.

(4) This is how to calculate the relevant amount of the interest distribution—

$$R = A \text{ x } \frac{B}{C}$$

Where—

R = the relevant amount;

A = the amount of the interest distribution before deduction of tax to the unit holder in question;

B = such amount of the gross income as derives from eligible income;

C = the amount of the gross income.

(5) In subsection (4) above the references to the gross income are references to the gross income entered as mentioned in subsection (1)(b) above.

468O Residence condition.

(1) For the purposes of sections 468M and 468N, the residence condition is fulfilled with respect to a unit holder if—

(a) there is a valid declaration made by him that he is not ordinarily resident in the United Kingdom; or

(b) he holds the rights as a personal representative of a unit holder and—

(i) before his death the deceased made a declaration valid at the time of his death that he was not ordinarily resident in the United Kingdom; or

(ii) the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.

(2) For the purposes of sections 468M and 468N, the residence condition is also fulfilled with respect to a unit holder if the unit holder is a company and there is a valid declaration made by the company that it is not resident in the United Kingdom.

(3) The Board may by regulations make such provision as appears to them to be necessary or expedient modifying the application of this section and section 468P in relation to interest distributions made to or received under a trust.

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(4) Regulations under subsection (3) above may—
- (a) make different provision for different cases; and
- (b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

Modifications etc. (not altering text)

C497 Ss. 468O, 468P applied (with modifications) (27.9.1994) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994 (S.I. 1994/2318), **regs. 1**, 3-6

468P Residence declarations.

(1) A declaration made for the purposes of section 468O must—
- (a) be in such form as may be required or authorised by the Board;
- (b) be made in writing to the trustees of the authorised unit trust in question; and
- (c) contain any details or undertakings required by subsections (2) to (4) below.

(2) A declaration made as mentioned in section 468O(1)(a) or (b)(i) must contain—
- (a) the name and principal residential address of the person making it; and
- (b) an undertaking that he will notify the trustees if he becomes ordinarily resident in the United Kingdom.

(3) A declaration made as mentioned in section 468O(1)(b)(ii) must contain the name of the deceased and his principal residential address immediately before his death.

(4) A declaration made as mentioned in section 468O(2) must contain—
- (a) the name of the company making it and the address of its registered or principal office; and
- (b) an undertaking that the company will notify the trustees if it becomes resident in the United Kingdom.

(5) For the purposes of determining whether an interest distribution should be made with or without any deduction, the trustees may not treat a declaration as valid if—
- (a) they receive a notification in compliance with an undertaking under subsection (2) or (4) above that the person in question has become ordinarily resident or, as the case may be, resident in the United Kingdom; or
- (b) they come into possession of information by some other means which indicates that the person in question is or may be ordinarily resident or, as the case may be, resident in the United Kingdom;

but, subject to that, they are entitled to treat the declaration as valid.

(6) The trustees shall, on being required to do so by a notice given by an officer of the Board, make available for inspection by such an officer any declarations made to them under this section or any specified declaration or description of declarations.

(7) Where a notice has been given to the trustees under subsection (6) above, the declarations shall be made available within such time as may be specified in the notice and the person carrying out the inspection may take copies of or extracts from them.

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(8) The Board may by regulations make provision for giving effect to this section, including in particular provision requiring trustees and managers of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.

(9) Regulations under subsection (8) above may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

Modifications etc. (not altering text)

C498 Ss. 468O, 468P applied (with modifications) (27.9.1994) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994 (S.I. 1994/2318), **regs. 1**, 3-6

VALID FROM 10/07/2003

[F972 468PA Section 468O(1A): consequences of reasonable but incorrect belief

Where—

(a) an interest distribution is made to a unit holder by the trustees of an authorised unit trust,

(b) the trustees, in reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) to make a deduction from the interest distribution,

(c) that obligation would apply but for that condition being so fulfilled, and

(d) (contrary to the belief of the trustees) the unit holder is in fact ordinarily resident in the United Kingdom,

section 350 and Schedule 16 have effect as if that obligation applied.**]**

Textual Amendments

F971 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

F972 Ss. 468PA, 468PB inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(9)**

Modifications etc. (not altering text)

C499 Ss. 468M, 468O, 468PA applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 7

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VALID FROM 10/07/2003

[F972 468PB Regulations supplementing sections 468M to 468PA

(1) The Board may by regulations make provision for giving effect to sections 468M to 468PA.

(2) The regulations may, in particular, include provision modifying the application of those sections in relation to interest distributions made to or received under a trust.

(3) The regulations may, in particular, include provision for the giving by officers of the Board of notices requiring trustees of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.

(4) The regulations may—
- (a) make provision in relation to times before they are made,
- (b) make different provision for different cases, and
- (c) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.**]**

Textual Amendments

F971 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

F972 Ss. 468PA, 468PB inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(9)**

VALID FROM 03/05/1994

Distributions to corporate unit holder

468Q Dividend distribution to corporate unit holder.

(1) Subsection (2) below applies where—
- (a) a dividend distribution for a distribution period is made to a unit holder by the trustees of an authorised unit trust; and
- (b) on the distribution date for that distribution period the unit holder is within the charge to corporation tax.

(2) For the purpose of computing corporation tax chargeable in the case of the unit holder the unfranked part of the dividend distribution shall be deemed—
- (a) to be an annual payment and not a dividend distribution, a foreign income distribution or an interest distribution; and
- (b) to have been received by the unit holder after deduction of income tax at the lower rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.

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(3) This is how to calculate the unfranked part of the dividend distribution—

$$U = \left(\left(A + B \right) x \frac{C}{D} \right) - B$$

Where—

U = the unfranked part of the dividend distribution to the unit holder;

A = the amount of the dividend distribution;

B = the amount of any foreign income distribution for the distribution period for which that dividend distribution is made to the unit holder;

C = such amount of the gross income as does not derive from franked investment income;

D = the amount of the gross income.

(4) If the calculation in accordance with subsection (3) above produces a value of U that is less than O, it shall be assumed for the purposes of this section that no part of the dividend distribution is unfranked.

(5) Where the unit holder is on the distribution date the manager of the scheme, subsection (2) above shall not apply in so far as the rights in respect of which the dividend distribution is made are held by him in the ordinary course of his business as manager of the scheme.

(6) For the purposes of this section the references to the gross income are references to the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to unit holders for the distribution period in question.

468R Foreign income distribution to corporate unit holder.

(1) Subsection (2) below applies where—

(a) a foreign income distribution for a distribution period is made to a unit holder by the trustees of an authorised unit trust; and

(b) on the distribution date for that distribution period the unit holder is within the charge to corporation tax.

(2) The provisions of subsections (2) to (6) of section 468Q shall have effect, with the necessary modifications, in relation to the foreign income distribution as they have effect in relation to a dividend distribution, and in particular as if for the provisions of subsection (3) of that section there were substituted the provisions of subsection (3) below.

(3) This is how to calculate the unfranked part of the foreign income distribution—

$$U = \left(\left(A + B \right) x \frac{E}{D} \right) - A$$

Where—

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U = the unfranked part of the foreign income distribution to the unit holder in question;

A = the amount of any dividend distribution for the distribution period for which that foreign income distribution is made to the unit holder;

B = the amount of that foreign income distribution;

E = such amount of the gross income as does not derive from foreign income dividends;

D = the amount of the gross income.

VALID FROM 27/07/1999

[[F973]469A Court common investment funds.

(1) The Tax Acts shall have effect in relation to any common investment fund established under section 42 of the [M1265]Administration of Justice Act 1982 (common investment funds for money paid into court) as if—

(a) the fund were an authorised unit trust;

(b) the person who is for the time being the investment manager of the fund were the trustee of that authorised unit trust; and

(c) the persons whose interests entitle them, as against the Accountant General, to share in the fund's investments were the unit holders in that authorised unit trust.

(2) In this section "the Accountant General" means (subject to subsection (3) below) the Accountant General of the Supreme Court of Judicature in England and Wales or the Accountant General of the Supreme Court of Judicature of Northern Ireland.

(3) Where in the case of any common investment fund a person other than the Accountant General is authorised by the Lord Chancellor to hold shares in the fund, the reference in subsection (1)(c) above to the Accountant General shall include a reference to that other person.**]**

Textual Amendments

F971 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

F973 S. 469A inserted (with effect in accordance with s. 68(3)-(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 68(1)**

Marginal Citations

M1265 1982 c.53.

Dealers in securities, banks and insurance businesses

471 Exchange of securities in connection with conversion operations, nationalisation etc.

(1) [M1266]If—

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(a) any securities to which a person who is carrying on a trade which consists wholly or partly in dealing in securities is beneficially entitled are exchanged for other securities; and

(b) the exchange is one to which this section applies,

then, whether or not any additional consideration is given for the exchange but subject to subsection (2) below, that person shall be treated for tax purposes (except as regards any tax payable in respect of dividends or interest), both at the time of the exchange and thereafter, as if the exchange had not taken place, and in that case the produce of any subsequent realisation of any of the securities received by him under the exchange (together with any additional consideration, or the appropriate part of any additional consideration, received by him under the exchange) shall be treated as the produce of the realisation of the corresponding securities surrendered by or transferred from him under the exchange, or of a corresponding part thereof, as the case may be.

(2) Subsection (1) above shall not apply to any person who gives notice to the inspector not later than two years after the end of the chargeable period in which the exchange takes place that he desires not to be treated as mentioned in that subsection.

(3) The exchanges to which this section applies are—

(a) any exchange effected under any arrangement carried out under section 2 of the [M1267]National Loans Act 1939 or section 14 of the [M1268]National Loans Act 1968 if the Treasury direct, in pursuance of that arrangement, that this section shall apply to exchanges thereunder;

(b) any exchange of securities effected by section 1 of the [M1269]Bank of England Act 1946; and

(c) any exchange of securities effected in pursuance of any enactment passed after 5th April 1946 which provides for the compulsory acquisition of any securities and the issue of other securities in lieu thereof, if the Treasury direct that this section shall apply to exchanges of securities effected in pursuance of that enactment.

(4) In this section "securities" includes shares, stock, bonds, debentures and debenture stock.

Marginal Citations

M1266 Source—1970 s.326

M1267 1939 c. 117.

M1268 1968 c. 13.

M1269 1946 c. 27.

472 Distribution of securities issued in connection with nationalisation etc.

(1) [M1270]Where—

(a) in pursuance of any enactment passed after 5th April 1946 any securities are issued to any body corporate as, or as part of, the consideration for the compulsory acquisition of any property under that enactment; and

(b) that body corporate is wound up or the capital thereof is reduced or any bonds, debentures or debenture stock thereof are redeemed, and, in or in connection with the winding up, reduction of capital or redemption, all or any

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of the securities so issued are distributed to holders of securities of the body corporate ("the distributed securities"); and

(c) the Treasury direct that this section shall apply in relation to the distribution,

any person ("the dealer") who is carrying on a trade which consists wholly or partly in dealing in securities and is beneficially entitled to any securities ("the relevant securities") to the holders of which the distribution is made shall, in relation to that distribution, be treated for tax purposes in the manner specified in subsections (2) and (3) below, unless he gives notice to the inspector not later than two years after the end of the chargeable period in which the distribution takes place that he desires not to be so treated in relation to that distribution.

(2) If the result of the winding up, reduction of capital or redemption of bonds, debentures or debenture stock is that the relevant securities to which the dealer is beneficially entitled are wholly extinguished without his receiving anything in respect thereof except the distributed securities, he shall be treated for tax purposes (except as regards any tax payable in respect of dividends or interest), both then and thereafter, as if neither the extinction nor the distribution had taken place but as if the produce of any subsequent realisation of any of the distributed securities were the produce of the realisation of the relevant securities or a corresponding part thereof, as the case may be.

(3) In any other case—

(a) the dealer shall be treated as having acquired the distributed securities at a cost equal to such proportion of the cost to him of the relevant securities as may be specified in the direction of the Treasury referred to in subsection (1) above and the question whether he has made any, and if so what, profit or suffered any, and if so what, loss on any subsequent realisation of the distributed securities shall be determined accordingly; and

(b) in considering whether he has, either as the result of the winding up, reduction of capital or redemption of bonds, debentures or debenture stock and the distribution of the securities, or on any subsequent realisation of any of the relevant securities, made any, and if so what, profit or suffered any, and if so what, loss in connection with the relevant securities, the distributed securities shall be left out of account and the cost to him of the relevant securities shall be deemed to be reduced by the amount of the cost at which, under paragraph (a) above, he is taken to have acquired the distributed securities.

(4) In this section "securities" includes shares, stock, bonds, debentures and debenture stock.

Marginal Citations

M1270 Source—1970 s.327

VALID FROM 22/07/2004

[F974 472A Trading profits etc. from securities: taxation of amounts taken to reserves]

(1) This section applies in relation to securities—

(a) which are held by a person carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities; and

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(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) Profits and losses arising from such securities that in accordance with generally accepted accounting practice are—

(a) calculated by reference to the fair value of the securities, and

(b) recognised in that person's statement of recognised gains and losses or statement of changes in equity,

shall be brought into account in computing the profits or losses of a business in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (2) does not apply—

(a) to an amount to the extent that it derives from or otherwise relates to an amount brought into account under that subsection in an earlier period of account, or

(b) to an amount recognised for accounting purposes by way of correction of a fundamental error.

(4) In this section, "securities"—

(a) includes shares and any rights, interests or options that by virtue of section 99, 135(5) or 136(5) of the Taxation of Chargeable Gains Act 1992 are treated as shares for the purposes of sections 126 to 136 of that Act; but

(b) does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996).**]**

Textual Amendments

F971 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

F974 S. 472A inserted (with effect in accordance with s. 54(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 54** (as amended (retrospectively) by Finance Act 2005 (c.7), Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**)

473 Conversion etc. of securities held as circulating capital.

(1) [M1271]Subsections (3) and (4) below shall have effect where a transaction to which this section applies occurs in relation to any securities ("the original holding")—

(a) to which a person carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is beneficially entitled; and

(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) This section applies to any transaction which, if the securities were not such as are mentioned in subsection (1)(b) above—

(a) would result in the original holding being equated with a new holding by virtue of sections **[**[F975]126 to 136 of the 1992**]** Act (capital gains tax roll-over relief in cases of conversion etc.); or

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(b) would be treated by virtue of section **[**[F975]134**]** of that Act (compensation stock) as an exchange for a new holding which does not involve a disposal of the original holding;

but does not apply to any transaction in relation to which section 471 applies or would apply if the person concerned had not given a notice under that section.

(3) Subject to subsection (4) below, in making any computation in accordance with the provisions of this Act applicable to Case I of Schedule D of the profits or losses of the business—

(a) the transaction shall be treated as not involving any disposal of the original holding, and

(b) the new holding shall be treated as the same asset as the original holding.

(4) Where under the transaction the person concerned receives or becomes entitled to receive any consideration in addition to the new holding, subsection (3) above shall have effect as if references to the original holding were references to the proportion of it which the market value of the new holding at the time of the transaction bears to the aggregate of that value and the market value at that time (or, if it is cash, the amount) of the consideration.

(5) Subsections (3) and (4) above shall have effect with the necessary modifications in relation to any computation made for the purposes of section 76(2) in a case where securities held by the company concerned are equated with a new holding by virtue of any of sections **[**[F975]126 to 136 of the 1992**]**Act or are treated as not disposed of by virtue of section **[**[F975]134**]**of that Act.

(6) In this section "securities" includes shares, any security within the meaning of section **[**[F976]132 of the 1992 Act**]** and any rights, interests or options which by virtue of section **[**[F976]136(3), 147 or 99**]** of that Act are treated as shares for the purposes of sections **[**[F976]126 to 136**]** of that Act.

(7) In determining for the purposes of subsection (2)(a) above whether a transaction would result in the original holding being equated with a new holding by virtue of section **[**[F977]135 or 136 of the 1992**]** Act the reference in section **[**[F977]137(1)**]** of that Act to capital gains tax shall be construed as a reference to income tax.

Textual Amendments

F975 Words in 473(2)(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(a)** (with ss. 60, 101(1), 171, 201(3))

F976 Words in s. 473(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(b)** (with ss. 60, 101(1), 171, 201(3))

F977 Words in s. 473(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(c)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M127 Source—1977 s.46; 1979(C) Sch.7

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474 Treatment of tax-free income.

(1) [M1272]Where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is carried on in the United Kingdom by a person not resident there, then—

(a) in computing for any of the purposes of the Tax Acts the profits arising from, or loss sustained in, the business, and

(b) in the case of an insurance business, also in computing the profits or loss from pension business [F978] . . . under section 436,

all interest, dividends and other payments whatsoever to which section 48 or 123(4) extends shall be included notwithstanding the exemption from tax conferred by those sections respectively.

In this subsection "securities" includes stocks and shares.

(2) Where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities—

(a) is carried on in the United Kingdom by a person not ordinarily resident there, and

(b) in making any such computation as is referred to in subsection (1) above with respect to that business, any interest on any securities issued by the Treasury is excluded by virtue of a condition of the issue thereof regulating the treatment of the interest on those securities for tax purposes,

then any expenses attributable to the acquisition or holding of, or to any transaction in, the securities (but not including in those expenses any interest on borrowed money), and any profits or losses so attributable, shall also be excluded in making that computation.

Textual Amendments

F978 Words in s. 474(1)(b) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras.8, 18, **Sch. 19 Pt. V**, Note 3

Marginal Citations

M1272 Source—1970 s.328(1)(2); 1970(F) Sch.5 Part III 11(6)(f)

475 Tax-free Treasury securities: exclusion of interest on borrowed money.

(1) [M1273]This section has effect where paragraphs (a) and (b) of section 474(2) apply to a business for any accounting period or year of assessment.

(2) Up to the amount determined under this section ("the amount ineligible for relief"), interest on money borrowed for the purposes of the business—

(a) shall be excluded in any computation under the Tax Acts of the profits (or losses) arising from the business or, where subsection (6) below applies, arising from any annuity business forming part of the life assurance business, and

(b) shall be excluded from the definition of "charges on income" in section 338.

(3) Subject to subsection (4) below, in determining the amount ineligible for relief, account shall be taken of all money borrowed for the purposes of the business which

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is outstanding in the accounting or basis period, up to the total cost of the tax-free Treasury securities held for the purpose of the business in that period.

(4) Where the person carrying on the business is a company, account shall not be taken of any borrowed money carrying interest which, apart from subsection (2) above, does not fall to be included in the computations under paragraph (a) of that subsection, and is not to be treated as a charge on income for the purposes of the Corporation Tax Acts.

(5) Subject to subsection (6) below, the amount ineligible for relief shall be equal to a year's interest on the amount of money borrowed which is to be taken into account under subsection (3) above at a rate equal to the average rate of interest in the accounting or basis period on money borrowed for the purposes of the business, except that in the case of a period of less than 12 months interest shall be taken for that shorter period instead of for a year.

(6) Where relief for expenses of management is to be granted to an insurance company for any accounting period, and that relief falls to be reduced under section **[**[F979]444E(2)**]**(by applying the fraction which is investment income **[**[F980]attributable to basic life assurance and general annuity business**]** other than income from tax-free Treasury securities divided by that total investment income)—

(a) the amount ineligible for relief shall be a fraction of the amount of interest in the accounting period on money borrowed for the purposes of the business; and

(b) that fraction shall be the fraction which is income from tax-free Treasury securities divided by total investment income **[**[F980]attributable to basic life assurance and general annuity business**]** (that is to say, one minus the fraction to be applied under section **[**[F979]444E(2)**]**).

(7) In this section "tax-free Treasury securities" means securities issued by the Treasury with a condition regulating the treatment of the interest thereon for income tax or corporation tax purposes such that interest on the securities is excluded in computing the income or profits.

(8) For the purposes of this section the cost of a holding of tax-free Treasury securities which has fluctuated in the accounting or basis period shall be the average cost of acquisition of the initial holding, and of any subsequent acquisitions in the accounting or basis period, applied to the average amount of the holding in the accounting or basis period, and this subsection shall be applied separately to securities of different classes.

(9) In this section "accounting or basis period" means the company's accounting period or the period by reference to which the profits or gains arising in the year of assessment are to be computed.

Textual Amendments

F979 Words in s. 475(6) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 31.12.1992) by 1993 c. 34, **s. 100(2)(a)(3)**

F980 Words in s. 475(6) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 31.12.1992) by 1993 c. 34, **s. 100(2)(b)(3)**

Marginal Citations

M1273 Source—1970 s.329

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CHAPTER IV

BUILDING SOCIETIES, BANKS, SAVINGS BANKS, INDUSTRIAL AND PROVIDENT SOCIETIES AND OTHERS

476 Building societies: regulations for payment of tax.

F981 . . . . . .

Textual Amendments

F981 S. 476 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 2, **Sch. 19 Pt. 4**, Note 8

477 Investments becoming or ceasing to be relevant building society investments.

F982 . . . . . .

Textual Amendments

F982 S. 477 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 3, **Sch. 19 Pt. 4**, Note 8

[F983 477A Building societies: regulations for deduction of tax.

(1) The Board may by regulations make provision with respect to any year of assessment requiring any building society—

(a) in such cases as may be prescribed by the regulations to deduct out of any dividend or interest paid or credited in the year in respect of shares in, or deposits with or loans to, the society a sum representing the amount of income tax on it, and

(b) to account for and pay any amount required to be deducted by the society by virtue of this subsection.

F984 [(1A) Regulations under subsection (1) above may not make provision with respect to any dividend or interest paid or credited, on or after the day on which the Finance Act 1991 was passed, in respect of a security (other than a qualifying certificate of deposit [F985 and other than a qualifying deposit right]]) which was quoted, or capable of being quoted, on a recognised stock exchange at the time the dividend or interest became payable.

(2) Regulations under subsection (1) above may—

(a) make provision with respect to the furnishing of information by building societies or their investors, including, in the case of societies, the inspection of books, documents and other records on behalf of the Board;

(b) contain such incidental and consequential provisions as appear to the Board to be appropriate, including provisions requiring the making of returns.

(3) For any year of assessment to which regulations under subsection (1) above apply, dividends or interest payable in respect of shares in, or deposits with or loans to, a building society shall be dealt with for the purposes of corporation tax as follows—

(a) in computing for any accounting period ending in the year of assessment the income of the society from the trade carried on by it, there shall be allowed as

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a deduction the actual amount paid or credited in the accounting period of any such dividends or interest, together with any amount of income tax accounted for and paid by the society in respect thereof;

(b) no part of any such dividends or interest paid or credited in the year of assessment shall be treated as a distribution of the society or as franked investment income of any company resident in the United Kingdom.

[F986(3A) Subsection (3B) below applies in the case of a dividend or interest payable in respect of any security (other than a qualifying certificate of deposit **[**F985and other than a qualifying deposit right**]]**) which is quoted, or capable of being quoted, on a recognised stock exchange at the time the dividend or interest becomes payable.

(3B) Where the amount payable by way of dividend or interest represents more than a reasonable commercial return for the use of the principal to which the security relates, the amount deductible in respect of the dividend or interest under subsection (3)(a) above shall not exceed an amount equal to the amount which would have represented a reasonable commercial return for the use of that principal.

(3C) For the purposes of subsection (3B) above, no amount shall be regarded as representing the principal to which a security relates in so far as it exceeds any new consideration which has been received by the society for the issue of the security.

(4) Subsection (3)(a) above shall apply to any terminal bonus paid by the society under a certified contractual savings scheme as if it were a dividend on a share in the society.

(5) Notwithstanding anything in sections 64, 66 and 67, for any year of assessment to which regulations under subsection (1) above apply income tax chargeable under Case III of Schedule D shall, in the case of any relevant sum, be computed on the full amount of the income arising in the year of assessment.

(6) For the purposes of subsection (5) above a sum is relevant if it is a sum in respect of which a liability to deduct income tax—

(a) is imposed by regulations under subsection (1) above, or

(b) would be so imposed if a certificate were not supplied, in accordance with the regulations, to the effect that the person beneficially entitled to the sum is unlikely to be liable to pay any amount by way of income tax for the year of assessment in which the sum is paid.

(7) Notwithstanding anything in sections 348 to 350, for any year of asessment to which regulations under subsection (1) above apply income tax shall not be deducted upon payment to the society of any interest on advances, being interest payable in that year.

(8) Subsection (7) above shall not apply to any payment of relevant loan interest to which section 369 applies.

(9) In this section "dividend" has the meaning given by regulations under subsection (1) above, but any sum which is paid by a building society by way of dividend and which is not paid under deduction of income tax shall be treated for the purposes of Schedule D as paid by way of interest.**]**

[F987(10) In this section—

"qualifying certificate of deposit" has the same meaning as in section 349, and

F988 "qualifying deposit right" has the meaning given by section 349(4), reading "paid" as "paid or credited", and**]**

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"security" includes share.

Textual Amendments

F983 S. 477A inserted (with effect in accordance with Sch. 5 para. 4(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 4(1)**

F984 S. 477A(1A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(2)**

F985 Words in s. 477A(1A)(3A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 3(2), **6**

F986 S. 477A(3A)-(3C) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 52(2)(3)**

F987 S. 477A(10) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(3)**

F988 S. 477A(10): definition of "qualifying deposit right" inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 3(3), **6**

Modifications etc. (not altering text)

C500 *See* 1990 Sch.5 para.16(1), (2), (3)—*regulations may also require building societies to account for tax on transitional sums.*

C501 *See* 1990 Sch.5 para.16(1), (4), (5)—*for the year* 1991-92,*the words from*
"actual"
to the end of the paragraph are replaced by
"appropriate amount";*and the following subs. is inserted after* subs.(3):— "(3A) In subsection (3)(a) above the reference to the appropriate amount is to the actual amount paid or credited in the accounting period of any such dividends or interest together with—(a) in the case of dividends or interest paid or credited in the year 1990-91, any amount accounted for and paid by the society in respect thereof as representing income tax, and (b) in the case of dividends or interest paid or credited in the year 1991-92, any amount of income tax accounted for and paid by the society in respect thereof."

[477B [F989]Building societies: incidental costs of issuing qualifying shares.

(1) In computing for the purposes of corporation tax the income of a building society from the trade carried on by it, there shall be allowed as a deduction, if subsection (2) below applies, the incidental costs of obtaining finance by means of issuing shares in the society which are qualifying shares.

(2) This subsection applies if any amount payable in respect of the shares by way of dividend or interest is deductible in computing for the purposes of corporation tax the income of the society from the trade carried on by it.

(3) In subsection (1) above, "the incidental costs of obtaining finance" means expenditure on fees, commissions, advertising, printing and other incidental matters (but not including stamp duty), being expenditure wholly and exclusively incurred for the purpose of obtaining the finance (whether or not it is in fact obtained), or of providing security for it or of repaying it.

(4) This section shall not be construed as affording relief—

(a) for any sums paid in consequence of, or for obtaining protection against, losses resulting from changes in the rate of exchange between different currencies, or

(b) for the cost of repaying qualifying shares so far as attributable to their being repayable at a premium or to their having been issued at a discount.

(5) In this section—

"dividend" has the same meaning as in section 477A, and

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"qualifying share" has the same meaning as in section **[**[F990]117(4) of the 1992 Act**]**.

Textual Amendments

F989 S. 477B inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 3(1)(2)**

F990 Words in s. 477B(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(28)** (with ss. 60, 101(1), 171, 201(3))

478 Building societies: time for payment of tax.

(1) [M1274]This section shall apply, in place of the provisions of section 10, with respect to any accounting period ending before 6th April 1990 of a building society to which section 344 of the 1970 Act applied immediately before the coming into force of this Act.

(2) Where this section applies to a building society, then—

(a) corporation tax assessed on the society for any accounting period shall be paid within 30 days from the date of the issue of the notice of assessment, except that if the society's basis period for the year 1965-66 did not extend into the year 1966, the tax shall not be payable before the like time after the last day of the accounting period as 1st January 1966 is after the last day of that basis period; but

(b) if corporation tax has not become payable by the society for an accounting period by the like time from the beginning of that period as there is between the beginning of the society's basis period for the year 1965-66 and 1st January 1966, the society shall at that time from the beginning of the accounting period make a provisional payment of tax computed on the amount on which the society is chargeable to corporation tax for the accounting period last ended with such adjustments, if any, as may be required for periods of different length or as may be agreed between the society and the inspector.

(3) References in **[**[F991]subsection (2)**]** above to a society's basis period for the year 1965-66 are references to the period by reference to which the society was assessed to income tax for that year under arrangements entered into under section 445 of the [M1275]Income Tax Act 1952.

(4) [M1276]Where, by virtue of subsection (2)(a) above, corporation tax assessed on a building society in respect of a 1989 accounting period would, apart from this subsection, be payable by a date which is earlier than the end of the period of two months from the end of that accounting period, the tax shall be payable within that period of two months.

(5) If, apart from this subsection, the date on which, under subsection (2)(b) above, a building society would be required to make a provisional payment of corporation tax for a 1989 accounting period would fall before the end of the period of two months from the end of that accounting period, that date shall be postponed until the end of that period of two months.

(6) With respect to a 1989 accounting period of a building society to which subsection (4) above applies, in section 825(8)(b) of this Act and paragraph 5(c) in the second column of the Table in section 86(4) of the Management Act (the reckonable date for interest

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on overdue tax), the reference to the time limit imposed by section (2)(a) above shall be construed as a reference to the limit imposed by subsection (4) above.

(7) In subsections (4) to (6) above a "1989 accounting period" means an accounting period ending in the year 1989-90.

Textual Amendments

F991 1990 s.89*and* Sch.14 para.8 (*correction of errors*)*—deemed always to have had effect. Previously* "section (2)".

Marginal Citations

M1274 Source—1970 s.344; 1975 (No.2) s.44(2); 1987 s.36(2)
M1275 1952 c. 10.
M1276 Source—1987 Sch.6 Part II

479 Interest paid on deposits with banks etc.

F992 . . . . . .

Textual Amendments

F992 S. 479 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 5, **Sch. 19 Pt. 4**, Note 8

480 Deposits becoming or ceasing to be composite rate deposits.

F993 . . . . . .

Textual Amendments

F993 S. 480 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 6, **Sch. 19 Pt. 4**, Note 8

[F994 480A Relevant deposits: deduction of tax from interest payments.

(1) Any deposit-taker making a payment of interest in respect of a relevant deposit shall, on making the payment, deduct out of it a sum representing the amount of income tax on it for the year of assessment in which the payment is made.

(2) Any payment of interest out of which an amount is deductible under subsection (1) above shall be a relevant payment for the purposes of Schedule 16 whether or not the deposit-taker making the payment is resident in the United Kingdom.

(3) Schedule 16 shall apply in relation to any payment which is a relevant payment by virtue of subsection (2) above—

(a) with the substitution for any reference to a company of a reference to a deposit-taker,

(b) as if paragraph 5 applied only in relation to payments received by the deposit-taker and falling to be taken into account in computing his income chargeable to corporation tax, and

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(c) as if in paragraph 7 the reference to section 7(2) included a reference to sections 11(3) and 349(1).

(4) In relation to any deposit-taker who is not a company, Schedule 16 shall have effect as if—

(a) paragraph 5 were omitted, and

(b) references to accounting periods were references to periods for which the deposit-taker makes up his accounts.

(5) For the purposes of this section, crediting interest shall be treated as paying it.**]**

Textual Amendments

F994 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

Modifications etc. (not altering text)

C502 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**

C503 *See* S.I. 1990 No. 2232.

[F995 480B Relevant deposits: exception from section 480A.

(1) The Board may by regulations provide that section 480A(1) shall not apply as regards a payment of interest if such conditions as may be prescribed by the regulations are fulfilled.

(2) In particular, the regulations may include—

(a) provision for a certificate to be supplied to the effect that the person beneficially entitled to a payment is unlikely to be liable to pay any amount by way of income tax for the year of assessment in which the payment is made;

(b) provision for the certificate to be supplied by that person or such other person as may be prescribed by the regulations;

(c) provision about the time when, and the manner in which, a certificate is to be supplied;

(d) provision about the form and contents of a certificate.

(3) Any provision included under subsection (2)(d) above may allow the Board to make requirements, in such manner as they see fit, as to the matters there mentioned.

(4) For the purposes of this section, crediting interest shall be treated as paying it.**]**

Textual Amendments

F995 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

Modifications etc. (not altering text)

C504 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**

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[F996 480C Relevant deposits: computation of tax on interest.

Notwithstanding anything in sections 64, 66 and 67, income tax chargeable under Case III of Schedule D on interest in respect of a relevant deposit shall be computed on the full amount of the income arising in the year of assessment.]

Textual Amendments

F996 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

481 "Deposit-taker", "deposit" and "relevant deposit".

(1) M1277 In this section "the relevant provisions" means sections 479 and 480, this section and section 482 F997.

[F998 (1A) In this section "the relevant provisions" also means sections 480A and 480C.]

(2) In the relevant provisions "deposit-taker" means any of the following—

(a) the Bank of England;

(b) any institution authorised under the M1278 Banking Act 1987 or municipal bank within the meaning of that Act;

(c) the Post Office;

[F999 (ca) any local authority;]

F1000 (d) any company to which property and rights belonging to a trustee savings bank were transferred by section 3 of the M1279 Trustee Savings Bank Act 1985;

F1000 (e) any bank formed under the M1280 Savings Bank (Scotland) Act 1819; and

(f) any person or class of person who receives deposits in the course of his business or activities and which is for the time being prescribed by order made by the Treasury for the purposes of this paragraph.

(3) M1281 In the relevant provisions "deposits" means a sum of money paid on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made.

(4) For the purposes of the relevant provisions a deposit is a relevant deposit if, but only if—

(a) the person who is beneficially entitled to any interest in respect of the deposit is an individual or, where two or more persons are so entitled, all of them are individuals; or

(b) in Scotland, the person who is so entitled is a partnership all the partners of which are individuals; or

(c) the person entitled to any such interest receives it as a personal representative in his capacity as such;

and the deposit is not prevented from being a relevant deposit by subsection (5) below.

(5) A deposit is not a relevant deposit if—

(a) a qualifying certificate of deposit has been issued in respect of it or it is a qualifying time deposit;

(b) it is a debt on a debenture ("debenture" having the meaning given in section 744 of the M1282 Companies Act 1985) issued by the deposit-taker;

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(c) it is a loan made by a deposit-taker in the ordinary course of his business or activities;

(d) it is a debt on a security which is listed on a recognised stock exchange;

(e) it is a general client account deposit;

(f) it forms part of a premiums trust fund (within the meaning of **[**[F1001]section 184 of the Finance Act 1993) of an underwriting or former underwriting member**]** of Lloyd's;

(g) it is made by a Stock Exchange money broker (recognised by the Bank of England) in the course of his business as such a broker;

(h) in the case of a deposit-taker resident in the United Kingdom for the purposes of income tax or corporation tax, it is held at a branch of his situated outside the United Kingdom;

(j) in the case of a deposit-taker who is not so resident, it is held otherwise than at a branch of his situated in the United Kingdom; or

(k) the appropriate person has declared in writing to the deposit-taker liable to pay interest in respect of the deposit that—

(i) at the time when the declaration is made, the person who is beneficially entitled to the interest is not, or, as the case may be, all the persons who are so entitled are not, ordinarily resident in the United Kingdom;

(ii) in a case falling within subsection (4)(c) above the deceased was, immediately before his death, not ordinarily resident in the United Kingdom.

[[F1002](5A) In a case where—

(a) there is an arrangement falling within section 56A,

(b) the deposit is with a deposit-taker,

(c) no certificate of deposit, as defined in section 56(5), has been issued in respect of the right at the time the interest mentioned in section 480A or 480C is paid, and

(d) the conditions set out in paragraphs (a) and (b) in the definition of "qualifying certificate of deposit" in section 482(6) apply,

the deposit is not a relevant deposit.**]**

(6) [M1283]The Treasury may by order make amendments in this section and sections **[**[F1003]480A, 480C**]** 479(2) to (7), 480 [F1004] and 482 providing for deposits of a kind specified in the order to be or, as the case may be, not to be relevant deposits in relation to all deposit-takers or such deposit-takers or classes of deposit-takers as may be so specified.

Textual Amendments

F997 Words "sections 479 and 480" repealed by 1990 s.132 and Sch.19 Part IV on and after 6 April 1991

F998 1990 s. 30 and Sch. 5 para. 8(2)

F999 1990 s. 30 and Sch. 5 para. 8(3) as regards interest paid or credited on or after 6 April 1991

F1000 Subs (d) and (e) omitted by 1990 s.30 and Sch. 5 para. 8(3)(5) and s.132 and Sch.19 Part IV as regards interest paid or credited on or after 6 April 1991

F1001 Words in s. 481(5)(f) substituted (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 183(2)**, 184(3)

F1002 S. 481(5A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 4, **6**

F1003 1990 s. 30 and Sch. 5 para. 8(4)

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F1004 Words "479(2) to (7), 480" repealed by 1990 s.132 and Sch.19 Part IV on and after 6 April 1991

Marginal Citations

M1277 Source—1984 Sch.8 2(1); 1985 s.38(2); 1987 Sch.15 16(2)
M1278 1987 c. 22.
M1279 1985 c. 58.
M1280 1819 c. 62.
M1281 Source—1984 Sch.8 3(1)-(3); 1985 s.38(3), (4)
M1282 1985 c. 6.
M1283 Source—1984 Sch.8 3A(1); 1985 s.38(7)

482 Supplementary provisions.

(1) **M1284** For the purposes of sections 479, 480 and **F1005** 481 and this section, any amount which is credited as interest in respect of a relevant deposit shall be treated as a payment of interest.

(2) **M1285** A declaration under section 481(5)(k) shall—

(a) if made under sub-paragraph (i), contain an undertaking by the person making it that if the person, or any of the persons in respect of whom it is made, becomes ordinarily resident in the United Kingdom he will notify the deposit-taker accordingly; and

(b) in any case, be in such form as may be prescribed or authorised, and contain such information as may reasonably be required, by the Board.

(3) **M1286** A deposit-taker shall, on being so required by notice given to him by an inspector, make all declarations which have been made to him under section 481(5) available for inspection by the inspector or by a named officer of the Board.

(4) Where a notice has been given to a deposit-taker under subsection (3) above, the declarations shall be made available within such time as may be specified in the notice, and the person to whom they are to be made available may take copies of or extracts from them.

(5) A deposit-taker shall treat every deposit made with him as a relevant deposit unless satisfied that it is not a relevant deposit, but where he has satisfied himself that a deposit is not a relevant deposit he shall be entitled to continue to so treat it until such time as he is in possession of information which can reasonably be taken to indicate that the deposit is or may be a relevant deposit.

(6) In section 481(5)—

"appropriate person", in relation to a deposit, means any person who is beneficially entitled to any interest in respect of the deposit or entitled to receive any such interest as a personal representative in his capacity as such or to whom any such interest is payable;

"general client account deposit" means a deposit, held by the deposit-taker in a client account (other than one which is identified by the deposit-taker as one in which sums are held only for one or more particular clients of the person whose account it is) in respect of which that person is required by provision made under any enactment to make payments representing interest to some or all of the clients for whom, or on whose account, he received the sums deposited in the account;

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"qualifying certificate of deposit" means a certificate of deposit, as defined in section 56(5), which is issued by a deposit-taker and under which—

(a) the amount payable by the deposit-taker, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made); and

(b) the obligation of the deposit-taker to pay that amount arises after a period of not less than seven days beginning with the date on which the deposit is made; and

"qualifying time deposit" means a deposit which is made by way of loan for an amount which is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made) and on terms which—

(a) prevent repayment of the deposit before the expiry of the period of seven days beginning with the date on which the deposit is made, but which require repayment at the end of a specified period;

(b) do not make provision for the transfer of the right to repayment; and

(c) prevent partial withdrawals of, or additions to, the deposit.

In relation to deposits made before 20th May 1986 this subsection shall have effect with the substitution for "seven" of " 28 " (in both places).

(7) For the purposes of section 481(5)(h) and (j) a deposit is held at a branch of a deposit-taker if it is recorded in his books as a liability of that branch.

(8) [M1287]A certificate of deposit, as defined in section 56(5), which was issued before 13th March 1984 on terms which provide for interest to be payable on the deposit at any time after 5th April 1985 (whether or not interest is payable on it before that date) shall, if it is not a qualifying certificate of deposit, be treated for the purposes of section 481(5) as if it were a qualifying certificate of deposit.

(9) [M1288]Any deposit which was made before 6th July 1984 but which is not a qualifying time deposit shall, where it is made on terms which—

(a) do not make provision for the transfer of the right to repayment;

(b) prevent partial withdrawals of, or additions to, the deposit; and

(c) require—

(i) the deposit-taker to repay the sum at the end of a specified period which ends after 5th April 1985; or

(ii) in a case where interest is payable only at the time of repayment of the deposit, the deposit-taker to repay the sum on demand or on notice;

be treated for the purposes of section 481(5) as if it were a qualifying time deposit.

(10) A [M1289]n order under section 481(2)(f) may prescribe a person or class of person in relation to all relevant deposits or only in relation to relevant deposits of a kind specified in the order.

(11) The Board may by regulations make provision—

(a) [M1290]requiring any declaration under section 481(5)(k)(i) which does not give the address of the person making it, to be supported by a certificate given by the deposit-taker concerned—

(i) in such form as may be prescribed or authorised by the Board; and

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(ii) containing such information as may reasonably be required by the Board; and

[[F1006](aa) with respect to the furnishing of information by depositors or deposit-takers, including, in the case of deposit-takers, the inspection of books, documents and other records on behalf of the Board; and**]**

(b) generally for giving effect to sections 479 to 481 and this section.

[[F1007](11A) In subsection (11)(aa) above the reference to depositors is to persons who are appropriate persons (within the meaning given by subsection (6) above) in relation to deposits.**]**

(12) [M1291]Regulations under subsection (11) above or an order under section 481(6) may contain such incidental and consequential provision as appears to the Board or the Treasury, as the case may be, to be appropriate.

Textual Amendments

F1005 Words "479, 480 and" repealed by 1990 s. 132 and Sch.19 Part IV on and after 6 April 1991
F1006 1990 s. 30 and Sch. 5 para. 9(4)
F1007 1990 s. 30 and Sch.5 para.9(5)

Modifications etc. (not altering text)

C505 See 1990 s. 30 and Sch. 5 para. 9(2)(6)— words "less than seven days" replaced by "more than 5 years" as regards interest paid or credited on or after 6 April 1991
C506 See 1990 s. 30 and Sch. 5 para. 9(3)(6)— sub (a) replaced by the following as regards interest paid or credited on or after 6 April1991:— "(a) require repayment of the deposit at a specified time falling before the end of the period of five years beginning with the date on which the deposit is made;"
C507 See 1990 s.132 and Sch.19 Part IV - proviso repealed on and after 6 April 1991.

Marginal Citations

M1284 Source—1984 Sch. 8 1(2)
M1285 Source—1984 Sch.8 3(4), (4A); 1985 s.38(5)
M1286 Source—1984 Sch.8 3(5)-(9); 1985 s.38(6); 1986 No.771
M1287 Source—1984 Sch.8 6(2)
M1288 Source—1984 Sch.8 6(3)
M1289 Source—1984 Sch.8 2(2); 1985 s.38(2)
M1290 Source—1984 Sch.8 3A(2); 1985 s.38(7)
M1291 Source—1984 Sch.8 3A(3); 1985 s.38(7)

[482A [F1008] Audit powers in relation to non-residents.

(1) The Board may make regulations with respect to the exclusion, in relation to investments of persons who are not ordinarily resident in the United Kingdom, of powers conferred by regulations made by virtue of section 477A(2)(a) or 482(11)(aa) (“audit powers”).

(2) Regulations under subsection (1) above may in particular—

(a) make provision for the exclusion of audit powers in the case of any building society or deposit-taker to be dependent on whether the society or deposit-taker is approved by the Board for the purposes of the regulations and on the scope of that approval;

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(b) make provision with respect to the approval of building societies and deposit-takers by the Board for the purposes of the regulations;

(c) make provision with respect to, and with respect to alteration of, the scope of approval by the Board for the purposes of the regulations;

(d) make provision with respect to the termination of approval by the Board for the purposes of the regulations; and

(e) make provision with respect to appeals against decisions of the Board with respect to approval for the purposes of the regulations, including decisions with respect to the scope of such approval.

(3) Regulations under subsection (1) above may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

(4) In this section "deposit-taker" has the meaning given by section 481(2).**]**

Textual Amendments

F1008 S. 482A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s.75**

483 Determination of reduced rate for building societies and composite rate for banks etc.

F1009(1) . . . . . .

F1009(2) . . . . . .

F1009(3) . . . . . .

(4) If the order made under section 26 of the Finance Act 1984 in the year 1987-88 is made in pursuance of subsection (4) of that section, that order shall, notwithstanding that that subsection is not re-enacted by this Act, apply for the purposes of sections 476 and 479 for the year 1988-89.

F1009(5) . . . . . .

Textual Amendments

F1009 S. 483(1)-(3)(5) repealed by Finance Act 1990 (c. 29), Sch. 5 para. 12, **Sch. 19 Part IV**, Note 8

484 Savings banks: exemption from tax.

(1) M1292 Any savings bank other than a savings bank which is the successor or further successor to an existing trustee savings bank shall on making a claim be entitled to exemption from income tax and corporation tax in respect of the income of its funds to the extent that such income is applied in the payment or credit of interest to any depositor; but, subject to section 325, any such interest shall be chargeable under Case III of Schedule D.

(2) M1293 Any gain or loss accruing to a savings bank which is the successor to an existing trustee savings bank on a disposal of an exempt investment held by that existing bank

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on 21st November 1979, may, if that existing bank has so elected, be computed by reference to the cost of the investment instead of by reference to its market value on the latter date and, in the case of a loss, without any restriction under section **[**[F1010]126A(1)**]**.

(3) In subsection (2) above the reference to an election is a reference to an election under paragraph 2(3) of Schedule 11 to the Finance Act 1980 (under which the election must have been by notice in writing given to the Board within two years after 21st November 1979, and has effect in relation to all exempt investments held by the bank on that date).

(4) Where a savings bank which is the successor to an existing trustee savings bank holds investments which include both exempt investments held by the existing bank on 21st November 1979 and other investments of the same class, any investments of that class which are disposed of by the successor shall be treated for the purposes of subsection (2) above as consisting of the other investments rather than of the exempt investments held on that date.

(5) In this section references to exempt investments held by an existing trustee savings bank on 21st November 1979 are to investments on the disposal of which immediately before that date no chargeable gain or allowable loss would have accrued to the bank by virtue of section 67 of the 1979 Act (gilt-edged securities held for more than a year).

(6) [M1294]In this section "successor" and "existing", in relation to a trustee savings bank, have the meanings given by section 1 of the [M1295]Trustee Savings Bank Act 1985, and "further successor" has the meaning given by paragraph 9 of Schedule 2 to that Act.

Textual Amendments

F1010 Words in s. 484(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(29)** (with ss. 60, 101(1), 171(1), 291(3))

Marginal Citations

M1292 Source—1970 s.339; 1980 Sch.11 5; TSB 1985 Sch.2 6(5), (6)
M1293 Source—1980 Sch.11 2(3)-(6); TSB 1985 Sch.2 6(3)
M1294 Source—TSB 1985 s.1(1), Sch.2 9(1)
M1295 1985 c.58

485 Savings banks: supplemental.

(1) [M1296]Where the business of a trustee savings bank has been transferred to another trustee savings bank after 21st November 1979 and before the day which was the vesting day for the purposes of the [M1297]Trustee Savings Bank Act 1985—

(a) any exempt investment which was held on that date by the first bank and was transferred with the business shall be treated for the purposes of section 484 in its application to any savings bank which is the successor to the second bank as if it had been held on that date by the second bank but without prejudice to any election made in respect of the investment by the first bank under sub-paragraph (3) of paragraph 2 of Schedule 11 to the Finance Act 1980; and

(b) the cost of the investment shall be taken for the purposes of that sub-paragraph as equal to the cost of the investment to the first bank.

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(2) Where the business of a trustee savings bank was transferred to another trustee savings bank before 21st November 1979 the cost of any exempt investment held by the second bank on that date which—

(a) was transferred to it with the business; and

(b) was an exempt investment on the date of the transfer,

shall be taken for the purposes of section 484(2) in its application to any savings bank which is the successor to the second bank as equal to the cost of the investment to the first bank.

(3) In this section references to exempt investments held by a trustee savings bank on 21st November 1979 or the date of the transfer are to investments on the disposal of which immediately before that date no chargeable gain or allowable loss would have accrued to the bank by virtue of section 67 of the 1979 Act (gilt-edged securities held for more than a year) or, in the case of a transfer which took place before that section came into force, section 41 of the [M1298]Finance Act 1969 (which was re-enacted by section 67 of the 1979 Act).

Marginal Citations

M1296 Source—1980 Sch.11 3, 4, 6(2)-(4); TSB 1985 Sch.2 6(7)

M1297 1985 c. 58.

M1298 1969 c. 32.

486 Industrial and provident societies and co-operative associations.

(1) [M1299]Notwithstanding anything in the Tax Acts, share interest or loan interest paid by a registered industrial and provident society shall not be treated as a distribution; and, subject to subsection (7) below and section 487(3), any share or loan interest paid in an accounting period of the society—

(a) shall be deductible in computing, for the purposes of corporation tax, the income of the society for that period from the trade carried on by the society, or

(b) if the society is not carrying on a trade, shall be treated for those purposes as a charge on the income of the society.

(2) Notwithstanding anything in sections 348 to 350, any share interest or loan interest paid by a registered industrial and provident society, except any to which subsection (3) below applies, shall be paid without deduction of income tax.

(3) This subsection applies to any share interest or loan interest payable to a person whose usual place of abode is not within the United Kingdom, and in any such case section 349(2) shall apply to the payment as it applies to a payment of yearly interest, and income tax shall be deducted accordingly.

(4) Any share interest or loan interest paid by a registered industrial and provident society shall be chargeable under Case III of Schedule D.

(5) Where at any time, by virtue of this section, the income of a person from any source, not having previously been chargeable by direct assessment on that person, becomes so chargeable, section 66(3) shall apply as if the source of that income were a new source of income acquired by that person at that time.

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(6) Every registered industrial and provident society shall, within three months after the end of any accounting period of the society, deliver to the inspector a return showing—

(a) the name and place of residence of every person to whom the society has by virtue of this section paid without deduction of income tax sums amounting to more than £15 in that period; and

(b) the amount so paid in that period to each of those persons.

(7) If for any accounting period a return under subsection (6) above is not duly made by a registered industrial and provident society, share and loan interest paid by the society in that period shall not be deductible in computing its income, or be treated as a charge on income.

(8) If in the course of, or as part of, a union or amalgamation of two or more registered industrial and provident societies, or a transfer of engagements from one registered industrial and provident society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the society making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that society on the disposal.

(9) Subsections (1) and (8) above shall have effect as if references to a registered industrial and provident society included any co-operative association established and resident in the United Kingdom, and having as its object or primary object to assist its members in the carrying on of agricultural or horticultural businesses on land occupied by them in the United Kingdom or in the carrying on of businesses consisting in the catching or taking of fish or shellfish.

(10) It is hereby declared that, in computing, for the purposes of any provision of the Tax Acts relating to profits or gains chargeable under Case I of Schedule D ("the tax computation"), any profits or gains of—

(a) any registered industrial and provident society which does not sell to persons not members thereof; or

(b) any registered industrial and provident society the number of the shares in which is not limited by its rules or practice;

there are to be deducted as expenses any sums which—

(i) represent a discount, rebate, dividend or bonus granted by the company to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company, being transactions which are taken into account in the tax computation; and

(ii) are calculated by reference to those amounts or to the magnitude of those transactions and not by reference to the amount of any share or interest in the capital of the company.

(11) No dividends or bonus deductible in computing income as mentioned in subsection (10) above shall be regarded as a distribution.

(12) In this section—

"co-operative association" means a body of persons having a written constitution from which the Minister is satisfied, having regard to the provision made as to the manner in which the income of the body is to be applied for the benefit of its members and all other relevant provisions, that the body is in substance a co-operative association;

"the Minister" means—

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the Minister of Agriculture, Fisheries and Food, as regards England and Wales;

the Secretary of State, as regards Scotland; and

the Department of Agriculture for Northern Ireland, as regards Northern Ireland;

"registered industrial and provident society" means a society registered or deemed to be registered under the [M1300]Industrial and Provident Societies Act 1965 or under the [M1301]Industrial and Provident Societies Act (Northern Ireland) 1969;

"share interest" means any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the amount of his holding in the share capital of the society;

"loan interest" means any interest payable by the society in respect of any mortgage, loan, loan stock or deposit;

and references to the payment of share interest or loan interest include references to the crediting of such interest.

Modifications etc. (not altering text)

C508 *See* 1988(F) Sch.8 para.1—*re-basing to* 1982.

C509 S. 486(8) excluded (with effect in accordance with s. 131(4) of the affecting Act) by Finance Act 1995 (c. 4), **s. 131(1)(2)(b)**

Marginal Citations

M1299 Source—1970 s.340, 345; CUA 1979 s.25(2)

M1300 1965 c. 12.

M1301 1969 c. 24 (N.I.).

487 Credit unions.

(1) [M1302]Subject to subsection (2) below, in computing for the purposes of corporation tax the income of a credit union for any accounting period—

(a) neither the activity of the credit union in making loans to its members nor in placing on deposit or otherwise investing from time to time its surplus funds shall be regarded as the carrying on of a trade or part of a trade; and

(b) interest received by the credit union on loans made by it to its members shall not be chargeable to tax under Case III of Schedule D or otherwise.

(2) Paragraph (b) of subsection (1) above shall not apply to an accounting period of a credit union for which the credit union is obliged to make a return under section 486(6) and has not done so within three months after the end of that accounting period or such longer period as the inspector shall allow.

(3) No share interest, loan interest or annuity or other annual payment paid or payable by a credit union in any accounting period shall be deductible in computing for the purposes of corporation tax the income of the credit union for that period from any trade carried on by it or be treated for those purposes as a charge on income.

(4) A credit union shall not be regarded as an investment company for the purposes of section 75 above or section 306 of the 1970 Act (capital allowances).

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(5) In this section—

"credit union" means a society registered as a credit union under the [M1303]Industrial and Provident Societies Act 1965 or the [M1304]Credit Unions (Northern Ireland) Order 1985;

"share interest" and "loan interest" have the same meaning as in section 486;

"surplus funds", in relation to a credit union, means funds not immediately required for its purposes;

and references to the payment of share interest or loan interest include references to the crediting of such interest.

Marginal Citations

M1302 Source—1970 s.340A; CUA 1979 s.25(1)
M1303 1965 c. 12.
M1304 S.I. 1985/1205 (N.I. 12.).

488 Co-operative housing associations.

(1) Where a housing association makes a claim in that behalf for any year or part of a year of assessment during which the association was approved for the purposes of this section—

(a) [M1305]rent to which the association was entitled from its members for the year or part shall be disregarded for tax purposes; and

(b) any yearly interest payable by the association for the year or part shall be treated for tax purposes as payable not by the association but severally by the members of the association who during the year or part were tenants of property of the association, in the proportion which the rents payable by those members for the year or part bear to the aggregate of the rents to which the association was entitled for the year or part from the properties to which the interest relates; and

(c) each member of the association shall be treated for the purposes of section 354 as if he were the owner of the association's estate or interest in the property of which he is the tenant.

(2) Where the property, or any of the properties, to which any such interest as is mentioned in paragraph (b) of subsection (1) above relates is for any period not subject to a tenancy—

(a) that paragraph shall not apply in relation to so much of the interest as is attributable to the property not subject to a tenancy; and

(b) for the purposes of that paragraph as it applies in relation to a tenant of any other property to which the interest relates, the association shall be deemed to have received, in respect of the property not subject to a tenancy, rent at the rate payable therefor when it was last let by the association.

(3) In computing the income of the association no payments shall be deductible under section 25(3) to (7) in so far as attributable to a period as respects which a claim under subsection (1) above has effect.

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(4) Where a claim under subsection (1) above has effect, any adjustment of the liability to tax of a member or of the association which is required in consequence of the claim may be made by an assessment or by repayment or otherwise, as the case may require.

(5) Where a housing association makes a claim in that behalf for an accounting period or part of an accounting period during which it was approved for the purposes of this section, the housing association shall be exempt from corporation tax on chargeable gains accruing to it in the accounting period or part on the disposal by way of sale of any property which has been or is being occupied by a tenant of the housing association.

(6) References in this section to the approval of an association shall be construed as references to approval—

(a) by the Secretary of State in the case of a housing association in Great Britain;

(b) by the Head of the Department of the Environment for Northern Ireland in the case of a housing association in Northern Ireland;

and an association shall not be approved unless the approving authority is satisfied—

(i) that the association is, or is deemed to be, duly registered under the [M1306]Industrial and Provident Societies Act 1965 or the [M1307]Industrial and Provident Societies Act (Northern Ireland) 1969, and is a housing association within the meaning of the [M1308]Housing Associations Act 1985 or **[**[F1011]Article 3 of the Housing (Northern Ireland) Order 1992**]**;

(ii) that the rules of the association restrict membership to persons who are tenants or prospective tenants of the association, and preclude the granting or assignment (or, in Scotland, the granting or assignation) of tenancies to persons other than members; and

(iii) that the association satisfies such other requirements as may be prescribed by the approving authority, and will comply with such conditions as may for the time being be so prescribed.

(7) An approval given for the purposes of this section shall have effect as from such date (whether before or after the giving of the approval) as may be specified by the approving authority and shall cease to have effect if revoked.

(8) The Secretary of State as respects Great Britain, or the Head of the Department of the Environment for Northern Ireland as respects Northern Ireland, may make regulations for the purpose of carrying out the provisions of this section; and, from the coming into operation of regulations under this subsection prescribing requirements or conditions for the purposes of subsection (6)(iii) above, "prescribed" in subsection (6)(iii) above shall mean prescribed by or under such regulations.

The power to make regulations under this subsection shall be exercisable by the Secretary of State by statutory instrument and by the Head of the Department of the Environment for Northern Ireland by statutory rule for the purposes of the [M1309]Statutory Rules (Northern Ireland) Order 1979.

(9) A claim under this section shall be made to the inspector, and shall be made not later than two years after the end of the year of assessment or accounting period to which, or to a part of which, it relates.

Section 42 of the Management Act shall not apply to a claim under this section.

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(10) Subject to subsection (11) below, no claim under this section shall have effect unless it is proved that during the year or accounting period, or part thereof, to which the claim relates—

(a) no property belonging to the association making the claim was let otherwise than to a member of the association;

(b) no property let by the association, and no part of such property, was occupied, whether solely or as joint occupier, by a person not being a member of the association;

(c) the association making the claim satisfies the conditions specified in subsection (6)(i) and (ii) above and has complied with the conditions prescribed under subsection (6)(iii) for the time being in force; and

(d) any covenants required to be included in grants of tenancies by those conditions have been observed.

For the purposes of paragraph (b) above occupation by any other person in accordance with the will, or the provisions applicable on the intestacy, of a deceased member, shall be treated during the first six months after the death as if it were occupation by a member.

(11) Where the Board are satisfied that the requirements of subsection (10) above are substantially complied with they may direct that the claim shall have effect; but if subsequently information comes to the knowledge of the Board which satisfies them that the direction was not justified they may revoke the direction and thereupon the liability of all persons concerned to tax for all relevant years or accounting periods shall be adjusted by the making of assessments or otherwise.

(12) A claim under this section shall be in such form and contain such particulars as may be prescribed by the Board, and, without prejudice to the generality of this provision, the required particulars may include an authority granted by all members of the association for any relevant information contained in any return made by a member under the provisions of the Income Tax Acts to be used by the Board in such manner as the Board may think fit for determining whether the claim ought to be allowed.

Textual Amendments

F1011 Words in s. 488(6) substituted (15.9.1992) by S.I. 1992/1725 (N.I. 15), arts. 1(2), 107, **Sch. 8 para. 5**

Modifications etc. (not altering text)

C510 *See*—1965 s.93(6) (*in* Part II Vol.5)—*housing associations approved under* s.488*not eligible for grant under* 1965 s.93.1976(D)—*exemption of certain housing associations from development land tax.* 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*from* 19*March* 1985.Housing Subsidies Act 1967 (c.29) ss.26(4)*and* 32(1) (*in* Part II Vol.5*of* 1989*edition*)—*treatment of approved housing associations in respect of interest subsidised under that Act before* 1*April* 1983.

C511 *See reference to approved housing associations in* 1988(F) s.43(3)*and* 44.

Marginal Citations

M1305 Source—1970 s.341; 1972 Sch.11 6

M1306 1965 c. 12.

M1307 1969 c.24 (N.I.).

M1308 1985 c. 68.

M1309 S.I. 1979/1573 (N.I.12.).

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489 Self-build societies.

(1) [M1310]Where a self-build society makes a claim in that behalf for any year or part of a year of assessment during which the society was approved for the purposes of this section, rent to which the society was entitled from its members for the year or part shall be disregarded for tax purposes.

(2) Where a claim under subsection (1) above has effect, any adjustment of the society's liability to tax which is required in consequence of the claim may be made by an assessment or by repayment or otherwise, as the case may require.

(3) Where a self-build society makes a claim in that behalf for an accounting period or part during which it was approved for the purposes of this section, the society shall be exempt from corporation tax on chargeable gains accruing to it in the accounting period or part thereof on the disposal of any land to a member of the society.

(4) References in this section to the approval of a self-build society are references to its approval by the Secretary of State, and the Secretary of State shall not approve a self-build society for the purposes of this section unless he is satisfied—
   (a) that the society is, or is deemed to be, duly registered under the [M1311]Industrial and Provident Societies Act 1965; and
   (b) that the society satisfies such other requirements as may be prescribed by or under regulations under subsection (6) below and will comply with such conditions as may for the time being be so prescribed.

(5) An approval given for the purposes of this section shall have effect as from such date (whether before or after the giving of the approval) as may be specified by the Secretary of State and shall cease to have effect if revoked by him.

(6) The Secretary of State may by statutory instrument make regulations for the purpose of carrying out the provisions of this section; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.

(7) Section 42 of the Management Act shall not apply to a claim under this section, but such a claim shall be made to the inspector and shall be made not later than two years after the end of the year of assessment or accounting period to which, or to a part of which, it relates.

(8) Subject to subsection (9) below, no claim under this section shall have effect unless it is proved that during the year or accounting period, or part thereof, to which the claim relates—
   (a) no land owned by the society was occupied, in whole or in part and whether solely or as joint occupier, by a person who was not, at the time of his occupation, a member of the society; and
   (b) the society making the claim satisfies the condition specified in paragraph (a) of subsection (4) above and has complied with the conditions prescribed under paragraph (b) of that subsection and for the time being in force;

   and for the purposes of paragraph (a) above, occupation by any other person in accordance with the will, or the provisions applicable on the intestacy, of a deceased member, shall be treated during the first six months after the death as if it were occupation by a member.

(9) Notwithstanding the provisions of subsection (8) above, where, on a claim under this section, the Board are satisfied that the requirements of paragraphs (a) and (b) of that

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subsection are substantially complied with, they may direct that the claim shall have effect; but if, subsequently, information comes to the knowledge of the Board which satisfies them that the direction was not justified, they may revoke the direction and thereupon the liability of the society to tax for all relevant years or accounting periods shall be adjusted by the making of assessments or otherwise.

(10) A claim under this section shall be in such form and contain such particulars as may be prescribed by the Board.

(11) In this section—

"self-build society" has the same meaning as in the [M1312]Housing Associations Act 1985 or, in Northern Ireland, Part VII of the [M1313]Housing (Northern Ireland) Order 1981; and

"rent" includes any sums to which a self-build society is entitled in respect of the occupation of any of its land under a licence or otherwise.

(12) In the application of this section to Northern Ireland—

(a) any reference in subsections (4) and (5) above to the Secretary of State shall be construed as a reference to the Department of the Environment for Northern Ireland;

(b) the reference in subsection (4)(a) to the [M1314]Industrial and Provident Societies Act 1965 shall be construed as a reference to the [M1315]Industrial and Provident Societies Act (Northern Ireland) 1969; and

(c) for subsection (6) there shall be substituted the following subsection—

"(6) the Department of the Environment for Northern Ireland may by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 make regulations for the purpose of carrying out the provisions of this section; and a statutory rule containing any such regulations shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954."

Modifications etc. (not altering text)

C512 See 1976(D)—*exemption of certain housing associations from development land tax.* 1976(D)*repealed from* 19*March* 1985.

C513 *See reference to approved self-build societies in* 1988(F) s.43(3)*and* s.44.

Marginal Citations

M1310 Source—1970 s.341A

M1311 1965 c. 12.

M1312 1985 c. 68.

M1313 S.I. 1981/156 (N.I. 3).

M1314 1965 c. 12.

M1315 1969 c. 24 (N.I.).

490 Companies carrying on a mutual business or not carrying on a business.

(1) [M1316]Subject to subsection (2) below, where a company carries on any business of mutual trading or mutual insurance or other mutual business the provisions of the Tax Acts relating to distributions shall apply to distributions made by the company notwithstanding that they are made to persons participating in the mutual activities

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of that business and derive from those activities, but shall so apply only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income (including group income).

(2) In the case of a company carrying on any mutual life assurance business, the provisions of the Tax Acts relating to distributions shall not apply to distributions made to persons participating in the mutual activities of that business and derived from those activities; but if the business includes annuity business, the annuities payable in the course of that business shall not be treated as charges on the income of the company to any greater extent than if the business were not mutual but were being carried on by the company with a view to the realisation of profits for the company.

(3) Subject to subsections (1) and (2) above, the fact that a distribution made by a company carrying on any such business is derived from the mutual activities of that business and the recipient is a person participating in those activities shall not affect the character which the payment or other receipt has for purposes of corporation tax or income tax in the hands of the recipient.

(4) Where a company does not carry on, and never has carried on, a trade or a business of holding investments, and is not established for purposes which include the carrying on of a trade or of such a business, the provisions of the Tax Acts relating to distributions shall apply to distributions made by the company only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

Modifications etc. (not altering text)
C514 S. 490 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations
M1316 Source—1970 s.346

491 Distribution of assets of body corporate carrying on mutual business.

(1) [M1317]Where any person receives any money or money's worth—

(a) forming part of the assets of a body corporate, other than assets representing capital; or

(b) forming part of the consideration for the transfer of the assets of a body corporate, other than assets representing capital, as part of a scheme of amalgamation or reconstruction which involves the winding up of the body corporate; or

(c) consisting of the consideration for a transfer or surrender of a right to receive anything falling under paragraph (a) or (b) above, being a receipt not giving rise to any charge to tax on the recipient apart from this section,

and the body corporate has at any time carried on a trade which consists of or includes the conducting of any mutual business (whether confined to members of the body corporate or not), and is being or has been wound up or dissolved, the provisions of this section shall apply to the receipt.

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(2) If a transfer or surrender of a right under subsection (1)(c) above is not at arm's length, the person making the transfer or surrender shall, for the purposes of this section, be deemed then to have received consideration equal to the value of the right.

(3) If in respect of a payment of any amount made to the body corporate for the purposes of its mutual business any deduction has been allowed for the purposes of tax in computing the profits or gains or losses of a trade, then—

(a) if at the time of the receipt the recipient is the person, or one of the persons, carrying on that trade, the amount or value of the receipt shall be treated for the purposes of tax as a trading receipt of that trade; and

(b) if at the time of the receipt the recipient is not the person, or one of the persons, carrying on that trade, but was the person, or one of the persons, carrying on that trade when any payment was made to the body corporate for the purposes of its mutual business in respect of which a deduction was allowed for the purposes of tax in computing the profits or gains or losses of the trade, the recipient shall, subject to subsection (6) below, be charged under Case VI of Schedule D for the chargeable period in which the receipt falls on an amount equal to the amount or value of the receipt.

(4) Subsection (3)(a) above applies notwithstanding that, as a result of a change in the persons carrying on the trade, the profits or gains are under section 113 or 337(1) determined as if it had been permanently discontinued and a new trade set up and commenced.

(5) Where an individual is chargeable to tax by virtue of subsection (3)(b) above and the profits or gains of the trade there mentioned fell to be treated as earned income for the purposes of the Income Tax Acts, the sums in respect of which he is so chargeable shall also be treated for those purposes as earned income.

(6) If the trade mentioned in subsection (3)(b) above was permanently discontinued before the time of the receipt, then in computing the charge to tax under subsection (3)(b) above there shall be deducted from the amount or value of the receipt—

(a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade had not been discontinued, would have been deducted in computing for tax purposes the profits or gains or losses of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits as so computed, and

(b) any capital allowance to which the person who carried on the trade was entitled immediately before the discontinuance and to which effect has not been given by way of relief before discontinuance.

(7) Relief shall not be given under subsection (6) above or under section 105(1) in respect of any loss, expense, debit or allowance if and so far as it has been so given by reference to another charge to tax under this section or under section 103.

(8) For the purposes of subsection (1) above assets representing capital consist of—

(a) assets representing any loan or other capital subscribed, including income derived from any investment of any part of that capital, but not including profits from the employment of that capital for the purposes of the mutual business of the body corporate;

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(b) assets representing any profits or gains charged to tax as being profits or gains of any part of the trade carried on by the body corporate which does not consist of the conducting of any mutual business;

(c) (so far as not comprised in paragraphs (a) and (b) above) assets representing taxed income from any investments.

(9) In this section "mutual business" includes any business of mutual insurance or mutual trading.

(10) Subsections (3) to (7) above shall apply with any necessary modifications—

(a) to a profession or vocation; and

(b) to the occupation of woodlands the profits or gains of which are assessable under Schedule D;

as they apply to a trade.

(11) It is hereby declared that the description of trades in subsection (1) above does not include any trade all the profits or gains of which are chargeable to tax and, in particular, does not include such a trade carried on by any registered industrial and provident society.

Modifications etc. (not altering text)
C515 *See* 1988(F) Sch.14 Part V—*repeal of* (b)*from* 6*April* 1993.

Marginal Citations
M131 Source—1970 s.347

CHAPTER V

Modifications etc. (not altering text)
C516 Pt. 12 Ch. 5 modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 98**

PETROLEUM EXTRACTION ACTIVITIES

Modifications etc. (not altering text)
C517 Pt. 12 Ch. 5 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 8 para. 1(4)**

492 Treatment of oil extraction activities etc. for tax purposes.

(1) Where a person carries on as part of a trade—

(a) any oil extraction activities; or

(b) any of the following activities, namely, the acquisition, enjoyment or exploitation of oil rights; or

(c) activities of both those descriptions,

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those activities shall be treated for all purposes of income tax, and for the purposes of the charge of corporation tax on income, as a separate trade, distinct from all other activities carried on by him as part of the trade.

(2) Relief in respect of a loss incurred by a person shall not be given under section 380 or 381 against income arising from oil extraction activities or from oil rights ("ring fence income") except to the extent that the loss arises from such activities or rights.

(3) Relief in respect of a loss incurred by a person shall not be given under section **[**[F1012]393A(1)**]** against his ring fence profits except to the extent that the loss arises from oil extraction activities or from oil rights.

(4) In any case where—

(a) in any chargeable period a person incurs a loss in activities ("separate activities") which, for that or any subsequent chargeable period, are treated by virtue of subsection (1) above as a separate trade for the purposes specified in that subsection; and

(b) in any subsequent chargeable period any of his trading income is derived from activities ("related activities") which are not part of the separate activities but which, apart from subsection (1) above, would together with those activities constitute a single trade,

then, notwithstanding anything in that subsection, the amount of the loss may be set off, in accordance with section 385 or 393(1), against so much of his trading income in any subsequent chargeable period as is derived from the related activities.

(5) Subject to subsection (7) below, a capital allowance which is to be given to any person by discharge or repayment of tax shall not to any extent be given effect under **[**[F1013]section 141 of the 1990 Act**]** by deduction from or set off against his ring fence income.

(6) Subject to subsection (7) below, a capital allowance which is to be given to any person by discharge or repayment of tax shall not to any extent be given effect under **[**[F1014]section 145 of the 1990 Act**]** by deduction from or set off against his ring fence profits.

(7) Subsection (5) or (6) above shall not apply to a capital allowance which falls to be made to a company for any accounting period in respect of an asset used in the relevant accounting period by a company associated with it and so used in carrying on oil extraction activities. For the purposes of this subsection, the relevant accounting period is that in which the allowance in question first falls to be made to the company (whether or not it can to any extent be given effect in that period under **[**[F1015]section 145(1) of the 1990 Act**]**).

(8) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief shall not be allowed against the claimant company's ring fence profits except to the extent that the claim relates to losses incurred by the surrendering company that arose from oil extraction activities or from oil rights.

Textual Amendments

F1012 Words in s. 492(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 17**

F1013 Words in s. 492(5) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(22)(a)**

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F1014 Words in s. 492(6) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(22)(b)**

F1015 Words in s. 492(7) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(22)(c)**

493 Valuation of oil disposed of or appropriated in certain circumstances.

(1) Where a person disposes of any oil in circumstances such that the market value of that oil in a particular month falls to be taken into account under section 2 of the [M1318]Oil Taxation Act 1975 ("the 1975 Act"), otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in computing for the purposes of petroleum revenue tax the assessable profit or allowable loss accruing to him in any chargeable period from an oil field (or as would so fall but for section 10 of that Act), then—

(a) for all purposes of income tax, and

(b) for the purposes of the charge of corporation tax on income,

the disposal of the oil and its acquisition by the person to whom it was disposed of shall be treated as having been for a consideration equal to the market value of the oil as so taken into account under section 2 of that Act (or as would have been so taken into account under that section but for section 10 of that Act).

(2) Where a person makes a relevant appropriation of any oil without disposing of it and does so in circumstances such that the market value of that oil in a particular month falls to be taken into account under section 2 of the 1975 Act in computing for the purposes of petroleum revenue tax the assessable profit or allowable loss accruing to him in any chargeable period from an oil field (or would so fall but for section 10 of that Act), then for all the purposes of income tax and for the purposes of the charge of corporation tax on income, he shall be treated—

(a) as having, at the time of the appropriation—

(i) sold the oil in the course of the separate trade consisting of activities falling within section 492(1)(a) or (b); and

(ii) bought it in the course of the separate trade consisting of activities not so falling; and

(b) as having so sold and bought it at a price equal to its market value as so taken into account under section 2 of the 1975 Act (or as would have been so taken into account under that section but for section 10 of that Act).

In this subsection "relevant appropriation" has the meaning given by section 12(1) of the 1975 Act.

(3) Where—

(a) a person disposes otherwise than in a sale at arm's length (as defined in paragraph 1 of Schedule 3 to the 1975 Act) of oil acquired by him in the course of oil extraction activities carried on by him or by virtue of oil rights held by him, and

(b) subsection (1) above does not apply in relation to the disposal,

then, for all purposes of income tax and for the purposes of the charge of corporation tax on income, the disposal of the oil and its acquisition by the person to whom it was disposed of shall be treated as having been for a consideration equal to the market value of the oil in the calendar month in which the disposal was made.

(4) If a person appropriates oil acquired by him in the course of oil extraction activities carried on by him or by virtue of oil rights held by him and the appropriation is to

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refining or to any use except for production purposes of an oil field, within the meaning of Part I of the 1975 Act, then, unless subsection (2) above applies, for all purposes of income tax and for the purposes of the charge of corporation tax on income—

(a) he shall be treated as having, at the time of the appropriation, sold and bought the oil as mentioned in subsection (2)(a)(i) and (ii) above; and

(b) that sale and purchase shall be deemed to have been at a price equal to the market value of the oil in the calendar month in which it was appropriated.

(5) For the purposes of subsections (3) and (4) above—

(a) "calendar month" means a month of the calendar year; and

(b) paragraph 2 of Schedule 3 to the 1975 Act shall apply as it applies for the purposes of Part I of that Act, but with the following modifications, that is to say—

(i) for sub-paragraph (2)(f) there shall be substituted—

"(f) the contract is for the sale of the whole quantity of oil of which the market value falls to be ascertained for the purposes of section 493(3) or (4) of the Income and Corporation Taxes Act 1988 and of no other oil; and for the avoidance of doubt it is hereby declared that the terms as to payment which are to be implied in the contract shall be those which are customarily contained in contracts for sale at arm's length of oil of the kind in question."; and

(ii) sub-paragraphs (3) and (4) shall be omitted.

Marginal Citations

M1318 1975 c. 22

494 Charges on income.

(1) Section 338 shall have effect subject to the following provisions of this section.

(2) Interest paid by a company shall not be allowable under section 338 as a deduction against the company's ring fence profits except—

(a) to the extent that it was payable in respect of money borrowed by the company which is shown to have been used to meet expenditure incurred by the company in carrying on oil extraction activities or in acquiring oil rights otherwise than from a connected person or to have been appropriated to meeting expenditure to be so incurred by the company; and

(b) in the case of interest paid by the company to a company associated with it, to the extent that (subject always to paragraph (a) above) the rate at which it was payable did not exceed what, having regard to all the terms on which the money was borrowed and the standing of the borrower, was a reasonable commercial rate.

Section 839 shall apply for the purposes of this subsection.

(3) Where a company pays to a company associated with it a charge on income not consisting of a payment of interest, the charge shall not be allowable to any extent under section 338 against the first-mentioned company's ring fence profits.

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(4) In any case where—

(a) such of the charges on income which are paid by a company and allowable under section 338 as, by virtue of subsections (2) and (3) above, are not allowable against the company's ring fence profits exceed the remaining part of its profits (the company's "non-oil profits"), and

(b) the amount of that excess is greater than the amount (if any) by which the total of the charges on income which are allowable to the company under that section exceeds the total of the company's profits,

then, for the purpose of enabling the company to surrender the excess referred to in paragraph (a) above by way of group relief, section 403(7) shall have effect as if in that subsection—

(i) the reference to the amount paid by the surrendering company by way of charges on income were a reference to so much of that amount as is allowable only against the company's non-oil profits; and

(ii) the reference to the surrendering company's profits were a reference to its non-oil profits alone.

VALID FROM 27/07/1999

[F1016 494A Sale and lease-back.

(1) This section applies where—

(a) a company ("the seller") carrying on a trade has disposed of an asset which was used for the purposes of that trade, or an interest in such an asset;

(b) the asset is used, under a lease, by the seller or a company associated with the seller ("the lessee") for the purposes of a ring fence trade carried on by the lessee; and

(c) the lessee uses the asset before the end of the period of two years beginning with the disposal.

(2) Subject to subsection (4) below, subsection (3) below applies to so much (if any) of the expenditure incurred by the lessee under the lease as—

(a) falls, in accordance with normal accountancy practice, to be treated in the accounts of the lessee as a finance charge; or

(b) would so fall if the lessee were a company incorporated in the United Kingdom.

(3) The expenditure shall not be allowable in computing for the purposes of Schedule D the profits of the ring fence trade.

(4) Expenditure shall not be disallowed by virtue of subsection (3) above to the extent that the disposal referred to in subsection (1) above is made for a consideration which—

(a) is used to meet expenditure incurred by the seller in carrying on oil extraction activities or in acquiring oil rights otherwise than from a company associated with the seller; or

(b) is appropriated to meeting expenditure to be so incurred by the seller.

(5) Where any expenditure—

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(a) would apart from subsection (3) above be allowable in computing for the purposes of Schedule D the profits of the ring fence trade for an accounting period, but

(b) by virtue of that subsection is not so allowable,

that expenditure shall be brought into account for the purposes of Chapter II of Part IV of the [M1319]Finance Act 1996 as if it were a non-trading debit in respect of a loan relationship of the lessee for that accounting period.

(6) In this section, "lease", in relation to an asset, has the same meaning as in sections 781 to 784.**]**

Textual Amendments

F1016 S. 494AA inserted (with application in accordance with s. 100(2)(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 100(1)**

Marginal Citations

M1319 1996 c.8.

VALID FROM 31/07/1998

[[F1017]494A Computation of amount available for surrender by way of group relief.

(1) In section 403(3) (availability of charges, Schedule A losses and management expenses for surrender as group relief) the reference to the gross profits of the surrendering company for an accounting period does not include the company's relevant ring fence profits for that period.

(2) If for that period—

(a) there are no charges on income paid by the company that are allowable under section 338, or

(b) the only charges on income so allowable are charges to which section 494(3) above applies,

all the company's ring fence profits are relevant ring fence profits.

(3) In any other case the company's relevant ring fence profits are so much of its ring fence profits as exceeds the amount of the charges on income paid by the company as—

(a) are allowable under section 338 for that period, and

(b) are not charges to which section 494(3) above applies.**]**

Textual Amendments

F1017 S. 494A inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 30** (with Sch. 5 para. 73)

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495 Regional development grants.

(1) Subsection (2) below applies in any case where—

(a) a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to the 1975 Act applies (transactions between connected persons and otherwise than at arm's length), and

(b) the expenditure incurred by the other person referred to in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph has been or is to be met by a regional development grant and, in whole or in part, falls to be taken into account **[**[F1018]Part I, II or VII of the 1990 Act (capital allowances relating to industrial buildings, machinery or plant and scientific research).**]**.

(2) Where this subsection applies, for the purposes of the charge of income tax or corporation tax on the income arising from those activities of the person referred to in paragraph (a) of subsection (1) above which are treated by virtue of section 492(1) as a separate trade for those purposes, the expenditure referred to in that paragraph shall be treated as reduced by the amount of the regional development grant referred to in paragraph (b) of that subsection.

(3) Subsections (4) to (6) below apply where—

(a) expenditure incurred by any person in relation to an asset in any relevant period ("the initial period") has been or is to be met by a regional development grant; and

(b) notwithstanding the provisions of section 137 of the [M1320]Finance Act 1982 and subsections (1) and (2) above, in determining that person's liability to income tax or corporation tax for the initial period the whole or some part of that expenditure falls to be taken into account **[**[F1019]Part I, II or VII of the 1990 Act**]**; and

(c) in a relevant period subsequent to the initial period either expenditure on the asset becomes allowable under section 3 or 4 of the 1975 Act or the proportion of any such expenditure which is allowable is different as compared with the initial period;

and in subsections (4) to (6) below the subsequent relevant period referred to in paragraph (c) above is referred to as "the adjustment period".

(4) Where this subsection applies—

(a) there shall be redetermined for the purposes of subsections (5) and (6) below the amount of the expenditure referred to in subsection (3)(a) above which would have been taken into account as mentioned in subsection (3)(b) if the circumstances referred to in subsection (3)(c) had existed in the initial period; and

(b) according to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3)(b), the difference is in subsections (5) and (6) below referred to as the increase or the reduction in the allowance.

(5) If there is an increase in the allowance, then, for the purposes of the provisions referred to in subsection (3)(b) above, an amount of capital expenditure equal to the increase shall be deemed to have been incurred by the person concerned in the adjustment period on an extension of or addition to the asset referred to in subsection (3)(a) above.

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(6) If there is a reduction in the allowance, then, for the purpose of determining the liability to income tax or corporation tax of the person concerned, he shall be treated as having received in the adjustment period, as income of the trade in connection with which the expenditure referred to in subsection (3)(a) above was incurred, a sum equal to the amount of the reduction in the allowance.

(7) In this section—

"regional development grant" means a grant made under the provisions of Part II of the [M1321]Industrial Development Act 1982 or Part I of the [M1322]Industry Act 1972 or such grant made under an enactment of the Parliament of Northern Ireland or Measure of the Northern Ireland Assembly as has been or may be declared by the Treasury under section **[**[F1020]153 of the 1990 Act**]** to correspond to a grant made under those provisions; and

"relevant period" means an accounting period of a company or a year of assessment.

Textual Amendments

F1018 Words in s. 495(1)(b) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(23)(a)**

F1019 Words in s. 495(3)(b) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(23)(b)**

F1020 Words in s. 495(7) substituted (with effect in accordance with s. 164 of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(23)(c)**

Marginal Citations

M1320 1982 c. 39

M1321 1982 c. 52

M1322 1972 c. 63

496 Tariff receipts.

(1) Any sum which—

(a) constitutes a tariff receipt of a person who is a participator in an oil field, and

(b) constitutes consideration in the nature of income rather than capital, and

(c) would not, apart from this subsection, be treated for the purposes of this Chapter as a receipt of the separate trade referred to in section 492(1),

shall be so treated for those purposes.

(2) To the extent that they would not otherwise be so treated, the activities of a participator in an oil field or a person connected with him in making available an asset in a way which gives rise to tariff receipts of the participator shall be treated for the purposes of this Chapter as oil extraction activities.

(3) In determining for the purposes of subsection (1) above whether any sum constitutes a tariff receipt of a person who is a participator, no account shall be taken of any sum which—

(a) is in fact received or receivable by a person connected with the participator, and

(b) constitutes a tariff receipt of the participator,

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but in relation to the person by whom such a sum is actually received, subsection (1) above shall have effect as if he were a participator and as if the condition in paragraph (a) of that subsection were fulfilled.

(4) References in this section to a person connected with a participator include references to a person with whom the person is associated within the meaning of paragraph 11 of Schedule 2 to [M1323]the Oil Taxation Act 1983.

Marginal Citations

M1323 1983 c. 56.

VALID FROM 22/07/2004

[[F1021]496A Exploration expenditure supplement

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.**]**

Textual Amendments

F1021 S. 496A inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 286(2)**

VALID FROM 19/07/2006

[[F1022]496B Ring fence expenditure supplement

Schedule 19C to this Act (ring fence expenditure supplement) shall have effect.**]**

Textual Amendments

F1022 S. 496B inserted (19.7.2006) by Finance Act 2006 (c. 25), **s. 154(2)**

497 Restriction on setting ACT against income from oil extraction activities etc.

(1) Section 239 shall have effect subject to the following provisions of this section; and in those provisions any reference to a company's ring fence income shall be construed, except in relation to relief under section 380 of this Act and section 71 of the 1968 Act, as a reference to the company's ring fence profits.

(2) Where advance corporation tax is paid by a company ("the distributing company") in respect of any distribution made by it to a company associated with it and resident in the United Kingdom **[**[F1023]or in respect of any distribution which, in accordance with subsections (2A) and (2B) below, is made pursuant to a substitution scheme**]**or, where subsection (3) below applies, in respect of any distribution consisting of a dividend on a redeemable preference share—

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(a) that advance corporation tax shall not be set against the distributing company's liability to corporation tax on any ring fence income of the distributing company; and

(b) if the benefit of any amount of that advance corporation tax is surrendered under section 240 to a subsidiary of the distributing company, the corresponding amount of advance corporation tax which under that section the subsidiary is treated for the purposes of section 239 as having paid shall not be set against the subsidiary's liability to corporation tax on any ring fence income of the subsidiary.

[[F1024](2A) For the purposes of subsection (2) above, a distribution ("the relevant distribution") is made pursuant to a substitution scheme if—

(a) it is made on or after 2nd May 1991 in respect of shares or securities issued or transferred pursuant to or otherwise for the purposes of a scheme or arrangements; and

(b) by virtue of the scheme or arrangements a person's entitlement to, or to any rights in, the relevant distribution arises, directly or indirectly, by way of substitution for or addition to any entitlement of his to, or any prospect of his of, a distribution in respect of shares in or securities of another company; and

(c) at the time of the relevant distribution that other company is associated with the distributing company and is resident in the United Kingdom.

(2B) Where a distribution is made in respect of shares the issue or transfer of which constituted or formed part of an exempt distribution, within the meaning of section 213 (demergers), the distribution in respect of the shares shall not be regarded for the purposes of subsection (2) above as made pursuant to a substitution scheme by reason only that the transfer or issue of the shares was carried out as part of a transaction falling within subsection (1) of that section.**]**

(3) Subject to subsection (4) below, this subsection applies in relation to the payment of a dividend on redeemable preference shares if the dividend is paid on or after 17th March 1987 and—

(a) at the time the shares are issued, or

(b) at the time the dividend is paid,

the company paying the dividend is under the control of a company resident in the United Kingdom, and in this subsection "control" shall be construed in accordance with section 416.

(4) Subsection (3) above does not apply if or to the extent that it is shown that the proceeds of the issue of the redeemable preference shares—

(a) were used to meet expenditure incurred by the company issuing them in carrying on oil extraction activities or in acquiring oil rights otherwise than from a connected person; or

(b) were appropriated to meeting expenditure to be so incurred by that company;

and section 839 applies for the purposes of this subsection.

(5) Where in the case of any accounting period of a company there is an amount of advance corporation tax which because of subsection (2) above is not available to be set against the company's liability to corporation tax for that period on ring fence income of the company, section 239(2) shall as regards that period have effect as if the reference to the company's profits charged to corporation tax for that period were a reference to the company's profits so charged exclusive of any ring fence income.

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(6) For the purposes of subsections (2) to (4) above, shares in a company are redeemable preference shares either if they are so described in the terms of their issue or if, however they are described, they fulfil the condition in paragraph (a) below and either or both of the conditions in paragraphs (b) and (c) below—

(a) that, as against other shares in the company, they carry a preferential entitlement to a dividend or to any assets in a winding up or both;

(b) that, by virtue of the terms of their issue, the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part;

(c) that, by virtue of any material arrangements, the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them.

(7) For the purposes of paragraph (a) of subsection (6) above, shares are to be treated as carrying a preferential entitlement to a dividend as against other shares if, by virtue of any arrangements, there are circumstances in which a minimum dividend will be payable on those shares but not on others; and for the purposes of paragraph (c) of that subsection arrangements relating to shares are material arrangements if the company which issued the shares or a company associated with that company is a party to the arrangements.

Textual Amendments

F1023 Words in s. 497(2) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 66(1)**

F1024 S. 497(2A)(2B) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 66(2)**

498 Limited right to carry back surrendered ACT.

(1) In any case where,—

(a) on a date not earlier than 17th March 1987, a company which is the surrendering company for the purposes of section 240 paid a dividend; and

(b) at no time in the accounting period of the surrendering company in which that dividend was paid was the surrendering company under the control of a company resident in the United Kingdom (construing "control" in accordance with section 416); and

(c) under section 240(1) the benefit of the advance corporation tax paid in respect of that dividend was surrendered to a subsidiary of the surrendering company; and

(d) that advance corporation tax is not such that the restriction in paragraph (a) or paragraph (b) of section 497(2) applies with respect to it; and

(e) in one or more of the accounting periods of the subsidiary beginning in the six years preceding the accounting period in which falls the date referred to in paragraph (a) above, the subsidiary has a liability to corporation tax in respect of profits which consist of or include ring fence profits,

sections 239 and 240 shall have effect subject to subsections (3) to (7) below.

(2) Where the conditions in subsection (1) above are fulfilled, the subsidiary to which the benefit of the advance corporation tax is surrendered is in the following provisions of this section referred to as a "qualifying subsidiary"; and in those provisions—

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(a) "the surrendering company" has the same meaning as in section 240;
(b) "surrendered advance corporation tax" means advance corporation tax which, by virtue of section 240(2), a qualifying subsidiary is treated as having paid in respect of a distribution made on a particular date; and
(c) "the principal accounting period" means the accounting period of the qualifying subsidiary in which that date falls.

(3) So much of section 240(4) as would prevent surrendered advance corporation tax being set against a qualifying subsidiary's liability to corporation tax under section 239(3) shall not apply, but section 239(3) shall instead have effect subject to the following provisions of this section.

(4) Surrendered advance corporation tax may not under section 239(3) be set against a qualifying subsidiary's liability to corporation tax for an accounting period earlier than the principal accounting period unless throughout—
(a) that period,
(b) the principal accounting period, and
(c) any intervening accounting period,
the qualifying subsidiary was carrying on activities which, under and for the purposes specified in section 492, constitute a separate trade.

(5) Subject to subsection (6) below, for each accounting period of the surrendering company in which is paid a dividend the advance corporation tax on which gives rise, under section 240, to surrendered advance corporation tax, the total amount of that surrendered advance corporation tax in respect of which claims may be made under section 239(3) (whether by one qualifying subsidiary of the surrendering company or by two or more taken together) shall not exceed whichever of the following limits is appropriate to the accounting period of the surrendering company—
(a) for periods ending on or after 17th March 1987 and before 1 st April 1989, £10 million;
(b) for periods ending on or after 1st April 1989 and before 1st April 1991, £15 million;
(c) for later periods, £20 million.

(6) In any case where an accounting period of the surrendering company is less than 12 months, the amount which is appropriate to it under subsection (5)(a) to (c) above shall be proportionately reduced.

(7) The amount of surrendered advance corporation tax of the principal accounting period which, on a claim under section 239(3), may be treated as if it were advance corporation tax paid in respect of distributions made by the qualifying subsidiary concerned in any earlier accounting period shall not exceed the amount of advance corporation tax that would have been payable in respect of a distribution made at the end of that earlier period of an amount which, together with the advance corporation tax so payable in respect of it, would equal the qualifying subsidiary's ring fence profits of that period.

(8) In determining the amount (if any) of advance corporation tax which may be repayable—
(a) under section 17(3) of the 1975 Act, or
(b) under section 127(5) of the [M1324]Finance Act 1981,

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any advance corporation tax in respect of a distribution actually made on or after 17th March 1987 shall be left out of account.

Marginal Citations

M1324 1981 c. 35.

499 Surrender of ACT where oil extraction company etc. owned by a consortium.

(1) In any case where—

(a) a company (in this section referred to as "the consortium company") is owned by a consortium consisting of two members only, each of which owns 50 per cent. of the issued share capital of the company; and

(b) the consortium company carries on a trade consisting of or including activities falling within section 492(1)(a) to (c); and

(c) all of the issued share capital of the consortium company is of the same class and carries the same rights as to voting, dividends and distribution of assets on a winding up,

section 240 shall have effect, subject to the following provisions of this section, as if the company were a subsidiary of each member of the consortium.

(2) This section has effect with respect to advance corporation tax paid by either member of the consortium in respect of a dividend paid by it on or after 17th March 1987; and, in relation to a surrender under section 240 of the benefit of the advance corporation tax paid in respect of such a dividend—

(a) "surrendered advance corporation tax" means advance corporation tax which, by virtue of section 240(2), the consortium company is treated as having paid; and

(b) "the notional distribution date" means the date of the distribution in respect of which the surrendered advance corporation tax is treated as paid.

(3) No surrender under section 240 of the benefit of advance corporation tax may be made by virtue of this section—

(a) unless the conditions in paragraphs (a) to (c) of subsection (1) above are fulfilled throughout that accounting period of the consortium company in which falls the notional distribution date; or

(b) if arrangements are in existence by virtue of which any person could cause one or more of those conditions to cease to be fulfilled at some time during that or any later accounting period.

(4) In the application of section 239 in relation to surrendered advance corporation tax resulting from a surrender by either one of the consortium members under section 240, the reference in section 239(2) to the consortium company's profits charged to corporation tax shall be construed as a reference to one half of so much of those profits as consists of ring fence profits.

(5) So much of any surplus advance corporation tax as consists of or includes surrendered advance corporation tax shall not be treated under section 239(4) as if it were advance corporation tax paid in respect of distributions made by the consortium company in a later accounting period unless the conditions in paragraphs (a) to (c) of subsection (1) above are fulfilled throughout that later period.

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(6) In any case where—

(a) as a result of a surrender by one of the consortium members, the consortium company is treated as paying an amount of surrendered advance corporation tax which exceeds the limit applicable under section 239(2) (as modified by subsection (4) above), and

(b) that excess falls to be treated under section 239(4) as advance corporation tax paid by the consortium company in respect of distributions made in a later accounting period,

then, for the purposes of the application of section 239(2) (as modified by subsection (4) above) in relation to that later accounting period, the excess of the surrendered advance corporation tax shall be treated as resulting from a surrender by that one of the consortium members referred to in paragraph (a) above.

(7) Where section 240 has effect as mentioned in subsection (2) above, subsection (11) of that section shall have effect with the omission of paragraph (b) (and the word "and" immediately preceding it).

(8) Notwithstanding the provisions of subsection (1) above the consortium company shall not be regarded as a subsidiary for the purposes of section 498.

500 Deduction of PRT in computing income for corporation tax purposes.

(1) Where a participator in an oil field has paid any petroleum revenue tax with which he was chargeable for a chargeable period, then, in computing for corporation tax the amount of his income arising in the relevant accounting period from oil extraction activities or oil rights, there shall be deducted an amount equal to that petroleum revenue tax.

(2) There shall be made all such adjustments of assessments to corporation tax as are required in order to give effect to subsection (1) above.

(3) For the purposes of subsection (1) above, the relevant accounting period, in relation to any petroleum revenue tax paid by a company, is—

(a) the accounting period of the company in or at the end of which the chargeable period for which that tax was charged ends; or

(b) if that chargeable period ends after the accounting period of the company in or at the end of which the trade giving rise to the income referred to above is permanently discontinued, that accounting period.

(4) **[**[F1025]Subject to the following provisions of this section**]** if some or all of the petroleum revenue tax in respect of which a deduction has been made under subsection (1) above is subsequently repaid, that deduction shall be reduced or extinguished accordingly; and any additional assessment to corporation tax required in order to give effect to this subsection may be made at any time not later than six years after the end of the **[**[F1026]calendar year**]** in which the first-mentioned tax was repaid.

[[F1027](5) If, in a case where paragraph 17 of Schedule 2 to the 1975 Act applies, an amount of petroleum revenue tax in respect of which a deduction has been made under subsection (1) above is repaid by virtue of an assessment under that Schedule or an amendment of such an assessment, then, so far as concerns so much of that repayment as constitutes the appropriate repayment,—

(a) subsection (4) above shall not apply; and

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(b) the following provisions of this section shall apply in relation to the company which is entitled to the repayment.

(6) In subsection (5) above and the following provisions of this section—

(a) "the appropriate repayment" has the meaning assigned by sub-paragraph (2) of paragraph 17 of Schedule 2 to the 1975 Act;

(b) in relation to the appropriate repayment, a "carried back loss" means an allowable loss which falls within sub-paragraph (1)(a) of that paragraph and which (alone or together with one or more other carried back losses) gives rise to the appropriate repayment;

(c) in relation to a carried back loss, "the operative chargeable period" means the chargeable period in which the loss accrued; and

(d) in relation to the company which is entitled to the appropriate repayment, "the relevant accounting period" means the accounting period in or at the end of which ends the operative chargeable period or, if the company's ring fence trade is permanently discontinued before the end of the operative chargeable period, the last accounting period of that trade.

(7) In computing for corporation tax the amount of the company's income arising in the relevant accounting period from oil extraction activities or oil rights there shall be added an amount equal to the appropriate repayment; but this subsection has effect subject to subsection (8) below in any case where—

(a) two or more carried back losses give rise to the appropriate repayment; and

(b) the operative chargeable period in relation to each of the carried back losses is not the same; and

(c) if subsection (6)(d) above were applied separately in relation to each of the carried back losses there would be more than one relevant accounting period.

(8) Where paragraphs (a) to (c) of subsection (7) above apply, the appropriate repayment shall be treated as apportioned between each of the relevant accounting periods referred to in paragraph (c) of that subsection in such manner as to secure that the amount added by virtue of that subsection in relation to each of those relevant accounting periods is what it would have been if—

(a) relief for each of the carried back losses for which there is a different operative chargeable period had been given by a separate assessment or amendment of an assessment under Schedule 2 to the 1975 Act; and

(b) relief for a carried back loss accruing in an earlier chargeable period had been so given before relief for a carried back loss accruing in a later chargeable period.

(9) Any additional assessment to corporation tax required in order to give effect to the addition of an amount by virtue of subsection (7) above may be made at any time not later than six years after the end of the calendar year in which is made the repayment of petroleum revenue tax comprising the appropriate repayment.

(10) In this section "allowable loss" and "chargeable period" have the same meaning as in Part I of the 1975 Act and "calendar year" means a period of twelve months beginning on 1st January.**]**

Textual Amendments

F1025 Words in s. 500(4) inserted by Finance Act 1990 (c. 29), **s. 62(1)(a)**

F1026 Words in s. 500(4) substituted by Finance Act 1990 (c. 29), **s. 62(1)(b)**

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F1027 S. 500(5)-(10) substituted for s. 500(5) by Finance Act 1990 (c. 29), **s. 62(2)**

501 Interest on repayment of PRT.

Where any amount of petroleum revenue tax paid by a participator in an oil field is, under any provision of Part I of the 1975 Act, repaid to him with interest, the amount of the interest paid to him shall be disregarded in computing the amount of his income for the purposes of corporation tax.

VALID FROM 24/07/2002

[F1028 501A Supplementary charge in respect of ring fence trades

(1) Where in any accounting period beginning on or after 17th April 2002 a company carries on a ring fence trade, a sum equal to 10 per cent of its adjusted ring fence profits for that period shall be charged on the company as if it were an amount of corporation tax chargeable on the company.

(2) A company's adjusted ring fence profits for an accounting period are the amount which, on the assumption mentioned in subsection (3) below, would be determined for that period (in accordance with this Chapter) as the profits of the company's ring fence trade chargeable to corporation tax.

(3) The assumption is that financing costs are left out of account in computing—
- (a) the amount of the profits or loss of any ring fence trade of the company's for each accounting period beginning on or after 17th April 2002; and
- (b) where for any such period the whole or part of any loss relief is surrendered to the company in accordance with section 492(8), the amount of that relief or, as the case may be, that part.

(4) For the purposes of this section, "financing costs" means the costs of debt finance.

(5) In calculating the costs of debt finance for an accounting period the matters to be taken into account include—
- (a) any costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);
- (b) any exchange gain or loss, within the meaning of Chapter 2 of Part 2 of the Finance Act 1993, in relation to debt finance;
- (c) any trading profit or loss, under Chapter 2 of Part 4 of the Finance Act 1994 (interest rate and currency contracts), in relation to debt finance;
- (d) the financing cost implicit in a payment under a finance lease; and
- (e) any other costs arising from what would be considered in accordance with generally accepted accounting practice to be a financing transaction.

(6) Where an amount representing the whole or part of a payment falling to be made by a company—
- (a) falls (or would fall) to be treated as a finance charge under a finance lease for the purposes of accounts relating to that company and one or more other companies and prepared in accordance with generally accepted accounting practice, but

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(b) is not so treated in the accounts of the company,

the amount shall be treated for the purposes of this section as financing costs falling within subsection (5)(d) above.

(7) If—

(a) in computing the adjusted ring fence profits of a company for an accounting period, an amount falls to be left out of account by virtue of subsection (5)(d) above, but

(b) the whole or any part of that amount is repaid,

the repayment shall also be left out of account in computing the adjusted ring fence profits of the company for any accounting period.

(8) In this section "finance lease" means any arrangements—

(a) which provide for an asset to be leased or otherwise made available by a person to another person ("the lessee"), and

(b) which, under generally accepted accounting practice,—

(i) fall (or would fall) to be treated, in the accounts of the lessee or a person connected with the lessee, as a finance lease or a loan, or

(ii) are comprised in arrangements which fall (or would fall) to be so treated.

(9) For the purposes of applying subsection (8)(b) above, the lessee and any person connected with the lessee are to be treated as being companies which are incorporated in a part of the United Kingdom.

(10) In this section "accounts", in relation to a company, includes any accounts which—

(a) relate to two or more companies of which that company is one, and

(b) are drawn up in accordance with—

(i) section 227 of the Companies Act 1985, or

(ii) Article 235 of the Companies (Northern Ireland) Order 1986.**]**

Textual Amendments

F1028 S. 501A inserted (24.7.2002) by Finance Act 2002 (c. 23), **ss. 91**, 93

VALID FROM 24/07/2002

[F1029 501B Assessment, recovery and postponement of supplementary charge

(1) Subject to subsection (3) below, the provisions of section 501A(1) relating to the charging of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including—

(a) those relating to returns of information and the supply of accounts, statements and reports;

(b) those relating to the assessing, collecting and receiving of corporation tax;

(c) those conferring or regulating a right of appeal; and

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(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(2) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if any reference to corporation tax included a reference to a sum chargeable under section 501A(1) as if it were an amount of corporation tax.

(3) In any regulations made under section 32 of the Finance Act 1998 (as at 17th April 2002, the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999)—

(a) references to corporation tax do not include a reference to a sum chargeable on a company under section 501A(1) as if it were corporation tax; and

(b) references to profits charged to corporation tax do not include a reference to adjusted ring fence profits, within the meaning of section 501A(1).

(4) In this section "the Taxes Acts" has the same meaning as in the Management Act.**]**

Textual Amendments

F1029 S. 501B inserted (24.7.2002) by Finance Act 2002 (c. 23), **ss. 92(1)**, 93

502 Interpretation of Chapter V.

(1) In this Chapter—

"the 1975 Act" means the Oil Taxation Act 1975 [M1325];

"oil" means any substance won or capable of being won under the authority of a licence granted under either the Petroleum (Production) Act 1934 or the [M1326]Petroleum (Production) Act (Northern Ireland) 1964, other than methane gas won in the course of operations for making and keeping mines safe;

"oil extraction activities" means any activities of a person—

(a) in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for him; or

(b) in extracting or causing to be extracted for him oil at any place in the United Kingdom or a designated area under rights authorising the extraction and held by him or, if the person in question is a company, by the company or a company associated with it; or

(c) in transporting or causing to be transported for him [F1030] . . . oil extracted at any such place not on dry land under rights authorising the extraction and so held **[**[F1031]where the transportation is—

(i) to the place where the oil is first landed in the United Kingdom, or

(ii) to the place in the United Kingdom or, in the case of oil first landed in another country, the place in that or any other country (other than the United Kingdom) at which the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction**]**; or

(d) in effecting or causing to be effected for him the initial treatment or initial storage of oil won from any oil field under rights authorising its extraction and so held;

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"oil field" has the same meaning as in Part I of the 1975 Act;

"oil rights" means rights to oil to be extracted at any place in the United Kingdom or a designated area, or to interests in or to the benefit of such oil;

"participator" has the same meaning as in Part I of the 1975 Act; and

"ring fence income" means income arising from oil extraction activities or oil rights; and

"ring fence profits" has the **[**[F1032] meaning given by subsection (1A) below**]** or, in any case where that subsection does not apply, means ring fence income; **[**[F1033] and

"ring fence trade" means activities which—

(a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492; and

(b) constitute a separate trade (whether by virtue of that subsection or otherwise)**]**.

[[F1034](1A) Where in accordance with section 197(3) of the 1992 Act a person has an aggregate gain for any chargeable period, that gain and his ring fence income (if any) for that period together constitute his ring fence profits for the purposes of this Chapter.**]**

(2) For the purposes of subsection (1) above—

(a) "designated area" means an area designated by Order in Council under section 1(7) of the [M1327]Continental Shelf Act 1964;

(b) "initial treatment" has the same meaning as in Part I of the 1975 Act; and

(c) the definition of "initial storage" in section 12(1) of the 1975 Act shall apply but, in its application for those purposes in relation to the person mentioned in subsection (1)(d) above and to oil won from any one oil field shall have effect as if the reference to the maximum daily production rate of oil for the field as there mentioned were a reference to that person's share of that maximum daily production rate, that is to say, a share thereof proportionate to his share of the oil won from that field.

(3) For the purposes of this Chapter two companies are associated with one another if—

(a) one is a 51 per cent. subsidiary of the other;

(b) each is a 51 per cent. subsidiary of a third company; or

(c) one is owned by a consortium of which the other is a member.

Section 413(6) shall apply for the purposes of paragraph (c) above.

(4) Without prejudice to subsection (3) above, for the purposes of this Chapter, two companies are also associated with one another if one has control of the other or both are under the control of the same person or persons; and in this subsection "control" shall be construed in accordance with section 416.

Textual Amendments

F1030 S. 502(1): words in definition of "oil extraction activities" repealed (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 55(1)(a)(2), 82, **Sch. 18 Pt.VII**

F1031 S. 502(1): words in definition of "oil extraction activities" inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 55(1)(b)(2)**

F1032 S. 502(1): words in definition of "ring fence profits" substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(30)** (with ss. 60, 101(1), 171(1), 201(3))

F1033 S. 502(1): definition of "ring fence trade" added by Finance Act 1990 (c. 29), **s. 62(3)**

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F1034 S. 502(1A) inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 300(1), **Sch. 10 para. 14(30)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1325 1975 c. 22.
M1326 1964 c. 28 (N.I.)
M1327 1964 c. 29.

VALID FROM 19/07/2006

CHAPTER 5A

SPECIAL RULES FOR LONG FUNDING LEASES OF PLANT OR MACHINERY: CORPORATION TAX

[F1035 *Introductory*

Textual Amendments

F1035 Pt. 12 Ch. 5A (ss. 502A-502L) inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 11**

502A Scope of Chapter 5A

This Chapter has effect for the purposes of corporation tax only.

Lessors under long funding finance leases

502B Lessor under long funding finance lease: rental earnings

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessor of any plant or machinery under a long funding finance lease.

(2) The amount to be brought into account as the lessor's taxable income from the lease for the period of account is the amount of the rental earnings in respect of the lease for the period of account.

(3) The "rental earnings" for any period is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment for that period in respect of the lease where it meets the finance lease test.

(4) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan in the accounts in question, so much of the rentals under the lease as fall (or would fall) to be treated as interest are to be treated for the purposes of this section as rental earnings.

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Modifications etc. (not altering text)

C518 S. 502B excluded (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 20 para. 11(2)**

C519 S. 502B excluded (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 33 para. 5**

502C Lessor under long funding finance lease: exceptional items

(1) This section applies for determining for the purposes of corporation tax the profits of a company which is or has been the lessor under a long funding finance lease.

(2) This section has effect where a profit or loss (whether of an income or capital nature) —

(a) arises to the company in connection with the lease, and

(b) in accordance with generally accepted accounting practice falls to be recognised for accounting purposes in a period of account, but

(c) would not, apart from this section, be brought into account in computing the profits of the company for the purposes of corporation tax.

(3) The profit or loss is to be treated—

(a) in the case of a profit, as income of the company attributable to the lease,

(b) in the case of a loss, as a revenue expense incurred by the company in connection with the lease.

(4) Any reference in this section to an amount falling to be recognised for accounting purposes in a period of account is a reference to an amount falling to be recognised for accounting purposes—

(a) in the company's profit and loss account or income statement,

(b) in the company's statement of recognised gains and losses or statement of changes in equity, or

(c) in any other statement of items brought into account in computing the company's profits or losses for that period.

Modifications etc. (not altering text)

C520 S. 502C excluded (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 20 para. 11(8)**

C521 S. 502C excluded (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 33 para. 7**

502D Lessor under long funding finance lease making termination payment

(1) This section applies for determining the liability to corporation tax of a company which is or has been the lessor under a long funding finance lease.

(2) Where—

(a) the lease terminates, and

(b) a sum calculated by reference to the termination value is paid to the lessee,

no deduction in respect of the sum paid to the lessee is allowed in computing the profits of the company.

(3) This section does not prevent a deduction in respect of a sum to the extent that the sum is brought into account in determining the company's rental earnings.

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Lessors under long funding operating leases

502E Lessor under long funding operating lease: periodic deduction

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account—
  (a) for the whole of which, or
  (b) for any part of which,
the company is the lessor of any plant or machinery under a long funding operating lease.

(2) A deduction is allowed in computing the profits of the company for the period of account.

(3) The amount of the deduction for any period of account is to be determined as follows.

(4) First, find the "relevant value" for the purposes of subsection (6)(a) below, which is—
  (a) if the only use of the plant or machinery by the lessor has been the leasing of it under the long funding operating lease as a qualifying activity, cost;
  (b) if the last previous use of the plant or machinery by the lessor was the leasing of it under another long funding operating lease as a qualifying activity, market value;
  (c) if the last previous use of the plant or machinery by the lessor was the leasing of it under a long funding finance lease as a qualifying activity, the recognised value;
  (d) if the last previous use of the plant or machinery by the lessor was for the purposes of a qualifying activity other than leasing under a long funding lease, the lower of cost and market value;
  (e) if the lessor owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but—
    (i) the plant or machinery is brought into use by the lessor for the purposes of a qualifying activity on or after 1st April 2006, and
    (ii) that qualifying activity is the leasing of the plant or machinery under the long funding operating lease,
  the relevant value is the lower of first use market value and first use amortised value.

(5) In subsection (4) above—
  "cost" means the amount of the expenditure incurred by the lessor on the provision of the plant or machinery;
  "first use amortised value" means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity, on the assumption that—
    (a) the cost of acquiring the plant or machinery had been written off on a straight line basis over the remaining useful economic life of the plant or machinery, and
    (b) any further capital expenditure incurred had been written off on a straight line basis over so much of the remaining economic life of

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the plant or machinery as remains at the time when the expenditure is incurred;

"first use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity;

"market value" means the market value of the plant or machinery at the commencement of the term of the long funding operating lease;

"recognised value" means the value at which the plant or machinery is recognised in the books or other financial records of the lessor at the commencement of the long funding operating lease.

(6) From—

(a) the relevant value determined in accordance with subsection (4) above,

subtract

(b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(e) above, would have been) expected to be the residual value of the plant or machinery,

to find the expected gross reduction in value over the term of the lease.

(7) Apportion the amount of that expected gross reduction in value to each period of account in which any part of the term of the lease falls.

(8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.

(9) The amount of the deduction for any period of account is the amount so apportioned to that period.

502F Long funding operating lease: lessor's additional expenditure

(1) This section applies if in any period of account—

(a) a company is the lessor of any plant or machinery under a long funding operating lease,

(b) the company incurs capital expenditure in relation to the plant or machinery, and

(c) that capital expenditure (the "additional expenditure") is not reflected in the market value of the plant or machinery at the commencement of the term of the lease.

(2) In a case falling within section 502E(4)(e) above, subsection (1)(c) above has effect as if the reference to the commencement of the term of the lease were a reference to the time when the plant or machinery is first brought into use by the lessor for the purposes of the qualifying activity.

(3) Where this section applies, an additional deduction is allowed in computing the profits of the company for each post-expenditure period of account in which the company is the lessor of the plant or machinery under the lease.

(4) The amount of the deduction for any such period of account is to be determined as follows.

(5) Find ARV, CRV, PRV, and TRV where—

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"ARV" is the amount which, at the time when the additional expenditure is incurred, is expected to be the residual value of the plant or machinery;

"CRV" is the amount which, at the commencement of the term of the lease, is expected to be the residual value of the plant or machinery;

"PRV" is the sum of any amounts that fell to be taken into account as RRV (see subsection (6)) in the application of this section in relation to any previous additional expenditure incurred by the company in relation to the leased plant or machinery;

"TRV" is the total of CRV and PRV.

(6) Find RRV, where—

(a) if ARV exceeds TRV, RRV is the portion of the excess that is a result of the additional expenditure, but

(b) if ARV does not exceed TRV, RRV is nil.

(7) From—

(a) the amount of the additional expenditure,

subtract

(b) RRV,

to find the expected partial reduction in value over the remainder of the term of the lease.

(8) Apportion the amount of that expected partial reduction in value to each post-expenditure period of account in which any part of the term of the lease falls.

(9) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each post-expenditure period of account.

(10) The amount of the additional deduction for any period of account is the amount so apportioned to that period.

(11) In this section "post-expenditure period of account" means any period of account ending after the incurring of the additional expenditure.

502G Lessor under long funding operating lease: termination of lease

(1) This section applies for determining the liability to corporation tax of a company which is the lessor immediately before the termination of a long funding operating lease.

(2) Step 1 is to find—

(a) the termination amount (TA);

(b) the total of any sums paid to the lessee that are calculated by reference to the termination value (LP).

(3) Step 2 is to find—

(a) the relevant value for the purposes of section 502E(6)(a) (RV);

(b) the total of the deductions allowable under section 502E for periods of account for the whole or part of which the company was the lessor before the termination of the lease (TD1);

(c) the amount, if any, (ERV) by which RV exceeds TD1.

(4) Step 3 is to find—

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(a) the total of any amounts of capital expenditure incurred by the company which constitute additional expenditure for the purposes of section 502F in the case of the lease (TAE);

(b) the total of any deductions allowable under section 502F for periods of account for the whole or part of which the company was the lessor before the termination of the lease (TD2);

(c) the amount, if any, (EAE) by which TAE exceeds TD2.

(5) Step 4 is to find the total of ERV and EAE (T).

(6) If (TA – LP) exceeds T, treat a profit of an amount equal to the excess as arising to the company in the period of account in which the lease terminates.

(7) If T exceeds (TA – LP), treat a loss of an amount equal to the excess as arising to the company in that period of account.

(8) A profit or loss treated as arising to the company under subsection (6) or (7) above is to be treated—

(a) in the case of a profit, as income of the company attributable to the lease,

(b) in the case of a loss, as a revenue expense incurred by the company in connection with the lease.

(9) In computing the profits of the company, no deduction is allowed in respect of any sums paid to the lessee that are calculated by reference to the termination value.

VALID FROM 21/07/2008

Lessors under long funding finance or operating leases: avoidance etc

502GA Cases where ss. 502B to 502G do not apply: plant or machinery held as trading stock

(1) Sections 502B to 502G do not apply in the case of a company which is or has been the lessor of any plant or machinery under a long funding lease if the following condition is met.

(2) The condition is that any part of the expenditure incurred by the company on the acquisition of the plant or machinery for leasing under the lease—

(a) is (apart from those sections) allowable as a deduction in calculating its profits or losses for the purposes of corporation tax, and

(b) is so allowable as a result of the plant or machinery forming part of its trading stock.

(3) For the purposes of this section the cases in which expenditure incurred by a company on the acquisition of any plant or machinery for leasing under a lease is allowable as such a deduction include any case where—

(a) the company becomes entitled to the deduction at any time after the expenditure is incurred, and

(b) the deduction arises as a result of the plant or machinery forming part of its trading stock at that time.

(4) If—

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(a) at any time any of sections 502B to 502G has applied for determining the amounts to be taken into account in calculating the profits or losses of the company for the purposes of corporation tax, and

(b) the condition in subsection (2) is met at any subsequent time,

those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.

(5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (4).

[F1036 502GB Cases where ss. 502B to 502G do not apply: lessor also lessee under non-long funding lease

(1) This section applies if—

(a) a company is the lessee of any plant or machinery under a lease ("lease A") that is not a long funding lease,

(b) it enters into a lease ("lease B") of any of that plant or machinery (as lessor), and

(c) lease B is a long funding lease.

(2) Sections 502B to 502G do not apply in relation to lease B.

(3) If by virtue of section 70H of the Capital Allowances Act (tax return by lessee treating lease as long funding lease) lease A becomes a long funding lease (and does not cease to be such a lease), treat this section as never having applied in relation to lease B.]

Textual Amendments

F1036 S. 502GB inserted (with effect in accordance with Sch. 20 para. 9(6) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(3)**

[F1037 502GC Cases where ss. 502B to 502G do not apply: other avoidance

(1) Sections 502B to 502G do not apply in the case of a company which is or has been the lessor of any plant or machinery under a long funding lease if conditions A to C are met.

(2) Condition A is that the long funding lease forms part of any arrangement entered into by the company which includes one or more other transactions (whether the arrangement is entered into before or after or at the inception of the lease).

(3) Condition B is that the main purpose, or one of the main purposes, of the arrangement is to secure that, over the relevant period, there would be a substantial difference between—

(a) the total amount of the amounts under the arrangement which are, in accordance with generally accepted accounting practice, recognised in determining the company's profit or loss for any period or taken into account in calculating the amounts which are so recognised, and

(b) the total amount of the amounts under the arrangement which are taken into account in calculating the profits or losses of the company for the purposes of corporation tax.

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(4) For the purposes of condition B "the relevant period" means the period which begins with the inception of the lease and ends with the end of the term of the lease.

(5) Condition C is that the difference would be attributable (wholly or partly) to the application of any of sections 502B to 502G in relation to the company by reference to the plant or machinery under the lease.

(6) The reference in this section to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
  (a) in the company's profit and loss account or income statement,
  (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
  (c) in any other statement of items brought into account in calculating the company's profits and losses for that period.

(7) For the purposes of this section it does not matter whether the parties to any transaction which forms part of the arrangement differ from the parties to any of the other transactions.

(8) For the purposes of this section the cases in which two or more transactions are to be taken as forming part of an arrangement include any case in which it would be reasonable to assume that one or more of them—
  (a) would not have been entered into independently of the other or others, or
  (b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(9) If—
  (a) at any time any of sections 502B to 502G has applied for determining the amounts to be taken into account in calculating the profits or losses of the company for the purposes of corporation tax, and
  (b) conditions A to C are met at any subsequent time,

  those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.

(10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).**]**

Textual Amendments

F1037 S. 502GC inserted (with effect in accordance with Sch. 20 para. 9(7) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(4)**

VALID FROM 21/07/2009

[F1039 502GD F1038 Cases where ss 502B to 502G do not apply: films]

(1) If a company is or has been a lessor under a long funding lease of a film, sections 502B to 502G do not apply in respect of the lease.

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(2) "Film" has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).**]**

Textual Amendments

F1038 S. 502GA and preceding cross-heading inserted (with effect in accordance with Sch. 20 para. 9(5) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(2)**

F1039 S. 502GD inserted (with effect in accordance with Sch. 33 para. 3 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 33 para. 1**

Insurance company as lessor

502H Insurance company as lessor

(1) This section applies to a company carrying on life assurance business if it is the lessor under a long funding lease in a period of account.

(2) In this section—

(a) subsections (3) to (7) have effect in relation to—

(i) basic life assurance and general annuity business, and

(ii) long-term business which is not life assurance business, and

(b) subsections (8) to (10) have effect in relation to certain computations falling to be made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (4) below applies in the case of each of the following amounts—

(a) an amount of rental earnings which the company is required by section 502B (long funding finance lease) to bring into account as taxable income,

(b) an amount treated under section 502C(3)(a) (long funding finance lease: lessor's exceptional items) as a profit arising to the company,

(c) an amount of rental income arising to the company from a long funding operating lease,

(d) an amount treated under section 502G(8)(a) (long funding operating lease: lessor's excess termination amount) as a profit arising to the company,

but only if the leased asset is an asset of the company's long-term insurance fund.

(4) In determining for the purposes of the Corporation Tax Acts in any such case the extent to which any such amount is referable to—

(a) basic life assurance and general annuity business, or

(b) long-term business which is not life assurance business,

section 432A (apportionment of insurance companies' income) is to have effect in relation to the amount as it has effect in relation to the income arising from an asset.

This subsection is subject to subsections (5) and (6) below.

(5) Before applying subsection (4) above in a case where—

(a) that subsection applies by virtue of subsection (3)(a) above in relation to an amount of rental earnings, and

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(b) there is an amount which is deductible as a revenue expense by virtue of section 502C(3)(b) (long funding finance lease: lessor's exceptional items),

the amount so deductible is to be given effect by applying it, so far as possible, in reducing the amount of the rental earnings.

(6) Before applying subsection (4) above by virtue of subsection (3)(c) above in relation to an amount of rental income,—

(a) any deduction falling to be made under section 502E, or

(b) any reduction falling to be made under section 502F,

is to be given effect by applying it, so far as possible, in reducing (or further reducing) the amount of the rental income.

(7) Where, after applying amounts in making reductions required by subsection (5) or (6) above, there remains unapplied an amount in respect of—

(a) a deduction falling to be made under section 502E,

(b) a reduction falling to be made under section 502F, or

(c) an amount deductible as a revenue expense by virtue of section 502C(3)(b),

the amount is to be apportioned under section 432A in the same way as income.

(8) Where—

(a) the leased asset is an asset of the company's long-term insurance fund, and

(b) a computation falling within subsection (9) below falls to be made,

subsection (10) below applies to the computation.

(9) A computation falls within this subsection if it is a computation of profits of—

(a) life assurance business carried on by the company, or

(b) any category of life assurance business carried on by the company,

and falls to be made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(10) In making the computation, no amount shall be brought into account by virtue of any of the following provisions—

(a) section 502B (long funding finance lease: rental earnings),

(b) section 502C(3)(a) or (b) (long funding finance lease: profit or loss in respect of exceptional items),

(c) section 502E (long funding operating lease: periodic deduction),

(d) section 502F (long funding operating lease: lessor's additional expenditure),

(e) section 502G(8)(a) or (b) (long funding operating lease: lessor's profit or loss in respect of termination amount).

Lessees under long funding finance leases

502I Lessee under long funding finance lease: limit on deductions

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessee of any plant or machinery under a long funding finance lease.

(2) In calculating the company's profits for the period of account,—

(a) the amount deducted in respect of amounts payable under the lease,

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must not exceed

(b) the amounts which, in accordance with generally accepted accounting practice, fall (or would fall) to be shown in the company's accounts as finance charges in respect of the lease.

(3) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, subsection (2) above applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

502J Lessee under long funding finance lease: termination

(1) This section applies where—

(a) a company is or has been the lessee under a long funding finance lease, and

(b) in connection with the termination of the lease, a payment calculated by reference to the termination value falls to be made to the company.

(2) The payment is not to be brought into account in determining for the purposes of corporation tax the profits of the company for any period of account.

(3) Subsection (2) above does not affect the amount of any disposal value that falls to be brought into account by the company under the Capital Allowances Act.

Lessees under long funding operating leases

502K Lessee under long funding operating lease

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessee of any plant or machinery under a long funding operating lease.

(2) The deductions that may be allowed in computing the profits of the company for the period of account are to be reduced in accordance with the following provisions of this section.

(3) The amount of the reduction for any period of account is to be determined as follows.

(4) First, find the "relevant value" for the purposes of subsection (6)(a) below, which is—

(a) the market value of the plant or machinery at the commencement of the term of the lease, unless paragraph (b) below applies;

(b) if the lessee—

(i) has the use of the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but

(ii) brings the plant or machinery into use for the purposes of a qualifying activity on or after 1st April 2006,

the lower of first use market value and first use amortised market value.

(5) In subsection (4) above—

"first use amortised market value" means the value that the plant or machinery would have—

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(a) at the time when it is first brought into use for the purposes of the qualifying activity, but

(b) on the assumption that the market value of the plant or machinery at the commencement of the term of the lease had been written off on a straight line basis over the remaining useful economic life of the plant or machinery;

"first use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.

(6) From—

(a) the relevant value determined in accordance with subsection (4) above,

subtract

(b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(b) above, would have been) expected to be the market value of the plant or machinery at the end of the term of the lease,

to find the expected gross reduction over the term of the lease.

(7) Apportion the amount of that expected gross reduction to each period of account in which any part of the term of the lease falls.

(8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.

(9) The amount of the reduction for any period of account is the amount so apportioned to that period.

*Interpretation of Chapter***]**

502L Interpretation of this Chapter

(1) This section has effect for the interpretation of this Chapter.

(2) In this Chapter—

"qualifying activity" has the same meaning as in Part 2 of the Capital Allowances Act;

"residual value", in relation to any plant or machinery leased under a long funding operating lease, means—

(a) the estimated market value of the plant or machinery on a disposal at the end of the term of the lease,

less

(b) the estimated costs of that disposal.

(3) Any reference in this Chapter to a sum being written off on a straight line basis over a period of time (the "writing-off period") is a reference to—

(a) the sum being apportioned between each of the periods of account in which any part of the writing-off period falls,

(b) that apportionment being made on a time basis, according to the proportion of the writing-off period that falls in each of the periods of account, and

(c) the sum being written off accordingly.

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(4) Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases) applies in relation to this Chapter as it applies in relation to that Part.

CHAPTER VI

MISCELLANEOUS BUSINESSES AND BODIES

503 Letting of furnished holiday accommodation treated as a trade.

(1) [M1328]Subject to the following provisions of this section, for the purposes of sections 5(2), 380 to 390, 393, **[**[F1040]393A(1)**]**, 401, 623(2)(c), 644(2)(c) and 833(4)(c) . . . [F1041]

(a) the commercial letting of furnished holiday accommodation in the United Kingdom in respect of which the profits or gains are chargeable under Case VI of Schedule D shall be treated as a trade; and

(b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.

(2) [M1329]In their application by virtue of subsection (1) above sections 390(1) and 401(1) shall have effect as if for the references in those sections to Case I of Schedule D there were substituted references to Case VI of that Schedule.

(3) No relief shall be given to an individual under section 381 as it has effect by virtue of subsection (1) above, in respect of a loss sustained in any year of assessment, if any of the accommodation in respect of which the trade is carried on in that year was first let by him as furnished accommodation more than three years before the beginning of that year of assessment.

(4) Relief shall not be given for the same loss or the same portion of a loss both under any provision of Chapters I and II of Part X except sections 391, 392, 395 and 396, as those Chapters apply by virtue of this section, and under any other provision of the Tax Acts.

(5) [M1330]In computing the profits or gains arising from the commercial letting of furnished holiday accommodation which are chargeable to tax under Case VI of Schedule D, such expenditure may be deducted as would be deductible if the letting were a trade and those profits or gains were accordingly to be computed in accordance with the rules applicable to Case I of that Schedule.

(6) [M1331]Where there is a letting of accommodation only part of which is holiday accommodation such apportionments shall be made for the purposes of this section as appear to the inspector, or on appeal the Commissioners, to be just and reasonable.

(7) Where a person has been charged to income tax or corporation tax otherwise than in accordance with the provisions of this section, such assessment, reduction or discharge of an assessment or, where a claim for repayment is made, such repayment, shall be made as may be necessary to give effect to those provisions.

Textual Amendments

F1040 Words in s. 503(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 18**

F1041 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

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Modifications etc. (not altering text)

C522 S. 503 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 21**

Marginal Citations

M1328 Source—1984 s.50(1), Sch.11 1; 1987 (No.2) Sch.2 6
M1329 Source—1984 Sch.11 2
M1330 Source—1984 Sch.11 3
M1331 Source—1984 Sch.11 6, 7

504 Supplementary provisions.

(1) [M1332]This section has effect for the purposes of section 503.

(2) A letting—

(a) is a commercial letting if it is let on a commercial basis and with a view to the realisation of profits; and

(b) is of furnished accommodation if the tenant is entitled to the use of furniture.

(3) Accommodation shall not be treated as holiday accommodation for the purposes of this section unless—

(a) it is available for commercial letting to the public generally as holiday accommodation for periods which amount, in the aggregate, to not less than 140 days;

(b) the periods for which it is so let amount in the aggregate to at least 70 days; and

(c) for a period comprising at least seven months (which need not be continuous but includes any months in which it is let as mentioned in paragraph (b) above) it is not normally in the same occupation for a continuous period exceeding 31 days.

(4) Any question whether accommodation let by any person other than a company is, at any time in a year of assessment, holiday accommodation shall be determined—

(a) if the accommodation was not let by him as furnished accommodation in the preceding year of assessment but is so let in the following year of assessment, by reference to the 12 months beginning with the date on which he first so let it in the year of assessment;

(b) if the accommodation was let by him as furnished accommodation in the preceding year of assessment but is not so let in the following year of assessment, by reference to the 12 months ending with the date on which he ceased so to let it in the year of assessment; and

(c) in any other case, by reference to the year of assessment.

(5) Any question whether accommodation let by a company is at any time in an accounting period holiday accommodation shall be determined—

(a) if the accommodation was not let by it as furnished accommodation in the period of 12 months immediately preceding the accounting period but is so let in the period of 12 months immediately following the accounting period, by reference to the 12 months beginning with the date in the accounting period on which it first so let it;

(b) if the accommodation was let by it as furnished accommodation in the period of 12 months immediately preceding the accounting period but is not so let

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by it in the period of 12 months immediately following the accounting period, by reference to the 12 months ending with the date in the accounting period on which it ceased so to let it;

(c) in any other case, by reference to the period of 12 months ending with the last day of the accounting period.

(6) Where, in any year of assessment or accounting period, a person lets furnished accommodation which is treated as holiday accommodation for the purposes of this section in that year or period ("the qualifying accommodation"), he may make a claim under this subsection, within two years after that year or period, for averaging treatment to apply for that year or period to that and any other accommodation specified in the claim which was let by him as furnished accommodation during that year or period and would fall to be treated as holiday accommodation in that year or period if subsection (3)(b) above were satisfied in relation to it.

(7) Where a claim is made under subsection (6) above in respect of any year of assessment or accounting period, any such other accommodation shall be treated as being holiday accommodation in that year or period if the number of days for which the qualifying accommodation and any other such accommodation was let by the claimant as mentioned in subsection (3)(a) above during the year or period amounts on average to at least 70.

(8) Qualifying accommodation may not be specified in more than one claim in respect of any one year of assessment or accounting period.

(9) For the purposes of this section a person lets accommodation if he permits another person to occupy it, whether or not in pursuance of a lease; and "letting" and "tenant" shall be construed accordingly.

Modifications etc. (not altering text)

C523 S. 504 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 241(2)**, 289 (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1332 Source—1984 s.50(2)-(9)

VALID FROM 06/04/2005

[F1042 504A Letting of furnished holiday accommodation treated as trade for certain income tax purposes

(1) For the purposes specified in subsection (2)—

(a) a UK property business which consists in, or so far as it consists in, the commercial letting of furnished holiday accommodation is treated as if it were a trade the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005, and

(b) all such lettings made by a particular person or partnership or body of persons are treated as one trade.

The "commercial letting of furnished holiday accommodation" has the same meaning as it has for the purposes of Chapter 6 of Part 3 of ITTOIA 2005.

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(2) Subsection (1) applies for the purposes of—
- (a) Chapter 1 of Part 10 (loss relief for income tax),
- (b) section 833(4)(c) (income regarded as earned income), and
- (c) section 189(2)(b) of the Finance Act 2004 (income regarded as relevant UK earnings for pension purposes).

(3) Chapter 1 of Part 10 as applied by this section has effect with the following adaptations—
- (a) no relief is to be given to an individual under section 381 (relief for losses in early years of trade) in respect of a year of assessment if any of the accommodation in respect of which the trade is carried on in that year was first let by that person as furnished accommodation more than three years before the beginning of that year of assessment;
- (b) section 384 (restrictions on right of set-off) has effect with the omission of subsections (6) to (8) (which relate to certain losses attributable to capital allowances);
- (c) section 390 (treatment of interest as loss) has effect as if the reference to a trade carried on wholly or partly in the United Kingdom were a reference to the UK property business so far as it is treated as a trade.

(4) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

(5) Relief is not to be given for the same loss, or the same portion of a loss, both under a provision of Chapter 1 of Part 10 as applied by this section and under any other provision of the Income Tax Acts.**]**

Textual Amendments

F1042 S. 504A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 197** (with Sch. 2)

505 Charities: general.

(1) [M1333]Subject to subsections (2) and (3) below, the following exemptions shall be granted on a claim in that behalf to the Board—
- (a) exemption from tax under Schedules A and D in respect of the rents and profits of any lands, tenements, hereditaments or heritages belonging to a hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only;
- (b) *exemption from tax under Schedule B in respect of any lands occupied by a charity*[F1043];
- (c) exemption—
  - (i) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities,
  - (ii) from tax under Schedule D in respect of any yearly interest or other annual payment, and
  - (iii) from tax under Schedule F in respect of any distribution,

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where the income in question forms part of the income of a charity, or is, according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only;

(d) exemption from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities which are in the names of trustees and are applicable solely towards the repairs of any cathedral, college, church or chapel, or of any building used solely for the purposes of divine worship, so far as the same are applied to those purposes;

(e) exemption from tax under Schedule D in respect of the profits of any trade carried on by a charity, if the profits are applied solely to the purposes of the charity and either—

(i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity; or

(ii) the work in connection with the trade is mainly carried out by beneficiaries of the charity.

(2) [M1334]Any payment which—

(a) is received by a charity from another charity; and

(b) is not made for full consideration in money or money's worth; and

(c) is not chargeable to tax apart from this subsection; and

(d) is not, apart from this subsection, of a description which (on a claim) would be eligible for relief from tax by virtue of any provision of subsection (1) above;

shall be chargeable to tax under Case III of Schedule D but shall be eligible for relief from tax under subsection (1)(c) above as if it were an annual payment.

(3) [M1335]If in any chargeable period of a charity—

(a) its relevant income and gains are not less than £10,000; and

(b) its relevant income and gains exceed the amount of its qualifying expenditure; and

(c) the charity incurs, or is treated as incurring, non-qualifying expenditure;

relief shall not be available under either subsection (1) above or section **[**[F1044]256 of the 1992 Act**]**for so much of the excess as does not exceed the non-qualifying expenditure incurred in that period.

(4) In relation to a chargeable period of less than 12 months, subsection (3) above shall have effect as if the amount specified in paragraph (a) of that subsection were proportionately reduced.

(5) In subsection (3) above "relevant income and gains" means—

(a) income which apart from subsection (1) above would not be exempt from tax together with any income which is taxable notwithstanding that subsection; and

(b) gains which apart from section **[**[F1044]256 of the 1992 Act**]**would be chargeable gains together with any gains which are chargeable gains notwithstanding that section.

(6) [M1336]Where by virtue of subsection (3) above there is an amount of a charity's relevant income and gains for which relief under subsection (1) above and section **[**[F1044]256 of the 1992 Act**]** is not available, the charity may, by notice to the Board, specify which items of its relevant income and gains are, in whole or in part, to be attributed to that amount, and, for this purpose, all covenanted payments to charity (within the meaning

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of section 660(3)) shall be treated as a single item; and if within 30 days of being required to do so by the Board, a charity does not give notice under this subsection, the items of its relevant income and gains which are to be attributed to the amount in question shall be such as the Board may determine.

(7) Where it appears to the Board that two or more charities acting in concert are engaged in transactions of which the main purpose or one of the main purposes is the avoidance of tax (whether by the charities or by any other person), the Board may by notice given to the charities provide that, for such chargeable periods as may be specified in the notice, subsection (3) above shall have effect in relation to them with the omission of paragraph (a).

(8) An appeal may be brought against a notice under subsection (7) above as if it were notice of the decision of the Board on a claim made by the charities concerned.

Textual Amendments

F1043 *Repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

F1044 Words in s. 505(3)(5)(b)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(31)** (with ss. 60, 101(1), 171(1), 201(3))

Modifications etc. (not altering text)

C524 S. 505 modified (3.5.1994) by Finance Act 1994 (c. 9), **s. 171**

C525 *See the following sections of this Act:*—s.86—*employees seconded to charities.*s.235*and* 237—*disallowance of relief, and charge at additional rate, on income from stripping distributions etc.*s.332—*relief in respect of premises held by a charity or ecclesiastical corporation for use as official residence of clergyman or minister.*s.507—*exemption of the Trustees of the National Heritage Memorial Fund; and exemption of the Historic Buildings and Monuments Commission for England;*s.660—*dispositions of income for short periods.*s.682(1)—*application of* 1988 Part XV Ch.III (*income under revocable settlements, etc.*)*where settlement trustees are trustees for charitable purposes.*s.683 to 685—*tax on income under certain settlements.*s.704—*cancellation of tax advantages from certain transactions in securities.*s.733—*interest and dividends on securities purchased and resold.*
and see—1989 s.94*and* Sch.11 para.15—*deep gain securities.*1990 s.56*and* Sch.10 para.21—*exemption for convertible securities held by charities.*Charities Act 1960 (c.58) s.5 (*construed as in* ss.45*and* 46)—*effect of registration as a charity in England and Wales and* s.9 (in Part II Vol.5)—*exchange of information with other government departments and local authorities.*

Marginal Citations

M1333 Source—1970 s.360(1)
M1334 Source—1986 s.30(1)
M1335 Source—1986 s.31(1), (2), (3)(c), (d)
M1336 Source—1986 s.31(7)-(9)

506 Qualifying expenditure and non-qualifying expenditure.

(1) [M1337]In this section, section 505 and Schedule 20—

"charity" means any body of persons or trust established for charitable purposes only;

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"qualifying expenditure", in relation to a chargeable period of a charity, means, subject to subsection (3) below, expenditure incurred in that period for charitable purposes only; and

"non-qualifying expenditure" means expenditure which is not qualifying expenditure.

(2) [M1338]For the purposes of section 505 and subsection (1) above, where expenditure which is not actually incurred in a particular chargeable period properly falls to be charged against the income of that chargeable period as being referable to commitments (whether or not of a contractual nature) which the charity has entered into before or during that period, it shall be treated as incurred in that period.

(3) A payment made (or to be made) to a body situated outside the United Kingdom shall not be qualifying expenditure by virtue of this section unless the charity concerned has taken such steps as may be reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

(4) [M1339]If in any chargeable period a charity—

(a) invests any of its funds in an investment which is not a qualifying investment, as defined in Part I of Schedule 20; or

(b) makes a loan (not being an investment) which is not a qualifying loan, as defined in Part II of that Schedule;

then, subject to subsection (5) below, the amount so invested or lent in that period shall be treated for the purposes of this section as being an amount of expenditure incurred by the charity, and, accordingly, as being non-qualifying expenditure.

(5) If, in any chargeable period, a charity which has in that period made an investment or loan falling within subsection (4) above—

(a) realises the whole or part of that investment; or

(b) is repaid the whole or part of that loan;

any further investment or lending in that period of the sum realised or repaid shall, to the extent that it does not exceed the sum originally invested or lent, be left out of account in determining the amount which, by virtue of subsection (4) above, is treated as non-qualifying expenditure incurred in that period.

(6) If the aggregate of the qualifying and non-qualifying expenditure incurred by a charity in any chargeable period exceeds the relevant income and gains of that period, Part III of Schedule 20 shall have effect to treat, in certain cases, some or all of that excess as non-qualifying expenditure incurred in earlier periods.

Modifications etc. (not altering text)

C526 *Definition employed for purposes of*:1990 s.25—*donation to charity by individuals.*1990 s.56*and* Sch.10 para.21—*exemption for convertible securities held by charities.*1990 s.94(1)—*inspection powers* (*definition extended to cover bodies mentioned in* sections 507*and* 508).

Marginal Citations

M1337 Source—1970 s.360(3); 1986 s.31(1)(a), (c), Sch.7 1(1)

M1338 Source—1986 Sch.7 1(2), (3)

M1339 Source—1986 s.31(4)-(6)

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VALID FROM 19/07/2006

[F1045 506A Transactions with substantial donors

(1) This section applies to the following transactions—
- (a) the sale or letting of property by a charity to a substantial donor,
- (b) the sale or letting of property to a charity by a substantial donor,
- (c) the provision of services by a charity to a substantial donor,
- (d) the provision of services to a charity by a substantial donor,
- (e) an exchange of property between a charity and a substantial donor,
- (f) the provision of financial assistance by a charity to a substantial donor,
- (g) the provision of financial assistance to a charity by a substantial donor, and
- (h) investment by a charity in the business of a substantial donor.

(2) For the purposes of this section a person is a substantial donor to a charity in respect of a chargeable period if—
- (a) the charity receives relievable gifts of at least £25,000 from him in a period of 12 months in which the chargeable period wholly or partly falls, or
- (b) the charity receives relievable gifts of at least £100,000 from him in a period of six years in which the chargeable period wholly or partly falls;

and if a person is a substantial donor to a charity in respect of a chargeable period by virtue of paragraph (a) or (b), he is a substantial donor to the charity in respect of the following five chargeable periods.

(3) A payment made by a charity to a substantial donor in the course of or for the purposes of a transaction to which this section applies shall be treated for the purposes of section 505 as non-charitable expenditure.

(4) If the terms of a transaction to which this section applies are less beneficial to the charity than terms which might be expected in a transaction at arm's length, the charity shall be treated for the purposes of section 505 as incurring non-charitable expenditure equal to that amount which the Commissioners for Her Majesty's Revenue and Customs determine as the cost to the charity of the difference in terms.

(5) A payment by a charity of remuneration to a substantial donor shall be treated for the purposes of section 505 as non-charitable expenditure unless it is remuneration, for services as a trustee, which is approved by—
- (a) the Charity Commission,
- (b) another body with responsibility for regulating charities by virtue of legislation having effect in respect of any Part of the United Kingdom, or
- (c) a court.**]**

Textual Amendments

F1045 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 19/07/2006

[F1045 506B Section 506A: exceptions

(1) Section 506A shall not apply to a transaction within section 506A(1)(b) or (d) if the Commissioners for Her Majesty's Revenue and Customs determine that the transaction—
  (a) takes place in the course of a business carried on by the substantial donor,
  (b) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and
  (c) is not part of an arrangement for the avoidance of any tax.

(2) Section 506A shall not apply to the provision of services to a substantial donor if the Commissioners determine that the services are provided—
  (a) in the course of the actual carrying out of a primary purpose of the charity, and
  (b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.

(3) Section 506A shall not apply to the provision of financial assistance to a charity by a substantial donor if the Commissioners determine that the assistance—
  (a) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and
  (b) is not part of an arrangement for the avoidance of any tax.

(4) Section 506A shall not apply to investment by a charity in the business of a substantial donor where the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.

(5) A disposal at an undervalue to which section 587B applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(6) A disposal at an undervalue to which section 257(2) of the 1992 Act (gifts of chargeable assets) applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(7) In the application of section 506A payments by a charity, or benefits arising to a substantial donor from a transaction, shall be disregarded in so far as they—
  (a) relate to a donation by the donor, and
  (b) do not exceed the relevant limit in relation to the donation for the purposes of section 339 or section 25 of the Finance Act 1990.

(8) A company which is wholly owned by a charity within the meaning of section 339(7AB) shall not be treated as a substantial donor in relation to the charity which owns it (or any of the charities which own it).

(9) A registered social landlord or housing association shall not be treated as a substantial donor in relation to a charity with which it is connected; and for that purpose—
  (a) "registered social landlord or housing association" means a body entered on a register maintained under—
    (i) section 1 of the Housing Act 1996,

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(ii) section 57 of the Housing (Scotland) Act 2001, or
(iii) Article 14 of the Housing (Northern Ireland) Order 1992, and

(b) a body and a charity are connected if (and only if)—
(i) the one is wholly owned, or subject to control, by the other, or
(ii) both are wholly owned, or subject to control, by the same person.**]**

Textual Amendments

F1045 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

VALID FROM 19/07/2006

[F1045 506C Sections 506A and 506B: supplemental

(1) A gift is "relievable" for the purposes of section 506A(2) if relief is available in respect of it under—
(a) section 83A,
(b) section 339,
(c) sections 587B and 587C,
(d) section 25 of the Finance Act 1990 (individual gift aid),
(e) section 257 of the 1992 Act (gifts of chargeable assets),
(f) section 63 of the Capital Allowances Act (gifts of plant and machinery),
(g) sections 713 to 715 of ITEPA 2003 (payroll giving),
(h) section 108 of ITTOIA 2005 (gifts of trading stock), or
(i) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts).

(2) A charity is treated as incurring expenditure in accordance with section 506A(4) at such time (or times) as the Commissioners determine.

(3) Section 506A applies to a transaction entered into in a chargeable period with a person who is a substantial donor in respect of that period, even if it was not until after the transaction was entered into that he first satisfied the definition of "substantial donor" in respect of that period.

(4) Either or both of subsections (3) and (4) of section 506A may be applied to a single transaction; but any amount of non-charitable expenditure which a charity is treated as incurring under section 506A(3) in respect of a transaction shall be deducted from any amount which it would otherwise be treated as incurring under section 506A(4) in respect of the transaction.

(5) Two or more connected charities shall be treated as a single charity for the purposes of section 506A and 506B and this section; and for this purpose "connected" means connected in a matter relating to the structure, administration or control of a charity.

(6) Where remuneration is paid otherwise than in money, section 506A(5) shall apply as to a payment in money of the amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.

(7) In sections 506A and 506B and this section—

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(a) a reference to a substantial donor or other person includes a reference to a person connected with him within the meaning of section 839,

(b) "financial assistance" includes, in particular—

(i) the provision of a loan, guarantee or indemnity, and

(ii) entering into alternative finance arrangements within the meaning of section 46 of the Finance Act 2005, and

(c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.

(8) On an appeal against an assessment the Special Commissioners may review a decision of the Commissioners in connection with section 506A.

(9) The Treasury may by regulations vary a sum, or a period of time, specified in section 506A(2).**]**

Textual Amendments

F1045 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

507 The National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England and the British Museum.

(1) [M1340]There shall on a claim in that behalf to the Board be allowed in the case of—

(a) the Trustees of the National Heritage Memorial Fund;

(b) the Historic Buildings and Monuments Commission for England;

[[F1046](c) the Trustees of the British Museum;

(d) the Trustees of the **[**[F1047]Natural History Museum**]**;**]**

[[F1048](e) the United Kingdom Ecolabelling Board;**]**

such exemption from tax as falls to be allowed under section 505 in the case of a charity the whole income of which is applied to charitable purposes.

(2) [M1341]*The Trustees of the British Museum and the Trustees of the British Museum (Natural History)shall each be entitled, on a claim in that behalf to the Board, to the following exemptions—*

(a) *exemption from tax under Schedules A and D in respect of any land, or interest in or right over land, vested in them; and*

(b) *the like exemptions in respect of any dividends of stock vested in them, or in any other person for their use, and in respect of distributions charged under Schedule F, as are granted to charities under section* 505 [F1049].

Textual Amendments

F1046 1989 s.60(1)*in relation to accounting periods ending on or after* 14*March* 1989.

F1047 Words in s. 507(1)(d) substituted (1.9.1992) by Museums and Galleries Act 1992 (c. 44), s. 11(2), **Sch. 8 para. 1(8)**; S.I. 1992/1874, **art. 2**

F1048 S. 507(1)(e) inserted (1.11.1992) by S.I. 1992/2383, reg. 2(2), **Sch. para.11**

F1049 *Repealed by* 1989 ss.60(1)*and* 187*and* Sch.17 Part IV*in relation to accounting periods ending on or after* 14*March* 1989.

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Modifications etc. (not altering text)

C527 *See* 1989 s.59—*these bodies treated as established for charitable purposes for purposes of* s.59 (*covenanted subscriptions*).1990 s.25—*donations to charity by individuals.*

Marginal Citations

M1340 Source—1980 s.118(1); 1983 s.46(1)

M1341 Source—1970 s.363(a), (b)

508 Scientific research organisations.

(1) [M1342]Where—

(a) an Association which has as its object the undertaking of scientific research which may lead to or facilitate an extension of any class or classes of trade is approved for the purposes of this section by the Secretary of State; and

(b) the memorandum of association or other similar instrument regulating the functions of the Association precludes the direct or indirect payment or transfer to any of its members of any of its income or property by way of dividend, gift, division, bonus or otherwise howsoever by way of profit;

there shall, on a claim in that behalf to the Board, be allowed in the case of the Association such exemption from tax as falls to be allowed under section 505 in the case of a charity the whole income of which is applied to charitable purposes.

(2) The condition specified in paragraph (b) of subsection (1) above shall not be deemed not to be complied with in the case of any Association by reason only that the memorandum or other similar instrument regulating its functions does not prevent the payment to its members of reasonable remuneration for goods, labour or power supplied, or for services rendered, of reasonable interest for money lent, or of reasonable rent for any premises.

(3) In this section "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge.

Marginal Citations

M1342 Source—1970 s.362

VALID FROM 29/04/1996

[F1050 508A Investment trusts investing in housing.

(1) Where any company that is an investment trust has eligible rental income for any accounting period—

(a) the rate of corporation tax chargeable for any financial year on the trust's housing investment profits for that period shall be deemed to be the small companies' rate for that year; and

(b) its housing investment profits for that period shall be treated for the purposes of section 13 as excluded from its basic profits for that period.

(2) For the purposes of this section—

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(a) a company's eligible rental income for any period is so much of its income for that period as consists in rents or other receipts deriving from lettings by the company of eligible properties; and

(b) its housing investment profits for any period are so much of its profits for that period as represents the amount chargeable to tax under Schedule A in respect of its eligible rental income for that period.

(3) In computing the amount mentioned in subsection (2)(b) above for any period, deductions shall be made which (except in so far as they exceed the amount from which they are deducted) are, in aggregate, not less than the sum of the following amounts—

(a) every amount which is both—

(i) deductible (otherwise than as a debit brought into account under Chapter II of Part IV of the Finance Act 1996) in the computation of any income of the company, or of its total profits, for that period, and

(ii) referable to, or to activities connected with, the letting by the company on assured tenancies of dwelling-houses that are eligible properties when so let,

and

(b) any amount that is so referable that would represent a non-trading deficit on the company's loan relationships for that period.

(4) For the purposes of subsection (3) above any question—

(a) whether for any period there is an amount referable to any matter that would represent a non-trading deficit on a company's loan relationships, or

(b) as to what that amount is for that period,

shall be determined by computing whether and to what extent there would for that period have been a non-trading deficit on the company's loan relationships if debits and credits fell to be brought into account under Chapter II of Part IV of the Finance Act 1996 to the extent only that they are referable to that matter.**]**

Textual Amendments

F1050 Ss. 508A, 508B inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 1**

VALID FROM 29/04/1996

[F1050 508B Interpretation of section 508A.

(1) In section 508A "eligible property", in relation to a company, means (subject to the following provisions of this section) any dwelling-house as respects which the following conditions are satisfied—

(a) the company first acquired an interest in the dwelling-house on or after 1st April 1996;

(b) that interest was not, at the time when it was acquired, subject to any letting or to any statutory tenancy;

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(c) at that time no arrangements had been made by the company or any person connected with it for the letting of the dwelling-house;

(d) the interest of the company in the dwelling-house is a freehold interest or an interest under a long lease at a low rent;

(e) the consideration given by the company for the acquisition of its interest in the dwelling-house did not exceed—

(i) £125,000, in the case of a dwelling-house in Greater London, or

(ii) £85,000, in any other case;

(f) the dwelling-house is let by the company under an assured tenancy and is neither—

(i) let by the company in consideration of a premium within the meaning of Schedule 8 to the 1992 Act, nor

(ii) a dwelling-house in respect of which the person to whom it is let or any associate of his has been granted any option to purchase.

(2) For the purposes of paragraph (b) of subsection (1) above, no account shall be taken of any shorthold tenancy or statutory shorthold tenancy to which the interest became subject before the time when it was acquired.

(3) For the purposes of paragraph (c) of subsection (1) above, no account shall be taken of any arrangements made by a person connected with the company in question before the time when the interest was acquired by the company if—

(a) that person had an interest in the dwelling-house when he made those arrangements;

(b) that person did not dispose of his interest at any time after the arrangements were entered into and before the company acquired its interest; and

(c) the arrangements were such as to confer a relevant entitlement on a person who, at the time when the company acquired its interest, was a tenant under any shorthold tenancy of the dwelling-house (or any part of it).

(4) For the purposes of subsection (3)(c) above a relevant entitlement is an entitlement of a tenant under a shorthold tenancy of any premises, on the coming to an end of that tenancy, to such a further tenancy of the same or substantially the same premises as will itself be a shorthold tenancy.

(5) For the purposes of this section the consideration given by a company for the acquisition of an interest in a dwelling-house shall be taken (subject to subsection (6) below) to include—

(a) any amount expended by the company on the construction or renovation of the dwelling-house or on any conversion by virtue of which that dwelling-house came to be usable as such;

(b) any amount so expended by a person connected with the company; and

(c) any consideration given by a person connected with the company for the acquisition of any such interest in the dwelling-house as—

(i) is subsequently acquired by the company, or

(ii) is held by such a person at the same time as the company holds its interest in the premises.

(6) Where a company has acquired any interest in a dwelling house from a person connected with that company—

(a) amounts expended by that person as mentioned in paragraph (a) of subsection (5) above, and

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(b) the amount of any consideration given by that person for an interest in the dwelling-house,

shall be treated by virtue of that subsection as included in the consideration given by the company to the extent only that the aggregate of those amounts exceeds the consideration given by that company to that person for the interest acquired from that person by the company.

(7) In section 508A and this section—

"associate" has the meaning given by subsections (3) and (4) of section 417;

"assured tenancy" means—

(a) any letting which is an assured tenancy for the purposes of the [M1343]Housing Act 1988 or the [M1344]Housing (Scotland) Act 1988, or

(b) any tenancy in Northern Ireland which complies with such requirements or conditions as may be prescribed by regulations made by the Department of the Environment for Northern Ireland;

"letting" includes a letting by virtue of an agreement for a lease or under a licence, and "let" shall be construed accordingly;

"long lease", in relation to the interest of a company in any dwelling-house, means a lease for a term of years certain of which at least 21 years remains unexpired at the time when that interest was acquired by the company;

"low rent" means a rent at an annual rate not exceeding—

(a) £1,000, in the case of a dwelling-house in Greater London; and

(b) £250, in any other case;

"rent" has the same meaning as it has for the purposes of Schedule A in its application to companies within the charge to corporation tax;

"shorthold tenancy" means any letting which is an assured shorthold tenancy for the purposes of the [M1345]Housing Act 1988 or a short assured tenancy for the purposes of the [M1346]Housing (Scotland) Act 1988;

"statutory shorthold tenancy" means—

(a) a statutory periodic tenancy within the meaning of the Housing Act 1988 which arose on the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, or

(b) a statutory assured tenancy within the meaning of the Housing (Scotland) Act 1988 which arose on the coming to an end of a short assured tenancy;

"statutory tenancy"—

(a) in relation to England and Wales, has the same meaning as in the [M1347]Rent Act 1977;

(b) in relation to Scotland, has the same meaning as in the [M1348]Rent (Scotland) Act 1984; and

(c) in relation to Northern Ireland, has the same meaning as in the [M1349]Rent (Northern Ireland) Order 1978.

(8) Section 839 shall apply for the purposes of this section.

(9) Section 508A shall have effect where—

(a) a company acquires an interest in any dwelling-house, and

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(b) a person connected with the company has previously acquired an interest in the dwelling-house, being an interest subsequently acquired by the company or one held by that person at the same time as the company holds its interest,

as if references in this section (except in subsection (3) above) to the time when the company first acquired an interest in the premises included references to the time when the person connected with the company first acquired his interest.

(10) The Treasury may, if they think fit, by order vary the figures for the time being specified in paragraph (e) of subsection (1) above; and an order under this subsection may make different provision for different localities in Greater London or elsewhere.

(11) In the application of this section to Scotland—

(a) references to acquiring an interest shall be construed, if there is a contract to acquire the interest, as references to entering into that contract;

(b) references to the freehold interest shall be construed as references to the estate or interest of the proprietor of the*dominium utile* or, in the case of property other than feudal property, of the owner;

(c) in the definition of "long lease" in subsection (7) above, the word "certain" shall be omitted.

(12) Regulations made for the purposes of paragraph (b) of the definition of "assured tenancy" in subsection (7) above shall be made by statutory rule for the purposes of the [M1350]Statutory Rules (Northern Ireland) Order 1979, and shall be subject to negative resolution within the meaning of section 41(6) of the [M1351]Interpretation Act (Northern Ireland) 1954.**]**

Textual Amendments

F1050 Ss. 508A, 508B inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 1**

Marginal Citations

M1343 1988 c. 50.
M1344 1988 c. 43.
M1345 1988 c. 50.
M1346 1988 c. 43.
M1347 1977 c. 42.
M1348 1984 c. 58.
M1349 S.I. 1978/1050 (N.I. 20).
M1350 S.I. 1979/1573 (N.I. 12).
M1351 1954 c. 33 (N.I.).

509 Reserves of marketing boards and certain other statutory bodies.

(1) [M1352]Where a body established by or under any enactment and having as its object, or one of its objects, the marketing of an agricultural product or the stabilising of the price of an agricultural product is required, by or under any scheme or arrangements approved by or made with a Minister of the Crown or government department, to pay the whole or part of any surplus derived from its trading operations or other trade receipts into a reserve fund satisfying the conditions specified in subsection (2) below,

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then, in computing for the purposes of tax the profits or gains or losses of the body's trade—

(a) there shall be allowed as deductions any sums so required to be paid by the body into the reserve fund out of the profits or gains of the trade, and

(b) there shall be taken into account as trading receipts any sums withdrawn by the body from the fund, except so far as they are so required to be paid to a Minister or government department, or are distributed to producers of the product in question or refunded to persons paying any levy or duty.

(2) The conditions to be satisfied by the reserve fund are as follows—

(a) that no sum may be withdrawn from the fund without the authority or consent of a Minister of the Crown or government department; and

(b) that where money has been paid to the body by a Minister of the Crown or government department in connection with arrangements for maintaining guaranteed prices, or in connection with the body's trading operations, and is repayable to that Minister or department, sums afterwards standing to the credit of the fund are required as mentioned in subsection (1) above to be applied in whole or in part in repaying the money; and

(c) that the fund is reviewed by a Minister of the Crown at intervals fixed by or under the scheme or arrangements in question, and any amount by which it appears to the Minister to exceed the reasonable requirements of the body is withdrawn therefrom.

(3) In this section references to a Minister of the Crown or government department include references to a Head of a Department or a Department in Northern Ireland, and references to producers of a product include references to producers of one type or quality of a product from another.

Modifications etc. (not altering text)

C528 S. 509(1) extended (with modifications) (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 23**

Marginal Citations

M1352 Source—1970 s.348; 1971 s.28(1)

510 Agricultural societies.

(1) [M1353]Profits or gains arising to an agricultural society from any exhibition or show held for the purposes of the society shall be exempt from tax if applied solely to the purposes of the society.

(2) In this section "agricultural society" means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, livestock breeding or forestry.

Marginal Citations

M1353 Source—1970 s.361

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[F1051 510A European economic interest groupings.

(1) M1354 In this section "grouping" means a European Economic Interest Grouping formed in pursuance of Council Regulation (EEC) No. 2137/85 of 25th July 1985, whether registered in Great Britain, in Northern Ireland, or elsewhere.

(2) Subject to the following provisions of this section, for the purposes of charging tax in respect of income and gains a grouping shall be regarded as acting as the agent of its members.

(3) In accordance with subsection (2) above—

(a) for the purposes mentioned in that subsection the activities of the grouping shall be regarded as those of its members acting jointly and each member shall be regarded as having a share of its property, rights and liabilities; and

(b) for the purposes of charging tax in respect of gains a person shall be regarded as acquiring or disposing of a share of the assets of the grouping not only where there is an acquisition or disposal of assets by the grouping while he is a member of it, but also where he becomes or ceases to be a member of a grouping or there is a change in his share of the property of the grouping.

(4) Subject to subsection (5) below, for the purposes of this section a member's share of any property, rights or liabilities of a grouping shall be determined in accordance with the contract under which the grouping is established.

(5) Where the contract does not make provision as to the shares of members in the property, rights or liabilities in question a member's share shall be determined by reference to the share of the profits of the grouping to which he is entitled under the contract (and if the contract makes no provision as to that, the members shall be regarded as having equal shares).

(6) Subject to subsection (7) below, where any trade or profession is carried on by a grouping it shall be regarded for the purposes of charging tax in respect of income and gains as carried on in partnership by the members of the grouping.

(7) Sections 111 and 114(4) shall not apply to the members of a grouping and section 112 shall have effect in relation to the members of a grouping as if the second reference in subsection (2) to the firm were a reference to the members and subsection (3) were omitted.

(8) Notwithstanding subsection (7) above, where a trade or profession is carried on by a grouping, the amount of which the members are chargeable to income tax in respect of it shall be computed (but not assessed) jointly.]

Textual Amendments

F1051 S. 510A inserted (retrospective to 1.7.1989) by Finance Act 1990 (c. 29), Sch. 11 paras. 1, **5**

Marginal Citations

M1354 Source—O.J. No. L199/1.

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511 The Electricity Council and Boards, the Northern Ireland Electricity Service and the Gas Council.

(1) [M1355]For the purposes of the Corporation Tax Acts, the Electricity Council shall be treated as carrying on a trade, and those Acts shall have effect as if the trade carried on by the Central Electricity Authority at any time before 1st January 1958 had been the trade of the Electricity Council.

(2) For the purposes of the Corporation Tax Acts—

(a) any trade carried on by a Board shall be treated as if it were part of the trade carried on by the Electricity Council;

(b) subject to paragraph (c) below, any property, rights or liabilities of a Board shall be treated as property, rights or liabilities of the Electricity Council, and anything done by or to a Board shall be deemed to have been done by or to the Electricity Council;

(c) any rights, liabilities or things done —

(i) of, by or to the Electricity Council against, to or by a Board, or

(ii) of, by or to a Board against, to or by the Electricity Council or any other Board,

shall be left out of account;

and corporation tax shall be charged accordingly.

(3) For the purposes of the operation of the Corporation Tax Acts in accordance with subsections (1) and (2) above, the Electricity Council shall be deemed to have been in existence as from 1st April 1948, and anything done by, to or in relation to the Central Electricity Authority shall be treated as if it had been done by, to or in relation to the Electricity Council.

[F1052](4) . . . . . .

[F1052](5) . . . . . .

(6) [M1356]In subsections (1) and (2) above "Board" means—

(a) any Area Board established by or under the provisions of the [M1357]Electricity Act 1947; and

(b) in relation to any time on or after 1st January 1958, the Central Electricity Generating Board.

(7) [M1358]The Corporation Tax Acts shall apply in relation to the trade of the Gas Council as if before the beginning of April 1962 it had consisted of the trades of the Area Boards (within the meaning of the [M1359]Gas Act 1948), and (without prejudice to the generality of the foregoing) allowances and balancing charges shall be made to or on the Gas Council accordingly by reference to the capital expenditure of Area Boards and to the allowances made to Area Boards in respect of that expenditure.

Textual Amendments

F1052 S. 511(4)(5) repealed (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(4), **Sch.14**; S.R. 1992/117, **art. 3(1)**

Modifications etc. (not altering text)

C529 *See* ss.89*and* 90*and* Sch.11 Electricity Act 1989*in connection with electricity industry privatisation; and see* s.112*and* Sch.18 Electricity Act 1989*for changes to* s.511*from a day to be appointed.*

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Marginal Citations

M1355 Source—1970 s.349(1)-(3)
M1356 Source—1970 s.349(4)
M1357 1947 c. 54.
M1358 Source—1970 s.350(3)
M1359 1948 c. 67.

512 Atomic Energy Authority and National Radiological Protection Board.

(1) [M1360]The United Kingdom Atomic Energy Authority and the National Radiological Protection Board shall be entitled to exemption from income tax and corporation tax—

(a) under Schedules A,*B*[F1053] and C;

(b) under Schedule D in respect of any yearly interest or other annual payment received by the Authority or Board;

(c) under Schedule F in respect of distributions received by the Authority or Board.

(2) Income arising from investments or deposits held for the purposes of any pension scheme provided and maintained by the Authority shall be treated for the purposes of this section as if that income and the source thereof belonged to the Authority.

Textual Amendments

F1053 *Repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

Marginal Citations

M1360 Source—1970 s.351

513 British Airways Board and National Freight Corporation.

(1) [M1361]Subject to subsection (2) below, the successor company in which the property, rights, liabilities and obligations of the British Airways Board are vested by the [M1362]Civil Aviation Act 1980 shall be treated for all purposes of corporation tax as if it were the same person as the British Airways Board; and the successor company to which the undertaking of the National Freight Corporation is transferred by the [M1363]Transport Act 1980 shall be treated for those purposes as if it were the same person as the National Freight Corporation.

(2) [M1364]The transfer by the Civil Aviation Act 1980 from the British Airways Board to the successor company of liability for any loan made to the Board shall not affect any direction in respect of the loan which has been given by the Treasury under section 581.

(3) A successor company shall not by virtue of subsection (1) above be regarded as a body falling within section **[**[F1054]170(12) of the 1992 Act**]**.

Textual Amendments

F1054 Words in s. 513(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(32)** (with ss. 60, 101(1), 171(1), 201(3))

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Marginal Citations

M1361 Source—1973 s.36(1)
M1362 1980 c.60.
M1363 1980 c.34.
M1364 Source—1980 s.119(1)-(3)

514 Funds for reducing the National Debt.

[M1365]Where any property is held upon trust in accordance with directions which are valid and effective under section 9 of the Superannuation and other [M1366]Trust Funds (Validation) Act 1927 (which provides for the validation of trust funds for the reduction of the national debt), any income arising from that property or from any accumulation of any such income, and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust, shall be exempt from income tax.

Marginal Citations

M1365 Source—1970 s.364
M1366 1927 c. 41.

515 Signatories to Operating Agreement for INMARSAT.

(1) [M1367]An overseas signatory to the Operating Agreement made pursuant to the Convention on the International Maritime Satellite Organisation which came into force on 16th July 1979 shall be exempt from income tax and corporation tax in respect of any payment received by that signatory from the Organisation in accordance with that Agreement.

(2) In this section "an overseas signatory" means a signatory other than one designated for the purposes of the Agreement by the United Kingdom in accordance with the Convention.

Marginal Citations

M1367 Source—1980 s.63

516 Government securities held by non-resident central banks.

(1) [M1368]Tax shall not be chargeable on dividends (within the meaning of Schedule C) paid out of the public revenue of the United Kingdom where they are income of any bank or issue department of a bank to which this subsection for the time being applies.

(2) Subsection (1) above shall not prevent any such dividends being taken into account in computing profits or gains or losses of a business carried on in the United Kingdom.

(3) A bank or issue department of a bank to which this subsection for the time being applies shall be exempt from tax in respect of chargeable gains accruing to it.

(4) Her Majesty may by Order in Council direct that subsection (1) or (3), or both, shall apply to any bank, or to its issue department, if it appears to Her Majesty that the

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bank is not resident in the United Kingdom and is entrusted by the government of a territory outside the United Kingdom with the custody of the principal foreign exchange reserves of that territory.

(5) No recommendation shall be made to Her Majesty in Council to make an order under this section unless a draft of the order has been laid before the House of Commons and has been approved by resolution of that House.

Modifications etc. (not altering text)
C530 *For Orders in Council see* Part III Vol.5.

Marginal Citations
M1368 Source—1970 s.370

517 Issue departments of the Reserve Bank of India and the State Bank of Pakistan.

[M1369]There shall be exempt from tax any profits or income arising or accruing to the issue department of the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or to the issue department of the State Bank of Pakistan constituted under certain orders made under section 9 of the [M1370]Indian Independence Act 1947.

Marginal Citations
M1369 Source—1970 s.371
M1370 1947 c. 30.

518 Harbour reorganisation schemes.

(1) [M1371]This section has effect where the trade of any body corporate other than a limited liability company is transferred to a harbour authority by or under a certified harbour reorganisation scheme which provides also for the dissolution of the transferor.

(2) For the purposes of the Corporation Tax Acts, the trade shall not be treated as permanently discontinued, nor shall a new trade be treated as set up and commenced.

(3) The transferee shall be entitled to relief from corporation tax under section 393(1), as for a loss sustained by it in carrying on the transferred trade or any trade of which it comes to form part, for any amount which, if the transferor had continued to carry it on, would have been available to the transferor for carry-forward against chargeable profits of succeeding accounting periods, but subject to any claim made by the transferor under section **[**[F1055]393A(1)**]**.

(4) There shall be made to or on the transferee in accordance with the provisions of the Capital Allowances Acts all such allowances and charges as would, if the transferor had continued to carry on the trade, have fallen to be made to or on it under those Acts and the amount of any such allowance or charge shall be computed as if the transferee had been carrying on the trade since the transferor had begun to do so and as if everything done to or by the transferor had been done to or by the transferee.

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(5) No sale or transfer which on the transfer of the trade is made by the transferor to the transferee of any assets in use for the purposes of the trade shall be treated as giving rise to any such allowance or charge as is mentioned in subsection (4) above.

[F1056](6) . . . . . .

(7) The transferee shall be entitled to relief from corporation tax in respect of chargeable gains for any amount for which the transferor would have been entitled to claim relief in respect of allowable losses if it had continued to carry on the trade.

(8) [M1372]Where part only of such trade is transferred to a harbour authority by or under a certified harbour organisation scheme, and the transferor continues to carry on the remainder of the trade, or any such trade is, by or under a certified harbour reorganisation scheme which provides also for the dissolution of the transferor, transferred in parts to two or more harbour authorities, this section shall apply as if the transferred part, or each of the transferred parts, had at all times been a separate trade.

(9) Where a part of any trade is to be treated by virtue of subsection (8) above as having been a separate trade over any period there shall be made any necessary adjustments of accounting periods, and such apportionments as may be just of receipts, expenses, allowances or charges.

Subsection (10) of section 343 shall apply to any apportionment under this subsection as it applies to an apportionment under subsection (9) of that section.

(10) [M1373]In this section—

"harbour authority" has the same meaning as in the [M1374]Harbours Act 1964;

"harbour reorganisation scheme" means any statutory provision providing for the management by a harbour authority of any harbour or group of harbours in the United Kingdom, and "certified", in relation to any harbour reorganisation scheme, means certified by a Minister of the Crown or government department as so providing with a view to securing, in the public interest, the efficient and economical development of the harbour or harbours in question;

"limited liability company" means a company having a limit on the liability of its members;

"statutory provision" means any enactment, or any scheme, order or other instrument having effect under an enactment, and includes an enactment confirming a provisional order; and

"transferor", in relation to a trade, means the body from whom the trade is transferred, whether or not the transfer is effected by that body.

Textual Amendments

F1055 Words in s. 518(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 19(1)**

F1056 S. 518(6) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 19(2), **Sch. 19 Pt. V**, Note 4

Marginal Citations

M1371 Source—1970 s.352(1)-(6); 1971 Sch.8 16; 1986 s.56(7)(a), Sch.13 2(5)(a)

M1372 Source—1970 s.352(8), (9)

M1373 Source—1970 s.352(11)

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M1374 1964 c. 40.

519 Local authorities.

(1) [M1375]A local authority in the United Kingdom—

(a) shall be exempt from all charge to income tax in respect of its income;

(b) shall be exempt from corporation tax;

and so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

(2) Subsection (1) above shall apply to a local authority association as it applies to a local authority.

(3) In this Act "local authority association" means any incorporated or unincorporated association—

(a) of which all the constituent members are local authorities, groups of local authorities or local authority associations, and

(b) which has for its object or primary object the protection and furtherance of the interests in general of local authorities or any description of local authorities;

and for this purpose, if a member of an association is a representative of or appointed by any authority, group of authorities or association, that authority, group or association (and not he) shall be treated as a constituent member of the association.

[F1057](4) . . . . . .

Textual Amendments

F1057 Subs.(4) *repealed by* 1990 s.127 *and* Sch.18 para.5(2) *and* 132 *and* Sch.19 Part IV *on and after* 1 *April* 1990.

Modifications etc. (not altering text)

C531 S. 519 extended (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(1)(2)(a)**, 425(2) (with s. 157(4)); S.I. 1999/3434, **art. 2**

C532 Definition applied for purposes of—1979(C) s.149B(3)—*miscellaneous exemptions.* 1988 s.832(1)—*interpretation of Tax Acts.*

Marginal Citations

M1375 Source—1970 s.353(1), (4)

[F1058519A Health service bodies.

(1) A health service body—

(a) shall be exempt from income tax in respect of its income, and

(b) shall be exempt from corporation tax,

and, so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

(2) In this section "health service body" means—

(a) a health authority, within the meaning of the National Health Service Act 1977;

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(b) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990;

(c) a Family Health Services Authority;

(d) a Health Board or Special Health Board, the Common Services Agency for the Scottish Health Service and a National Health Service trust respectively constituted under sections 2, 10 and 12A of the National Health Service (Scotland) Act 1978;

(e) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;

(f) the Dental Practice Board;

(g) the Scottish Dental Practice Board; [F1059] . . .

(h) the Public Health Laboratory Service Board.

[[F1060](i) a Health and Social Services Board and the Northern Ireland Central Services Agency for the Health and Social Services established under Articles 16 and 26 respectively of the Health and Personal Social Services (Northern Ireland) Order 1972;

(j) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990; and

(k) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.**]]**

Textual Amendments

F1058 S. 519A inserted (17.9.1990) by National Health Service and Community Care Act 1990 (c. 19), **ss. 61(1)**, 67(2); S.I. 1990/1329, art. 2(5)(a), **Sch. 2**

F1059 Word in s. 519A(2)(g) repealed by S.I. 1991/195, **art. 6**

F1060 S. 519A(2)(i) (j) (k) added by S.I. 1991/195, **art. 6**

PART XIII

MISCELLANEOUS SPECIAL PROVISIONS

CHAPTER I

INTELLECTUAL PROPERTY

Modifications etc. (not altering text)

C533 Pt. 13 Ch. 1 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 20**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Patents and know-how

520 Allowances for expenditure on purchase of patent rights: post-31st March 1986 expenditure.

(1) [M1376]Subject to subsection (3) below, where a person incurs capital expenditure after 31st March 1986 on the purchase of patent rights, allowances and charges shall, in accordance with subsections (4) and (6) below, be made to and on him in respect of that expenditure.

(2) No allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—
- (a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or
- (b) any income receivable by him in respect of the rights would be liable to tax.

(3) [M1377]For the purposes of this section and section 521 any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by that person on the first day on which he does carry it on, unless, before that first day, he has sold all the rights on the purchase of which the expenditure was incurred.

(4) [M1378]For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with section 521(2) there shall be made to him—
- (a) except where paragraph (b) or (c) below applies, a writing-down allowance of an amount equal, subject to subsection (5) below, to—
  - (i) 25 per cent. of the excess; or
  - (ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if, in a case where the period is a year of assessment and the allowance falls to be made in taxing a trade, the trade has been carried on for part only of that year;
- (b) if an allowance falls to be made to that person in taxing his trade and the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess; and
- (c) if paragraph (b) above does not apply but the period is the chargeable period in which the last of the relevant patent rights comes to an end without any of those rights being revived, a balancing allowance equal to the whole of the excess.

(5) For the purposes of subsection (4)(c) above the "relevant patent rights" at any time are those—
- (a) on the purchase of which the person concerned has incurred capital expenditure which has been taken into account in determining his qualifying expenditure for any chargeable period; and
- (b) which he has not wholly disposed of.

(6) For any chargeable period for which a person's qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.

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Marginal Citations

M1376 Source - 1970 s.378(1); 1985 s.64(1)
M1377 Source - 1970 s.378(2)(c); 1985 s.64(2)(b)
M1378 Source - 1985 Sch.18 Part I 1

521 Provisions supplementary to section 520.

M1379 (1) For the purposes of section 520(4) to (6), a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—

(a) any capital expenditure incurred by him on the purchase of patent rights, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and

(b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value, the balance of that excess after deducting any writing-down allowance under section 520(4)(a) made by reference to that excess.

(2) If, in any chargeable period or its basis period, a person sells the whole or any part of any patent rights on the purchase of which he has incurred capital expenditure, then, for the purposes of section 520(4) to (6) and subsection (1) above, he is required to bring into account for that chargeable period disposal value equal, subject to subsections (3) and (4) below, to the net proceeds to him of that sale.

(3) The disposal value to be brought into account by any person in respect of any patent rights as a result of one or more sales falling within subsection (2) above shall not (or, as the case may be, shall not in the aggregate) exceed the capital expenditure incurred by him on the purchase of those rights.

(4) Where the person mentioned in subsection (3) above has acquired the patent rights as a result of a transaction which was, or a series of transactions each of which was, between persons who are connected with each other within the terms of section 839, that subsection shall have effect as if it referred to the capital expenditure on the purchase of the rights incurred by whichever party to that transaction or to any of those transactions incurred the greatest such expenditure.

(5) Where a person incurs capital expenditure on the purchase of patent rights and either—

(a) he and the seller are connected with each other F1061 . . . , or

(b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, but for this subsection, might have been expected to accrue to the parties was the obtaining of an allowance under section 520(4),

there shall be disregarded for the purposes of section 520(4) and (6) and subsection (1) above so much (if any) of that expenditure as exceeds [F1062 the relevant amount determined in accordance with subsection (6)below].

[F1063 (6) The relevant amount referred to in subsection (5) above is—

(a) in a case in which, by virtue of subsections (2) to (4) above, a disposalvalue falls to be brought into account by reason of the sale, an amount equalto that disposal value,

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(b) in a case in which no disposal value falls to be brought into account asmentioned in paragraph (a) above, but the seller receives on the sale acapital sum in respect of which he is chargeable to tax in accordance withsection 524, an amount equal to that sum,

(c) in any other case, an amount equal to whichever of the following is thesmallest—

(i) the price which the rights would have fetched if sold in the open market,

(ii) where capital expenditure was incurred by the seller on acquiring therights, the amount of that expenditure,

(iii) where capital expenditure was incurred by any person connected with theseller on acquiring the rights, the amount of the expenditure incurred by thatperson.

(7) Section 839 (connected persons) shall apply for the purposes of thissection.**]**

Textual Amendments

F1061 Words in s. 521(5) repealed (with effect in accordance with Sch. 13 para. 27(4) of the repealing Act) by Finance Act 1989 (c. 26), Sch. 13 para. 27(2)(a), **Sch. 17 Pt. 6**,

F1062 Words in s. 521(5) substituted (with effect in accordance with Sch. 13 para. 27(4) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 13 para. 27(2)(b)**

F1063 S. 521(6)(7) substituted (with effect in accordance with Sch. 13 para. 27(4) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 13 para. 27(3)**

Marginal Citations

M1379 Source - 1985 Sch.18 Part I 2-4

522 Allowances for expenditure on purchase of patent rights: pre-1st April 1986 expenditure.

M1380 (1) Subject to subsection (2) below, where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights, there shall, subject to and in accordance with the following provisions of this Chapter, be made to him writing-down allowances in respect of that expenditure during the writing-down period.

(2) No writing-down allowance shall be made to a person under subsection (1) above in respect of any expenditure unless—

(a) the allowance falls in accordance with section 528(1) to be made to him in taxing his trade; or

(b) any income receivable by him in respect of the rights would be liable to tax.

(3) Subject to subsections (4) to (6) below, the writing-down period referred to in subsection (1) above is 17 years beginning with the chargeable period related to the expenditure.

(4) Where the rights are purchased for a specified period, subsection (3) above shall have effect with the substitution for the reference to 17 years of a reference to 17 years or the number of years comprised within that period, whichever is the less.

(5) Where the rights purchased begin one complete year or more after the commencement of the patent and subsection (4) above does not apply, subsection (3) above shall have

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effect with the substitution for the reference to 17 years of a reference to 17 years less the number of complete years which, when the rights began, have elapsed since the commencement of the patent or, if 17 complete years have so elapsed, of a reference to one year.

(6) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of subsections (3) to (5) above as if it had been incurred by that person on the first day on which he does carry it on, unless, before that first day, he has sold all the rights on the purchase of which the expenditure was incurred.

(7) Subsections (2) and (3) of section **[**[F1064]146 of the 1990 Act**]** (effect of providing for writing-down allowances during a writing-down period of a specified length) shall apply to this section as they apply to the provisions specified in subsection (1) of that section.

Textual Amendments

F1064 Words in s. 522(7) substituted (with effect in accordance with and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1**, para. 8(25), s. 164(3)

Marginal Citations

M1380 Source - 1970 s.378; 1985 s.64(1)

523 Lapses of patent rights, sales etc.

[M1381](1) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, any of the following events occurs, that is to say—

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights or so much of them as he still owns; or

(c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed,

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

(2) Where a person incurred capital expenditure before 1st April 1986 on the purchase of patent rights and, before the end of the writing-down period under section 522, either of the following events occurs, that is to say—

(a) the rights come to an end without being subsequently revived, or

(b) he sells all those rights, or so much of them as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed,

there shall, subject to and in accordance with the following provisions of this Chapter, be made to him for the chargeable period related to the event an allowance ("a balancing allowance") equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where—

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(a) a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells all or any part of those rights, and

(b) the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any,

there shall, subject to and in accordance with the following provisions of this Chapter, be made on him for the chargeable period related to the sale a charge ("a balancing charge") on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to those net proceeds.

(4) Where a person who incurred capital expenditure before 1st April 1986 on the purchase of patent rights sells a part of those rights and subsection (3) above does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount arrived at by—

(a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and

(b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,

and so on for any subsequent sales.

(5) References in this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any writing-down allowances made in respect thereof for chargeable periods before that related to the event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

(6) Notwithstanding anything in subsections (1) to (5) above—

(a) no balancing allowance shall be made in respect of any expenditure incurred before 1st April 1986 unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and

(b) the total amount on which a balancing charge is made in respect of any expenditure incurred before 1st April 1986 shall not exceed the total writing-down allowances actually made in respect of that expenditure, less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

Modifications etc. (not altering text)

C534 *See* 1979(C) s.31(2)—*amount on which balancing charge levied not to be excluded from capital gains computation.*

Marginal Citations

M138 Source - 1970 s.379; 1985 s.64(2)(c)

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524 Taxation of receipts from sale of patent rights.

(1) [M1382]Subject to subsection (2) below, where a person resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Chapter, be charged to tax under Case VI of Schedule D, for the chargeable period in which the sum is received by him and successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of six years (or such less fraction as has not already been charged).

(2) If the person by notice served on the inspector not later than two years after the end of the chargeable period in which the sum was received, elects that the whole of the sum shall be charged to tax for that chargeable period, it shall be charged to tax accordingly.

(3) [M1383]Subject to subsection (4) below, where a person not resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Chapter—

(a) he shall be chargeable to tax in respect of that sum under Case VI of Schedule D; and

(b) section 349(1) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to income tax; and

(c) all other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly.

(4) If, not later than two years after the end of the year of assessment in which the sum is paid, the person to whom it is paid, by notice to the Board, elects that the sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election, but—

(a) the election shall not affect the amount of tax which is to be deducted and assessed under section 349(1) and 350; and

(b) where any sum is deducted under section 349(1), any adjustments necessary to give effect to the election shall be made by way of repayment of tax; and

(c) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately falling to be paid for that year is less than the amount of tax paid for that year.

(5) [M1384]In subsections (3) and (4) above, "tax" shall mean income tax or, in subsection (3) in a case where the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum, corporation tax.

(6) Where subsection (3) applies to charge a company to corporation tax in respect of a sum paid to it, subsection (4) shall not apply, but the company may, by notice given to the Board not later than two years after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than six years from the beginning of that in which the sum is paid (being accounting periods during which the company remains within the charge

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to corporation tax in respect of any proceeds of the sale not consisting of a capital sum), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.

(7) [M1385]Subject to subsections (8) and (9) below, where the person selling all or any part of any patent rights ("the seller") acquired the rights sold, or the rights out of which they were granted, by purchase and the price paid by him consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by him when he sells the rights were reduced by the amount of that sum.

(8) Where between the purchase and the sale the seller has sold part of the rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under subsection (7) above in respect of the subsequent sale shall be itself reduced by the amount of that sum.

(9) Nothing in subsections (7) and (8) above shall affect the amount of income tax which is to be deducted and assessed under section 349(1) and (3) by virtue of subsection (3) above, and, where any sum is deducted under section 349(1), any adjustment necessary to give effect to the provisions of this subsection shall be made by way of repayment of tax.

(10) [M1386]A claim for relief under this section shall be made to the Board.

Modifications etc. (not altering text)

C535 *See* S.I. 1970 No.488 (*under* "Double taxation relief: general" *in* Part III Vol.5) regns. 2-10—*payments exempt under double taxation agreements.*

Marginal Citations

M1382 Source - 1970 s.380(1)
M1383 Source - 1970 s.380(2)
M1384 Source - 1970 s.380(3)
M1385 Source - 1970 s.380(4)
M1386 Source - 1970 s.380(5)

525 Capital sums: death, winding up or partnership change.

(1) [M1387]Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under section 524 dies or, being a body corporate, commences to be wound up—

(a) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences; and

(b) the amount falling to be charged for the chargeable period in which the death occurs or the winding up commences shall, subject to subsection (2) below, be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent chargeable periods.

(2) In the case of a death the personal representatives may, by notice served on the inspector not later than 30 days after notice has been served on them of the charge falling to be made by virtue of subsection (1) above, require that the income tax payable out of the estate of the deceased by reason of the increase provided for by

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that subsection shall be reduced so as not to exceed the total amount of income tax which would have been payable by him or out of his estate by reason of the operation of section 524 in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years.

(3) [M1388]Where, under **[**[F1065]section 152 of the 1990 Act**]** (succession to trades) as applied by section 532, a charge under section 524 falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, subsection (1) above shall have effect in relation to the discontinuance as it has effect where a body corporate commences to be wound up.

(4) Where subsection (3) above applies—

(a) the additional sum which, under subsection (1) above, falls to be charged for the chargeable period in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representatives) shall be charged separately for his proportion; and

(b) each partner (or, if he is dead, his personal representatives) shall have the same right to require a reduction of the total income tax payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representatives under subsection (2) above in the case of a death, and that subsection shall have effect accordingly, but as if references to the amount of income tax which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax which would in that event have fallen to be paid or borne by the partner in question or out of his estate.

(5) [F1066]. . . . . .

Textual Amendments

F1065 Words in s. 525(3) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(26)**, s. 164(3)

F1066 S. 525(5) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 4 of the repealing Act) by Finance Act 1988 c. 39, **Sch. 14 Pt. 8**

Marginal Citations

M1387 Source - 1970 s.381(1)

M1388 Source - 1970 s.381(2)

526 Relief for expenses.

[M1389](1) Where—

(a) a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance

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of a patent, or the obtaining of an extension of a term of a patent, or a rejected or abandoned application for a patent, and

(b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains of that trade,

there shall be made to him, for the chargeable period in which those expenses were paid or incurred, an allowance equal to the amount thereof.

(2) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the devising thereof (not being expenses in respect of which, or of assets representing which, an allowance falls to be made under any other provision of the Income Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

Marginal Citations

M1389 Source - 1970 s.382

527 Spreading of royalties over several years.

M1390 (1) Where a royalty or other sum to which section 348 or 349(1) applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may on the making of a claim require that the income tax or corporation tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax or corporation tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(2) Subsection (1) above shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(3) F1067 . . . . . .

(4) Nothing in this section shall apply to any sum to which section 349(1) applies by virtue of section 524(3)(b).

Textual Amendments

F1067 S. 527(3) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 5 of the repealing Act) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 8**

Marginal Citations

M1390 Source - 1970 s.384

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528 Manner of making allowances and charges.

M1391 (1) An allowance or charge under section 520, 522 or 523 shall be made to or on a person in taxing his trade if—

(a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and

(b) at any time in that chargeable period or its basis period the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade.

(2) Where an allowance falls to be made to a person for any year of assessment under section 520, 522, 523 or 526 as those provisions apply for the purposes of income tax, and the allowance is not to be made in taxing a trade—

(a) the amount of the allowance shall be deducted from or set off against his income from patents for that year of assessment, and

(b) if the amount to be allowed is greater than the amount of his income from patents for that year of assessment, the balance shall be deducted from or set off against his income from patents for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.

Relief shall be given under this subsection on the making of a claim.

(3) Where an allowance falls to be made to a company for any accounting period under section 520, 522, 523 or 526 as those provisions apply for the purposes of corporation tax, and is not to be made in taxing a trade—

(a) the allowance shall, as far as may be, be given effect by deducting the amount of the allowance from the company's income from patents of the accounting period;

(b) where the allowance cannot be given full effect under paragraph (a) above in that period by reason of a want or deficiency of income from patents, then (so long as the company remains within the charge to corporation tax) the amount unallowed shall be carried forward to the succeeding accounting period, and shall be treated for the purposes of that paragraph, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.

(4) Effect shall be given to any balancing charge under section 520 or 523 which is not to be made in taxing a trade—

(a) if a charge to income tax, by making the charge under Case VI of Schedule D;

(b) if a charge to corporation tax, by treating the amount on which the charge is to be made as income from patents.

Marginal Citations

M1391 Source-1970 s.385; 1985 s.64(2)(d)-(f)

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529 Patent income to be earned income in certain cases.

M1392(1) Subject to subsection (2) below, any income from patent rights arising to an individual where the patent was granted for an invention actually devised by him, whether alone or jointly with any other person, shall be treated for all purposes as earned income.

(2) Where any part of the rights in question or of any rights out of which they were granted has at any time belonged to any other person, so much only of that income shall be treated as earned income as is not properly attributable to the rights which have belonged to that other person.

Marginal Citations

M1392 Source-1970 s.383

530 Disposal of know-how.

(1) M1393Subject to section 531, where after 31st March 1986 a person—

(a) acquires know-how for use in a trade carried on by him, or

(b) acquires know-how, and thereafter sets up and commences a trade in which it is used,

allowances and charges shall, in accordance with subsections (2) and (3) below, be made to and on him in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax.

(2) M1394For any chargeable period for which a person within subsection (1) above has qualifying expenditure which exceeds any disposal value to be brought into account by him in accordance with subsection (5) below, there shall be made to him—

(a) unless the period is the chargeable period related to the permanent discontinuance of the trade, a writing-down allowance of an amount equal to—

(i) 25 per cent. of the excess, or

(ii) a proportionately reduced percentage of the excess if the period is part only of a year, or if the period is a year of assessment but the trade had been carried on for part only of the year; and

(b) if the period is the chargeable period related to the permanent discontinuance of the trade, a balancing allowance equal to the whole of the excess.

(3) For any chargeable period for which a person's qualifying expenditure is less than the disposal value which he is to bring into account, there shall be made on him a balancing charge and the amount on which the charge is made shall be an amount equal to the difference.

(4) For the purposes of subsections (2) and (3) above a person's qualifying expenditure for a chargeable period is the aggregate of the following amounts—

(a) any capital expenditure incurred by him on the acquisition of know-how, being expenditure incurred during the chargeable period or its basis period or at any previous time, other than expenditure which, or any part of which, has formed part of his qualifying expenditure for any previous chargeable period; and

(b) if, for the chargeable period immediately preceding the chargeable period in question, there was an excess of qualifying expenditure over disposal value,

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the balance of that excess after deducting any writing-down allowance under subsection (2)(a) above made by reference to that excess.

(5) If, in any chargeable period or its basis period, a person sells any know-how on the acquisition of which for use in a trade carried on by him he has incurred expenditure falling within subsection (1) above, then, for the purposes of subsections (2) to (4) above, he is required to bring into account for that chargeable period disposal value equal to the net proceeds to him of that sale.

(6) [M1395]Subject to section 531, where after 19th March 1968 and before 1st April 1986 a person—

(a) acquired know-how for use in a trade carried on by him, or

(b) acquired know-how, and thereafter sets up and commences a trade in which it is used,

writing-down allowances in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax, shall be made in taxing the trade during a writing-down period of six years beginning with the chargeable period related to the expenditure; and if during that period he ceases to carry on the trade, an allowance equal to the amount of that expenditure then unallowed shall be made in taxing the trade for the chargeable period related to the discontinuance.

(7) [M1396]For the purposes of subsections (1) and (6) above, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.

(8) **[**[F1068][M1397]Subsections (2) and (3) of section 146 of the 1990 Act**]** (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to subsection (6) above as **[**[F1068]they apply**]** to the provisions specified in subsection (1) of that section.

Textual Amendments

F1068 Words in s. 530(8) substituted (with effect in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(27)** (with s. 164(3))

Marginal Citations

M1393 Source-1970 s.386(1); 1985 s.65(1)
M1394 Source-1985 Sch.18 Part II 5-7
M1395 Source-1970 s.386(1); 1985 s.65(1)
M1396 Source-1970 s.386(1)
M1397 Source-1970 s.386(9); 1985 s.65(2)

531 Provisions supplementary to section 530.

(1) [M1398]Subject to subsection (7) below, where, after 19th March 1968, a person disposes of know-how which has been used in a trade carried on by him, and continues to carry on the trade after the disposal, the amount or value of any consideration received by him for the disposal shall—

(a) if it is received in respect of the disposal of know-how after 31st March 1986, so far as it is not brought into account as disposal value under section 530(5), nor is chargeable to tax as a revenue or income receipt;

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(b) in any other case, so far as it is not chargeable to tax as a revenue or income receipt,

be treated for all purposes as a trading receipt.

(2) [M1399]Subject to subsection (3) below, where, after 19th March 1968, a person disposes of a trade or part of a trade and, together with that trade or part, of know-how used in it, any consideration received by him for the know-how shall be dealt with in relation both to him and to the person acquiring the know-how, if that person provided the consideration, and for the purposes of corporation tax, income tax and capital gains tax, as a payment for goodwill.

(3) Subsection (2) above shall not apply—

(a) to either of the persons concerned if they so elect by notice given jointly to the inspector within two years of the disposal, or

(b) to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom;

and where know-how is disposed of with a trade or part of a trade, but that subsection is excluded in relation to the person acquiring it, section 530(1) and (6) shall apply as if that person had acquired it for use in a trade previously carried on by him.

(4) [M1400]Subject to subsections (5) and (7) below, any consideration received by a person for the disposal of know-how shall—

(a) if it is received in respect of the disposal of know-how after 31st March 1986 and is not brought into account as disposal value under section 530(5), or

(b) if it is neither chargeable to tax under subsection (1) above or otherwise as a revenue or income receipt, nor dealt with in relation to him as a payment for goodwill as mentioned in subsection (2) above, (whether the disposal took place before or after 31st March 1986),

be treated as a profit or gain chargeable to tax under Case VI of Schedule D.

(5) [M1401]Where the person concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this subsection be treated as a profit or gain chargeable to tax under Case VI of Schedule D shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this subsection or otherwise.

(6) Where subsection (4) above has effect in the case of an individual who devised the know-how in question, whether alone or jointly with any other person, the amount in respect of which he is chargeable to tax by virtue of that subsection shall be treated for all purposes as earned income.

(7) Subsections (1) and (3) to (6) above and section 530(1) and (6) shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and subsection (2) above shall apply in any such case with the omission of the words "Subject to subsection (3) below".

In this subsection references to a body of persons include references to a partnership.

(8) [M1402]Where in connection with any disposal of know-how a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another's activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall

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be treated for the purposes of this section as consideration received for the disposal of the know-how.

Modifications etc. (not altering text)

C536 S. 531(2)(7) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 19(2)**

Marginal Citations

M1398 Source-1970 s.386(2); 1985 s.65(3)(a)
M1399 Source-1970 s.386(3)
M1400 Source-1970 s.386(4); 1985 s.65(3)(b)
M1401 Source-1970 s.386(4)-(6)
M1402 Source-1970 s.386(8); 1985 Sch.18 Part II 8

532 Application of the 1968 Act.

M1403 (1) Subject to subsection (2) below, the Tax Acts shall have effect as if sections 520 to 531, this section and section 533 were contained in **[**F1069 the 1990 Act**]**, and any reference in the Tax Acts to any capital allowance to be given "by way of discharge or repayment of tax and to be available or available primarily against a specified class of income" shall include a reference to any capital allowance given in accordance with subsection (2) or (3) of section 528.

(2) **[**F1070 Sections 157 and 158 of the 1990 Act**]** (special provisions as to controlled sales) shall not (by virtue of subsection (1) above) apply with respect to expenditure incurred after 31st March 1986 on the purchase of patent rights.

(3) Subject to subsection (2) above, in **[**F1071 the 1990 Act**]**, as applied by virtue of subsection (1) above to patent rights, the sum referred to in **[**F1071 section 158(1)(a) of**]** that Act (special provisions as to controlled sales) is the amount of any capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with the provisions of section 523.

(4) The reference in **[**F1072 section 159(1) of the 1990 Act**]** (certain payments not to be treated as capital expenditure) to any expenditure or sum in the case of which a deduction of income tax falls or may fall to be made under sections 348 to 350 does not include a sum in the case of which such a deduction falls or may fall to be so made by virtue of section 524(3)(b).

(5) In **[**F1073 the 1990 Act**]** as so applied to know-how—

(a) references in **[**F1073 that Act**]** to property and its purchase or sale include references to know-how and its acquisition or disposal;

(b) **[**F1074 Sections 157 and 158 of that Act**]** (special provisions as to controlled sales), shall be omitted.

Textual Amendments

F1069 Words in s. 532(1) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(a)**, s. 164(3)

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F1070 Words in s. 532(2) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(b)**, s. 164(3)

F1071 Words in s. 532(3) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(c)**, s. 164(3)

F1072 Words in s. 532(4) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(d)**, s. 164(3)

F1073 Words in s. 532(5) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(e)**, s. 164(3)

F1074 Words in s. 532(5)(b) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(28)(e)**, s. 164(3)

Marginal Citations

M1403 Source-1970 s.387; 1985 s.64(2)(h)

533 Interpretation of sections 520 to 532.

(1) [M1404]In sections 520 to 532—

"income from patents" means—

(a) any royalty or other sum paid in respect of the user of a patent; and

(b) any amount on which tax is payable for any chargeable period by virtue of section 520(6), 523(3), 524 or 525;

"the commencement of the patent" means, in relation to a patent, the date as from which the patent rights become effective;

"patent rights" means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;

"United Kingdom patent" means a patent granted under the laws of the United Kingdom.

(2) Subject to subsection (3) below, in sections 520 to 532 any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent.

(3) If a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the right subsists, the grantor shall be treated for the purposes of sections 520 to 532 as thereby selling the whole of the rights.

(4) Where, under sections 46 to 49 of the Patents Act 1949 **[**[F1075], sections 55 to 59 of the Patents Act 1977**]** or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, sections 520 to 532 shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.

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(5) Expenditure incurred in obtaining a right to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted shall be deemed for all the purposes of sections 520 to 532 to be expenditure on the purchase of patent rights, and if the patent rights are subsequently acquired the expenditure shall be deemed for those purposes to have been expenditure on the purchase of those rights.

(6) Any sum received from a person which by virtue of subsection (5) above is deemed to be expenditure incurred by him on the purchase of patent rights shall be deemed to be proceeds of a sale of patent rights.

(7) [M1405]In sections 530 and 531 "know-how" means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto), or in the carrying out of any agricultural, forestry or fishing operations.

Textual Amendments

F1075 Words in s. 533(4) inserted (with retrospective effect) by Finance Act 1988, Sch. 13 Pt. 1 paras. 5, 1

Marginal Citations

M1404 Source-1970 s.388; 1985 s.64(2)(g)

M1405 Source-1970 s.386(8); 1985 Sch.18 Part II 8

Copyright and public lending right

534 Relief for copyright payments etc.

[M1406](1) Where—

(a) an author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence; and

(b) the consideration for the assignment or grant consists wholly or partially of a payment to which this section applies, being a payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment; and

(c) the author was engaged on the making of the work for a period of more than 12 months;

he may, on making a claim, require that effect shall be given to the following provisions of this section in connection with that payment.

(2) If the period for which he was engaged on the making of the work does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable 12 months before that date.

(3) If the period for which he was engaged on the making of the work exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became

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receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.

(4) This section applies to—
  (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
  (b) any payment of or on account of royalties or sums payable periodically,

except that it shall not by virtue of paragraph (b) above apply to payments in respect of the copyright in any work which only become receivable more than two years after its first publication.

(5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of the copyright in the same work which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after the work's first publication.

(6) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 535 as respects that payment.

(7) In this section—
  (a) "author" includes a joint author; and
  (b) any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

Marginal Citations
M1406 Source-1970 s.389

535 Relief where copyright sold after ten years or more.

M1407 (1) Where not less than ten years after the first publication of the work the author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence, and—
  (a) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment, and
  (b) the copyright or interest is not assigned or granted for a period of less than two years,

he may by making a claim require that effect shall be given to the following provisions of this section in connection with that payment.

(2) Except where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in six equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable.

(3) Where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming

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receivable in a number of equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable, the number being the number of whole years in that period.

(4) Subject to subsection (5) below, if the author dies, any instalment which under this section would, but for the death, be treated as becoming receivable after the death shall for income tax purposes be treated as becoming receivable on the date when the last instalment before the death is to be treated as becoming receivable.

(5) If the personal representatives so elect—

(a) the total amount of income tax which would have been payable by the deceased or out of his estate in respect of the payment if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the death shall be computed, and

(b) the income tax payable out of the estate by reason of the provisions of subsection (4) above shall be reduced so as not to exceed the amount at (a) above.

F1076 . . . . . .

(6) If—

(a) the payment would, apart from this section, have been taken into account in assessing the profits or gains of a profession or vocation, and

(b) the profession or vocation is permanently discontinued (otherwise than on death) after the date on which the payment actually became receivable,

any instalment which under this section would, but for the discontinuance, be treated as receivable on a date after the discontinuance shall for income tax purposes be treated as becoming receivable when the last instalment before the discontinuance is to be treated as becoming receivable, unless the author elects to be treated (for all purposes) as if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the discontinuance.

(7) Notice of any election under subsection (5) or (6) above shall be served on the inspector within two years of the death, or as the case may be of the discontinuance.

(8) In any case where—

(a) but for this section, the payment would be included in computing any profits or gains chargeable to tax under Case VI of Schedule D, and

(b) any amount would be deductible from that payment in computing those profits or gains (whether under the general provisions relating to Case VI or under section 105(1)),

the amount which, under this section, is to be treated as receivable in instalments shall be the amount of the payment after that deduction, and effect shall not be given to that deduction in any other way.

(9) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 534 as respects that payment.

(10) Where it is necessary, in order to give effect to a claim or election under this section, or as a result of the claim or election, to make any adjustment by way of an assessment on any person, the assessment shall not be out of time if it is made within one year

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of the final determination of the claim or, as the case may be, within one year from the giving of notice of the election.

(11) In this section—

"author" includes a joint author;

"lump sum payment" includes an advance on account of royalties which is not returnable;

and any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

Textual Amendments

F1076 Words in s. 535(5) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 5 of the repealing Act) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 8**

Marginal Citations

M1407 Source-1970 s.390

536 Taxation of royalties where owner abroad.

M1408 (1) Subject to the provisions of this section, where the usual place of abode of the owner of a copyright is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

(2) In subsection (1) above—

[F1077 "copyright" does not include copyright in—

(i) a cinematograph film or video recording, or

(ii) the sound-track of such a film or recording, so far as it is not separately exploited; and**]**

"owner of a copyright" includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright;

and the reference to royalties or sums paid periodically for or in respect of a copyright does not include royalties or sums paid in respect of copies of works which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.

(3) Subject to subsection (4) below, where any payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is so entitled to deduct.

(4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent

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on behalf of the owner of the copyright such repayment of income tax as is proper in respect of the sum deducted by way of commission.

(5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

(6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

Textual Amendments

F1077 Words in s. 536(2) substituted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 7 para. 36(5)**; S.I. 1989/816, **art. 2**

Modifications etc. (not altering text)

C537 See—1988 s.387—*sums assessed under* s.350*by virtue of* s.536*not to be carried forward under* s.387*as trading losses.*1988 s.821—*under-deductions of tax from payments made before passing of annual Act.*S.I. 1970 No.488 (*under* "*Double Taxation relief: general*" *in* Part III Vol.5) regns.2-10—*payments exempt under double taxation agreements.*

Marginal Citations

M1408 Source-1970 s.391

537 Public lending right.

[M1409] Sections 534, 535 and 536 shall have effect in relation to public lending right as they have effect in relation to copyright.

Marginal Citations

M1409 Source-1983 s.27(b)

[[F1078] Designs]

Textual Amendments

F1078 Ss. 537A, 537B and preceding cross-heading inserted (1.8.1989) by Intellectual Property Act 1988 (c. 48), **Sch. 7 para. 36(6)**; S.I. 1989/816, **art. 2**

537A Relief for payments in respect of designs.

(1) Where the designer of a design in which design right subsists assigns that right, or the author of a registered design assigns the right in the design, wholly or partially, or grants an interest in it by licence, and—

(a) the consideration for the assignment or grant consists, in whole or in part, of a payment to which this section applies, the whole amount of which would otherwise be included in computing the amount of his profits or gains for a single year of assessment, and

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(b) he was engaged in the creation of the design for a period of more than 12 months,

he may, on making a claim, require that effect shall be given to the following provisions in connection with that payment.

(2) If the period for which he was engaged in the creation of the design does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable and the remaining half shall be treated as having become receivable 12 months before that date.

(3) If the period for which he was engaged in the creation of the design exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.

(4) This section applies to—

(a) a lump sum payment, including an advance on account of royalties which is not returnable, and

(b) any other payment of or on account of royalties or sums payable periodically which does not only become receivable more than two years after articles made to the design or, as the case may be, articles to which the design is applied are first made available for sale or hire.

(5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of rights in the design in question which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after articles made to the design or, as the case may be, articles to which the design is applied were first made available for sale or hire.

(6) In this section—

(a) "designer" includes a joint designer, and

(b) any reference to articles being made available for sale or hire is to their being so made available anywhere in the world by or with the licence of the design right owner or, as the case may be, the proprietor of the registered design.

537B Taxation of design royalties where owner abroad.

(1) Where the usual place of abode of the owner of a right in a design is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that right as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

(2) In subsection (1) above—

(a) "right in a design" means design right or the right in a registered design,

(b) the reference to the owner of a right includes a person who, notwithstanding that he has assigned the right to some other person, is entitled to receive periodical payments in respect of the right, and

(c) the reference to royalties or other sums paid periodically for or in respect of a right does not include royalties or sums paid in respect of articles which

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are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.

(3) Where a payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the right to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purpose of section 349(1) be taken to be diminished by the sum which the agent is entitled to deduct.

(4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the right such repayment of income tax as is proper in respect of the sum deducted by way of commission.

(5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

(6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

Artists' receipts

538 Relief for painters, sculptors and other artists.

M1410(1) Where the artist obtains any sum for the sale of a painting, sculpture or other work of art, or by way of commission or fee for the creation of the work of art, and—

(a) he was engaged on the making of the work of art for a period of more than 12 months, or

(b) he was engaged for a period of more than 12 months in making a number of works of art for an exhibition, and the work is one of them,

he may, by making a claim, require that effect shall be given to the following provisions of this section as respects that sum.

(2) If the period for which he was engaged on the making of the work does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable 12 months before that date.

(3) If the period for which he was engaged on the making of the work exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.

Marginal Citations

M1410 Source-1970 s.392

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CHAPTER II

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

Modifications etc. (not altering text)

C538 Pt. 13 Ch. 2 restricted (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 3(2)** (with Sch. 13 para. 16)

539 Introductory.

(1) [M1411]This Chapter shall have effect for the purposes of imposing, in the manner and to the extent therein provided, charges to tax,[F1079] . . . , in respect of gains to be treated in accordance with this Chapter as arising in connection with policies of life insurance, contracts for life annuities and capital redemption policies.

(2) [M1412]Nothing in this Chapter shall apply—

(a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals; or

(b) to any policy of life insurance issued in connection with an approved scheme, as defined in Chapter I of Part XIV; or

(c) [M1413]to a policy of insurance which constitutes, or is evidence of, a contract for the time being approved under section 621.

In the application of this subsection to Scotland, for the reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the [M1414]Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

(3) [M1415]In this Chapter—

"assignment", in relation to Scotland, means an assignation;

"capital redemption policy" means any insurance effected in the course of a capital redemption business as defined in section 458(3); and

[[F1080] "friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act);**]**

"life annuity" means any annuity to which sections 656 and 657 apply and any annuity the contract for which is made on or after 1st June 1984 by a friendly society or branch thereof in the course of life or endowment business as defined in section 466.

(4) [M1416]For the purposes of this Chapter the falling due of a sum payable in pursuance of a right conferred by a policy or contract to participate in profits shall be treated as the surrender of rights conferred by the policy or contract.

(5) [M1417]This Chapter shall have effect only as respects policies of life insurance issued in respect of insurances made after 19th March 1968, contracts for life annuities entered into after that date, and capital redemption policies effected after that date.

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(6) A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of subsection (5) above and the following provisions of this Chapter as issued in respect of one made after that date if it is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(7) A variation effected before the end of the year 1968 shall be disregarded for the purposes of subsection (6) above if its only effect was to bring into conformity with paragraph 2 of Schedule 9 to the Finance Act 1968 (which is re-enacted, as amended, by paragraph 2 of Schedule 15 to this Act) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

(8) Subsections (1) to (7) above do not apply in relation to section 554.

[[F1081](9) A policy of life insurance issued in respect of an insurance made before 14th March 1989 shall be treated for the purposes of sections 540(5A), 547(8) and 548(3A) as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.**]**

Textual Amendments

F1079 Words in s. 539(1) repealed (with effect in accordance with Sch. 17 Pt. 5 Note 6 of the repealing Act) by Finance Act 1989 (c. 26), **Sch. 17 Pt. 5**

F1080 S. 539(3): definition of "friendly society" inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.15**; S.I. 1993/236, **art. 2**

F1081 S. 539(9) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 2**

Marginal Citations

M1411 Source-1970 s.393(1); 1971 Sch.6 41; 1972 Sch.24 23
M1412 Source-1970 s.393(2)(a), (c); 1971 Sch.3 11
M1413 Source-1970 s.393(2A); 1971 Sch.2 6
M1414 1924 c. 27.
M1415 Source-1970 s.393(3); 1985 s.41(8) 56, Sch. 9 para. 15
M1416 Source-1975 Sch.2 15
M1417 Source-1970 s.393(4), (5)

VALID FROM 06/04/2005

[[F1082]539ZA Application of this Chapter etc. to policies and contracts in which persons other than companies are interested

(1) This section applies where, for the purposes of determining the application of this Chapter in relation to a policy or contract at any time, it is necessary to have regard to its application at another time.

(2) It makes no difference to the application of this Chapter at that other time whether liability in respect of a gain arising at that time would have arisen or (as the case may be) would arise because of the application of this Chapter or Chapter 9 of Part

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4 of ITTOIA 2005 (which makes provision for income tax purposes corresponding to that made by this Chapter).

(3) References in this section to this Chapter include references to paragraph 20 of Schedule 15 to this Act and section 79 of the Finance Act 1997 (payments under certain life insurance policies).**]**

Textual Amendments

F1082 S. 539ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 211** (with Sch. 2)

VALID FROM 09/04/2003

[F1083 539A The conditions for being an excepted group life policy

(1) The conditions mentioned in section 539(2)(f) (excepted group life policies) are those set out in the following provisions of this section.

(2) Condition 1 is that under the terms of the policy a sum or other benefit of a capital nature is payable or arises on the death of each of the individuals insured under the policy who dies without attaining an age which is specified in the policy and is not greater than 75 years.

In determining whether this condition is satisfied, disregard any terms of the policy which exclude from benefit the death of a person in specified circumstances, if the exclusion applies in relation to death in those circumstances in the case of each of the individuals insured under the policy.

(3) Condition 2 is that under the terms of the policy—

(a) the same method is to be used for calculating the sums or other benefits of a capital nature payable or arising on each death, and

(b) if there is any limitation on those sums or other benefits, the limitation is the same in the case of any death.

(4) Condition 3 is that the policy does not have, and is not capable of having, on any day—

(a) a surrender value that exceeds the proportion of the premiums paid which, on a time apportionment, is referable to the unexpired paid-up period beginning with that day, or

(b) if there is no such period, any surrender value.

For the purposes of this subsection the unexpired paid-up period beginning with any day is the period (if any) which—

(i) begins with that day, and

(ii) ends with the earliest subsequent day on which—

(a) a payment of premium falls due under the policy, or

(b) the term of the policy ends.

(5) Condition 4 is that no sums or other benefits may be paid or conferred under the policy, except as mentioned in condition 1 or condition 3.

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(6) Condition 5 is that any sums payable or other benefits arising under the policy must (whether directly or indirectly) be paid to or for, or conferred on, or applied at the direction of—

(a) an individual or charity beneficially entitled to them, or

(b) a trustee or other person acting in a fiduciary capacity who will secure that the sums or other benefits are paid to or for, or conferred on, or applied in favour of, an individual or charity beneficially.

In this subsection "charity" means any body of persons or trust established for charitable purposes only.

(7) Condition 6 is that no person—

(a) who is an individual whose life is insured under the policy, or

(b) who is, within the meaning of section 839, connected with an individual whose life is so insured,

may, by virtue of a group membership right relating to that individual, receive (directly or indirectly) any death benefit in respect of another group member.

In this subsection—

(i) "group membership right", in relation to an individual, means any right (including the right of any person to be considered by trustees in their exercise of a discretion) that is referable to that individual's being one of the individuals whose lives are insured by the policy; and

(ii) "death benefit in respect of another group member" means—

(a) any sums or other benefits payable or arising under the policy on the death of any other of those individuals, or

(b) anything representing any such sums or benefits.

(8) Condition 7 is that a tax avoidance purpose is not the main purpose, or one of the main purposes, for which a person is at any time—

(a) the holder, or one of the holders, of the policy, or

(b) the person, or one of the persons, beneficially entitled under the policy.

In this subsection—

(i) "tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the holder of the policy or any other person); and

(ii) "tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance).**]**

Textual Amendments

F1083 S. 539A inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 2**

540 Life policies: chargeable events.

(1) [M1418]Subject to the provisions of this section, in this Chapter "chargeable event" means, in relation to a policy of life insurance—

(a) if it is not a qualifying policy, any of the following—

(i) any death giving rise to benefits under the policy;

(ii) the maturity of the policy;

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(iii) the surrender in whole of the rights conferred by the policy;

(iv) the assignment for money or money's worth of those rights; and

(v) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year; and

(b) if it is a qualifying policy (whether or not the premiums thereunder are eligible for relief under section 266), any of the above events, but—

(i) in the case of death or maturity, only if the policy is converted into a paid-up policy before the expiry of ten years from the making of the insurance, or, if sooner, of three-quarters of the term for which the policy is to run if not ended by death or disability;

(ii) in the case of a surrender or assignment or such an excess as is mentioned in paragraph (a)(v) above, only if it is effected or occurs within that time, or the policy has been converted into a paid-up policy within that time.

(2) [M1419]The maturity of a policy is not a chargeable event in relation thereto if—

(a) a new policy is issued in consequence of the exercise of an option conferred by the maturing policy, and

(b) the whole of the sums becoming payable under the maturing policy are retained by the company with whom the insurance was made and applied in the payment of one or more premiums under the new policy,

unless the circumstances are such that the person making the insurance in respect of which the new policy is issued was an infant when the former policy was issued, and the former policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining 25 or on the anniversary of the policy immediately following his attainment of that age.

(3) [M1420]Except as provided by section 544, no event is a chargeable event in relation to a policy issued in respect of an insurance made before 26th June 1982 if the rights conferred by the policy have at any time before that date and before the event been assigned for money or money's worth and are not at the time of the event held by the original beneficial owner.

(4) [M1421]No account shall be taken for the purposes of **[**[F1084]subsections (1) and (3) above**]** of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights or share concerned, or of any assignment between spouses living together.

(5) Where subsection (1)(b) applies to a policy which has been varied so as to increase the premiums payable thereunder, it shall so apply as if the references in subsection (1)(b)(i) to the making of the insurance and the term of the policy were references respectively to the taking effect of the variation and the term of the policy as from the variation.

[[F1085](5A) Sub-paragraphs (i) and (ii) of subsection (1)(b) above shall not apply inrelation to a policy issued in respect of an insurance made on or after 14th March 1989 if, immediately before the happening of the event, the rights conferred by the policy were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company.**]**

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(6) [M1422]This section has effect subject to paragraph 20 of Schedule 15.

Textual Amendments

F1084 Words in s. 540(4) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 3(2)**

F1085 S. 540(5A) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 3(3)**

Marginal Citations

M1418 Source-1970 s.394(1), (2); 1975 Sch.2 9(1), (2)

M1419 Source-1970 s.394(3); 1984 s.75(1)

M1420 Source-1970 s.394(4); 1983 s.18(1) 1975 Sch.2 10

M1421 Source-1970 s.394(5), (6); 1975 Sch.2 10

M1422 Source-1982 s.34

541 Life policies: computation of gain.

(1) [M1423]On the happening of a chargeable event in relation to any policy of life insurance, there shall be treated as a gain arising in connection with the policy—

(a) if the event is a death, the excess (if any) of the surrender value of the policy immediately before the death, plus the amount or value of any relevant capital payments, over the sum of the following—

(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;

(b) if the event is the maturity of the policy, or the surrender in whole of the rights thereby conferred, the excess (if any) of the amount or value of the sum payable or other benefits arising by reason of the event, plus the amount or value of any relevant capital payments, over the sum of the following—

(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;

(c) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or of any previously assigned share in the rights conferred by the policy, over the sum of the following—

(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below on the previous happening of chargeable events;

(d) if the event is the occurrence of such an excess as is mentioned in section 540(1)(a)(v), the amount of the excess.

(2) [M1424]Where, in a case falling within subsection (1)(b) above, a right to periodical payments arises by reason of the event, there shall be treated as payable by reason thereof an amount equal to the capital value of those payments at the time the right arises.

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(3) Where, in a case falling within subsection (1)(c) above, the assignment is between persons who are connected with each other within the meaning of section 839, the assignment shall be deemed to have been made for a consideration equal to the market value of the rights or share assigned.

(4) [M1425]Where there is an assignment, otherwise than for money or money's worth, of all the rights conferred by the policy, the calculations required to be made by section 546 shall be made, in the first instance, without regard to any surrender or assignment of part of or a share in those rights which takes place after the assignment, and any gain treated as arising under subsection (1)(d) above on the calculation so made shall be treated as arising to the assignor.

[[F1086](4A) Where, immediately before the happening of the chargeable event, the rights conferred by a qualifying endowment policy are held as security for a debt owed by a company, then, if—

(a) the conditions in subsection (4B) below are satisfied,

(b) the amount of the debt exceeds the total amount previously paid under the policy by way of premiums, and

(c) the company makes a claim for the purpose within two years after the end of the accounting period in which the chargeable event happens,

this section shall have effect as if the references in subsection (1)(a) and (b) to that total amount were references to the amount of the debt.

(4B) The conditions referred to in subsection (4A) above are—

(a) that, throughout the period beginning with the making of the insurance and ending immediately before the happening of the chargeable event, the rights conferred by the policy have been held as security for a debt owed by the company;

(b) that the capital sum payable under the policy in the event of death during the term of the policy is not less than the amount of the debt when the insurance was made;

(c) that any sum payable under the policy by reason of the chargeable event is applied in repayment of the debt (except to the extent that its amount exceeds the amount of debt);

(d) that the debt was incurred to defray money applied—

(i) in purchasing an estate or interest in land to be occupied by the company for the purposes of a trade carried on by it, or

(ii) for the purpose of the construction, extension or improvement (but not the repair or maintenance) of buildings which are or are to be so occupied.

(4C) If the amount of the debt is higher immediately before the happening of the chargeable event than it was at some earlier time during the period mentioned in subsection (4B)(a) above, the amount to be taken into account for the purposes of subsection (1) above shall be the lowest amount at which it stood during that period.

(4D) If during the period mentioned in subsection (4B)(a) above the company incurs a debt by borrowing in order to repay another debt, subsections (4B) and (4C) above shall have effect as if, where appropriate, references to either debt included references to the other.**]**

(5) [M1426]In this section—

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(a) "relevant capital payments" means, in relation to any policy, any sum or other benefit of a capital nature, other than one attributable to a person's disability, paid or conferred under the policy before the happening of the chargeable event; and

(b) references in this subsection and (in relation to premiums) in subsection (1) above to "the policy" include references to any related policy, that is to say, to any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, and any policy in relation to which that policy is such a policy, and so on; **[**[F1087]and

(c) "qualifying endowment policy" means a policy which is a qualifying policy by virtue of paragraph 2 of Schedule 15;**]**

and the provisions of this section are subject to paragraph 20 of Schedule 15.

(6) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the [M1427]Finance Act 1984 as an additional premium.

Textual Amendments

F1086 S. 541(4A)-(4D) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 4(2)**

F1087 S. 541(5)(c) and word inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 4(3)**

Modifications etc. (not altering text)

C539 S. 541 extended (retrospectively and with effect in accordance with s. 79(7)(8) of the extending Act) by Finance Act 1997 (c. 16), **s. 79(3)(b)**

Marginal Citations

M1423 Source-1970 s.395(1); 1975 Sch.2 11(1)

M1424 Source-1970 s.395 (2), (3)

M1425 Source-1970 s.395(3A); 1975 Sch.2 11(2)

M1426 Source-1970 s.395(4); 1982 s.34; 1975 Sch.2 10

M1427 1984 c. 43

542 Life annuity contracts: chargeable events.

(1) [M1428]Subject to subsections (2) and (3) below, in this Chapter "chargeable event" means, in relation to any contract for a life annuity—

(a) the surrender in whole of the rights conferred by the contract, or

(b) the assignment for money or money's worth of those rights, or

(c) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year.

(2) Where the terms of a contract provide for the payment of a capital sum as an alternative, in whole or in part, to payments by way of annuity, the taking of the capital sum shall be treated for the purposes of this section and section 543 as a surrender in whole or in part of the rights conferred by the contract, and where the terms of the contract provide for the payment of a capital sum on death and the contract was made

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on or after 10th December 1974, the death shall be treated for those purposes as a surrender in whole of the rights conferred by the contract.

(3) [M1429]Except as provided by section 544, an event referred to in subsection (1) above is not a chargeable event in relation to any contract made before 26th June 1982 if the rights conferred by the contract have at any time before that date and before the event been assigned for money or money's worth and are not at the time of the event held by the original beneficial owner.

(4) Subsection (4) of section 540 shall, with any necessary modifications, apply for the purposes of this section as it applies for the purposes of that section.

Marginal Citations

M1428 Source-1970 s.396(1); 396(1); 1975 Sch.2 9(3), 12

M1429 Source-1970 s.396(2), (3); 1983 s.18(2); 1975 Sch.2 12

543 Life annuity contracts: computation of gain.

[M1430](1) On the happening of a chargeable event in relation to any contract for a life annuity, there shall be treated as a gain arising in connection with the contract—

(a) if the event is the surrender in whole of the rights conferred by the contract, the excess (if any) of the amount payable by reason of the event plus the amount or value of any relevant capital payments over the sum of the following—

(i) the total amount previously paid under the contract, whether by way of premiums or as lump sum consideration, reduced, if before the happening of the event one or more payments have been made on account of the annuity, by the capital element in that payment or payments, as determined in accordance with section 656; and

(ii) the total amount treated as a gain by virtue of paragraph (c) below on the previous happening of chargeable events;

(b) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or of any previously assigned share in the rights conferred by the contract, over the sum of the following—

(i) the amount specified paragraph (a)(i) above; and

(ii) any amount treated as a gain by virtue of paragraph (c) below on the previous happenings of chargeable events;

(c) if the event is the occurrence of such an excess as is mentioned in section 542(1), the amount of the excess.

(2) Subsection (3) of section 541 shall apply for the purposes of subsection (1) above as it applies for the purposes of subsection (1)(c) of that section, and subsection (4) of that section shall apply for the purposes of this section with the substitution of references to the contract for references to the policy.

(3) In this section "relevant capital payments" means, in relation to any contract, any sum or other benefit of a capital nature paid or conferred under the contract before the happening of the chargeable event.

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Marginal Citations

M1430 Source-1970 s.397; 1975 Sch.2 13

544 Second and subsequent assignment of life policies and contracts.

(1) [M1431]In this section "assigned policy" means a policy of life assurance—

(a) which was issued in respect of an insurance made before 26th June 1982; and

(b) the rights conferred by which have been assigned for money or money's worth before that date; and

(c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.

(2) In this section "assigned contract" means a contract for a life annuity—

(a) which was made before 26th June 1982; and

(b) the rights conferred by which have been assigned for money or money's worth before that date; and

(c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.

(3) [M1432]In any case where after 23rd August 1982—

(a) the rights conferred by an assigned policy or, as the case may be, an assigned contract are again assigned for money or money's worth; or

(b) a payment is made by way of premium or as lump sum consideration under the policy or contract; or

(c) subject to subsections (5) and (7) below, a sum is lent by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;

section 540(3) shall cease to apply to the policy or section 542(3) shall cease to apply to the contract, as the case may be.

(4) [M1433]No account shall be taken for the purposes of subsection (3)(a) above of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights concerned, or of an assignment between spouses living together.

(5) [M1434]Subsection (3)(c) above does not apply unless—

(a) the policy was issued in respect of an insurance made after 26th March 1974 or, as the case may be, the contract was entered into after that date; and

(b) the sum concerned is lent to or at the direction of the individual who, in accordance with subsection (6) below, is at the time of the loan the chargeable individual.

(6) The individual who is at any time the chargeable individual for the purposes of subsection (5)(b) above shall be determined as follows—

(a) if at the time the rights conferred by the policy or contract are vested in an individual as beneficial owner or are held on trusts created by an individual (including such trusts as are referred to in section 547(1)(a)), that individual is the chargeable individual; and

(b) if at that time those rights are held as security for a debt owed by an individual, that individual is the chargeable individual.

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(7) Subsection (3)(c) above does not apply in relation to a policy if—
  (a) it is a qualifying policy; and
  (b) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling-house to be used as his only or main residence.

(8) [M1435]Where section 540(3) or 542(3) ceases to apply to an assigned policy or assigned contract by virtue of paragraph (c) of subsection (3) above, the lending of the sum concerned shall be regarded for the purposes of the Income Tax Acts (other than that paragraph) as taking place immediately after the time at which section 540(3) or, as the case may be, 542(3) ceases so to apply.

Marginal Citations

M1431 Source-1983 Sch.4 1
M1432 Source-1983 s.18(3), Sch.4 2(1)
M1433 Source-1983 Sch.4 2(2)
M1434 Source-1983 Sch.4 2(3)
M1435 Source-1983 Sch.4 2(4)

545 Capital redemption policies.

[M1436](1) Subject to subsection (2) below, in this Chapter "chargeable event" means, in relation to a capital redemption policy, any of the following—
  (a) the maturity of the policy, except where the sums payable on maturity are annual payments chargeable to tax under Schedule D;
  (b) the surrender in whole of the rights conferred by the policy;
  (c) the assignment for money or money's worth of those rights; and
  (d) an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section), except, if it ends with another chargeable event, the final year.

(2) Subsection (4) of section 540 shall apply for the purposes of this section as it applies for purposes of that section.

(3) The provisions of section 541, except subsection (3), shall, so far as appropriate and subject to subsection (4) below, apply to capital redemption policies as they apply to policies of life assurance.

(4) Where a chargeable event happens in relation to a capital redemption policy which has previously been assigned for money or money's worth, section 541 shall have effect in relation thereto as if, for the references to the total amount previously paid under the policy by way of premiums, there were substituted references to the amount or value of the consideration given for the last such assignment, plus the total amount of the premiums paid under the policy since that assignment.

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Marginal Citations

M1436 Source-1970 s.398; 1975 Sch.2 14, 9(4)

546 Calculation of certain amounts for purposes of sections 540, 542 and 545.

(1) [M1437]For the purposes of sections 540, 542 and 545, there shall be calculated as at the end of each year—

(a) the value, as at the time of surrender or assignment, of any part of or share in the rights conferred by the policy or contract which has been assigned or surrendered during the period ending with the end of that year and beginning with the commencement of the first year which falls wholly after 13th March 1975; and

(b) the appropriate portion of any payment made up to the end of that period by way of premium or as a lump sum consideration;

and the appropriate portion of any payment shall be one-twentieth for the year in which it is made, increased by a further one-twentieth for each of the subsequent years, up to a maximum of nineteen, but excluding therefrom any such one-twentieth for any year before that first year.

(2) [M1438]The reckonable aggregate value referred to in those sections shall be—

(a) the sum of the values calculated under subsection (1) above; less

(b) the sum of the values so calculated for a previous year and brought into account on the previous happening of a chargeable event.

(3) The allowable aggregate amount referred to in those sections shall be—

(a) the aggregate of the appropriate portions calculated under subsection (1) above; less

(b) the aggregate of the appropriate portions so calculated for a previous year and brought into account on the previous happening of a chargeable event.

(4) [M1439]In this section "year" means the 12 months beginning with the making of the insurance or contract and any subsequent period of 12 months; except that—

(a) death, the maturity of the policy or the surrender of the rights conferred by the policy or contract shall be treated as ending the final year; and

(b) if the final year would by virtue of paragraph (a) above begin and end in the same year of assessment, the final year and the year preceding it shall together be one year.

(5) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the [M1440]Finance Act 1984 as an additional premium.

Marginal Citations

M1437 Source-1975 Sch.2 9(5), (8)
M1438 Source-1975 Sch.2 9(6), (7)
M1439 Source-1975 Sch.2 9(9)
M1440 1984 c. 43

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VALID FROM 11/05/2001

[F1088 546A Treatment of certain assignments etc involving co-ownership

(1) This section applies in any case where—

(a) as a result of any transaction (the "material transaction") the whole or part of or a share in the rights conferred by a policy or contract ("the material interest") becomes beneficially owned by one person or by two or more persons jointly or in common ("the new ownership");

(b) immediately before the material transaction, the material interest was in the beneficial ownership of one person or of two or more persons jointly ("the old ownership"); and

(c) at least one person who is a member of the old ownership is also a member of the new ownership.

(2) In any such case, the material transaction shall, in accordance with the following provisions of this section, be taken for the purposes of this Chapter (other than this section) to be one or more assignments, of part only of the rights conferred by the policy or contract.

(3) For the purposes of this Chapter (other than this section), the members of the old ownership shall be treated—

(a) where the old ownership consists of two or more persons beneficially entitled jointly, as if the material interest had been in their beneficial ownership in equal shares instead of jointly;

(b) where the new ownership consists of two or more persons beneficially entitled jointly, as if the result of the material transaction had been that the material interest was in the beneficial ownership of those persons in equal shares instead of jointly; and

(c) as if the material transaction had been the assignment by each member of the old ownership of so much (if any) of his old share as exceeds his new share (or, if he does not have a new share, the whole of his old share).

(4) In this section—

"new share", in relation to the material interest and a person who is a member of the new ownership, means—

(a) if there is only one member of the new ownership, the material interest;

(b) if there are two or more members of the new ownership beneficially entitled to the material interest in common, the member's share in the material interest; or

(c) if there are two or more members of the new ownership beneficially entitled to the material interest jointly, the share attributed to the member by subsection (3)(b) above;

"old share", in relation to the material interest and a person who is a member of the old ownership, means—

(a) if there is only one member of the old ownership, the material interest; or

(b) if there are two or more members of the old ownership, the share attributed to the member by subsection (3)(a) above.**]**

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Textual Amendments

F1088 S. 546A inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 9**

VALID FROM 11/05/2001

[F1089 546B Special provision in respect of certain section 546 excesses

(1) This section applies in relation to a policy or contract in any case where—

(a) a section 546 excess occurs at the end of any year (including the final year, whether or not ending with a terminal chargeable event); and

(b) the condition in subsection (2) below is satisfied in relation to that year.

(2) The condition is that—

(a) during the year there has been an assignment for money or money's worth of part of or a share in the rights conferred by the policy or contract; or

(b) during the year there has been both—

(i) an assignment, otherwise than for money or money's worth, of the whole or part of or a share in the rights conferred by the policy or contract; and

(ii) an earlier surrender of part of or a share in the rights conferred by the policy or contract.

(3) Where this section applies—

(a) the occurrence of the section 546 excess shall be treated for the purposes of this Chapter as not being a chargeable event; but

(b) the amount of the section 546 excess shall be charged to tax in accordance with the provisions of section 546C.

(4) In this section—

"final year" has the meaning given by section 546(4);

"section 546 excess", in relation to any year, means an excess, occurring at the end of the year, of—

(a) the reckonable aggregate value mentioned in subsection (2) of section 546, over

(b) the allowable aggregate amount mentoned in subsection (3) of that section;

"terminal chargeable event" means any chargeable event other than—

(a) an assignment for money or money's worth of the whole of the rights conferred by the policy or contract;

(b) the occurrence of a section 546 excess; or

(c) a chargeable event by virtue of section 546C(7)(a);

"year" has the meaning given by section 546(4).**]**

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Textual Amendments

F1089 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

VALID FROM 11/05/2001

[F1089 546C Charging the section 546 excess to tax where section 546B applies

(1) This section applies where, in relation to any policy or contract, the amount of a section 546 excess occurring at the end of any year falls to be charged to tax in accordance with this section by virtue of section 546B(3)(b).

(2) The following amounts shall be calculated as at the end of that year—

(a) the aggregate of the values calculated under section 546(1)(a) in respect of any part of or share in the rights conferred by the policy or contract which has been assigned for money or money's worth, or surrendered, during the year;

(b) the amount by which—

(i) the reckonable aggregate value mentioned in section 546(2), as at the end of the year, exceeds

(ii) the aggregate calculated under paragraph (a) above;

and

(c) the amount by which—

(i) the allowable aggregate amount mentioned in section 546(3), as at the end of the year, exceeds

(ii) the amount calculated under paragraph (b) above.

(3) In this section—

(a) "relevant transaction" means any assignment for money or money's worth, or any surrender, of a part of or share in the rights conferred by the policy or contract which has happened during the year;

(b) "transaction value", in relation to any relevant transaction, means the value calculated in accordance with section 546(1)(a) in the case of that transaction;

(c) "the amount of available premium" means—

(i) in relation to the earliest relevant transaction, the amount calculated under subsection (2)(c) above (that amount being taken to be nil if there is no such excess as is there mentioned); and

(ii) in relation to each successive relevant transaction, that amount as successively reduced under subsections (5) to (7) below.

(4) Subsection (5) below shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened.

If the year is the final year and ends with a terminal chargeable event, this subsection is subject to section 546D.

(5) Where this subsection applies in relation to a relevant transaction—

(a) the transaction value shall be compared to the amount of available premium; and

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(b) if the amount of available premium exceeds or is equal to the transaction value, subsection (6) below shall apply in relation to the transaction; but

(c) if the transaction value exceeds the amount of available premium, subsection (7) below shall apply in relation to the transaction.

(6) Where this subsection applies in relation to a relevant transaction—

(a) the amount of available premium shall be reduced (or further reduced) by the transaction value; and

(b) that reduction shall have effect in relation to the next subsequent relevant transaction.

(7) Where this subsection applies in relation to a relevant transaction—

(a) the relevant transaction shall for the purposes of this Chapter be a chargeable event in relation to the policy or contract, except as provided by sections 540(3) and 542(3);

(b) a gain of an amount equal to that by which the transaction value exceeds the amount of available premium shall be treated for the purposes of this Chapter as arising in connection with the policy or contract on the happening of that chargeable event; and

(c) in relation to any subsequent relevant transaction, the amount of available premium shall be reduced to nil.

(8) Where the whole or any part of the amount of any gain treated as arising by subsection (7)(b) above falls to be treated under any provision of section 547 as forming part of the income of any body or person for—

(a) the year of assessment in which the chargeable event in question happened, or

(b) the accounting period in which it happened,

that year of assessment or accounting period shall be taken to be the one which includes the end of the year as at which the section 546 excess in question occurs, instead of the one (if different) in which the relevant transaction happened.

(9) Where this section applies in relation to the final year and that year ends with a terminal chargeable event—

(a) effect shall be given to this section before applying the provisions of this Chapter in relation to the terminal chargeable event; and

(b) in applying this Chapter in relation to the terminal chargeable event, any chargeable event by virtue of subsection (7)(a) above accordingly falls to be regarded as having occurred before the terminal chargeable event.

(10) This section shall be construed as one with section 546B.**]**

Textual Amendments

F1089 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

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VALID FROM 11/05/2001

[F1089 546D Modifications of s.546C for final year ending with terminal chargeable event

(1) This section applies in any case where the year mentioned in section 546C(4) is the final year and that year ends with a terminal chargeable event.

(2) In any such case there shall be calculated, as at the end of the year, the amount of the gain ("the gains limit") that would have been treated as arising on the happening of the terminal chargeable event, apart from the application of sections 546B and 546C in relation to that year.

(3) Subsection (5) of section 546C shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened, unless and until the transaction in question (the "final transaction") is such that the aggregate of—

(a) its transaction value apart from subsection (4) below, and

(b) the sum of the transaction values of any relevant transactions to which subsection (5) of that section has previously applied,

exceeds the gains limit.

(4) If, in the case of the final transaction,—

(a) the aggregate mentioned in subsection (3) above exceeds the gains limit, but

(b) the sum mentioned in paragraph (b) of that subsection is less than that limit,

subsection (5) of section 546C shall apply in relation to that transaction, but for the purposes of subsections (5) to (7) of that section its transaction value shall be reduced to an amount equal to the difference between the gains limit and the sum mentioned in paragraph (b) above.

(5) Except as provided by subsection (4) above, subsection (5) of section 546C shall not apply in relation to the final transaction or any subsequent relevant transaction.

(6) This section shall be construed as one with sections 546B and 546C.**]**

Textual Amendments

F1089 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

547 Method of charging gain to tax.

(1) [M1441] Where under section 541, 543 or 545 a gain is to be treated as arising in connection with any policy or contract—

(a) if, immediately before the happening of the chargeable event in question, the rights conferred by the policy or contract were vested in an individual as beneficial owner, or were held on trusts created by an individual (including trusts arising under section 11 of the [M1442] Married Women's Property Act 1882, section 2 of the [M1443] Married Women's Policies of Assurance (Scotland) Act 1880 or section 4 of the [M1444] Law Reform (Husband and Wife) Act (Northern Ireland) 1964 or as security for a debt owed by an individual, the

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amount of the gain shall be deemed to form part of that individual's total income for the year in which the event happened;

[[F1090](b) if, immediately before the happening of that event, those rights were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company, the amount of the gain shall be deemed to form part of the company's income (chargeable under Case VI of Schedule D) for the accounting period in which the event happened;**]**

(c) if, immediately before the happening of that event, those rights were vested in personal representatives, within the meaning of Part XVI, the amount of the gain shall be deemed for the purposes of that Part to be part of the aggregate income of the estate of the deceased.

(2) Nothing in subsection (1) above shall apply to any amount which is chargeable to tax apart from that subsection.

(3) [M1445]Where, immediately before the happening of a chargeable event, the rights conferred by any policy or contract were vested beneficially in two or more persons, or were held on trusts created, or as security for a debt owed, by two or more persons, subsection (1)(a) and (b) above shall have effect in relation to each of those persons as if he had been the sole owner, settlor or debtor, but with references to the amount of the gain construed as references to the part of it proportionate to his share in the rights at the time of the event or, as the case may require, when the trusts were created.

(4) References in subsections (1) and (3) above to the rights conferred by a policy or contract are, in the case of an assignment of a share only in any rights, references to that share.

(5) [M1446]Subject to subsections (6) and (7) below and section 550, where by virtue of subsection (1) above, a sum is included in an individual's total income—

(a) no assessment shall be made on him in respect of income tax at the basic rate on that sum but he shall be treated as having paid income tax at the basic rate on that sum or, if his total income is reduced by any deductions, on so much of that sum as is part of his total income as so reduced;

(b) no repayment shall be made of the income tax treated by virtue of paragraph (a) above as having been paid; and

(c) the sum so included shall be treated **[**[F1091]as income which is not chargeable at the lower rate and**]** for the purposes of sections 348 and 349(1) as not brought into charge to income tax.

[[F1092](5A) Where a gain is to be treated under section 543 as arising in connection with a contract for a life annuity made—

(a) after 26th March 1974, and

(b) unless the contract falls, or has at any time fallen, to be regarded as not forming part of any insurance company or friendly society's basic life assurance and general annuity business the income and gains of which are subject to corporation tax, in an accounting period of the insurance company or friendly society beginning before 1st January 1992,

subsection (6) below shall apply in relation to the gain unless subsection (7) below applies in relation to it.**]**

(6) **[**[F1093M1447]Where this subsection applies in relation to such a gain as is mentioned in subsection (5A) above**]**—

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(a) this section shall have effect, in relation to the gain, as if subsection (5) were omitted; and

(b) the gain shall be chargeable to tax under Case VI of Schedule D; but

(c) any relief under section 550 shall be computed as if this subsection had not been enacted.

(7) [M1448]Where under section 541 or 543 a gain is to be treated as arising in connection with a policy issued by a friendly society in the course of tax exempt life or endowment business, this section shall have effect in relation to the gain as if subsection (5) were omitted, but any relief under section 550 shall be computed as if this subsection had not been enacted.

[[F1094](8) Subsection (1)(b) above shall not have effect as respects—

(a) a policy of life insurance issued in respect of an insurance made before 14th March 1989,

(b) a contract for a life annuity made before that date, or

(c) a capital redemption policy issued in respect of an insurance made before that date, or issued by a company resident in the United Kingdom in respect of an insurance made on or after that date.**]**

[[F1095](9) In this section "basic life assurance and general annuity business" has the same meaning as in Chapter I of Part XII.**]**

Textual Amendments

F1090 S. 547(1)(b) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), Sch. 9 para. 5(3)

F1091 Words in s. 547(5)(c) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(4)(7)**

F1092 S. 547(5A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(1)**

F1093 Words in s. 547(6) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(2)**

F1094 S. 547(8) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 5(3)**

F1095 S. 547(9) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(3)**

Marginal Citations

M1441 Source-1970 s.399(1); 1972 Sch.24 24

M1442 1882 c. 75.

M1443 1880 c. 56.

M1444 1964 c. 23 (N.I.).

M1445 Source-1970 s.399(2), (3)

M1446 Source-1970 s.399(4); 1971 Sch.6 42

M1447 Source-1975 Sch.2 17

M1448 Source-1985 s.41(9); 1987 s.30(8)

VALID FROM 31/07/1998

[F1096547A Method of charging gain to tax: multiple interests.

(1) Where, immediately before the happening of a chargeable event, two or more persons have relevant interests in the rights conferred by the policy or contract in question, section 547 shall have effect in relation to each of those persons as if that person

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had been the only person with a relevant interest in those rights, but with references to the amount of the gain construed as references to his proportionate share of the amount of the gain.

(2) References in this section to the rights conferred by a policy or contract are, in the case of an assignment of a share only in any rights, references to that share.

(3) For the purposes of this section, a person has a "relevant interest" in the rights conferred by a policy or contract—

(a) in the case of an individual, if a share in the rights is vested in him as beneficial owner, or is held on trusts created, or as security for a debt owed, by him;

(b) in the case of a company, if a share in the rights is in the beneficial ownership of the company, or is held on trusts created, or as security for a debt owed, by the company;

(c) in the case of personal representatives, if a share in the rights is vested in them;

(d) in the case of trustees—

(i) if a share in the rights is held by them, and the person who created the trusts is not resident in the United Kingdom or has died or (in the case of a company or foreign institution) has been dissolved or wound up or has otherwise come to an end; or

(ii) if a share in the rights is held as security for a debt owed by them;

(e) in the case of a foreign institution, if a share in the rights is in the beneficial ownership of the foreign institution, or is held as security for a debt owed by the foreign institution.

(4) For the purposes of subsection (1) above, a person's "proportionate share" of the amount of a gain is that share of it which is proportionate to the share of the rights by reference to which he has the relevant interest in question.

(5) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held as security for one or more debts owed by two or more persons, this section shall effect in relation to the chargeable event as if—

(a) each of those persons were instead the sole debtor in respect of a separate debt; and

(b) the security for that separate debt were the appropriate share of the security for the actual debt or debts (so far as consisting of the rights, or a share in the rights, conferred by the policy or contract);

and for the purposes of paragraph (b) above the appropriate share, in the case of any person, is a share which is proportionate to that share of the actual debt or, as the case may be, the aggregate of the two or more actual debts, for which he is liable as between the debtors.

(6) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held on trusts created by two or more persons, this section shall have effect in relation to that chargeable event as if—

(a) each of those persons had instead been the sole settlor in relation to a separate share of the rights or share so held; and

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(b) that separate share were proportionate to the share which originates from him of the whole of the property subject to the trusts immediately before the happening of the chargeable event.

(7) The reference in subsection (6)(b) above to the share of the property which originates from a person is a reference to the share of the property which consists of—
(a) property which that person has provided directly or indirectly for the purposes of the trusts;
(b) property representing property which that person has so provided; and
(c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.

(8) References in subsection (7) above to property which a person has provided directly or indirectly—
(a) include references to property which has been provided directly or indirectly by another in pursuance of reciprocal arrangements with the person, but
(b) do not include references to property which the person has provided directly or indirectly in pursuance of reciprocal arrangements with another.

(9) References in subsection (7) above to property which represents other property include references to property which represents accumulated income from that other property.

(10) Where immediately before the happening of a chargeable event—
(a) the rights conferred by the policy or contract in question are, or a share in those rights is, held subject to any trusts, and
(b) different shares of the whole of the property subject to those trusts originate (within the meaning of subsection (6)(b) above) from different persons,

the rights or share shall, in relation to that chargeable event, be taken for the purposes of this section to be held on trusts created by those persons.

(11) Where the rights conferred by a policy or contract are, or an interest in any such rights is, in the beneficial ownership of two or more persons jointly, the rights or interest shall be treated for the purposes of this section as if they were in the beneficial ownership of those persons in equal shares.

(12) A non-fractional interest in the rights conferred by a policy or contract shall be treated for the purposes of this section as if it were instead such a share in those rights as may justly and reasonably be regarded for those purposes as representing the non-fractional interest.

(13) For the purposes of subsection (12) above, a “non-fractional interest" in the rights conferred by a policy or contract is an interest in some or all of those rights which is not a share in all of those rights (otherwise than by virtue only of subsection (2) above).

(14) This section applies in a case where the same person has two or more relevant interests in the rights conferred by a policy or contract as it applies in a case where two or more persons have separate relevant interests, unless—
(a) that person is the only person with a relevant interest in those rights, and
(b) he has all the relevant interests in the same capacity,

in which case section 547 applies.

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(15) In this section—

"foreign institution" has the same meaning as in section 547;

"personal representatives" has the same meaning as in Part XVI.

(16) Subsections (12) and (14) of section 547 apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F1096 S. 547A inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 2**

548 Deemed surrender of certain loans.

(1) Where— [M1449]

(a) under section 547 a gain arising in connection with a policy or contract would be treated as forming part of an individual's total income **[**[F1097]or the income of a company**]** ; and

(b) the policy was issued in respect of an insurance made after 26th March 1974 or the contract was made after that date; and

(c) any sum is at any time after the making of the insurance or contract lent to or at the direction of that individual **[**[F1098]or company**]** by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;

then, subject to **[**[F1099]subsections (3) and (3A)**]** below, the same results shall follow under this Chapter as if at the time the sum was lent there had been a surrender of part of the rights conferred by the policy or contract and the sum had been paid as consideration for the surrender.

(2) If the whole or any part of the sum is repaid the repayment shall be treated, for the purpose of computing any gain arising on the happening, at the end of the final year, of a chargeable event, as a payment of a premium or lump sum consideration.

(3) Subsections (1) and (2) above do not apply in relation—

(a) to a policy if—

(i) it is a qualifying policy; and

(ii) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling used or to be used as his only or main residence;

(b) to a contract if and to the extent that interest on the sum lent is eligible for relief under section 353 by virtue of section 365.

[[F1100](3A) Subsections (1) and (2) do not apply where the rights conferred by thepolicy or contract are in the beneficial ownership of a company, or are heldon trusts created, or as security for a debt owed, by a company, if the policywas issued in respect of an insurance made before 14th March 1989 or thecontract was made before that date.**]**

(4) In this section "final year" has the same meaning as in section 546.

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Textual Amendments

F1097 Words in s. 548(1)(a) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(2)(a)**

F1098 Words in s. 548(1)(c) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(2)(b)**

F1099 Words in s. 548(1) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(2)(c)**

F1100 S. 548(3A) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(3)**

Marginal Citations

M1449 Source-1975 Sch.2 16; 1976 s.35

VALID FROM 19/07/2007

[F1101 548A Effect of rebated or reinvested commission in certain cases

(1) This section applies if—
- (a) a relevant chargeable event occurs in respect of a policy or contract,
- (b) commission in respect of the policy or contract has at any time been rebated or reinvested, and
- (c) condition A or B is met.

(2) For the purposes of performing the calculation under section 541(1)(b) or (c) or 543(1)(a) or (b) for the chargeable event, the total amount paid under the policy or contract by way of premiums in any period is to be reduced by the total amount of commission attributable to those premiums that has been rebated or reinvested.

(3) Condition A is that the total amount paid under the policy or contract by way of premiums in a relevant period exceeds £100,000.

(4) Condition B is that—
- (a) at a time when the policy or contract was the taxable person's, the taxable person's policies and contracts exceeded the relevant threshold as respects a relevant period, and
- (b) payments under the policy or contract by way of premiums were made in that relevant period.

(5) In subsection (4)(a) "taxable person" means the person whose policy or contract the policy or contract is, immediately before the chargeable event.

(6) For the purposes of subsection (4)(a) a person's policies and contracts "exceed the relevant threshold" as respects a relevant period if the total amount of payments under them by way of premiums in that relevant period exceeds the sum specified in subsection (3).

(7) In this section "relevant chargeable event" means a chargeable event within—
- (a) any of sub-paragraphs (ii) to (iv) of section 540(1)(a) (including those sub-paragraphs as they apply in relation to a qualifying policy),
- (b) section 542(1)(a) or (b), or

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(c) section 545(1)(a) to (c).

(8) In this section "relevant period" means—

(a) the period beginning with the beginning of the year of assessment in which the chargeable event occurs and ending with the chargeable event, or

(b) any of the 3 preceding years of assessment.

(9) References in this section to a premium include, in relation to a contract for a life annuity, lump sum consideration.

(10) The Treasury may by order—

(a) substitute another sum for the sum for the time being specified in subsection (3);

(b) amend the definition of "relevant period".**]**

Textual Amendments

F1101 Ss. 548A, 548B inserted (with effect in accordance with s. 29(4) of the amending Act) by Finance Act 2007 (c. 11), **s. 29(1)**

VALID FROM 19/07/2007

[F1101 548B Section 548A: further definitions

(1) This section supplements section 548A.

(2) "Commission", in relation to a policy or contract, includes any passing of value to or for the benefit of an intermediary, or a person connected with an intermediary, that can reasonably be taken to represent a reward in respect of the policy or contract.

(3) Commission in respect of a policy or contract is "reinvested" if, as a result of a waiver of an entitlement to it, there is an increase in the total value of a relevant person's policies and contracts.

(4) The amount of commission reinvested is the amount of the increase.

(5) Commission in respect of a policy or contract is "rebated" if—

(a) value passes (directly or indirectly) from an intermediary, or a person connected with an intermediary, to or for the benefit of a relevant person (and the passing of value does not amount to the reinvestment of the commission), and

(b) the passing of value can reasonably be taken to be in respect of the commission.

(6) The amount of commission rebated is the amount of value passed.

(7) A policy or contract is a person's policy or contract if a gain arising in connection with it would be—

(a) a gain for which the person, or (if the person is an individual) the person's spouse or civil partner, would be liable to tax under Chapter 9 of Part 4 of ITTOIA 2005, or

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(b) treated by virtue of section 547(1) above as forming part of the person's income.

(8) Any necessary apportionment is to be made (on a just and reasonable basis) as regards—
(a) commission which is attributable to two or more premiums, and
(b) any part of such commission that has been rebated or reinvested.

(9) Commission which is in respect of one or more policies or contracts (but is not attributable to particular premiums) is to be attributed to such premiums as is just and reasonable.

(10) In subsections (3) and (5), "relevant person" means—
(a) any of the policyholders (including any of the persons who hold the contract),
(b) a person who beneficially owns the rights under the policy or contract,
(c) if those rights are held on trust, any of the trustees, or
(d) a person connected (within the meaning of section 839) with a person within any of paragraphs (a) to (c).

(11) In subsections (8) and (9), references to a premium include, in relation to a contract for a life annuity, lump sum consideration.**]**

Textual Amendments

F1101 Ss. 548A, 548B inserted (with effect in accordance with s. 29(4) of the amending Act) by Finance Act 2007 (c. 11), **s. 29(1)**

549 Certain deficiencies allowable as deductions.

M1450(1) Subject to subsection (2) below, where such an excess as is mentioned in section 541(1)(a) or (b) or 543(1)(a)—
(a) would be treated as a gain arising in connection with a policy or contract, and
(b) would form part of an individual's total income for the year of assessment in which the final year ends,

a corresponding deficiency occurring at the end of the final year shall be allowable as a deduction from his total income for that year of assessment, so far as it does not exceed the total amount treated as a gain by virtue of section 541(1)(d) or 543(1)(c) on the previous happenings of chargeable events.

(2) Except where the deficiency mentioned in subsection (1) above occurs in connection with a contract for a life annuity made after 26th March 1974 **[**F1102but in an accounting period of the insurance company or friendly society beginning before 1st January 1992,**]**, the deduction allowable under that subsection shall be made only for the purposes of ascertaining the individual's excess liability, that is to say, the excess (if any) of his liability to income tax over what it would be if all income tax **[**F1103not chargeable at the lower rate**][**F1104by virtue of section 1(2)(aa) were chargeable at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

(3) In this section "final year" has the same meaning as in section 546.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F1102 Words in s. 549(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(4)**

F1103 Words in s. 549(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1104 Words in s. 549(2) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 79**, SCh. 6 paras. 6, 25(1)

Marginal Citations

M1450 Source-1975 Sch.2 19; 1975 (No.2) s.40

550 Relief where gain charged at a higher rate.

(1) [M1451]The following provisions of this section shall have effect for the purposes of giving relief, on a claim in that behalf being made by him to the Board, in respect of any increase in an individual's liability to tax which is attributable to one or more amounts being included in his total income for a year of assessment by virtue of section 547(1)(a).

(2) Where one amount only is so included, there shall be computed—

(a) the tax which would be chargeable in respect of the amount if relief under this section were not available and it constituted the highest part of the claimant's total income for the year, and

(b) the tax (if any) which would be chargeable in respect of the amount if calculated, in accordance with subsection (3) below, by reference to its appropriate fraction;

and the relief shall consist of a reduction or repayment of tax equal to the difference between the two amounts of tax so computed, or, if tax would not be chargeable on a calculation by reference to the appropriate fraction, of a reduction or repayment of the tax equal to the tax computed under paragraph (a) above.

(3) In subsection (2) above "appropriate fraction" means, in relation to any amount, such a sum as bears thereto the same proportion as that borne by one to the number of complete years for which the policy or contract has run before the happening of the chargeable event; and the computation required by paragraph (b) of that subsection shall be made by applying to the amount in question such rate or rates of income tax, other than the basic rate **[**[F1105]or the lower rate**]**, as would apply if it were reduced to that fraction and, as so reduced, still constituted the highest part of the claimant's total income for the year.

(4) For the purposes of subsection (3) above the number of years for which a policy of life insurance has run before the happening of a chargeable event shall be calculated, where appropriate, from the issue of the earliest related policy, meaning, any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, any policy in relation to which that policy is such a policy, and so on.

(5) [M1452]Where a chargeable event on the happening of which an amount is included in an individual's total income by virtue of section 547(1)(a) follows the happening of another chargeable event in relation to the same policy or contract, and each of those events is such an excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d), subsections (3) and (4) above shall have effect in relation to that amount as if the number of complete years referred to in subsection (3) were the number of complete

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years elapsing between that other event (or, if more than one, the last of them) and the first-mentioned event.

(6) [M1453]Where by virtue of section 547(1)(a) two or more amounts are included in an individual's total income for any year of assessment, subsections (2) and (3) above shall apply as if they together constituted a single amount, but with the approporiate fraction of the whole determined by adding together the appropriate fractions of the individual amounts.

(7) A provision of this section requiring tax to be calculated as if an amount constituted the highest part of a claimant's total income shall apply notwithstanding any other provision of the Income Tax Acts directing any other amount to be treated as the highest part thereof, but, for the purposes of this section, a claimant's total income shall be deemed not to include any amount in respect of which he is chargeable to tax under section 34, 35, 36 or 148.

Textual Amendments

F1105 Words in s. 550(3) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(2)(7)**

Marginal Citations

M1451 Source-1970 s.400(1)-(3); 1971 Sch.6 43
M1452 Source-1975 Sch.2 18
M1453 Source-1970 s.400(4), (5); 1971 Sch.6 43

551 Right of individual to recover tax from trustees.

[M1454](1) Where—

(a) an amount is included in an individual's income by virtue of section 547(1)(a), and

(b) the rights or share in question were held immediately before the happening of the chargeable event on trust,

the individual shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, an amount equal to that (if any) by which the tax with which he is chargeable for the year of assessment in question, reduced by the amount of any relief available under section 550 in respect of the amount so included, exceeds the tax with which he would have been chargeable for the year if that amount had not been so included.

(2) Where, for the purposes of relief under section 550, two or more amounts are to be treated as one, the reduction required by subsection (1) above on account of the relief available in respect of any of them shall consist of a proportionate part of the relief available in respect of their aggregate.

(3) An individual may require the Board to certify any amount recoverable by him by virtue of this section, and the certificate shall be conclusive evidence of the amount.

Marginal Citations

M1454 Source-1970 s.401

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VALID FROM 31/07/1998

[F1106 551A Right of company to recover tax from trustees.

(1) Where—

(a) an amount is included in a company's income by virtue of section 547(1)(b), and

(b) the rights or share in question were held immediately before the happening of the chargeable event on trust,

the company shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, the amount (if any) by which T1 exceeds T2.

(2) For the purposes of subsection (1) above—

T1 is the tax with which the company is chargeable for the accounting period in question; and

T2 is the tax with which the company would have been chargeable for the accounting period if the amount mentioned in subsection (1)(a) above had not been included as there mentioned.

(3) A company may require the Board to certify any amount recoverable by the company by virtue of this section, and the certificate shall be conclusive evidence of the amount.**]**

Textual Amendments

F1106 Ss. 551A inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 3**

552 Information: duty of insurers.

(1) [M1455]Subject to subsections (2) to (5) below, where a chargeable event within the meaning of this Chapter has happened in relation to any policy or contract, the body by or with whom the policy or contract was issued, entered into or effected shall, within three months of the event or, if it is a death or an assignment, within three months of their receiving written notification thereof, deliver to the inspector a certificate specifying—

(a) the name and address of the policy holder;

(b) the nature of the event, and the date on which it happened;

(c) as may be required for computing the gain to be treated as arising by virtue of this Chapter—

(i) the surrender value of the policy, or the sum payable, or other benefits to be conferred, by the body in question by reason of the event;

(ii) the amount or value of any relevant capital payments;

(iii) the amounts previously paid under the policy or contract by way of premiums, or otherwise by way of consideration for an annuity; and

(iv) the capital element in any payment previously made on account of an annuity;

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(d) the number of years relevant for computing the appropriate fraction of the gain for the purposes of section 550(3).

(2) Subsection (1) above shall not apply where—

(a) the body in question are satisfied that no gain is to be treated as arising by reason of the event, or

(b) the amount of the surrender value or sum, or the value of the other benefits, referred to in paragraph (c)(i) of that subsection, together with the amount or value of any payments within paragraph (c)(ii) of that subsection, does not exceed £500, **[**[F1107]or

(c) the event is a chargeable event only because of section 540(5A).**]**

but the inspector may by notice require a like certificate in any such case, and it shall be the duty of the body to deliver the certificate within 30 days of receipt of the notice.

(3) [M1456]Where the chargeable event is an assignment of all the rights conferred by the policy or contract the certificate shall also specify any such excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d) which has occurred since the relevant date, the date on which it occurred and the value of the part of or share in the rights which have been surrendered or assigned since the relevant date.

(4) Where the chargeable event is the occurrence of such an excess as is mentioned in section 540(1)(a)(v), 542(1) or 545(1)(d), subsections (1) and (2) above shall apply with the omission of paragraph (b) of subsection (2) and the certificate shall also specify the value of the part of or share in the rights surrendered or assigned in any year since the relevant date and the amounts paid by way of premiums in any year since the relevant date.

(5) In subsections (3) and (4) above—

"year" has the same meaning as in section 546(4); and

"the relevant date", in relation to any certificate, means the date of the chargeable event in respect of which the last certificate under this section was delivered or, if none was delivered, the commencement of the policy or contract.

Textual Amendments

F1107 S. 552(c) and word inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 7**

Marginal Citations

M1455 Source-1970 s.402

M1456 Source-1975 Sch.2 20

VALID FROM 11/05/2001

[F1108]552ZA Information: supplementary provisions

(1) This section supplements section 552 and shall be construed as one with it.

(2) Where the obligations under any policy or contract of the body that issued, entered into or effected it ("the original insurer") are at any time the obligations of another

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body ("the transferee") to whom there has been a transfer of the whole or any part of a business previously carried on by the original insurer, section 552 shall have effect in relation to that time, except where the chargeable event—

(a) happened before the transfer, and

(b) in the case of a death or an assignment, is an event of which the notification mentioned in subsection (6) or (7) of that section was given before the transfer,

as if the policy or contract had been issued, entered into or effected by the transferee.

(3) Where, in consequence of section 546C(7)(a), paragraph (a) or (b) of section 552(1) requires certificates to be delivered in respect of two or more surrenders, happening in the same year, of part of or a share in the rights conferred by the policy or contract, a single certificate may be delivered under the paragraph in question in respect of all those surrenders (and may treat them as if they together constituted a single surrender) unless between the happening of the first and the happening of the last of them there has been—

(a) an assignment of part of or a share in the rights conferred by the policy or contract; or

(b) an assignment, otherwise than for money or money's worth, of the whole of the rights conferred by the policy or contract.

(4) Where the appropriate policy holder is two or more persons—

(a) section 552(1)(a) requires a certificate to be delivered to each of them; but

(b) nothing in section 552 or this section requires a body to deliver a certificate under subsection (1)(a) of that section to any person whose address has not been provided to the body (or to another body, at a time when the obligations under the policy or contract were obligations of that other body).

(5) A certificate under section 552(1)(b) or (3)—

(a) shall be in a form prescribed for the purpose by the Board; and

(b) shall be delivered by any means prescribed for the purpose by the Board;

and different forms, or different means of delivery, may be prescribed for different cases or different purposes.

(6) The Board may by regulations make such provision as they think fit for securing that they are able—

(a) to ascertain whether there has been or is likely to be any contravention of the requirements of section 552 or this section; and

(b) to verify any certificate under that section.

(7) Regulations under subsection (6) above may include, in particular, provisions requiring persons to whom premiums under any policy are or have at any time been payable—

(a) to supply information to the Board; and

(b) to make available books, documents and other records for inspection on behalf of the Board.

(8) Regulations under subsection (6) above may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.**]**

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Textual Amendments

F1108 Ss. 552, 552ZA substituted for s. 552 (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 18**

VALID FROM 17/07/2013

[F1109 552ZB Regulations in relation to qualifying policies

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations—

(a) requiring relevant persons—

(i) to provide prescribed information to persons who apply for the issue of qualifying policies or who are, or may be, required to make statements under paragraph B3(2) of Schedule 15;

(ii) to provide to an officer of Revenue and Customs prescribed information about qualifying policies which have been issued by them or in relation to which they are or have been a relevant transferee;

(b) making such provision (not falling within paragraph (a)) as the Commissioners think fit for securing that an officer of Revenue and Customs is able—

(i) to ascertain whether there has been or is likely to be any contravention of the requirements of the regulations or of paragraph B3(2) of Schedule 15;

(ii) to verify any information provided to an officer of Revenue and Customs as required by the regulations.

(2) The provision that may be made by virtue of subsection (1)(b) includes, in particular, provision requiring relevant persons to make available books, documents and other records for inspection by or on behalf of an officer of Revenue and Customs.

(3) The regulations may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) In this section—

"prescribed" means prescribed by the regulations,

"qualifying policy" includes a policy which would be a qualifying policy apart from—

(a) paragraph A1(2), B1(2), B2(2) or B3(3) of Schedule 15, or

(b) paragraph 17(2)(za) of that Schedule (including as applied by paragraph 18), and

"relevant person" means a person—

(a) who issues, or has issued, qualifying policies, or

(b) who is, or has been, a relevant transferee in relation to qualifying policies.

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(5) For the purposes of this section a person ("X") is at any time a "relevant transferee" in relation to a qualifying policy if the obligations under the policy of its issuer are at that time the obligations of X as a result of there having been a transfer to X of the whole or any part of a business previously carried on by the issuer.**]**

Textual Amendments

F1109 S. 552ZB inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 10**

VALID FROM 31/07/1998

[F1110 552A Tax representatives.

(1) This section has effect for the purpose of securing that, where it applies to an overseas insurer, another person is the overseas insurer's tax representative.

(2) In this section "overseas insurer" means a person who is not resident in the United Kingdom who carries on a business which consists of or includes the effecting and carrying out of—
  (a) policies of life insurance;
  (b) contracts for life annuities; or
  (c) capital redemption policies.

(3) This section applies to an overseas insurer—
  (a) if the condition in subsection (4) below is satisfied on the designated day; or
  (b) where that condition is not satisfied on that day, if it has subsequently become satisfied.

(4) The condition mentioned in subsection (3) above is that—
  (a) there are in force relevant insurances the obligations under which are obligations of the overseas insurer in question or of an overseas insurer connected with him; and
  (b) the total amount or value of the gross premiums paid under those relevant insurances is £1 million or more.

(5) In this section "relevant insurance" means any policy of life insurance, contract for a life annuity or capital redemption policy in relation to which this Chapter has effect and in the case of which—
  (a) the holder is resident in the United Kingdom;
  (b) the obligations of the insurer are obligations of a person not resident in the United Kingdom; and
  (c) those obligations are not attributable to a branch or agency of that person's in the United Kingdom.

(6) Before the expiration of the period of three months following the day on which this section first applies to an overseas insurer, the overseas insurer must nominate to the Board a person to be his tax representative.

(7) A person shall not be a tax representative unless—

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(a) if he is an individual, he is resident in the United Kingdom and has a fixed place of residence there, or

(b) if he is not an individual, he has a business establishment in the United Kingdom,

and, in either case, he satisfies such other requirements (if any) as are prescribed in regulations made for the purpose by the Board.

(8) A person shall not be an overseas insurer's tax representative unless—

(a) his nomination by the overseas insurer has been approved by the Board; or

(b) he has been appointed by the Board.

(9) The Board may by regulations make provision supplementing this section; and the provision that may be made by any such regulations includes provision with respect to—

(a) the making of a nomination by an overseas insurer of a person to be his tax representative;

(b) the information which is to be provided in connection with such a nomination;

(c) the form in which such a nomination is to be made;

(d) the powers and duties of the Board in relation to such a nomination;

(e) the procedure for approving, or refusing to approve, such a nomination, and any time limits applicable to doing so;

(f) the termination, by the overseas insurer or the Board, of a person's appointment as a tax representative;

(g) the appointment by the Board of a person as the tax representative of an overseas insurer (including the circumstances in which such an appointment may be made);

(h) the nomination by the overseas insurer, or the appointment by the Board, of a person to be the tax representative of an overseas insurer in place of a person ceasing to be his tax representative;

(j) circumstances in which an overseas insurer to whom this section applies may, with the Board's agreement, be released (subject to any conditions imposed by the Board) from the requirement that there must be a tax representative;

(k) appeals to the Special Commissioners against decisions of the Board under this section or regulations under it.

(10) The provision that may be made by regulations under subsection (9) above also includes provision for or in connection with the making of other arrangements between the Board and an overseas insurer for the purpose of securing the discharge by or on behalf of the overseas insurer of the relevant duties, within the meaning of section 552B.

(11) Section 839 (connected persons) applies for the purposes of this section.

(12) In this section—

"the designated day" means such day as the Board may specify for the purpose in regulations;

"tax representative" means a tax representative under this section.**]**

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Subordinate Legislation Made

P5 S. 552A(12) power exercised: 6.4.1999 appointed by S.I. 1999/881, **reg. 3**

Textual Amendments

F1110 Ss. 552A, 552B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 87**

Modifications etc. (not altering text)

C540 S. 522A restricted (6.4.1999) by The Overseas Insurers (Tax Representatives) Regulations 1999 (S.I. 1999/881), **reg. 11(2)**

VALID FROM 31/07/1998

[F1110 552B Duties of overseas insurers' tax representatives.

(1) It shall be the duty of an overseas insurer's tax representative to secure (where appropriate by acting on the overseas insurer's behalf) that the relevant duties are discharged by or on behalf of the overseas insurer.

(2) For the purposes of this section "the relevant duties" are—

(a) the duties imposed by section 552,

(b) any duties imposed by regulations made under subsection (4A)(a) of that section, and

(c) any duties imposed by regulations made under subsection (4A)(b) of that section by virtue of subsection (4B) of that section,

so far as relating to relevant insurances under which the overseas insurer in question has any obligations.

(3) An overseas insurer's tax representative shall be personally liable—

(a) in respect of any failure to secure the discharge of the relevant duties, and

(b) in respect of anything done for purposes connected with acting on the overseas insurer's behalf,

as if the relevant duties were imposed jointly and severally on the tax representative and the overseas insurer.

(4) In the application of this section in relation to any particular tax representative, it is immaterial whether any particular relevant duty arose before or after his appointment.

(5) This section has effect in relation to relevant duties relating to chargeable events happening on or after the day by which section 552A(6) requires the nomination of the overseas insurer's first tax representative to be made.

(6) Expressions used in this section and in section 552A have the same meaning in this section as they have in that section.**]**

Textual Amendments

F1110 Ss. 552A, 552B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 87**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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553 Non-resident policies and off-shore capital redemption policies.

M1457(1) If, in the case of a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15, the new policy is a qualifying policy, section 540 shall have effect with the following modifications—

(a) the surrender of the rights conferred by the old policy shall not be a chargeable event (within the meaning of that section); and

(b) the new policy shall be treated as having been issued in respect of an insurance made on the day referred to in paragraph 26 of that Schedule.

(2) If at any time neither the conditions in sub-paragraph (3) nor those in sub-paragraph (4) of paragraph 24 of Schedule 15 are fulfilled with respect to a new non-resident policy which has previously become a qualifying policy, then, from that time onwards, this Chapter shall apply in relation to the policy as if it were not a qualifying policy.

(3) Subject to subsection (5) below, on the happening of a chargeable event in relation to a new non-resident policy or a new offshore capital redemption policy, the amount which, apart from this subsection, would by virtue of section 541 be treated as a gain arising in connection with the policy shall be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the number of days on which the policy holder was resident in the United Kingdom in the period for which the policy has run before the happening of the chargeable event; and

B is the number of days in that period.

(4) The calculation of the number of days in the period referred to in subsection (3) above shall be made in like manner as is provided in section 550(4), substituting a reference to the number of days for the reference to the number of years.

(5) If, on the happening of the chargeable event referred to in subsection (3) above or at any time during the period referred to in that subsection, the policy is or was held by a trustee resident outside the United Kingdom or by two or more trustees any of whom is or was so resident, no reduction shall be made under that subsection unless—

(a) the policy was issued in respect of an insurance made on or before 19th March 1985; and

(b) on that date the policy was held by a trustee who was so resident or, as the case may be, by two or more trustees any of whom was so resident.

(6) Subject to subsection (7) below, where, under section 541, a gain (reduced in accordance with subsection (3) above) is to be treated as arising in connection with a new non-resident policy or a new offshore capital redemption policy—

(a) section 547 shall have effect, in relation to the gain, as if subsection (5) were omitted; and

(b) the gain shall be chargeable to tax under Case VI of Schedule D;

but any relief under section 550 shall be computed as if this subsection had not been enacted.

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(7) Paragraphs (a) and (b) of subsection (6) above do not apply to a gain arising in connection with a new non-resident policy if the conditions in either sub-paragraph (3) or sub-paragraph (4) of paragraph 24 of Schedule 15 are fulfilled at all times between the date on which the policy was issued and the date on which the gain is treated as arising.

(8) Where a claim is made under section 550 in respect of the amount of a gain treated as arising in connection with a new non-resident policy or a new offshore capital redemption policy (with or without other amounts), the "appropriate fraction" which, in accordance with subsection (2) of that section, is to be applied to that amount shall be modified by deducting from the number of complete years referred to in subsection (3) of that section any complete years during which the policy holder was not resident in the United Kingdom.

(9) Subsection (5) of section 550 shall not apply in relation to a new non-resident policy or a new offshore capital redemption policy.

(10) In this section—

"chargeable event" has, subject to subsection (1) above, the meaning given by section 540 or, as the case may be, 545;

"new non-resident policy" has the meaning given by paragraph 24 of Schedule 15; and

"new offshore capital redemption policy" means a capital redemption policy, as defined in section 539(3), which—

(a) is issued in respect of an insurance made after 22nd February 1984; and

(b) is so issued by a company resident outside the United Kingdom.

Marginal Citations

M1457 Source-1984 Sch.15 Part III; 1984 s.76(5); 1985 s.51

VALID FROM 31/07/1998

[F111 553A Overseas life assurance business: life policies.

(1) A policy of life insurance which, immediately before the happening of a chargeable event or a relevant event—

(a) is an overseas policy, but

(b) is not a new non-resident policy,

shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new non-resident policy.

(2) A policy of life insurance which, immediately before the happening of a relevant event—

(a) is an overseas policy, and

(b) is a new non-resident policy,

shall, in relation to that event, be taken for the purposes of this Chapter not to be a qualifying policy.

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(3) Where a chargeable event happens in relation to a new non-resident policy, section 553(7) shall not have effect in relation to the gain treated as arising in connection with the policy on the happening of the chargeable event.

(4) In this section—

"new non-resident policy" means a new non-resident policy as defined in paragraph 24 of Schedule 15 (and in subsections (2) and (3) above includes a policy treated as such by virtue of subsection (1) above);

"overseas policy" means a policy of life insurance which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company or friendly society;

"relevant event", in relation to a policy of life insurance, means an event which would be a chargeable event in relation to that policy if the policy were assumed not to be a qualifying policy.

(5) This section applies in relation to chargeable events and relevant events happening on or after 17th March 1998 in relation to policies of life insurance issued in respect of insurances made on or after that date.

(6) A policy of life insurance issued in respect of an insurance made before 17th March 1998 shall be treated for the purposes of this section as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.**]**

Textual Amendments

F1111 S. 553A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 88(1)**

VALID FROM 31/07/1998

[F1112553B Overseas life assurance business: capital redemption policies.

(1) A capital redemption policy which immediately before the happening of a chargeable event—

(a) is an overseas policy, but

(b) is not a new offshore capital redemption policy,

shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new offshore capital redemption policy.

(2) In this section—

"new offshore capital redemption policy" has the same meaning as in section 553;

"overseas policy" means a capital redemption policy which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company.

(3) This section applies in relation to capital redemption policies where the contract is made after the coming into force of the first regulations under section 458A in

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consequence of which capital redemption business forms part of the overseas life assurance business of an insurance company.**]**

Textual Amendments

F1112 S. 553B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 88(2)**

VALID FROM 31/07/1998

[F1113 553Œ Personal portfolio bonds.

(1) The Treasury may by regulations make provision imposing a yearly charge to tax in relation to personal portfolio bonds ("yearly" being construed for this purpose by reference to years as defined in section 546(4)).

(2) Subject to any provision to the contrary made by the regulations, any charge to tax under this section is in addition to any other charge to tax under this Chapter.

(3) The regulations may make provision with respect to or in connection with all or any of the following—
- (a) the method by which the charge to tax, or any relief, allowance or deduction against or in respect of the tax, is to be imposed or given effect;
- (b) the person who is to be liable for the tax;
- (c) the periods for or in respect of which the tax is to be charged;
- (d) the amounts in respect of which, or by reference to which, the tax is to be charged;
- (e) the period or periods by reference to which those amounts are to be determined;
- (f) the rate or rates at which the tax is to be charged;
- (g) any reliefs, allowances or deductions which are to be given or made against or in respect of the tax;
- (h) the administration of the tax.

(4) The provision that may be made by the regulations includes provision for imposing the charge to tax by a method which involves—
- (a) treating an event described in the regulations as if it were a chargeable event;
- (b) treating an amount determined in accordance with the regulations as if it were a gain treated as arising on the happening of a chargeable event;
- (c) deeming an amount determined in accordance with the regulations to be income of a person or body of persons (or to be part of the aggregate income of the estate of a deceased person); or
- (d) applying section 740, with or without modification, in relation to an amount determined in accordance with the regulations.

(5) The provision that may be made in the regulations includes provision for the amount or amounts in respect of which, or by reference to which, the tax is to be charged for periods beginning after the coming into force of the regulations to be determined in whole or in part by reference to periods beginning or ending, premiums paid,

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or events happening, before, on or after the day on which the Finance Act 1998 is passed.

(6) The regulations may make provision excluding, or applying (with or without modification), other provisions of this Chapter in relation to policies or contracts which are also personal portfolio bonds.

(7) In this section, "personal portfolio bond" means a policy of life insurance, contract for a life annuity or capital redemption policy under whose terms—

(a) some or all of the benefits are determined by reference to the value of, or the income from, property of any description (whether or not specified in the policy or contract) or fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and

(b) some or all of the property, or such an index, may be selected by, or by a person acting on behalf of, the holder of the policy or contract or a person connected with him (or the holder of the policy or contract and a person connected with him);

but a policy or contract is not a personal portfolio bond if the only property or index which may be so selected is of a description prescribed for this purpose in the regulations.

(8) The regulations may prescribe additional conditions which must be satisfied if a policy or contract is to be a personal portfolio bond.

(9) The regulations—

(a) may make different provision for different cases, different circumstances or different periods; and

(b) may make incidental, consequential, supplemental or transitional provision.

(10) In this section, "holder", in the case of a policy or contract held by two or more persons, includes a reference to any of those persons.

(11) Section 839 (connected persons) applies for the purposes of this section.**]**

Textual Amendments

F1113 S. 553C inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 89**

554 Borrowings on life policies to be treated as income in certain cases.

M1458(1) Where—

(a) under any contract or arrangements made on or after 7th April 1949, provision is made for the making to any person, at intervals until the happening of an event or contingency dependent on human life, of payments by way of loan; and

(b) under the contract or arrangements, the loans are secured upon a policy of life assurance which assures moneys payable on the happening of such an event or contingency and need not be repaid until the policy moneys become payable; and

(c) the amount of the moneys payable on the happening of the event or contingency is made by the policy to increase by reference to the length of a period ending on the happening of that event or contingency;

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the payments made by way of loan shall be treated for tax purposes as annual payments falling within Case III of Schedule D, or, if they are made to a person residing in the United Kingdom and the contract or arrangements were made outside the United Kingdom, as income from a possession out of the United Kingdom and, for income tax, as falling within section 65(1).

(2) The amount of the moneys payable under a policy of life assurance shall not be deemed for the purposes of this section to be made to increase by reference to the length of a period ending on the happening of an event or contingency dependent on human life by reason only that those moneys are to increase from time to time if profits are made by the person liable under the policy.

(3) This section shall not apply to any payments by way of loan if the Board are satisfied as respects those payments that it is not one of the objects of the contract or arrangements under which the payments are made that the recipient of them should enjoy the advantages which would, apart from any question of liability to tax, be enjoyed by a person in receipt of payments of the same amounts paid at the same times by way of annuity.

Marginal Citations

M1458 Source-1970 s.405

CHAPTER III

ENTERTAINERS AND SPORTSMEN

555 Payment of tax.

(1) [M1459]Where a person who is an entertainer or sportsman of a prescribed description performs an activity of a prescribed description in the United Kingdom ("a relevant activity"), this Chapter shall apply if he is not resident in the United Kingdom in the year of assessment in which the relevant activity is performed.

(2) [M1460]Where a payment is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall on making it deduct out of it a sum representing income tax and shall account to the Board for the sum.

(3) [M1461]Where a transfer is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall account to the Board for a sum representing income tax.

(4) [M1462]The sums mentioned in subsections (2) and (3) above shall be such as are calculated in accordance with prescribed rules but shall in no case exceed the relevant proportion of the payment concerned or of the value of what is transferred, as the case may be; and "relevant proportion" here means a proportion equal to the basic rate of income tax for the year of assessment in which the payment or, as the case may be, the transfer is made.

(5) [M1463]In this Chapter—

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(a) references to a payment include references to a payment by way of loan of money; and

(b) references to a transfer do not include references to a transfer of money but, subject to that, include references to a temporary transfer (as by way of loan) and to a transfer of a right (whether or not a right to receive money).

(6) [M1464]This section shall not apply to payments or transfers of such a kind as may be prescribed.

(7) [M1465]Regulations may—

(a) make provision enabling the Board to serve notices requiring persons who make payments or transfers to which subsection (2) or (3) above applies to furnish to the Board particulars of a prescribed kind in respect of payments or transfers;

(b) make provision requiring persons who make payments or transfers to which subsection (2) or (3) above applies to make, at prescribed times and for prescribed periods, returns to the Board containing prescribed information about payments or transfers and the income tax for which those persons are accountable in respect of them;

(c) make provision for the collection and recovery of such income tax, provision for assessments and claims to be made in respect of it, and provision for the payment of interest on it;

(d) adapt, or modify the effect of, any enactment relating to income tax for the purpose of making any such provision as is mentioned in paragraphs (a) to (c) above.

(8) [M1466]Where in accordance with subsections (2) to (7) above a person pays a sum to the Board, they shall treat it as having been paid on account of a liability of another person to income tax or corporation tax; and the liability and the other person shall be such as are found in accordance with prescribed rules.

(9) Where the sum exceeds the liability concerned, the Board shall pay such of the sum as is appropriate to the other person mentioned in subsection (8) above.

(10) Where no liability is found as mentioned in subsection (8) above, the Board shall pay the sum to the person to whom the payment or transfer to which subsection (2) or (3) above applies, and which gave rise to the payment of the sum concerned to the Board, was made.

(11) In construing references to a sum in subsections (8) to (10) above, anything representing interest shall be ignored.

Modifications etc. (not altering text)

C541 *See* 1988(F) s.130(7)—*payment of outstanding tax by migrating companies.*

C542 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M1459 Source-1986 Sch.11 1

M1460 Source-1986 Sch.11 2(1)

M1461 Source-1986 Sch.11 2(3)

M1462 Source-1986 Sch.11 2(2), (4)

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M1463 Source-1986 Sch.11 2(5), (6)
M1464 Source-1986 Sch.11 2(7)
M1465 Source-1986 Sch.11 3(1)
M1466 Source-1986 Sch.11 4

556 Activity treated as trade etc. and attribution of income.

(1) [M1467]Where a payment is made (to whatever person) and it has a connection of the prescribed kind with the relevant activity, the activity shall be treated for the purposes of the Tax Acts as performed in the course of a trade, profession or vocation exercised by the entertainer or sportsman within the United Kingdom, to the extent that (apart from this subsection) it would not be so treated.

This subsection shall not apply where the relevant activity is performed in the course of an office or employment.

(2) [M1468]Where a payment is made to a person who fulfils a prescribed description but is not the entertainer or sportsman and the payment has a connection of the prescribed kind with the relevant activity—

(a) the entertainer or sportsman shall be treated for the purposes of the Tax Acts as the person to whom the payment is made; and

(b) the payment shall be treated for those purposes as made to him in the course of a trade, profession or vocation exercised by him within the United Kingdom (whether or not he would be treated as exercising such a trade, profession or vocation apart from this paragraph).

(3) Regulations may provide—

(a) for the deduction, in computing any profits or gains of the entertainer or sportsman arising from the payment, of expenses incurred by other persons in relation to the payment;

(b) that any liability to tax (whether of the entertainer or sportsman or of another person) which would, apart from subsection (2) above, arise in relation to the payment shall not arise or shall arise only to a prescribed extent.

(4) [M1469]References in this section to a payment include references to a transfer.

(5) [M1470]This section shall not apply unless the payment or transfer is one to which section 555(2) or (3) applies, and subsections (2) and (3) above shall not apply in such circumstances as may be prescribed.

Modifications etc. (not altering text)

C543 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M1467 Source-1986 Sch.11 6(1), (3)
M1468 Source-1986 Sch.II 7(2), (3)
M1469 Source-1986 Sch.11 6(4) 7(6)
M1470 Source-1986 Sch.11 6(2), 7(5)

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557 Charge on profits or gains.

M1471 (1) Where income tax is chargeable under Case I or II of Schedule D on the profits or gains arising from payment (made to whatever person) and the payments have a connection of the prescribed kind with relevant activities of the entertainer or sportsman, such tax shall be charged—

(a) as if those payments were received in the course of one trade, profession or vocation exercised by the entertainer or sportsman within the United Kingdom separately from any other trade, profession or vocation exercised by him; and

(b) for each year of assessment, on the full amount of the profits or gains arising in the year from those payments.

(2) Regulations may—

(a) provide for the apportionment of profits or gains between different trades, professions or vocations of the entertainer or sportsman;

(b) provide for the apportionment between different years of assessment of the profits or gains arising from relevant activities of the entertainer or sportsman;

(c) provide for losses sustained in any trade, profession or vocation of the entertainer or sportsman to be deducted from or set off against the profits or gains of another trade, profession or vocation of the entertainer or sportsman;

(d) provide that prescribed provisions of the Tax Acts about losses, or about expenditure, shall not apply (or shall apply with prescribed modifications) in prescribed circumstances relating to the entertainer or sportsman.

(3) References in subsection (2)(a) and (c) above to a trade, profession or vocation of the entertainer or sportsman include references to that first mentioned in subsection (1)(a) above as well as to any other exercised by him.

(4) References in this section to a payment include references to a transfer.

(5) This section shall not apply in the case of a payment or transfer unless it is one to which section 555(2) or (3) applies.

Modifications etc. (not altering text)

C544 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M1471 Source-1986 Sch.11 8

558 Supplementary provisions.

(1) M1472 A payment to which subsection (2) of section 555 applies shall be treated for the purposes of the Tax Acts as not diminished by the sum mentioned in that subsection.

(2) Regulations may provide that for the purposes of the Tax Acts the value of what is transferred by a transfer to which section 555(3) applies shall be calculated in accordance with prescribed rules.

(3) In particular, rules may include provision for the calculation of an amount representing the actual worth of what is transferred, for that amount to be treated as a net amount

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corresponding to a gross amount from which income tax at the basic rate has been deducted, and for the gross amount to be taken to be the value of what is transferred.

(4) [M1473]No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an authorised officer of the Board from disclosing to any person who appears to the Board to have an interest in the matter information which may be relevant to determining whether section 555(2) or (3) applies to a payment or transfer.

(5) [M1474]Regulations may make provision generally for giving effect to this Chapter, and may make different provision for different cases or descriptions of case.

(6) [M1475]In this Chapter—

"regulations" means regulations made by the Treasury; and

"prescribed" means prescribed by regulations.

Modifications etc. (not altering text)

C545 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M1472 Source-1986 Sch.11 9
M1473 Source-1986 Sch.11 5
M1474 Source-1986 Sch.11 10, 11(2)
M1475 Source-1986 Sch.11 11(1), (3)

CHAPTER IV

SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

Modifications etc. (not altering text)

C546 *For regulations see* Part III Vol.5.

559 Deductions on account of tax etc. from payments to certain sub-contractors.

(1) [M1476]Subject to subsection (2) below, where a contract relating to construction operations is not a contract of employment but—

(a) one party to the contract is a sub-contractor; and

(b) another party to the contract ("the contractor") either is a sub-contractor under another such contract relating to all or any of the construction operations or is a person to whom section 560(2) applies,

this section shall apply to any payments which are made under the contract and are so made by the contractor to—

(i) the sub-contractor;

(ii) a person nominated by the sub-contractor or the contractor; or

(iii) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.

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(2) Subsection (1) above shall not apply to any payment made under the contract in question if the person to whom it is made or, if it is made to a nominee, each of the following persons, that is to say, the nominee, the person who nominated him and the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made, is excepted from this section in relation to those payments by virtue of section 561.

(3) Subsection (2) above does not apply to so much of any payment made under the contract in question to a person falling within subsection (4) of section 561 as exceeds, or in aggregate with other payments specified in regulations made under subsection (5) of that section exceeds, the limit prescribed by those regulations.

(4) [M1477]On making a payment to which this section applies the contractor shall deduct from it a sum equal to **[**[F1114]25 per cent.**]** of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates; and the sum so deducted shall be paid to the Board and shall be treated for the purposes of income tax or, as the case may be, corporation tax—

(a) as not diminishing the payment; but

(b) subject to subsection (5) below, as being income tax or, as the case may be, corporation tax paid in respect of the profits or gains of the trade, profession or vocation of the person for whose (or for whose employees' or officers') labour the contractor makes the payment.

(5) Where a sum deducted and paid to the Board under subsection (4) above is more than sufficient to discharge the liability to income tax of the person referred to in paragraph (b) of that subsection in respect of the profits or gains mentioned in that paragraph, so much of the excess as is required to discharge any liability of that person for Class 4 contributions shall be treated as being, for the purposes of the Social Security Act, Class 4 contributions paid in respect of the profits or gains so mentioned.

[[F1115](6) [M1478]References in section 1(1) of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964 to sums due on account of tax deductions for any period shall be construed as including references to any amounts due from any person in respect of deductions required to be made by him under this section**]**.

(7) [M1479]For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations shall be taken to be made under the contract; and if—

(a) the obligation is to make a payment to a person within subsection (1)(i) to (iii) above, but

(b) the payment discharging that obligation is made to a person not within those paragraphs,

the payment shall for those purposes be taken to be made to the first-mentioned person.

(8) [M1480]In this section—

"Class 4 contributions" means Class 4 contributions within the meaning of the [M1481]Social Security Act 1975 or, as the case may be, the [M1482]Social Security (Northern Ireland) Act 1975; and

"the Social Security Act" means whichever of those Acts is the one under which the contribution in question is payable.

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Textual Amendments

F1114 Words in s. 559(4) substituted (with effect in accordance with s. 28 of the amending Act) by Finance Act 1988, c. 39, s. 28

F1115 S. 559(6) repealed (N.I.) (1.10.1991) by S.I. 1989/2404, art. 382, **Sch. 10**; S.R. 1991/411, **art. 2**

Modifications etc. (not altering text)

C547 *See*—1970(M) s.62(1A)—*priority of claim for tax.*1970(M) s.63(3)—*recovery of tax in Scotland.*1970(M) s.64(1A)—*priority in cases of poinding in Scotland.*

C548 *See* 1988(F) s.130(7)(d)—*payment of outstanding tax by migrating companies.*

C549 *See* Insolvency (Northern Ireland) Order 1989, Art.381(2)*and* Sch.9 para.61*and* Art.382*and* Sch.10 (S.I. 1989 No.2405—*not reproduced*)

Marginal Citations

M1476 Source-1975 (No.2) s.69(1), 70A(2); 1982 Sch.8 5

M1477 Source-1975 (No.2) s.69(4), (5); 1987 s.23

M1478 Source-1975 (No.2) Sch.12 Pt.I 2(2); 1980 Sch.8 4(3); 1982 Sch.8 8

M1479 Source-1972 s.71(5); 1982 Sch.8 6

M1480 Source-1975 (No.2) s.69(10)

M1481 1975 c. 14.

M1482 1975 c. 15.

VALID FROM 24/07/2002

[F1116 559A Treatment of sums deducted under s.559

(1) A sum deducted under section 559 from a payment made by a contractor—
- (a) shall be paid to the Board, and
- (b) shall be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

(2) If the sub-contractor is not a company a sum deducted under section 559 and paid to the Board shall be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions shall be treated as being Class 4 contributions paid in respect of those profits.

(3) If the sub-contractor is a company—
- (a) a sum deducted under section 559 and paid to the Board shall be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;
- (b) regulations shall provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;
- (c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and

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(d) regulations shall provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).

(4) For the purposes of subsection (3) the "relevant liabilities" of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to a collector of inland revenue in pursuance of an obligation as an employer or contractor.

(5) In this section—

(a) "the sub-contractor" means the person for whose labour (or for whose employees' or officers' labour) the payment is made;

(b) references to the sub-contractor's "relevant profits" are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;

(c) "Class 4 contributions" means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(6) References in this section to regulations are to regulations made by the Board.

(7) Regulations under this section—

(a) may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate, and

(b) may make different provision for different cases.**]**

Textual Amendments

F1116 S. 559A inserted (with effect in accordance with s. 40(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 40(1)**

560 Persons who are sub-contractors or contractors for purposes of Chapter IV.

(1) [M1483]For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—

(a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (that is to say, in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or

(b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

(2) [M1484]This subsection applies to the following persons, that is to say—

(a) any person carrying on a business which includes construction operations;

(b) any local authority;

(c) any development corporation or new town commission;

(d) the Commission for the New Towns;

(e) the Housing Corporation, **[**[F1117]Housing for Wales,**]** a housing association, a housing trust, the Scottish Special Housing Association, and the Northern Ireland Housing Executive;

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(f) [M1485]a person carrying on a business at any time if—

(i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds £250,000, or

(ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on construction operations for the part of that period during which he has been carrying on the business exceeds £250,000;

and in paragraph (f) "period of account" means a period for which an account is made up in relation to the business in question.

(3) [M1486]Where section 559(1)(b) begins to apply to any person in any period of account by virtue of his falling within subsection (2)(f) above, it shall continue to apply to him until he satisfies the Board that his expenditure on construction operations has been less than £250,000 in each of three successive years beginning in or after that period of account.

(4) Where the whole or part of a trade is transferred by a company ("the transferor") to another company ("the transferee") and section 343 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—

(a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer shall be treated as if it had been incurred at that time by the transferee; and

(b) where only a part of the trade is transferred the expenditure shall be apportioned in such manner as appears to the Board, or on appeal to the Commissioners, to be just and reasonable.

(5) [M1487]In this section—

"development corporation" has the same meaning as in the [M1488]New Towns Act 1981 or the [M1489]New Towns (Scotland) Act 1968;

"housing association" has the same meaning as in the [M1490]Housing Associations Act 1985 or the [M1491]Housing (Northern Ireland) Order 1981;

"housing trust" has the same meaning as in the [M1492]Housing Associations Act 1985; and

"new town commission" has the same meaning as in the [M1493]New Towns Act (Northern Ireland) 1965.

Textual Amendments

F1117 Para.116 Sch.17Housing Act 1988 (c.50)—*into force on* 1*December* 1988*by virtue of* S.I. 1988 No.2056 (*not reproduced*).

Marginal Citations

M1483 Source-1975 (No.2) s.69(2)
M1484 Source-1975 (No.2) s.69(3)
M1485 Source-1975 (No.2) s.69(3A); 1980 Sch.8 1
M1486 Source-1975 (No.2) s.69(3B), (3C); 1980 Sch.8 1
M1487 Source-1975 (No.2) s.71(3)
M1488 1981 c. 64.
M1489 1968 c. 16.
M1490 1985 c. 69.

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M1491 S.I. 1981/156 (N.I. 3).
M1492 1985 c. 69.
M1493 1965 c. 13 (N.I.).

561 Exceptions from section 559.

M1494 (1) Subject to the provisions of regulations under subsection (5) below or section 566(2), a person is excepted from section 559 in relation to payments made under a contract if a certificate under this section has been issued to that person and is in force when the payment is made, but—

(a) where the certificate has been issued to a person who becomes a partner in a firm, that person is not excepted in relation to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor; and

(b) where a certificate has been issued to a person as a partner in a firm, that person is excepted in relation only to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm, is a sub-contractor.

(2) If the Board are satisfied, on the application of an individual or a company, that—

(a) where the application is for the issue of a certificate to an individual (otherwise than as a partner in a firm), he satisfies the conditions set out in section 562;

(b) where the application is for the issue of a certificate to a person as a partner in a firm, that person satisfies the conditions set out in section 563 if he is an individual or, if a company, the conditions set out in section 565 and, in either case, the firm itself satisfies the conditions set out in section 564;

(c) where the application is for the issue of a certificate to a company, the company satisfies the conditions set out in section 565 and, if the Board have given a direction under **[**F1118 subsection (6)**]** below, each of the persons to whom any of the conditions set out in section 562 applies in accordance with the direction satisfies the conditions which so apply to him,

the Board shall issue to that individual or company a certificate excepting that individual or company (or, in a case falling within paragraph (b) above, that individual or company as a partner in the firm specified in the certificate) from section 559.

(3) References in subsection (2) above to an individual, a company or a firm satisfying conditions set out in section 562, 563, 564 or 565 include, in relation to a condition which may, by virtue of a provision of that section, be treated as being satisfied, references to that individual, company or firm being treated as satisfying that condition.

(4) This subsection applies to the holder of a certificate in force under this section if it was issued to him on the basis—

(a) that the condition in subsection (3) of section 562 was inapplicable to him by reason of paragraph (b) of that subsection; or

(b) that he satisfied that condition by virtue of subsection (7) of that section.

(5) The Board may make regulations securing that a person to whom subsection (4) above applies shall not be excepted from subsection (1) above in relation to a payment to the extent that the amount of the payment, or the aggregate amount of the payment and such other payments as may be prescribed by the regulations, exceeds a limit so prescribed.

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(6) Where it appears to the Board, on an application made under subsection (2) above by a company, that the company—

(a) was incorporated on a date within the period of three years ending with the date of the application; or

(b) has not carried on business continuously throughout that period; or

(c) has carried on business continuously throughout that period but the business has not at all times in that period consisted of or included the carrying out of construction operations; or

(d) does not at the date of the application hold a certificate which is then in force under this section;

the Board may direct that the conditions set out in section 562 or such of them as are specified in the direction shall apply to the directors of the company and, if the company is a close company, to the persons who are the beneficial owners of shares in the company or to such of those directors or persons as are so specified as if each of them were an applicant for a certificate under this section (not being a certificate to the holder of which section 561(4) would apply).

In this subsection "director" has the same meaning as in Chapter II of Part V.

(7) 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 (6) above.

(8) The Board may at any time cancel a certificate which has been issued to a person and is in force under this section if it appears to them that—

(a) it was issued on information which was false;

(b) if an application for the issue of a certificate under this section to that person were made at that time, the Board would refuse to issue a certificate;

(c) that person has permitted the certificate to be misused; 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 section 566(2);

and may by notice require that person to deliver the certificate to the Board within the time specified in the notice.

Section 840 shall apply for the purposes of paragraph (d) above.

(9) A person aggrieved by the refusal of an application for a certificate under this section or the cancellation of such a certificate may, by notice given to the Board within 30 days after the refusal or, as the case may be, cancellation, appeal to the General Commissioners or, if he so elects in the notice, to the Special Commissioners; and the jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this section.

(10) If any person, for the purpose of obtaining a certificate under this section—

(a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or

(b) recklessly makes any statement, or furnishes any document, which is false in a material particular,

he shall be liable on summary conviction to a fine not exceeding £5,000.

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(11) A person to whom a certificate is issued under this section or a voucher is given as required by regulations under section 566(2)(j) shall take all reasonable steps to ensure its safety; and any person who, without lawful authority or lawful excuse—

(a) disposes of any such certificate or voucher or any form supplied by the Board in connection with regulations made by virtue of section 566(2)(e); or

(b) possesses such a certificate, voucher or form or any document purporting to be such a certificate, voucher or form,

shall be liable on summary conviction to a fine not exceeding £5,000.

(12) Notwithstanding any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence under subsection (10) or (11) above may be commenced at any time within three years from the commission of the offence.

(13) Without prejudice to section 843(3), this section shall come into force on 6th April 1988 to the exclusion of the provisions of section 70 of the Finance (No.2) Act 1975 which are re-enacted in this section, but any offence committed before that date shall not be punishable under this section and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

Textual Amendments

F1118 Words in s. 561(2)(c) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 5**

Marginal Citations

M1494 Source-1975 (No.2) s.70(1)-(6), (9)-(11), 70A(1), (2), 71(4); 1982 Sch.8 3, 5; 1987 (No.2) s.93

562 Conditions to be satisfied by individuals.

(1) In the case of an application for the issue of a certificate under section 561 to an individual (otherwise than as a partner in a firm) the following conditions are required to be satisfied by that individual.

(2) [M1495]The applicant must be carrying on a business in the United Kingdom which satisfies the following conditions, that is to say—

(a) the business consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations;

(b) the business is, to a substantial extent, carried on by means of an account with a bank;

(c) the business is carried on with proper records and in particular with records which are proper having regard to the obligations referred to in subsections (8) to (12) below; and

(d) the business is carried on from proper premises and with proper equipment, stock and other facilities.

(3) [M1496]Unless the applicant—

(a) is the holder of a certificate in force under section 561 (other than a holder to whom section 561(4) applies), or

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(b) supplies the Board with a guarantee by such person, for such amount and in such form as may be prescribed in regulations made by the Board,

he must throughout the period of three years ending with the date of his application for a certificate under section 561, have been employed in the United Kingdom as the holder of an office or employment or as a person carrying on a trade, profession or vocation.

(4) [M1497]The applicant must not be receiving full-time education or full-time training.

(5) [M1498]An applicant shall be treated as satisfying the condition in subsection (3) above if—

(a) he satisfies the Board that he has been employed as mentioned in that subsection throughout a period of three years beginning not more than six years before the date of his application and ending on a date before that date;

(b) he satisfies the Board either—

(i) that he has not been so employed throughout the whole of the period between those dates, or

(ii) that he has not been so employed during any part of that period other than a part for which he specifies he has been so employed; and

(c) where the applicant states that he has been outside the United Kingdom for the whole or part of the period mentioned in paragraph (b) above, he satisfies the Board of that fact by such evidence as may be prescribed in regulations made by the Board.

(6) [M1499]The Board may for the purposes of subsections (3) and (5) above treat a person as having been employed as mentioned in subsection (3) above throughout a period of three years if during a period of three years he has been so employed except for a period or periods not exceeding six months or six months in aggregate.

(7) [M1500]If the applicant satisfies the Board that he has during any period within six years before the date of his application attended a school or other establishment for the purpose of receiving full-time education or full-time training, this section shall have effect as if that period were one during which he was employed as mentioned in subsection (3) above.

(8) [M1501]The applicant must, subject to subsection (10) below, have complied with all obligations imposed on him by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, any business of his in respect of periods so ending.

(9) [M1502]An applicant who at any time in the qualifying period had control of a company shall be taken not to satisfy the condition in subsection (8) above unless the company has satisfied that condition in relation to periods ending at a time within that period when he had control of it; and for this purpose "control" has the meaning given by section 840.

(10) [M1503]An applicant or company that has failed to comply with such an obligation or request as is referred to in subsection (8) above shall nevertheless be treated as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (13) below will be satisfied.

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(11) [M1504]An applicant who must satisfy the Board under subsection (5) above that he has been outside the United Kingdom for the whole or part of the period mentioned in subsection (5)(b) above must also satisfy them by such evidence as may be prescribed in regulations made by the Board that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in subsection (8) above.

(12) [M1505]The applicant must, if any contribution has at any time during the qualifying period become due from him under Part I of the [M1506]Social Security Act 1975 or Part I of the [M1507]Social Security (Northern Ireland) Act 1975, have paid the contribution when it became due.

(13) [M1508]There must be reason to expect that the applicant will, in respect of periods ending after the end of the qualifying period, comply with such obligations as are referred to in subsections (8) to (12) above and with such requests as are referred to in subsection (8) above.

(14) [M1509]In this section "the qualifying period" means—

(a) in relation to a person who is within subsection (5) above, the period starting at the beginning of the last period of three years before his application throughout which he has been employed as mentioned in subsection (3) above (or is by virtue of subsection (6) above treated as having been so employed) and ending on the date of his application; and

(b) in the case of any other person, the period of three years ending with the date of his application.

Modifications etc. (not altering text)

C550 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M1495 Source-1975 (No.2) Sch.12 Pt. I 1
M1496 Source-1975 (No.2) Sch.12 Pt.I 2(1); 1982 Sch.8 7
M1497 Source-1975 (No.2) Sch.12 Pt.I 2A. 1982 Sch.8 10
M1498 Source-1975 (No.2) s.69(7), 71(6); 1964 c. 32 (N.I.)
M1499 Source-1975 (No.2) Sch.12 Pt.I 2(3); 1980 Sch.8 4(3)
M1500 Source-1975 (No.2) Sch.12 Pt.I 2(5); 1982 Sch.8 9
M1501 Source-1975 (No.2) Sch.12 Pt.I 3(1); 1982 Sch.8 11
M1502 Source-1975 (No.2) Sch.12 Pt.I 3(1A); 1982 Sch.8 12
M1503 Source-1975 (No.2) Sch.12 Pt.I 3(2); 1980 Sch.8 7; 1982 Sch.8 13
M1504 Source-1975 (No.2) Sch.12 Pt.I 3(3); 1980 Sch.8 6(1)
M1505 Source-1975 (No.2) Sch.12 Pt.I 4.
M1506 1975 c. 14.
M1507 1975 c. 15.
M1508 Source-1975 (No.2) Sch.12 Pt.I 7
M1509 Source-1975 (No.2) Sch.12 Pt.I 2(4); 1980 Sch.8 4(3)

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563 Conditions to be satisfied by partners who are individuals.

(1) [M1510]In the case of an application for the issue of a certificate under section 561 to an individual who is a partner in a firm, the following conditions are required to be satisfied by that individual.

(2) The partner, unless he is the holder of a certificate in force under section 561 (other than a holder to whom section 561(4) applies), must throughout the period of three years ending with the date of his application for a certificate under section 561 have been employed in the United Kingdom as the holder of an office or employment or as a person carrying on a trade, profession or vocation.

(3) [M1511]A partner who has not fulfilled the condition in subsection (2) above shall nevertheless be treated as satisfying that condition if—

(a) he satisfies the Board that he has been employed as mentioned in that subsection throughout a period of three years beginning not more than six years before the date of his application and ending on a date before that date;

(b) he satisfies the Board either—

(i) that he has not been so employed throughout the whole of the period between those dates, or

(ii) that he has not been so employed during any part of that period other than a part for which he specifies he has been so employed; and

(c) where the partner states that he has been outside the United Kingdom for the whole or part of the period mentioned in paragraph (b) above, he satisfies the Board of that fact by such evidence as may be prescribed in regulations made by the Board.

(4) The Board may for the purposes of this paragraph treat a person as having been employed as mentioned in subsection (2) above throughout a period of three years if during a period of three years he has been so employed except for a period or periods not exceeding six months or six months in aggregate.

(5) [M1512]The partner must, subject to subsection (6) below, have complied with all obligations imposed on him by or under the Income Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, any business of his in respect of periods so ending.

(6) [M1513]A partner who has failed to comply with such an obligation or request as is referred to in subsection (5) above shall nevertheless be treated as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (9) below will be satisfied.

(7) [M1514]A partner who must satisfy the Board under subsection (3) above that he has been outside the United Kingdom for the whole or part of the period mentioned in subsection (3)(b) above must also satisfy them by such evidence as may be prescribed in regulations made by the Board that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in subsection (5) above.

(8) [M1515]The partner must, if any contribution has at any time during the qualifying period become due from him under Part I of the [M1516]Social Security Act 1975 or Part I of the [M1517]Social Security (Northern Ireland) Act 1975, have paid the contribution when it became due.

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(9) There must be reason to expect that the partner will, in respect of periods ending after the end of the qualifying period, comply with such obligations as are referred to in subsections (5) to (8) above and with such requests as are referred to in subsection (5) above.

(10) [M1518]In this section "the qualifying period" means—

(a) in relation to a person who is within subsection (3) above, the period starting at the beginning of the last period of three years before his application throughout which he has been employed as mentioned in subsection (2) above (or is by virtue of subsection (4) above treated as having been so employed) and ending on the date of his application, and

(b) in the case of any other person, the period of three years ending with the date of his application.

Modifications etc. (not altering text)

C551 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 52**

Marginal Citations

M1510 Source-1975 (No.2) Sch.12 Pt.II 1(1); 1982 Sch.8 14
M1511 Source-1975 (No.2) Sch.12 Pt.II 1(2) (3); 1980 Sch.8 4, 5
M1512 Source-1975 (No.2) Sch.12 Pt.II 2(1)
M1513 Source-1975 (No.2) Sch.12 Pt.II 2(2); 1980 Sch.8 7
M1514 Source-1975 (No.2) Sch.12 Pt.II 2(3); 1980 Sch.8 6
M1515 Source-1975 (No.2) Sch.12 Pt.II 3, 4
M1516 1975 c. 14.
M1517 1975 c. 15.
M1518 Source-1975 (No.2) Sch.12 Pt.II 1(4); 1980 Sch.8 5

564 Conditions to be satisfied by firms.

(1) In the case of an application for the issue of a certificate under section 561 to an individual or a company as a partner in a firm the following conditions are required to be satisfied by the firm.

(2) [M1519]The firm's business must be carried on in the United Kingdom and must satisfy the conditions mentioned in section 562(2)(a) to (d).

(3) Subject to subsection (4) below, any income tax or corporation tax which became due from any partner in the firm in respect of the firm's business at any time in the period of three years ending with the date of the application for a certificate under section 561 must have been paid when the tax was demanded.

(4) Where the obligation referred to in subsection (3) above has not been complied with in the case of any firm, the firm shall nevertheless be treated as satisfying that condition as regards that tax if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (5) below will be satisfied.

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(5) [M1520]There must be reason to expect that income tax or corporation tax becoming due in respect of the firm's business in respect of periods ending after the end of the period referred to in subsection (3) above will be paid when it is demanded.

Modifications etc. (not altering text)

C552 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M1519 Source-1975 (No.2) Sch.12 Pt.III 1, 2; 1980 Sch.8 7

M1520 Source-1975 (No.2) Sch.12 Pt.III 5

565 Conditions to be satisfied by companies.

(1) In the case of an application for the issue of a certificate under section 561 to a company (whether as a partner in a firm or otherwise), the following conditions are required to be satisfied by the company.

(2) [M1521]The company must be carrying on (whether or not in partnership) a business in the United Kingdom and that business must satisfy the conditions mentioned in section 562(2)(a) to (d).

(3) The company must, subject to subsection (4) below, have complied with all obligations imposed on it by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, the business of the company in respect of periods so ending.

(4) A company which has failed to comply with such an obligation or request as is referred to in subsection (3) above shall nevertheless be treated as satisfying this condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (8) below will be satisfied.

(5) [M1522]The company must, if any contribution has at any time during the qualifying period become due from the company under Part I of the [M1523]Social Security Act 1975 or Part I of the [M1524]Social Security (Northern Ireland) Act 1975 have paid the contribution when it became due.

(6) [M1525]The company must have complied with any obligations imposed on it by the following provisions of the [M1526]Companies Act 1985, in so far as those obligations fell to be complied with within the qualifying period, that is to say—

(a) **[**[F1119]sections 226, 241 and 242**]** (contents, laying and delivery of annual accounts);

(b [F1120] . . . . . .

(c) section 288(2) (return of directors and secretary and notification of changes therein);

(d) **[**[F1121]sections 363 to 365**]** (annual returns);

(e) section 691 (registration of constitutional documents and list of directors and secretary of oversea company);

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(f) section 692 (notification of changes in constitution or directors or secretary of oversea company);

(g) section 693 (oversea company to state its name and country of incorporation);

(h) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);

(j) Chapter II of Part XXIII (accounts of oversea company).

(7) The company must have complied with any obligations imposed on it by the following provisions of the [M1527]Companies (Northern Ireland) Order 1986, in so far as those obligations fell to be complied with within the qualifying period, that is to say—

(a) Articles 235, 247 and 249 (annual accounts, documents included in annual accounts and laying and delivery of accounts);

(b) Article 295 (registered office and notification of changes therein);

(c) Article 296(2) (return of directors and secretary and notification of changes therein);

(d) **[**[F1122]Articles 371 to 373**]** (annual returns);

(e) Article 641 (registration of constitutional documents and list of directors and secretary of oversea company);

(f) Article 642 (notification of changes in constitution or directors or secretary of oversea company);

(g) Article 643 (oversea company to state its name and country of incorporation);

(h) Article 649 (accounts of oversea company).

(8) [M1528]There must be reason to expect that the company will, in respect of periods ending after the end of the qualifying period, comply with all such obligations as are referred to in subsections (2) to (7) above and with such requests as are referred to in subsection (3) above.

(9) [M1529]In this section "qualifying period" means the period of three years ending with the date of the company's application for a certificate under section 561.

Textual Amendments

F1119 Words in s. 565(6)(a) substituted (E.W.S.) (1.4.1990 with effect in accordance with S.I. 1990/355, arts. 6-9, **Sch. 1**) by Companies Act 1989 (c. 40), **Sch. 10 para. 38(3)**; S.I. 1990/355, arts. 3, 8, **Sch. 1**

F1120 S. 565(6)(b) repealed (1.10.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213, **Sch. 24**; S.I. 1991/1996, **art. 2(c)(iv)**

F1121 Words in s. 565(6)(d) substituted (E.W.S) (1.10.1990 with saving and transitional provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40), **s. 139(5)**

F1122 Words in s. 565(7)(d) substituted (1.10.1991) by S.I. 1990/1504, **art. 74(5)**; S.R. 1991/398, **art. 2(a)** (subject to the provisions set out in S.R. 1991/398, **arts. 3**, 4)

Modifications etc. (not altering text)

C553 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M1521 Source-1975 (No.2) Sch.12 Pt.IV 1, 2(1), (2); 1980 Sch.8 7; 1982 Sch.8 15

M1522 Source-1975 (No.2) Sch.12 Pt.IV 3

M1523 1975 c. 14.

M1524 1975 c. 15.

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M1525 Source-1975 (No.2) Sch.12 Pt.IV 6; 1987 Sch.15 8
M1526 1985 c. 6
M1527 S.I. 1986/1032 (N.I. 6).
M1528 Source-1975 (No.2) Sch.12 Pt.IV 7
M1529 Source-1975 (No.2) Sch.12 Pt.IV 2(3)

566 General powers to make regulations under Chapter IV.

(1) [M1530]The Board shall make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 559 and for the giving of receipts by persons receiving the payments to persons making them; and those regulations may include any matters with respect to which regulations may be made under section 203.

(2) [M1531]The Board may make regulations—

(a) prescribing the period for which certificates under section 561 are to be issued and the form of such certificates;

(b) providing for the renewal of such certificates;

(c) providing for the issue, renewal or cancellation of such certificates or the giving of directions under section 561(6) by inspectors on behalf of the Board;

(d) requiring the furnishing of information with respect to changes in the control of a company holding or applying for such a certificate;

(e) requiring the production of such certificates to such persons and in such circumstances as may be specified in the regulations and providing for the completion and return to the Board of forms certifying such production;

(f) requiring the surrender to the Board of such certificates in such circumstances as may be specified in the regulations;

(g) requiring persons who make payments under contracts relating to construction operations to keep such records and to make to the Board such returns relating to payments so made by them as may be specified in the regulations, and requiring persons who hold such certificates to keep such records relating to payments so made to them as may be so specified;

(h) 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 (g) above and with respect to rights of access to or copies of any such records which are removed;

(j) requiring vouchers for payments made under contracts relating to construction operations to persons who hold such certificates to be obtained by the person making, and given by the person receiving, the payment, prescribing the form of the vouchers, and requiring their production or surrender to the Board in such circumstances as may be specified in the regulations; and

(k) excluding payments from the operation of section 561 where, in such circumstances as may be specified in the regulations, the requirements of regulations relating to the production of certificates or the obtaining, production or surrender of vouchers have not been complied with;

and any such regulations may make different provision for different circumstances.

Section 840 shall apply for the purposes of paragraph (d) above.

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Modifications etc. (not altering text)

C554 *For regulations see* Part III Vol.5.*And see* 1970(M) s.98A—*special penalties in the case of certain returns.*

Marginal Citations

M1530 Source-1975 (No.2) s.69(6)

M1531 Source-1975 (No.2) s.70(7); 1982 Sch.8 4; 1987 (No.2) s.93 (5), (6)

567 Meaning of "construction operations".

(1) [M1532]In this Chapter "construction operations" means operations of any description specified in subsection (2) below, not being operations of any description specified in subsection (3) below; and references to construction operations shall be taken—

(a) except where the context otherwise requires, as including references to the work of individuals participating in the carrying out of such operations; and

(b) except in the case of offshore installations, as not including references to operations carried out or to be carried out otherwise than in the United Kingdom.

(2) [M1533]The following operations are, subject to subsection (3) below, construction operations for the purposes of this Chapter—

(a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;

(d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works;

(f) painting or decorating the internal or external surfaces of any building or structure.

(3) [M1534]The following operations are not construction operations for the purposes of this Chapter—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;

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(c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

(f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;

(g) signwriting and erecting, installing and repairing signboards and advertisements;

(h) the installation of seating, blinds and shutters;

(j) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

(4) [M1535]In this section "offshore installations" means installations which are maintained, or are intended to be established, for underwater exploitation or exploration to which the [M1536]Mineral Workings (Offshore Installations) Act 1971 applies.

(5) [M1537]The Treasury may by order—

(a) include in subsection (2) above any description of operations as to which they are satisfied that it is a normal activity of the construction industry and that its inclusion in that subsection is necessary for achieving the object of section 559;

(b) include in subsection (3) above any description of operations as to which they are satisfied that it cannot properly be considered a normal activity of the construction industry and ought to be excluded from subsection (2) above.

(6) An order under subsection (5) above shall not have effect unless a draft of the instrument containing it has been laid before and approved by a resolution of the House of Commons.

Modifications etc. (not altering text)

C555 *For regulations see* Part III Vol.5.

Marginal Citations

M1532 Source-1975 (No.2) s.71(8)
M1533 Source-1975 (No.2) Sch.13 Pt.I
M1534 Source-1975 (No.2) Sch.13 Pt.II; 1980/1171
M1535 Source-1975 (No.2) s.71(8), Sch.13, Pt.I
M1536 1971 c. 61.
M1537 Source-1975 (No.2) s.71 (9) (10)

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CHAPTER V

SCHEMES FOR RATIONALIZING INDUSTRY

568 Deductions from profits of contributions paid under certified schemes.

M1538 (1) Notwithstanding anything contained in section 74 but subject to the following provisions of this Chapter, where a person pays, wholly and exclusively for the purposes of a trade in respect of which he is chargeable under Case I of Schedule D, a contribution in furtherance of a scheme which is for the time being certified by the Secretary of State under this section, the contribution shall, in so far as it is paid in furtherance of the primary object of the scheme, be allowed to be deducted as an expense in computing the profits or gains of that trade.

(2) The Secretary of State shall certify a scheme under this section if he is satisfied—

(a) that the primary object of the scheme is the elimination of redundant works or machinery or plant from use in an industry in the United Kingdom; and

(b) that the scheme is in the national interest and in the interests of that industry as a whole; and

(c) that such number of persons engaged in that industry as are substantially representative of the industry are liable to pay contributions in furtherance of the primary object of the scheme by agreement between them and the body of persons carrying out the scheme.

References in this subsection to an industry in the United Kingdom shall include references to the business carried on by owners of ships or of a particular class of ships, wherever that business is carried on, and, in relation to that business, references in this subsection to works or machinery or plant shall include references to ships.

(3) The Secretary of State shall cancel any certificate granted under this section if he ceases to be satisfied as to any of the matters referred to in subsection (2) above.

(4) The Secretary of State may at any time require the body of persons carrying out a scheme certified under this section to produce any books or documents of whatever nature relating to the scheme and, if the requirement is not complied with, he may cancel the certificate.

(5) In this section and in section 569 "contribution", in relation to a scheme, does not include a sum paid by a person by way of loan or subscription of share capital, or in consideration of the transfer of assets to him, or by way of a penalty for contravening or failing to comply with the scheme.

Marginal Citations

M1538 Source-1970 s.406

569 Repayment of contributions.

M1539 (1) In the event of the repayment, whether directly or by way of distribution of assets on a winding up or otherwise, of a contribution or any part of a contribution which has been allowed to be deducted under section 568, the deduction of the contribution, or so much of it as has been repaid, shall be deemed to be an unauthorised deduction in respect of which an assessment shall be made, and, notwithstanding the provisions of

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the Tax Acts requiring assessments to be made within six years after the end of the chargeable period to which they relate, any such assessment and any consequential assessment may be made at any time within three years after the end of the chargeable period in which the repayment was made.

(2) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

Marginal Citations

M1539 Source-1970 s.407; 1971 Sch.6 45

570 Payments under certified schemes which are not repayments of contributions.

M1540 (1) Subject to the provisions of this section, where, under any scheme which is for the time being certified or has at any time been certified by the Secretary of State under section 568, any payment (not being a payment made by way of repayment of contributions) is made to a person carrying on a trade to which the scheme relates, that payment shall be treated for the purposes of the Tax Acts as a trading receipt of the trade, and shall accordingly be taken into account in computing the profits or gains of the trade for those purposes.

(2) Where on a claim it is shown in accordance with the provisions of Part II of Schedule 21 that the payments which have been made under such a scheme in respect of a trade (not being payments made by way of repayment of contributions) have been made wholly or partly in respect of damage in respect of which no relief may be given under the Tax Acts, then, subject to and in accordance with the provisions of that Schedule—

(a) relief shall be given in respect of those payments by reducing the amounts which are to be treated as trading receipts of the trade under subsection (1) above; but

(b) where such relief is given, section 568 shall, in relation to contributions subsequently paid under the scheme in respect of the trade, have effect subject to the modifications specified in Part III of that Schedule.

(3) The provisions of this section and Schedule 21 shall apply in relation to any payment made to a person who has ceased to carry on a trade to which any such scheme as is mentioned in subsection (1) above relates as they apply in relation to payments made to a person carrying on such a trade, subject to the modification that so much of that payment as falls to be treated as a trading receipt by virtue of those provisions shall be deemed for the purposes of those provisions to have been made to him on the last day on which he was engaged in carrying on the trade.

(4) In determining for the purposes of this section and of Schedule 21—

(a) whether any trade has ceased to be carried on; or

(b) whether any contribution is paid in respect of a trade in respect of which a payment has been made; or

(c) whether any payment is made in respect of a trade in respect of which a contribution has been paid,

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no regard shall be had to any event which, by virtue of any of the provisions of section 113 or section 337(1), is to be treated as effecting a discontinuance of a trade.

Marginal Citations
M1540 Source-1970 s.408

571 Cancellation of certificates.

M1541 (1) Where any certificate granted with respect to a scheme under section 568 is cancelled by the Secretary of State, and any deductible contributions paid in furtherance of the scheme have not been repaid at the expiration of one year from the cancellation, the body of persons carrying out the scheme shall, for the chargeable period in which that year expires, be charged to tax under Case VI of Schedule D upon the aggregate amount of the deductible contributions which have not been repaid at that time.

(2) The charge to tax under subsection (1) above shall not be made if the total amount of any contributions, other than deductible contributions, which have been paid under the scheme and have not been repaid before that time is greater than the available resources of the scheme, and shall not in any case be made upon an amount greater than the excess, if any, of those resources over that total amount.

(3) In subsection (2) above "the available resources", in relation to any scheme, means a sum representing the total funds held for the purposes of the scheme at the expiration of one year from the cancellation of the certificate plus a sum representing any funds held for the purposes of the scheme which, during that year, have been applied otherwise than in accordance with the provisions of the scheme as in force when the certificate was granted.

(4) Where the body of persons carrying out a scheme are charged to tax by virtue of subsection (1) above, and, after the expiration of one year from the cancellation of the certificate, any deductible contribution paid in furtherance of the scheme is repaid, the amount upon which the charge is made shall on the making of a claim be reduced by the amount repaid, and all such repayments of tax shall be made as are necessary to give effect to the provisions of this subsection.

(5) In this section "contribution" includes a part of a contribution, and "deductible contribution" means a contribution allowed to be deducted under section 568, any reduction under Part III of Schedule 21 being left out of account.

(6) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

Marginal Citations
M1541 Source-1970 s.409

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572 Application to statutory redundancy schemes.

[M1542](1) Sections 569 to 571 and Schedule 21 shall, subject to the adaptations specified in subsection (2) below, apply in relation to a statutory redundancy scheme as they apply in relation to a scheme certified under section 568.

(2) The adaptations referred to above are as follows, that is to say—

(a) for any reference to a contribution allowed to be deducted under section 568 there shall be substituted a reference to a contribution allowed to be deducted under any provision of the Tax Acts other than that section;

(b) any provision that section 568 shall, in relation to contributions, have effect subject to modifications, shall be construed as a provision that so much of any provision of the Tax Acts other than that section as authorises the deduction of contributions shall, in relation to the contributions in question, have effect subject to the modifications in question;

(c) for any reference to the cancellation of a certificate with respect to a scheme there shall be substituted a reference to the scheme ceasing to have effect; and

(d) for any reference to the provisions of the scheme as in force when the certificate was granted there shall be substituted a reference to the provisions of the scheme as in force when the contributions were first paid thereunder.

(3) In this section "statutory redundancy scheme" means a scheme for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act, whether passed before or after this Act.

Marginal Citations

M1542 Source-1970 s.410

VALID FROM 06/04/2007

[F1123 CHAPTER 5A

SHARE LOSS RELIEF

Textual Amendments

F1123 Pt. 13 Ch. 5A created (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by virtue of Income Tax Act 2007 (c. 3), **Sch. 1 para. 117(3)** (with Sch. 2)

Relief for losses on unquoted shares in trading companies

573 Relief for companies.

(1) [M1543]Subsection (2) below has effect where a company which has subscribed for shares in a qualifying trading company incurs an allowable loss (for the purpose of corporation tax on chargeable gains) on the disposal of the shares in any accounting period and the company disposing of the shares—

(a) is an investment company on the date of the disposal and either—

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(i) has been an investment company for a continuous period of six years ending on that date; or

(ii) has been an investment company for a shorter continuous period ending on that date and has not before the beginning of that period been a trading company or an excluded company; and

(b) was not associated with, or a member of the same group as, the qualifying trading company at any time in the period beginning with the date when it subscribed for the shares and ending with the date of the disposal.

(2) The company disposing of the shares may, within two years after the end of the accounting period in which the loss was incurred, make a claim requiring that the loss be set off for the purposes of corporation tax against income—

(a) of that accounting period; and

(b) if the company was then an investment company and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below;

and, subject to any relief for an earlier loss, the income of any of those periods shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this subsection against income of a later accounting period.

(3) The time referred to in subsection (2) above is the period of 12 months ending immediately before the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the income of an accounting period falling partly before that time shall not exceed a part of that income proportionate to the part of the accounting period falling within that time.

(4) Relief under subsection (2) above shall be given before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of any description; and where relief is given under that subsection in respect of the amount of a loss no deduction shall be made in respect of that amount for the purposes of corporation tax on chargeable gains.

(5) For the purposes of subsection (1)(b) above companies are associated with each other if one controls the other or both are under the control of the same person or persons; and section 416(2) to (6) shall apply for the purposes of this subsection.

(6) [M1544]For the purposes of this section a company subscribes for shares in another company if they are issued to it by that other company in consideration of money or money's worth.

Marginal Citations

M1543 Source-1981 s.36(1)-(5)

M1544 Source-1981 s.36(6); 1980 s.37(3)

575 Exclusion of relief under section 573 or 574 in certain cases.

[M1545](1) Sections 573 and 574 do not apply unless the disposal is—

(a) by way of a bargain made at arm's length for full consideration; or

(b) by way of a distribution in the course of dissolving or winding up the company; or

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(c) a deemed disposal under section **[**[F1124]24(2) of the 1992 Act**]**(claim that value of asset has become negligible).

(2) Where a person disposes of shares ("the new shares") which by virtue of section **[**[F1125]127 of the 1992 Act**]** (reorganisation etc. treated as not involving disposal) are identified with other shares ("the old shares") previously held by him, relief shall not be given under section 573 or 574 on the disposal of the new shares unless—

(a) relief under section 573 or 574 could (or if this section had been in force could) have been given on a disposal of the old shares if he had incurred an allowable loss in disposing of them as mentioned in subsection (1)(a) above on the occasion of the disposal that would have occurred but for section **[**[F1125]127 of the 1992 Act**]**; or

(b) he gave new consideration for the new shares;

but in a case within paragraph (b) above the amount of relief under section 573 or 574 on the disposal of the new shares shall not exceed the amount or value of the new consideration taken into account as a deduction in computing the loss incurred on their disposal.

(3) Where the shares are the subject of an exchange or arrangement of the kind mentioned in section **[**[F1126]135 or 136 of the 1992 Act**]**(company reconstructions etc.) which by reason of section **[**[F1126]137**]** of that Act involves a disposal of the shares, section 573 or 574 shall not apply to any allowable loss incurred on the disposal.

Textual Amendments

F1124 Words in s. 575(1)(c) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(34)(a)** (with ss. 60, 101(1), 171, 201(3))

F1125 Words in s. 575(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(34)(b)** (with ss. 60, 101(1), 171, 201(3))

F1126 Words in s. 575(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(34)(c)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C556 Ss. 574-576 applied (with effect in accordance with s. 93(11) of the affecting Act) by Finance Act 1994 (c. 9), **Sch. 12 para. 3(3)**

Marginal Citations

M1545 Source-1980 s.37(6)-(8); 1981 s.36(6)

576 Provisions supplementary to sections 573 to 575.

(1) [M1546]Where a person holds shares in a company which constitute a holding and comprise—

(a) shares for which he has subscribed ("qualifying shares"); and

(b) shares which he has acquired otherwise than by subscription,

any question whether a disposal by him of shares forming part of the holding is of qualifying shares shall be determined by treating that and any previous disposal by him out of the holding as relating to shares acquired later rather than earlier; and if

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a disposal by him is of qualifying shares forming part of a holding and he makes a claim under section 573 or 574 in respect of a loss incurred on their disposal, the amount of relief under that section on the disposal shall not exceed the sums that would be allowed as deductions in computing the loss if the shares had not been part of the holding.

(2) Where a claim is made under section 573 or 574 in respect of a loss accruing on the disposal of shares, section **[**[F1127]30 of the 1992 Act**]** (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and **[**[F1127](5)**]**to a tax-free benefit there were substituted references to any benefit whether tax-free or not.

(3) There shall be made all such adjustments of corporation tax on chargeable gains or capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of relief being given under section 573 or 574 in respect of an allowable loss or in consequence of the whole or part of such a loss in respect of which a claim is made not being relieved under that section.

(4) [M1547]For the purposes of sections 573 to 575 and this section a qualifying trading company is a company none of whose shares have at any time in the relevant period been quoted on a recognised stock exchange and which—

(a) either—

(i) is a trading company on the date of the disposal; or

(ii) has ceased to be a trading company at a time which is not more than three years before that date and has not since that time been an excluded company or an investment company; and

(b) either—

(i) has been a trading company for a continuous period of six years ending on that date or at that time; or

(ii) has been a trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company or an investment company; and

(c) has been resident in the United Kingdom throughout the period from its incorporation until that date.

(5) [M1548]In sections 573 to 575 and this section—

"excluded company" means a company—

(a) which has a trade which consists wholly or mainly of dealing in shares, securities, land, trades or commodity futures or is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised; or

(b) which is the holding company of a group other than a trading group; or

(c) which is a building society or a registered industrial and provident society as defined in section 486(12);

"group" means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries;

[[F1128]"holding" means any number of shares of the same class held by one person in one capacity, growing or diminishing as shares of that class are acquired or disposed of, but shares shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange, and

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subsection (4) of section 104 of the 1992 Act shall apply for the purposes of this definition as it applies for the purposes of subsection (1) of that section;**]**

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of one or more companies which are its 51 per cent. subsidiaries;

"investment company" has the meaning given by section 130 except that it does not include the holding company of a trading group;

"new consideration" means consideration in money or money's worth other than consideration of the kind excluded by **[**[F1129]paragraph (a) or (b) of section 128(2)**]**[F1130]of the 1992 Act**]**;

"relevant period" means the period ending with the date on which the shares in question are disposed of and beginning with the incorporation of the company, or, if later, one year before the date on which the shares were subscribed for;

"shares" includes stock but except in the definition of "excluded company" does not include shares or stock not forming part of a company's ordinary share capital;

"spouse" refers to one of two spouses who are living together (construed in accordance with section **[**[F1131]288(3) of the 1992 Act**]**);

"trading company" means a company other than an excluded company which is—

(a) **[**[F1132]a company whose business consists wholly or mainly of the carrying on of a trade or trades**]**; or

(b) the holding company of a trading group;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades, but for the purposes of this definition any trade carried on by a subsidiary which is an excluded company or not resident in the United Kingdom shall be treated as not constituting a trade.

Textual Amendments

F1127 Words in s. 576(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(a)** (with ss. 60, 101(1), 171, 201(3))

F1128 Definition in s. 576(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(b)(i)** (with ss. 60, 101(1), 171, 201(3))

F1129 Words in s. 576(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(b)(ii)** (with ss. 60, 101(1), 171, 201(3))

F1130 Words in s. 576(5) inserted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 6**

F1131 Words in s. 576(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(b)(iii)** (with ss. 60, 101(1), 171, 201(3))

F1132 1989 s.107*and* Sch.12 para.14*in relation to disposals made after* 31*March* 1989.*Previously* "(a) a trading company within the meaning of paragraph 7 of Schedule 19".

Modifications etc. (not altering text)

C557 Ss. 574-576 applied (with effect in accordance with s. 93(11) of the affecting Act) by Finance Act 1994 (c. 9), **Sch. 12 para. 3(3)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M1546 Source-1980 s.37(9)-(11); 1981 s.36(6)
M1547 Source-1980 s.37(5); 1981 s.36(6)
M1548 Source-1980 s.37(12); 1981 s.36(6), (7); 1987 (No.2) s.71

[F1133 576A Qualifying trading companies

(1) For the purposes of this Chapter a qualifying trading company is a company which meets each of conditions A to D.

(2) Condition A is that the company either—
- (a) meets each of the following requirements on the date of the disposal—
  - (i) the trading requirement (see section 576B),
  - (ii) the control and independence requirement (see section 576D),
  - (iii) the qualifying subsidiaries requirement (see section 576E), and
  - (iv) the property managing subsidiaries requirement (see section 576F), or
- (b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.

(3) Condition B is that the company either—
- (a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or
- (b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.

(4) Condition C is that the company—
- (a) met the gross assets requirement (see section 576G) both immediately before and immediately after the issue of the shares in respect of which the relief is claimed under this Chapter, and
- (b) met the unquoted status requirement (see section 576H) at the relevant time within the meaning of that section.

(5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—
- (a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and
- (b) ending with the date of the disposal.**]**

Textual Amendments

F1133 S. 576A inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 121** (with Sch. 2)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F1134 Qualifying trading companies: the requirements

Textual Amendments

F1134 S. 576B and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 122** (with Sch. 2)

576B The trading requirement

(1) The trading requirement is that—

(a) the company, disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or

(b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.

(2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—

(a) the company is treated as a parent company for the purposes of subsection (1)(b), and

(b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

(3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(4) For the purpose of determining the business of a group, activities are disregarded to the extent that they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.

(5) For the purposes of determining the business of a group, activities of a group company are disregarded to the extent that they consist in—

(a) the holding of shares in or securities of a qualifying subsidiary of the parent company,

(b) the making of loans to another group company,

(c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

(d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—

(i) that a qualifying trade to be carried on by a group company will be derived, or

(ii) that a qualifying trade carried on or to be carried on by a group company will benefit.

(6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.

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(7) In this section—

"excluded activities" has the meaning given by section 192 of ITA 2007 read with sections 193 to 199 of that Act,

"group" means a parent company and all its qualifying subsidiaries,

"group company", in relation to a group, means the parent company or any of its qualifying subsidiaries,

"incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,

"mainly trading subsidiary" means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,

"non-qualifying activities" means—

(a) excluded activities, and

(b) activities (other than research and development) carried on otherwise than in the course of a trade,

"parent company" means a company that has one or more qualifying subsidiaries,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007,

"qualifying trade" has the meaning given by section 189 of that Act,

"research and development" has the meaning given by section 837A.

(8) In sections 189(1)(b) and 194(4)(c) of ITA 2007 (as applied by subsection (7) for the purposes of the definitions of "excluded activities" and "qualifying trade") "period B" means the continuous period that is relevant for the purposes of section 576A(3).

[[F1135](9) In section 195 of ITA 2007 as applied by subsection (7) for the purposes mentioned in subsection (8), references to the issuing company are to be read as references to the company mentioned in subsection (1).**]**

Textual Amendments

F1135 S. 576B(9) inserted (6.4.2007) by Finance Act 2007 (c. 11), Sch. 16 paras. 11(3), **13**

[[F1136]**576C Ceasing to meet the trading requirement because of administration or receivership**

(1) A company is not regarded as ceasing to meet the trading requirement by reason only of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

(a) the entry into administration or receivership, and

(b) everything done as a result of the company concerned being in administration or receivership,

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is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 576A(2)—

(a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or

(b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

(4) Subsection (3) does not apply if —

(a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

(b) the company continues, during the winding up, to be a trading company.

(5) References in this section to a company being "in administration" or "in receivership" are to be read in accordance with section 252 of ITA 2007.**]**

Textual Amendments

F1136 S. 576C inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 123** (with Sch. 2)

[F1137 576D The control and independence requirement

(1) The control element of the requirement is that—

(a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and

(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 576A(3) or otherwise).

(2) The independence element of the requirement is that—

(a) the company must not—

(i) be a 51% subsidiary of another company, or

(ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and

(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 576A(3) or otherwise).

(3) This section is subject to section 576J(3).

F1138 (3A) **[** Section 839 (connected persons) applies for the purposes of this section.**]**

(4) In this section—

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"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable,

"control" is to be read as follows—

(a) in subsection (1)(a), in accordance with section 416(2) to (6),

(b) in subsection (2)(a), in accordance with section 840,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.**]**

Textual Amendments

F1137 S. 576D inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 124** (with Sch. 2)

F1138 S. 576D(3A) inserted (retrospective to 6.4.2007 and with effect in accordance with art. 1(2) of the amending S.I.) by The Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859), **art. 2(2)**

[F1139 576E The qualifying subsidiaries requirement

(1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.

(2) In this section "qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.**]**

Textual Amendments

F1139 S. 576E inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 125** (with Sch. 2)

[F1140 576F The property managing subsidiaries requirement

(1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.

(2) In this section—

"property managing subsidiary" has the meaning given by section 188(2) of ITA 2007,

"qualifying 90% subsidiary" has the meaning given by section 190 of that Act.**]**

Textual Amendments

F1140 S. 576F inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 126** (with Sch. 2)

[F1141 576G The gross assets requirement

(1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—

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(a) must not exceed £7 million immediately before the shares in respect of which the relief is claimed under this Chapter are issued, and

(b) must not exceed £8 million immediately afterwards.

(2) The gross assets requirement in the case of a parent company is that the value of the group assets—

(a) must not exceed £7 million immediately before the shares in respect of which the relief is claimed under this Chapter are issued, and

(b) must not exceed £8 million immediately afterwards.

(3) The value of the group assets means the aggregate of the values of the gross assets of each of the members of the group, disregarding any that consist in rights against, or shares in or securities of, another member of the group.

(4) In this section—

"group" means a parent company and its qualifying subsidiaries,

"parent company" means a company that has one or more qualifying subsidiaries,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007, and

"single company" means a company that does not have one or more qualifying subsidiaries.**]**

Textual Amendments

F1141 S. 576G inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 127** (with Sch. 2)

[F1142 576H The unquoted status requirement

(1) The unquoted status requirement is that, at the time ("the relevant time") at which the shares in respect of which the relief is claimed under this Chapter are issued—

(a) the company must be an unquoted company,

(b) there must be no arrangements in existence for the company to cease to be an unquoted company, and

(c) there must be no arrangements in existence for the company to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, if—

(i) section 576J applies in relation to the exchange, and

(ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.

(2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—

(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005 of ITA 2007, or

(b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c) of that Act,

if the order was made after the relevant time.

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(3) In this section—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable,

"debenture" has the meaning given by section 744 of the Companies Act 1985,

"unquoted company" has the meaning given by section 184(2) of ITA 2007.**]**

Textual Amendments

F1142 S. 576H inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 128** (with Sch. 2)

[F1143 576I Power to amend requirements by Treasury order]

The Treasury may by order make such amendments of sections 576B to 576H as they consider appropriate.**]**

Textual Amendments

F1143 S. 576I inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 129** (with Sch. 2)

[F1144 Qualifying trading companies: supplementary provisions

Textual Amendments

F1144 S. 576J and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 130** (with Sch. 2)

576J Relief after an exchange of shares for shares in another company

(1) This section and section 576K apply in relation to shares if—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company"),

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company,

(c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and

(e) by virtue of section 127 of the 1992 Act as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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In this subsection references to shares, except the first and that in the expression "subscriber shares", include securities.

(2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.

(3) Nothing in section 576D (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.

(4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(5) References in section 576K to "old shares", "new shares", "the old company" and "the new company" are to be read in accordance with this section.

[F1145 576K Substitution of new shares for old shares]

(1) Subsection (2) applies if, in the case of any new shares held by a company or by a nominee for a company, the old shares for which they were exchanged were shares that had been subscribed for by the company ("the investor").

(2) This Chapter has effect as if—

(a) the new shares had been subscribed for by the investor at the time when, and for the amount for which, the old shares were subscribed for by the investor,

(b) the new shares had been issued by the new company at the time when the old shares were issued to the investor by the old company, and

(c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.

(3) Section 573(6) applies for the purposes of this section.

F1146 **[** (4) Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied by section 576B(7) above for the purposes mentioned in section 576B(8).**]]**

Textual Amendments

F1145 S. 576K inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 131** (with Sch. 2)

F1146 S. 576K(4) inserted (6.4.2007) by Finance Act 2008 (c. 9), Sch. 16 paras. 11(4), **13**

[F1147 Supplemental]

Textual Amendments

F1147 S. 576L and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 132** (with Sch. 2)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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576L Interpretation of Chapter

(1) In this Chapter (subject to subsections (2) to (5))—

"excluded company" means a company which—

(a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,

(b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,

(c) is a holding company of a group other than a trading group, or

(d) is a building society or a registered industrial and provident society,

"group" (except in sections 576B and 576G) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,

"investment company" has the meaning given by section 130 except that it does not include the holding company of a trading group,

"registered industrial and provident society" means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) Act 1969,

"shares"—

(a) includes stock, but

(b) does not include shares or stock not forming part of a company's ordinary share capital,

"trading company" means a company other than an excluded company which is—

(a) a company whose business consists wholly or mainly of the carrying on of a trade or trades, or

(b) the holding company of a trading group, and

"trading group" means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades.

(2) Except as provided by subsection (3), paragraph (b) of the definition of "shares" in subsection (1) does not apply in the definition of "excluded company" in subsection (1) or in section 576J(1) to (4).

(3) Paragraph (b) of that definition applies in relation to the first reference to "shares" in section 576J(1).

(4) The definition of "shares" in subsection (1) does not apply in sections 576B(5)(a), 576G(3) and 576H(1)(c) and (2).

(5) For the purposes of the definition of "trading group" in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.**]**

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CHAPTER VI

OTHER PROVISIONS

Modifications etc. (not altering text)

C558 Pt 13 Ch. 6: ss. 573, 575 and 576 transposed to Pt. 13 Ch. 5A (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by Income Tax Act 2007 (c. 3), Sch. 1 paras. 117(3), 119(7), **120(7)** (with Sch. 2)

Relief for losses on unquoted shares in trading companies

574 Relief for individuals.

(1) [M1549]Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within two years after that year, make a claim for relief from income tax on an amount of his income equal to the amount of the loss; and where such relief is given in respect of the amount of a loss no deduction shall be made in respect of that amount under the **[**[F1148]1992**]** Act.

(2) The following provisions shall have effect as respects relief under this section—

(a) relief may, by notice given within two years after a year of assessment, be claimed for that year in respect of a loss incurred in the preceding year of assessment so far as relief under this section in respect of that loss has not already been given in that year, and relief claimed by virtue of this paragraph shall be given in priority to any relief in respect of a loss incurred in the year for which the relief is claimed;

(b) [F1149] . . . . . .

(c) [F1149] . . . . . .

(d) the relief shall be given in priority to relief under section 380 or 381.

(3) For the purposes of this section—

(a) an individual subscribes for shares if they are issued to him by the company in consideration of money or money's worth; and

(b) an individual shall be treated as having subscribed for shares if his spouse did so and transferred them to him by a transaction inter vivos.

Textual Amendments

F1148 Word in s. 574(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(33)** (with ss. 60, 101(1), 171, 201(3))

F1149 S. 574(2)(b)(c) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 2 of the repealing Act) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 8**)

Modifications etc. (not altering text)

C559 S. 574(1) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch. 2**.

C560 S. 574(1) modified (28.3.1992) by S.I. 1992/511, reg. 9, **Sch. 2**

C561 S. 574(1) applied with modifications (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M1549 Source-1980 s.37(1)-(4)

Miscellaneous

577 Business entertaining expenses.

(1) [M1550]Subject to the provisions of this section—

(a) no deduction shall be made in computing profits or gains chargeable to tax under Schedule A or Schedule D for any expenses incurred in providing business entertainment, and such expenses shall not be included in computing any expenses of management in respect of which relief may be given under the Tax Acts;

(b) no deduction for expenses so incurred shall be made from emoluments chargeable to tax under Schedule E; and

(c) for the purposes of **[**[F1150]Part II of the 1990 Act**]**, the use of any asset for providing business entertainment shall be treated as use otherwise than for the purposes of trade.

(2) [F1151]. . . . . .

(3) The expenses to which paragraph (a) of subsection (1) above applies include, in the case of any person, any sums paid by him to, or on behalf of, or placed by him at the disposal of a member of his staff exclusively for the purpose of defraying expenses incurred or to be incurred by him in providing business entertainment, but where—

(a) any such sum falls to be included in his emoluments chargeable to tax under Schedule E; and

(b) the deduction or inclusion of that sum as mentioned in that paragraph falls to be disallowed in whole or in part by virtue of this section;

paragraph (b) of that subsection shall not preclude the deduction of any expenses defrayed out of that sum.

(4) [F1151]. . . . . .

(5) For the purposes of this section "business entertainment" means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff, in connection with a trade carried on by that person, but does not include anything provided by him for bona fide members of his staff unless its provision for them is incidental to its provision also for others.

(6) [F1151]. . . . . .

(7) In this section—

(a) any reference to expenses incurred in, or to the use of an asset for, providing entertainment includes a reference to expenses incurred in, or to the use of an asset for, providing anything incidental thereto;

(b) references to a trade include references to any business, profession or vocation; and

(c) references to the members of a person's staff are references to persons employed by that person, directors of a company or persons engaged in the

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management of a company being for this purpose deemed to be persons employed by it.

(8) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment, except that it shall not by virtue of this subsection apply in relation to the provision for any person of a gift consisting of an article incorporating a conspicuous advertisement for the donor, being an article—

(a) which is not food, drink, tobacco or a token or voucher exchangeable for goods; and

(b) the cost of which to the donor, taken together with the cost to him of any other such articles given by him to that person in the same year, does not exceed £10.

(9) [M1551]Subsection (8) above shall not preclude the deduction, in computing profits or gains under Case I or II of Schedule D, of expenditure incurred in making a gift to a body of persons or trust established for charitable purposes only; and for the purposes of this subsection the Historic Buildings and Monuments Commission for England and the Trustees of the National Heritage Memorial Fund shall each be treated as such a body of persons.

(10) [M1552]Nothing in this section shall be taken as precluding the deduction of expenses incurred in, or any claim for capital allowances in respect of the use of an asset for, the provision by any person of anything which it is his trade to provide, and which is provided by him in the ordinary course of that trade for payment or, with the object of advertising to the public generally, gratuitously.

Textual Amendments

F1150 Words in s. 577(1)(c) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 c. 1), Sch. 1 para. 8(30), s. 164(3)

F1151 S. 577(2)(4)(6) repealed (with effect in accordance with s. 72(1) of the repealing Act) by Finance Act 1988 (c. 39), **Sch 14 Pt. 4**

Marginal Citations

M1550 Source-1970 s.411(1)-(8); 1985 s.43; 1971 s.50(8)

M1551 Source-1980 s.54, 118(3); 1983 s.46(3)(b)

M1552 Source-1970 s.411(9)

[[F1152]577A Expenditure involving crime.

(1) In computing profits or gains chargeable to tax under Schedule A or Schedule D, no deduction shall be made for any expenditure incurred in making a payment the making of which constitutes the commission of a criminal offence.

(2) Such expenditure shall not be included in computing any expenses of management in respect of which relief may be given under the Tax Acts.]

Textual Amendments

F1152 S. 577A inserted (with application in accordance with s. 123(2) of the amending Act) by Finance Act 1993 (c. 34), **s. 123(1)(2)**

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578 Housing grants.

[M1553](1) Where, under any enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, a payment is made to a person by way of grant or other contribution towards expenses incurred, or to be incurred, by that or any other person, the payment shall not be treated as a receipt in computing income for any tax purpose.

(2) Subsection (1) above shall not apply to a payment in so far as it is made in respect of an expense giving rise to a deduction in computing income for any tax purpose.

Marginal Citations

M1553 Source-1970 s.376

VALID FROM 22/03/2001

[[F1153]578A Expenditure on car hire

(1) This section provides for a reduction in the amounts—

(a) allowable as deductions in computing profits chargeable to tax under Case I or II of Schedule D,

(b) which can be included as expenses of management of an investment company (as defined by section 130), or

(c) allowable as deductions from emoluments chargeable to tax under Schedule E,

for expenditure on the hiring of a car to which this section applies.

(2) This section applies to the hiring of a car—

(a) which is not a qualifying hire car, and

(b) the retail price of which when new exceeds £12,000.

"Car" and "qualifying hire car" are defined by section 578B.

(3) The amount which would, apart from this section, be allowable or capable of being included must be reduced by multiplying it by the fraction—

$$\frac{£12{,}000 + P}{2P}$$

where P is the retail price of the car when new.

(4) If an amount has been reduced under subsection (3) and subsequently—

(a) there is a rebate (however described) of the rentals, or

(b) there occurs in connection with the rentals a transaction that falls within section 94 (debts deducted and subsequently released),

the amount otherwise taxable in respect of the rebate or transaction must be reduced by multiplying it by the fraction in subsection (3) above.]

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Textual Amendments

F1153 Ss. 578A, 578B inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 52** (with Sch. 3 para. 113)

VALID FROM 22/03/2001

[F1153 578B Expenditure on car hire: supplementary

(1) In section 578A "car" means a mechanically propelled road vehicle other than one—

(a) of a construction primarily suited for the conveyance of goods or burden of any description, or

(b) of a type not commonly used as a private vehicle and unsuitable for such use.

References to a car accordingly include a motor cycle.

(2) For the purposes of section 578A, a car is a qualifying hire car if—

(a) it is hired under a hire-purchase agreement (within the meaning of section 784(6)) under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1 per cent. of the retail price of the car when new, or

(b) it is a qualifying hire car for the purposes of Part 2 of the Capital Allowances Act (under section 82 of that Act).

(3) In section 578A and this section "new" means unused and not second-hand.

(4) The power under section 74(4) of the Capital Allowances Act to increase or further increase the sums of money specified in Chapter 8 of Part 2 of that Act includes the power to increase or further increase the sum of money specified in section 578A(2)(b) or (3).]

Textual Amendments

F1153 Ss. 578A, 578B inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 52** (with Sch. 3 para. 113)

579 Statutory redundancy payments.

M1554 (1) Any redundancy payment, and the corresponding amount of any other employer's payment, shall be exempt from income tax under Schedule E.

(2) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a trade, profession or vocation carried on by the employer, and within the charge to tax, the amount of the redundancy payment or the corresponding amount of the other employer's payment shall (if not otherwise so allowable) be allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of the trade, profession or vocation, but—

(a) if it is so allowed by virtue of this section the amount of the rebate recoverable shall (if it is not otherwise to be so treated) be treated as a receipt to be brought into account in computing those profits or gains; and

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(b) if the employer's payment was made after the discontinuance of the trade, profession or vocation the net amount so deductible shall be treated as if it were a payment made on the last day on which the trade, profession or vocation was carried on.

(3) Where a redundancy payment or other employer's payment is made in respect of employment wholly in a business carried on by the employer and expenses of management of the business are eligible for relief under section 75 or 76—

(a) the amount by which the redundancy payment, or the corresponding amount of the other employer's payment, exceeds the recoverable rebate shall (if not otherwise so allowable) be allowable as expenses of management eligible for relief under that section, and

(b) if the employer's payment was made after the discontinuance of the business the net amount so allowable shall be treated as if it were expenses of management incurred on the last day on which the business was carried on.

(4) Where a redundancy payment or other employer's payment is made in respect of employment wholly in maintaining or managing property the expenses of maintaining or managing which were eligible for relief under the provisions of section 25(1) or 28—

(a) the amount by which the redundancy payment or the corresponding amount of the other employer's payment exceeds the recoverable rebate shall (if not otherwise allowable under those provisions) be treated for the purposes of those provisions as a payment made by the employer in respect of the maintenance or management of the property, or of such part of it as he may elect; and

(b) if the employer's payment was made after the latest time when it could be taken into account for the purposes of relief under those provisions as a payment in respect of the maintenance or management of the property or any part of it, it shall be treated as having been made at that time.

(5) Relief shall not be given under subsections (2), (3) and (4) above, or otherwise, more than once in respect of any employer's payment, and if the employee was being employed in such a way that different parts of his remuneration fell for tax purposes to be treated in different ways—

(a) the amount by which the redundancy payment or the corresponding amount of the other employer's payment exceeds the recoverable rebate shall be apportioned to the different capacities in which the employee was employed; and

(b) subsections (2), (3) and (4) above shall apply separately to the employment in those capacities, and by reference to the apportioned part of that amount, instead of by reference to the full amount of the employer's payment, and the full amount of the rebate.

(6) Where the Minister pays a sum under section 106 of the [M1555]Employment Protection (Consolidation) Act 1978 or section 42 of the [M1556]Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 in respect of an employer's payment this section shall apply as if—

(a) that sum had been paid on account of that redundancy or other employer's payment, and

(b) so far as the employer has reimbursed the Minister, it had been so paid by the employer.

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Modifications etc. (not altering text)

C562 S. 579 modified (with effect in accordance with s. 39(3)-(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 23**

Marginal Citations

M1554 Source-1970 s.412(1)-(6)
M1555 1978 c. 44.
M1556 1965 c. 19 (N.I.).

580 Provisions supplementary to section 579.

M1557 (1) In section 579—

(a) "redundancy payment", "employer's payment" and "rebate" have the same meaning as in the Employment Protection (Consolidation) Act 1978 ("the 1978 Act") or Part III of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 ("the 1965 Act");

(b) references to the corresponding amount of an employer's payment (other than a redundancy payment) are references to the amount of that employer's payment so far as not in excess of the amount of the relevant redundancy payment (and so that, where in consequence of section 104(2) of the 1978 Act or section 40(2) of the 1965 Act there is no relevant redundancy payment, the corresponding amount of an employer's payment is nil);

(c) "the Minister" in relation to the 1978 Act means the Secretary of State and in relation to the 1965 Act means the Department of Health and Social Services.

(2) For the purposes of subsection (1) above "relevant redundancy payment" shall be construed in accordance with paragraph 8 of Schedule 6 to the 1978 Act or paragraph 8 of Schedule 6 to the 1965 Act.

(3) In section 579(1) the reference to tax under Schedule E does not include a reference to tax under section 148 and accordingly payments exempted by section 579(1) may be taken into account under section 148.

Marginal Citations

M1557 Source-1970 s.412(7), (8)

VALID FROM 29/04/1996

[F1154 580A Relief from tax on annual payments under certain insurance policies.

(1) This section applies (subject to subsection (7)(b) below) in the case of any such annual payment under an insurance policy as—

(a) apart from this section, would be brought into charge under Case III of Schedule D; or

(b) is equivalent to a description of payment brought into charge under Case III of that Schedule but (apart from this section) would be brought into charge under Case V of that Schedule.

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(2) Subject to the following provisions of this section, the annual payment shall be exempt from income tax if—
- (a) it constitutes a benefit provided under so much of an insurance policy as provides insurance against a qualifying risk;
- (b) the provisions of the policy by which insurance is provided against that risk are self-contained (within the meaning of section 580B);
- (c) the only annual payments relating to that risk for which provision is made by that policy are payments in respect of a period throughout which the relevant conditions of payment are satisfied; and
- (d) at all times while the policy has contained provisions relating to that risk, those provisions have been of a qualifying type.

(3) For the purposes of this section and section 580B a qualifying risk is any risk falling within either of the following descriptions, that is to say—
- (a) a risk that the insured will (or will in any specified way) become subject to, or to any deterioration in a condition resulting from, any physical or mental illness, disability, infirmity or defect;
- (b) a risk that circumstances will arise as a result of which the insured will cease to be employed or will cease to carry on any trade, profession or vocation carried on by him.

(4) For the purposes of this section the relevant conditions of payment are satisfied in relation to payments under an insurance policy for so long as any of the following continues, that is to say—
- (a) an illness, disability, infirmity or defect which is insured against by the relevant part of the policy, and any related period of convalescence or rehabilitation;
- (b) any period during which the insured is, in circumstances insured against by the relevant part of the policy, either unemployed or not carrying on a trade, profession or vocation;
- (c) any period during which the income of the insured (apart from any benefits under the policy) is less, in circumstances so insured against, than it would have been if those circumstances had not arisen; or
- (d) any period immediately following the end, as a result of the death of the insured, of any period falling within any of paragraphs (a) to (c) above;

and in this subsection "the relevant part of the policy" means so much of it as relates to insurance against one or more risks mentioned in subsection (3) above.

(5) For the purposes of subsection (2)(d) above provisions relating to a qualifying risk are of a qualifying type if they are of such a description that their inclusion in any policy of insurance containing provisions relating only to a comparable risk would (apart from any reinsurance) involve the possibility for the insurer that a significant loss might be sustained on the amounts payable by way of premiums in respect of the risk, taken together with any return on the investment of those amounts.

(6) An annual payment shall not be exempt from income tax under this section if it is paid in accordance with a contract the whole or any part of any premiums under which have qualified for relief for the purposes of income tax by being deductible either—
- (a) in the computation of the insured's income from any source; or
- (b) from the insured's income.

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(7) Where a person takes out any insurance policy wholly or partly for the benefit of another and that other person pays or contributes to the payment of the premiums under that policy, then to the extent only that the benefits under the policy are attributable, on a just and reasonable apportionment, to the payments or contributions made by that other person—

(a) that other person shall be treated for the purposes of this section and section 580B as the insured in relation to that policy;

(b) this section shall have effect in relation to those benefits, so far as comprised in payments to that other person or his spouse, as if the reference in subsection (1)(a) above to Case III of Schedule D included a reference to Schedule E; and

(c) subsection (6) above shall have effect as if the references to the premiums under the policy were references only to the payments or contributions made by that other person in respect of the premiums.

(8) Where—

(a) payments are made to or in respect of any person ("the beneficiary") under any insurance policy ("the individual policy"),

(b) the rights under the individual policy in accordance with which the payments are made superseded, with effect from the time when another policy ("the employer's policy") ceased to apply to that person, any rights conferred under that other policy,

(c) the employer's policy is or was a policy entered into wholly or partly for the benefit of persons holding office or employment under any person ("the employer") against risks falling within subsection (3)(a) above,

(d) the individual policy is one entered into in pursuance of, or in accordance with, any provisions contained in the employer's policy, and

(e) the beneficiary has ceased to hold office or employment under the employer as a consequence of the occurrence of anything insured against by so much of the employer's policy as related to risks falling within subsection (3)(a) above,

this section shall have effect as if the employer's policy and the individual policy were one policy.

(9) In the preceding provisions of this section references to the insured, in relation to any insurance policy, include references to—

(a) the insured's spouse; and

(b) in the case of a policy entered into wholly or partly for purposes connected with the meeting of liabilities arising from an actual or proposed transaction identified in the policy, any person on whom any of those liabilities will fall jointly with the insured or his spouse.

(10) References in this section and section 580B to insurance against a risk include references to any insurance for the provision (otherwise than by way of indemnity) of any benefits against that risk, and references to what is insured against by a policy shall be construed accordingly.**]**

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Textual Amendments

F1154 Ss. 580A, 580B inserted (with effect in accordance with s. 143(2)-(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 143(1)**

VALID FROM 29/04/1996

[F1154 580B Meaning of "self-contained" for the purposes of s.580A.

(1) For the purposes of section 580A the provisions of an insurance policy by which insurance is provided against a qualifying risk are self-contained unless subsection (2) or (3) below applies to the provisions of that policy so far as they relate to that risk; but, in determining whether either of those subsections so applies, regard shall be had to all the persons for whose benefit insurance is provided by that policy against that risk.

(2) This subsection applies to the provisions of an insurance policy so far as they relate to a qualifying risk if—

(a) that insurance policy contains provision for the payment of benefits other than those relating to that risk;

(b) the terms of the policy so far as they relate to that risk, or the manner in which effect is given to those terms, would have been significantly different if the only benefits under the policy had been those relating to that risk; and

(c) that difference is not one relating exclusively to the fact that the amount of benefits receivable by or in respect of any person under the policy is applied for reducing the amount of other benefits payable to or in respect of that person under the policy.

(3) This subsection applies to the provisions of an insurance policy ("the relevant policy") so far as they relate to a qualifying risk if—

(a) the insured under that policy is, or has been, the insured under one or more other policies;

(b) that other policy, or each of those other policies, is in force or has been in force at a time when the relevant policy was in force or at the time immediately before the relevant policy was entered into;

(c) the terms of the relevant policy so far as relating to that risk, or the manner in which effect is given to those terms, would have been significantly different if the other policy or policies had not been entered into; and

(d) that difference is not one relating exclusively to the fact that the amount of benefits receivable by or in respect of any person under the other policy, or any of the other policies, is applied for reducing the amount of benefits payable to or in respect of that person under the relevant policy.

(4) In subsections (2)(b) and (3)(c) above the references to the terms of a policy so far as they relate to a risk include references to the terms fixing any amount payable by way of premium or otherwise in respect of insurance against that risk.**]**

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Textual Amendments

F1154 Ss. 580A, 580B inserted (with effect in accordance with s. 143(2)-(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 143(1)**

VALID FROM 22/07/2004

[F1155 580C Relief from tax on annual payments under immediate needs annuities

(1) No liability to income tax arises in respect of a relevant annual payment made under an immediate needs annuity to the extent that—

(a) it is made for the benefit of the person protected under the immediate needs annuity, and

(b) it is made to a care provider or a local authority in respect of the provision of care for the person protected.

(2) In this section "relevant annual payment" means an annual payment which—

(a) would (apart from this section) be brought into charge under Case III of Schedule D, or

(b) is equivalent to a description of payment brought into charge under Case III of that Schedule but would (apart from this section) be brought into charge under Case V of that Schedule.

(3) In this section "immediate needs annuity" means a contract for a life annuity—

(a) the purpose, or one of the purposes, of which is to protect a person against the consequences of his being unable, at the time the contract is made, to live independently without assistance because of—

(i) mental or physical impairment, or

(ii) injury, sickness or other infirmity,

which is expected to be permanent, and

(b) under which benefits are payable in respect of the provision of care for the person protected.

(4) In this section "care provider" means a person who carries on a trade, profession or vocation which consists of or includes the provision of care and who—

(a) in relation to care provided in England and Wales or Northern Ireland, is registered under the relevant enactment in respect of the provision of care;

(b) in relation to care provided in Scotland, provides care which is registered under the relevant enactment;

(c) in relation to care provided in a territory outside the United Kingdom, satisfies comparable requirements under the law of that territory relating to the provision of care.

(5) In this section "the relevant enactment" means—

(a) in relation to England and Wales, Part 2 of the Care Standards Act 2000,

(b) in relation to Scotland, Part 1 of the Regulation of Care (Scotland) Act 2001,

(c) in relation to Northern Ireland, Part 2 or 3 of the Registered Homes (Northern Ireland) Order 1992 or Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

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(6) In this section "care" means accommodation, goods or services which it is necessary or desirable to provide to a person because of—
  (a) mental or physical impairment, or
  (b) injury, sickness or other infirmity,
which is expected to be permanent.

(7) In this section "life annuity" means an annuity to which section 656 (read with section 657) applies.

(8) The Treasury may by order amend—
  (a) the definition of "immediate needs annuity" in subsection (3) above;
  (b) the definitions of "care provider" in subsection (4) above and of "the relevant enactment" in subsection (5) above.**]**

Textual Amendments

F1155 S. 580C inserted (with effect in accordance with s. 147(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 147(3)**

581 Borrowing in foreign currency by local authorities and statutory corporations.

(1) [M1558]If the Treasury direct that this section shall apply to any securities issued by a local authority and expressed in a currency other than sterling, interest on those securities—
  (a) shall be paid without deduction of income tax, and
  (b) so long as the beneficial owner is not resident in the United Kingdom, shall be exempt from income tax (but not corporation tax).

(2) Where for repayment of the principal amount due under the securities there is an option between sterling and one or more currencies other than sterling, that subsection shall be applicable to the securities if the option is exercisable only by the holder of the securities, and shall not be applicable to the securities in any other case.

(3) Where any income of any person is by virtue of any provision of the Income Tax Acts to be deemed to be income of any other person, that income shall not be exempt from tax by virtue of this section by reason of the first-mentioned person not being resident in the United Kingdom.

(4) [M1559]This section shall have effect in relation to any securities issued by or loan made to a statutory corporation as it has effect in relation to any securities issued by a local authority, the references to the beneficial owner or holder of the securities being for this purpose read, in the case of such a loan, as references to the person for the time being entitled to repayment or eventual repayment of the loan.

(5) In subsection (4) above "statutory corporation" means—
  (a) a corporation incorporated by an Act; or
  (b) any other corporation, being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by an Act or by an order made under or confirmed by an Act;
but, save as is provided by paragraph (b) above, does not include any company within the meaning of the [M1560]Companies Act 1985 or the [M1561]Companies (Northern Ireland) Order 1986.

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(6) [M1562]In relation to securities issued before 6th April 1982 subsections (1) and (2) above shall have effect with the substitution for references to sterling of references to a currency of a country which at the time of the issue was specified in Schedule 1 to the [M1563]Exchange Control Act 1947.

Marginal Citations

M1558 Source-1970 s.416(1)-(3); 1982 s.64(2)
M1559 Source-1975 s.12; 1987 Sch.15 7
M1560 1985 c. 6.
M1561 S.I. 1986/1032 (N.I. 6).
M1562 Source-1970 s.416(1)-(3); 1982 s.64(2)
M1563 1947 c. 14.

VALID FROM 06/04/2005

[[F1156]581A Interest on foreign currency securities etc.

Interest within section 755(1) of ITTOIA 2005 (interest on foreign currency securities etc.) shall be paid without deduction of income tax.**]**

Textual Amendments

F1156 S. 581A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 242** (with Sch. 2)

582 Funding bonds issued in respect of interest on certain debts.

[M1564](1) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on any debt to which this section applies—

(a) the issue of the bonds shall be treated for all the purposes of the Tax Acts as if it were the payment of an amount of that interest equal to the value of the bonds at the time of their issue, and

(b) the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.

(2) Where an issue of bonds is treated by virtue of subsection (1) above as if it were the payment of an amount of interest, and any person by or through whom the bonds are issued would be required by virtue of any provision of the Tax Acts to deduct income tax from that amount of interest if it had been actually paid by or through him, the following provisions shall have effect—

(a) subject to paragraph (b) below, any such person—

(i) shall retain bonds the value of which at the time of their issue is equal to income tax on that amount of interest at the basic rate for the year of assessment in which the bonds are issued, and

(ii) shall be acquitted in respect of any such retention in the same way as if he had deducted such tax from the interest, and

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(iii) shall be chargeable with that tax accordingly, but may tender the bonds retained in satisfaction thereof;

(b) where the Board are satisfied that it is impracticable to retain bonds on account of income tax under paragraph (a) above—

(i) they may relieve any such person from the obligation to retain bonds and account for income tax under that paragraph, on his furnishing to them a statement of the names and addresses of the persons to whom the bonds have been issued and the amount of the bonds issued to each such person; and

(ii) tax in respect of the amount of interest treated by virtue of this section as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D for the chargeable period in which the bonds are issued on the persons receiving or entitled to the bonds.

(3) This section applies to any debt incurred, whether in respect of any money borrowed or otherwise, by any government, public authority or public institution whatsoever, or by any body corporate whatsoever.

(4) For the purposes of this section "funding bonds" includes any bonds, stocks, shares, securities or certificates of indebtedness.

Marginal Citations

M1564 Source-1970 s.417; 1971 Sch.6 47

[F1157 582A Designated international organisations: miscellaneous exemptions.

(1) The Treasury may by order designate for the purposes of any one or more of subsections (2) to (6) below any international organisation of which the United Kingdom is a member; and in those subsections "designated" means designated under this subsection.

(2) Section 43 shall not apply in the case of payment made by an organisation designated for the purposes of this subsection.

(3) Section 123(2) and paragraph 6(1)(b) of Schedule 3 shall have effect as if "foreign dividends" did not include any interest, dividends or other annual payments payable out of or in respect of the stocks, funds, shares or securities of an organisation designated for the purposes of this subsection.

(4) Section 349(1) shall not apply in the case of a payment of an amount payable by an organisation designated for the purposes of this subsection.

(5) Section 349(2) shall not apply in the case of interest payable by—

(a) an organisation designated for the purposes of this subsection, or

(b) a partnership of which such an organisation is a member.

(6) An organisation designated for the purposes of this subsection shall not be a person to whom section 560(2) applies.]

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Textual Amendments

F1157 S. 582A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 118(1)**

583 Inter-American Development Bank.

[M1565]A person not resident in the United Kingdom shall not be liable to income tax in respect of income from any security issued by the Inter-American Development Bank if he would not be liable but for the fact that—

(a) the security or income is issued, made payable or paid in the United Kingdom or in sterling; or

(b) the Bank maintains an office or other place of business in the United Kingdom.

Marginal Citations

M1565 Source-1976 s.131(2)

584 Relief for unremittable overseas income

(1) [M1566]Where a person is chargeable to tax by reference to the amount of any income arising in a territory outside the United Kingdom ("overseas income"), then for the purposes of tax this section shall apply to the overseas income in so far as—

(a) he is prevented from transferring the amount of the overseas income to the United Kingdom, either by the laws of that territory or any executive action of its government or by the impossibility of obtaining foreign currency in that territory; and

(b) he has not realised the overseas income outside that territory for a consideration in sterling or a consideration in some other currency which he is not prevented from transferring to the United Kingdom.

Overseas income to which this section applies is referred to below as unremittable.

(2) Subject to subsection (3) below, where a person so chargeable gives notice of his desire to be assessed in accordance with this subsection, then, in the first instance, account shall not be taken of the overseas income to the extent to which he shows to the satisfaction of the Board that the following conditions are satisfied with respect to it, that is to say—

(a) that it is unremittable; and

(b) that subsection (1)(a) above would continue to apply notwithstanding any reasonable endeavours on his part,

and tax shall be assessed and charged on all persons concerned and for all periods accordingly; but, on the Board ceasing, as respects any part of the income, to be satisfied that those conditions are satisfied, such assessments, reductions of assessments and repayments of tax shall be made as may be necessary to take account of it, and of any tax payable in respect of it under the law of the territory where it arises, according to their value at the date when, in the opinion of the Board, those conditions cease to be satisfied with respect to it, and may be so made at any time not later than six years after that date.

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(3) Where the tax chargeable is corporation tax, subsection (2) above shall have effect as if—

(a) for the word "assessed" in the second place where it occurs, there were substituted " assessable ";

(b) for the words from "on the Board ceasing" to "take account" there were substituted " on the said conditions ceasing to be satisfied as respects any part of the income, it shall be treated as income arising on the date when those conditions cease to be satisfied with respect to it and account shall be taken "; and

(c) for the words from "the date" onwards there were substituted " that date ".

(4) Where a company becomes chargeable to corporation tax in respect of income from any source by virtue of subsections (2) and (3) above after it has ceased to possess that source of income, the income shall be chargeable under Case VI of Schedule D.

(5) [M1567]Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the [M1568]Export Guarantees and Overseas Investment Act 1978 any payment is made by the Export Credit Guarantee Department in respect of any income which cannot be transferred to the United Kingdom, then, to the extent of the payment, the income shall be treated as income with respect to which the conditions mentioned in subsection (2) above are not satisfied (and accordingly cannot cease to be satisfied).

(6) [M1569]Any notice under subsection (2) above shall be delivered to the inspector before an assessment made by reference to that income otherwise than in accordance with that subsection has become final and conclusive; and there shall be made all such assessments, reductions of assessments or repayments of tax as may be required by reason of any such notice.

(7) In the case of the death of a person who, if he had not died, would, under subsection (2) above, have become chargeable to any income tax, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.

(8) Subject to subsections (2) and (3) above, the amount of any unremittable overseas income shall be determined by reference to the generally recognised market value in the United Kingdom (if any), or, in the absence of any such value, according to the official rate of exchange of the territory where the income arises.

(9) Any appeal against an assessment which involves a question as to the operation of this section shall be made to the Special Commissioners and not to the General Commissioners.

(10) [M1570]This section shall have effect as respects any accounting period in which the conditions in subsection (2) above cease to be satisfied in relation to any income, being an accounting period ending on or before such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section, with the omission of subsections (3) and (4).

Subordinate Legislation Made

P6 S. 584(10) power exercised: 30.9.1993 appointed by S.I. 1992/3066, **art. 2(2)(b)**

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Modifications etc. (not altering text)

C563 *See* 1979(C) s.13—*delayed remittances of capital gains.*

Marginal Citations

M1566 Source-1970 s.418(1), (2), (2A), (2B); 1987 (No.2) Sch.6 6
M1567 Source-1972 s.124(2)(a)
M1568 1978 c. 18.
M1569 Source-1970 s.418(3)-(6); 1987 (No.2) Sch.6 6
M1570 Source-1987 (No.2) Sch.6 6(5)

585 Relief from tax on delayed remittances.

M1571 (1) A person charged or chargeable for any year of assessment in respect of income from any source with tax which (apart from this section) falls to be computed under Case IV or V of Schedule D, or under Case III of Schedule E, on the amount of income received in the United Kingdom in the basis year for that year of assessment, may by making a claim require that the following provisions of this section shall apply, on showing that the following conditions are satisfied, that is to say—

(a) that of the income so received all or part arose before the basis year but he was unable to transfer it to the United Kingdom before that year; and

(b) subject to subsection (2) below, that that inability was due to the laws of the territory where the income arose, or to executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and

(c) that the inability was not due to any want of reasonable endeavours on his part.

(2) For the purposes of this section, where in any year of assessment a person is granted a pension or increase of pension retrospectively, the amount paid in respect of any previous year of assessment by virtue of the grant shall be treated as income arising in that previous year, whenever it is paid, and he shall be treated as having possessed the source of income from the time as from which the grant has effect; and subsection (1)(b) above shall not apply in relation to any amount so paid, except as respects the period after it becomes payable.

(3) Where a person claims that the provisions of this section shall apply for any year of assessment as respects the income from any source, then for the purposes of income tax—

(a) there shall be deducted from the income received in the United Kingdom in the basis year for that year the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) above are satisfied, so far as applicable; but

(b) the part (if any) of that amount arising in each previous year of assessment shall be treated as if it were income received in the United Kingdom in the basis year for that previous year.

(4) Nothing in this section shall alter the year which is to be taken as the basis year for computing tax chargeable for any year of assessment under Case IV or V of Schedule D, and where under subsection (3)(b) above income is treated as received in the United Kingdom in a year which is the basis year for two years of assessment, it shall not by reason thereof be taken into account except in the year in which it arose.

(5) Where—

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(a) a person makes a claim under this section for any year of assessment as respects income from any source chargeable under Case IV or V of Schedule D, and

(b) that year is the basis year for computing the tax with which he is chargeable on the income from that source both for that and for the succeeding year of assessment,

tax shall not be chargeable for either of those years of assessment on the amount referred to in paragraph (a) of subsection (3) above (without however being charged a second time by virtue of paragraph (b) of that subsection).

(6) No claim under this section shall be made in respect of any income more than six years after the end of the year of assessment in which the income is received in the United Kingdom.

(7) There shall be made all such adjustments, whether by way of repayment of tax, assessment or otherwise, as may be necessary to give effect to this section, and notwithstanding anything in the Income Tax Acts, any adjustment to give effect to a claim under this section may be made at any time.

(8) A person's executors or administrators may make any claim under this section which he might have made, if he had not died, and after a person's death—

(a) any tax paid by him and repayable by virtue of a claim under this section (whoever made the claim) shall be repaid to his executors or administrators; and

(b) any additional tax chargeable by virtue of such a claim shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

(9) In this section "basis year" means—

(a) in relation to tax chargeable for any year of assessment under Case IV or V of Schedule D in respect of income from any source, the year by reference to which the amount of the income chargeable finally falls to be computed; and

(b) in relation to tax chargeable for any year of assessment under Case III of Schedule E, that year of assessment;

and any reference in this section to a source of income includes a part of a source.

Modifications etc. (not altering text)

C564 *See* 1979(C) s.13—*delayed remittances of capital gains.*

Marginal Citations

M1571 Source-1970 s.419

586 Disallowance of deductions for war risk premiums.

M1572 (1) In computing the amount of the profits or gains of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing the expenses of management in respect of which relief may be given under section 75 or 76.

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(3) Subject to subsections (4) and (5) below, this section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage.

(4) Where the payment is made in respect of the right or eligibility mentioned in subsection (3) above and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of subsection (1) or (2) above.

(5) This section shall not apply to any payment made under any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.

(6) In this section "war damage" means loss or damage arising from action taken by an enemy of Her Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation of or in consequence of an attack by such an enemy.

Marginal Citations

M1572 Source-1970 s.420

587 Disallowance of certain payments in respect of war injuries to employees.

M1573 (1) In computing the amount of the profits or gains, or total income, of any person for any tax purpose, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(a) the expenses of management in respect of which relief may be given under section 75 or 76; or

(b) the expenses of management or supervision in respect of which relief may be given under section 121.

(3) Subject to subsections (4) and (5) below, this section applies—

(a) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere; and

(b) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to such war injuries.

(4) This section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before 3rd September 1939, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date.

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(5) This section shall not apply to any payment by way of benefit if, in the opinion of the Board, that payment was made under an established practice which was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.

(6) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Board, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or (2) above.

(7) Where a person makes a payment to which this section applies by way of premium or contribution, and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Board, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or (2) above.

(8) In this section "war injuries" means physical injuries—

(a) caused by—

(i) the discharge of any missile (including liquids and gas);

(ii) the use of any weapon, explosive or other noxious thing; or

(iii) the doing of any other injurious act,

either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of, or for the benefit of, Her Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

Marginal Citations

M1573 Source-1970 s.421

[587A [F1158]New issues of securities: extra return.

(1) This section applies where—

(a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,

(b) on a later occasion securities (new securities) of the same kind are issued,

(c) a sum (the extra return) is payable in respect of the new securities, by the person issuing them, to reflect the fact that interest is accruing on the old securities,

(d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and

(e) the extra return is equal to the amount of interest payable for the relevant period on so many old securities as there are new (or, if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new).

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(2) Anything payable or paid by way of the extra return shall be treated for the purposes of the Tax Acts as payable or paid by way of interest (to the extent that it would not be so treated apart from this subsection).

(3) But as regards any payment by way of the extra return, relief shall not be given under any provision of the Tax Acts to the person by whom the new securities are issued; and "relief" here means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

(4) For the purposes of this section securities are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

(5) For the purposes of this section the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are issued.

(6) For the purposes of this section the relevant day is—

(a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are issued, or

(b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are issued;

and an interest payment day, in relation to the old securities, is a day on which interest is payable under them.**]**

Textual Amendments

F1158 S. 587A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, **Sch. 12 para. 1** (with application as referred to in Sch. 12 para. 5 of that Act)

VALID FROM 28/07/2000

[F1159 587K Gifts of shares and securities to charities etc.

(1) Subsections (2) and (3) below apply where, otherwise than by way of a bargain made at arm's length, an individual, or a company which is not itself a charity, disposes of the whole of the beneficial interest in a qualifying investment to a charity.

(2) On a claim made in that behalf to an officer of the Board—

(a) the relevant amount shall be allowed—

(i) in the case of a disposal by an individual, as a deduction in calculating his total income for the purposes of income tax for the year of assessment in which the disposal is made;

(ii) in the case of a disposal by a company, as a charge on income for the purposes of corporation tax for the accounting period in which the disposal is made; and

(b) no relief in respect of the disposal shall be given under section 83A or any other provision of the Income Tax Acts;

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but paragraph (a)(i) above shall not apply for the purposes of any computation under section 550(2)(a) or (b).

(3) The consideration for which the charity's acquisition of the qualifying investment is treated by virtue of section 257(2) of the 1992 Act as having been made—
- (a) shall be reduced by the relevant amount; or
- (b) where that consideration is less than that amount, shall be reduced to nil.

(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—
- (a) where the disposal is a gift, the market value of the qualifying investment at the time when the disposal is made;
- (b) where the disposal is at an undervalue, the difference between that market value and the amount or value of the consideration for the disposal.

(5) Where there are one or more benefits received in consequence of making the disposal which are received by the person making the disposal or a person connected with him, the relevant amount shall be reduced by the value of that benefit or, as the case may be, the aggregate value of those benefits; and section 839 applies for the purposes of this subsection.

(6) Where the disposal is a gift, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it.

(7) Where the disposal is at an undervalue—
- (a) to the extent that the consideration for the disposal is less than that for which the disposal is treated as made by virtue of section 257(2)(a) of the 1992 Act, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it; and
- (b) section 48 of that Act (consideration due after time of disposal) shall apply in relation to the computation of the relevant amount as it applies in relation to the computation of a gain.

(8) In the case of a disposal by a company which is carrying on life assurance business—
- (a) if the company is charged to tax under Case I of Schedule D in respect of such business, subsections (2) and (3) above shall not apply;
- (b) if the company is not so charged to tax in respect of such business—
  - (i) subsection (2)(a)(ii) above shall have effect as if for "a charge on income" there were substituted "an expense of management"; and
  - (ii) the relevant amount given by subsection (4) above shall be reduced by so much (if any) of that amount as is not referable to basic life assurance and general annuity business;

  and for the purpose of determining how much (if any) of that amount is not so referable, section 432A shall have effect as if that amount were a gain accruing on the disposal of the qualifying investment to the company.

(9) In this section—

"authorised unit trust" and "open-ended investment company" have the meanings given by section 468;

"charity" has the same meaning as in section 506 and includes each of the bodies mentioned in section 507(1);

"the incidental costs of making the disposal to the person making it" shall be construed in accordance with section 38(2) of the 1992 Act;

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"life assurance business" and related expressions have the same meaning as in Chapter I of Part XII;

"offshore fund" means a collective investment scheme (within the meaning of the [M1574]Financial Services Act 1986) which is constituted by any company, unit trust scheme or other arrangement falling within paragraph (a), (b) or (c) of section 759(1);

"qualifying investment" means any of the following—

(a) shares or securities which are listed or dealt in on a recognised stock exchange;

(b) units in an authorised unit trust;

(c) shares in an open-ended investment company; and

(d) an interest in an offshore fund.

(10) Subject to subsection (11) below, the market value of any qualifying investment shall be determined for the purposes of this section as for the purposes of the 1992 Act.

(11) In the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 272(5) of the 1992 Act (meaning of "market value" in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this section.**]**

Textual Amendments

F1159 S. 587B inserted (with effect in accordance with s. 43(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 43(1)**

Modifications etc. (not altering text)

C565 S. 587B modified (with effect in accordance with reg. 30AA(3) of the modifying reg.) by the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30AA(1)(2)** (as inserted (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 5)

Marginal Citations

M1574 1986 c. 60.

VALID FROM 06/04/2007

[F1160 587BA Qualifying interests in land held jointly

(1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

(2) Where two or more persons ("the owners")—

(a) are jointly beneficially entitled to the qualifying interest in land, or

(b) are, taken together, beneficially entitled in common to the qualifying interest in land,

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relief under section 587B is available if at least one of the owners is a qualifying company and all the owners dispose of the whole of their beneficial interests in the qualifying interest in land to the charity.

(3) Subsection (4) applies if one or more of the owners is not a company.

(4) For the purpose of determining whether the owners' beneficial interests are disposed of as mentioned in subsection (2), section 587B(9B) and (9C) applies as if references to a company included a reference to a person who is not a company.

(5) Relief under section 587B is available to each of the owners which is a qualifying company.

(6) If one or more of the owners is an individual—
- (a) the relevant amount is taken to be the relievable amount calculated for the purposes of Chapter 3 of Part 8 of ITA 2007, and
- (b) the amount of relief under section 587B to be given to a qualifying company is such share of the relievable amount as is allocated to the company by the agreement mentioned in section 442(5) of ITA 2007.

(7) Subsections (8) to (12) apply if none of the owners is an individual.

(8) The amount of relief under section 587B to be given to a qualifying company is such share of the relevant amount as is allocated to the company by an agreement made between those owners which are qualifying companies.

(9) Calculate the relevant amount as if—
- (a) the owners were a single qualifying company, and
- (b) the disposals of the owners' beneficial interests were a single disposal by that single company of the whole of the beneficial interest in the qualifying interest in land.

(10) In particular, for the purposes of section 587B(7) calculate the consideration for which the disposal is made by virtue of section 257(2)(a) of the 1992 Act by—
- (a) calculating, for each owner, the consideration for which the disposal of the owner's beneficial interest is so made, and
- (b) adding together all the consideration calculated under paragraph (a).

(11) If one or more of the owners is not a qualifying company, in calculating the relevant amount make just and reasonable adjustments to reduce the relevant amount to reflect the fact that relief under section 587B is not available to that owner or to those owners.

(12) If one or more of the owners is within paragraph (b) of section 587B(8), in calculating the relevant amount make just and reasonable adjustments to reduce the relevant amount to reflect the requirements of sub-paragraph (ii) of that paragraph.

(13) A company is a qualifying company if—
- (a) it is not itself a charity, and
- (b) it is not within section 587B(8)(a).**]**

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Textual Amendments

F1160 S. 587BA inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 138** (with Sch. 2)

VALID FROM 24/07/2002

[F1161 587C Supplementary provision for gifts of real property

(1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

(2) Where two or more persons—
  (a) are jointly beneficially entitled to the qualifying interest in land, or
  (b) are, taken together, beneficially entitled in common to the qualifying interest in land,

section 587B applies only if each of those persons disposes of the whole of his beneficial interest in the qualifying interest in land to the charity.

(3) Relief under section 587B shall be available to each of the persons referred to in subsection (2) above, but the amount that may be allowed as respects any of them shall be only such share of the relevant amount as they may agree in the case of that person.

(4) No person may make a claim for a relief under subsection (2) of section 587B unless he has received a certificate given by or on behalf of the charity.

(5) The certificate must—
  (a) specify the description of the qualifying interest in land which is the subject of the disposal,
  (b) specify the date of the disposal, and
  (c) contain a statement that the charity has acquired the qualifying interest in land.

(6) If, in the case of a disposal of a qualifying interest in land, a disqualifying event occurs at any time in the relevant period, the person (or each of the persons) who made the disposal to the charity shall be treated as never having been entitled to relief under section 587B in respect of the disposal.

(7) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (6) above.

(8) For the purposes of subsection (6) above a disqualifying event occurs if the person (or any one of the persons) who made the disposal or any person connected with him (or any one of them)—
  (a) becomes entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  (b) becomes party to an arrangement under which he enjoys some right in relation to all or part of that land,

otherwise than for full consideration in money or money's worth.

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(9) A disqualifying event does not occur, for the purposes of subsection (6) above, if a person becomes entitled to an interest or right as mentioned in subsection (8)(a) above as a result of a disposition of property on death, whether the disposition is effected by will, under the law relating to intestacy or otherwise.

(10) For the purposes of subsection (6) above the relevant period is the period beginning with the date of the disposal of the qualifying interest in land and ending with—

(a) in the case of an individual, the fifth anniversary of the 31st January next following the end of the year of assessment in which the disposal was made, and

(b) in the case of a company, the sixth anniversary of the end of the accounting period in which the disposal was made.

(11) Section 839 (connected persons) applies for the purposes of this section.

(12) This section shall be construed as one with section 587B.**]**

Textual Amendments

F1161 S. 587C inserted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(5)**

588 Training courses for employees.

M1575 (1) Where, on or after 6th April 1987, a person (in this section referred to as the "employer") incurs expenditure in paying or reimbursing relevant expenses incurred in connection with a qualifying course of training which—

(a) is undertaken by a person (in this section referred to as the "employee") who is the holder or past holder of any office or employment under the employer; and

(b) is undertaken with a view to retraining the employee,

the employee shall not thereby be regarded as receiving any emolument which forms part of his income for any purpose of Schedule E.

(2) Section 589 shall have effect to determine for the purposes of this section—

(a) what is a qualifying course of training;

(b) whether such a course is undertaken by an employee with a view to retraining; and

(c) what are relevant expenses in relation to such a course.

(3) Subject to subsection (4) below, where—

(a) an employer incurs expenditure in paying or reimbursing relevant expenses as mentioned in subsection (1) above; and

(b) that subsection has effect in relation to the income of the employee for the purposes of Schedule E;

then, if and so far as that expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D the profits or gains of the trade, profession or vocation of the employer for the purposes of which the employee is or was employed.

(4) If the employer carries on a business, the expenses of management of which are eligible for relief under section 75, subsection (3) above shall have effect as if for

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the words from "in computing" onwards there were substituted " as expenses of management for the purposes of section 75 ".

(5) In any case where—

(a) an employee's liability to tax for any year of assessment is determined (by assessment or otherwise) on the assumption that subsection (1) above applies in his case and, subsequently, there is a failure to comply with any provision of section 589(3) and (4); or

(b) an employer's liability to tax for any year is determined (by assessment or otherwise) on the assumption that, by virtue only of subsection (3) above (or subsections (3) and (4) above), he is entitled to a deduction on account of any expenditure and, subsequently, there is such a failure as is referred to in paragraph (a) above;

an assessment under section 29(3) of the Management Act of an amount due in consequence of the failure referred to above may be made at any time not later than six years after the end of the chargeable period in which the failure occurred.

(6) Where an event occurs by reason of which there is a failure to comply with any provision of section 589(3) and (4), the employer of the employee concerned shall within 60 days of coming to know of the event give a notice to the inspector containing particulars of the event.

(7) If the inspector has reason to believe that an employer has not given a notice which he is required to give under subsection (6) above in respect of any event, the inspector may by notice require the employer to furnish him within such time (not less that 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this section.

Modifications etc. (not altering text)

C566 S. 588 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para 24** (the modification consisting of the insertion of a s. 588(4A) for limited purposes, and that s. 588(4A) was repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note)

Marginal Citations

M1575 Source-1987 s.35(1)-(7)

589 Qualifying courses of training etc.

M1576 (1) Subject to subsection (2) below, a course is a qualifying course of training if—

(a) it provides a course of training designed to impart or improve skills or knowledge relevant to, and intended to be used in the course of, gainful employment (including self-employment) of any description; and

(b) the course is entirely devoted to the teaching or practical application of the skills or knowledge (or to both such teaching and practical application); and

(c) the duration of the course does not exceed one year; and

(d) all teaching and practical application forming part of the course takes place within the United Kingdom.

(2) A course shall not be regarded as a qualifying course of training in relation to a particular employee unless—

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(a) he attends the course on a full-time or substantially full-time basis; and
(b) he is employed by the employer full-time throughout the period of two years ending at the time when he begins to undertake the course or, if it is earlier, at the time he ceases to be employed by him; and
(c) the opportunity to undertake the course, on similar terms as to payment or reimbursement of relevant expenses, is available either generally to holders or past holders of offices or employment under the employer or to a particular class or classes of such holders or past holders.

(3) An employee shall not be regarded as undertaking a course with a view to retraining unless—
(a) he begins to undertake the course of training while he is employed by the employer or within the period of one year after he ceases to be so employed; and
(b) he ceases to be employed by the employer not later than the end of the period of two years beginning at the end of the qualifying course of training.

(4) An employee shall not be regarded as having undertaken a course with a view to retraining if, any time within the period of two years beginning at the time when he ceased to be employed as mentioned in subsection (3)(b) above, he is again employed by the employer.

(5) Where an employee undertakes a qualifying course of training, the relevant expenses consist of—
(a) fees for attendance at the course;
(b) fees for any examination which is taken during or at the conclusion of the course;
(c) the cost of any books which are essential for a person attending the course, and
(d) travelling expenses falling within subsection (6) below.

(6) The travelling expenses referred to in subsection (5)(d) above are those which would be deductible under section 198—
(a) on the assumption that attendance at the course is one of the duties of the employee's office or employment; and
(b) if the employee has in fact ceased to be employed by the employer, on the assumption that he continues to be employed by him.

(7) Any reference in this section to an employee being employed by an employer is a reference to the employee holding office or employment under the employer.

Marginal Citations
M1576 Source-1987 Sch.5

[F1162 589A Counselling services for employees.

(1) This section applies where—
(a) qualifying counselling services are provided to a person (the employee) in connection with the termination of the holding by him of any office or employment, and
(b) the termination takes place on or after 16th March 1993.

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(2) This section also applies where—

(a) subsection (1)(a) above applies, and

(b) the termination takes place before 16th March 1993 but relevant expenditure is incurred on or after that date.

(3) Relevant expenditure is expenditure incurred in—

(a) providing the qualifying counselling services to the employee,

(b) paying or reimbursing fees for the provision to the employee of the qualifying counselling services, or

(c) paying or reimbursing any allowable travelling expenses incurred in connection with the provision of the qualifying counselling services to the employee.

(4) No charge to tax under Schedule E shall arise in respect of—

(a) the provision of the qualifying counselling services to the employee,

(b) the payment or reimbursement of fees for the provision to the employee of the qualifying counselling services, or

(c) the payment or reimbursement of any allowable travelling expenses incurred in connection with the provision of the qualifying counselling services to the employee.

(5) Where this section applies by virtue of subsection (2) above, subsection (4) above shall apply only to the extent that the expenditure incurred in providing the services or paying or reimbursing the fees or expenses is incurred on or after 16th March 1993.

(6) Subsection (4) above shall apply whether or not the person who provides the services or pays or reimburses the fees or expenses is the person under whom the employee holds or held the office or employment mentioned in subsection (1) above.

(7) Subsections (8) to (10) below apply where any relevant expenditure is incurred by the person under whom the employee holds or held the office or employment mentioned in subsection (1) above (the employer).

(8) If and so far as the expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D the profits or gains of the trade, profession or vocation of the employer for the purposes of which the employee is or was employed.

(9) If the employer carries on a business and the expenses of management of the business are eligible for relief under section 75, subsection (8) above shall have effect as if for the words from "in computing" onwards there were substituted "as expenses of management for the purposes of section 75".

(10) Where this section applies by virtue of subsection (2) above, subsections (8) and (9) above shall apply only to the extent that the expenditure is incurred on or after 16th March 1993.**]**

Textual Amendments

F1162 Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 108**

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Modifications etc. (not altering text)

C567 S. 589A modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para 25** (the modification consisting of the insertion of a s. 589A(9A) for limited purposes, and that s. 589A(9A) was repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note)

589B [F1163]Qualifying counselling services etc.

(1) Subsections (2) to (4) below apply for the purposes of section 589A.

(2) Subject to subsection (3) below, services are qualifying counselling services if—

(a) the purpose, or main purpose, of their provision is to enable the employee to adjust to the termination of his holding of the office or employment mentioned in section 589A(1) or is to enable him to find other gainful employment (including self-employment) or is to enable him to do both,

(b) the services consist wholly of any or all of the following, namely, giving advice and guidance, imparting or improving skills, and providing or making available the use of office equipment or similar facilities,

(c) the employee has been employed by the employer full-time throughout the period of two years ending at the time when the services begin to be provided to him or, if it is earlier, at the time he ceases to be employed by the employer,

(d) the opportunity to receive the services, on similar terms as to payment or reimbursement of any expenses incurred in connection with their provision, is available either generally to holders or past holders of offices or employment under the employer or to a particular class or classes of such holders or past holders, and

(e) the services are provided in the United Kingdom.

(3) Where paragraphs (a) to (d) of subsection (2) above are satisfied in relation to particular services but the services are provided partly in and partly outside the United Kingdom, the extent to which the services are qualifying counselling services shall be determined on a just and reasonable basis.

(4) In relation to services, allowable travelling expenses are those which would be deductible under section 198—

(a) on the assumption that receipt of the services is one of the duties of the employee's office or employment, and

(b) if the employee has in fact ceased to be employed by the employer, on the assumption that he continues to be employed by him.

(5) Any reference in this section or section 589A to an employee being employed by an employer is a reference to the employee holding office or employment under the employer.

Textual Amendments

F1163 Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 108**

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PART XIV

PENSION SCHEMES, SOCIAL SECURITY BENEFITS, LIFE ANNUITIES ETC.

CHAPTER I

RETIREMENT BENEFIT SCHEMES

Modifications etc. (not altering text)

C568 Pt. 14 Ch. 1 (ss. 590-612) modified (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 18**, 19(4), 31(2); S.I. 1995/631, **art. 2**

Approval of schemes

590 Conditions for approval of retirement benefit schemes.

(1) [M1577]Subject to section 591, the Board shall not approve any retirement benefits scheme for the purposes of this Chapter unless the scheme satisfies all of the conditions set out in subsection (2) below.

(2) [M1578]The conditions are—

(a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the widow, **[**[F1164]widower**]**, children or dependants or personal representatives of, the employee;

(b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;

(c) that there is a person resident in the United Kingdom who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter;

(d) that the employer is a contributor to the scheme;

(e) that the scheme is established in connection with some trade or undertaking carried on in the United Kingdom by a person resident in the United Kingdom;

(f) that in no circumstances, whether during the subsistence of the scheme or later, can any amount be paid by way of repayment of an employee's contributions under the scheme.

(3) [M1579]Subject to subsection (1) above, the Board shall approve a retirement benefits scheme for the purposes of this Chapter if the scheme satisfies all the conditions of this subsection, that is to say—

(a) that any benefit for an employee is a pension on retirement at a specified age not earlier than 60 **[**[F1165]and not later than 75**]**, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40;

(b) that any benefit for any widow **[**[F1166]or widower**]** of an employee is a pension payable on his death after retirement such that the amount payable to the

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widow **[**[F1166]or widower**]** by way of pension does not exceed two-thirds of any pension or pensions payable to the employee;

(c) that no other benefits are payable under the scheme;

(d) that no pension is capable in whole or in part of surrender, commutation or assignment, except in so far as the scheme allows an employee on retirement to obtain, by commutation of his pension, a lump sum or sums not exceeding in all three-eightieths of his final remuneration (*disregarding any excess of that remuneration over the permitted maximum*) [F1167] for each year of service up to a maximum of 40.

[[F1168](e) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of pension in respect of service in any one of them may not, when aggregated with any amount payable by way of pension in respect of service in the other or others, exceed the relevant amount;

(f) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of commuted pension in respect of service in any one of them may not, when aggregated with any amount payable by way of commuted pension in respect of service in the other or others, exceed the relevant amount;

(g) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of pension under the scheme may not, when aggregated with any amount payable by way of pension under the other scheme or schemes, exceed the relevant amount;

(h) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of commuted pension may not, when aggregated with any amount payable by way of commuted pension under the other scheme or schemes, exceed the relevant amount.**]**

(4) The conditions set out in subsections (2) and (3) above are in this Chapter referred to as "the prescribed conditions".

[[F1169](4A) In subsection (3)(c) above "benefits" does not include any benefits for whose payment the scheme makes provision in pursuance of any obligation imposed by legislation relating to social security.**]**

[F1170](5) . . . . . .

[F1170](6) . . . . . .

[[F1171](7) Subsections (8) to (10) below apply where the Board are considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

(a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Chapter,

(b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time

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before the Board in order for them to decide whether to give approval for the purposes of this Chapter,

(c) any section 608 scheme or schemes relating to employees of that class or description, and

(d) any relevant statutory scheme or schemes relating to employees of that class or description.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes taken together, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

(11) The reference in subsection (8)(c) above to a section 608 scheme is a reference to a fund to which section 608 applies.**]**

Textual Amendments

F1164 1988(F) s.35*and* Sch.3 para.18*on and after* 6*April* 1990.

F1165 Words in s. 590(3)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), 34(2)(4)

F1166 1988(F) s.35*and* Sch.3 para.18*on and after* 6*April* 1990.

F1167 S. 590(3)(e)-(h) substituted for words in s. 590(3) by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 3(3), **18(2)** in respect of schemes not approved before 27 July 1989 (not applicable to certain employees of pre 14 March 1989 schemes). Previously: " In paragraph (d) above " the permitted maximum" means £100,000 or such other sum as may for the time being be specified in an order made by the Treasury."; and those words in s. 590(3) (as originally enacted) amended (6.4.2005) by The Retirement Benefits Schemes (Increase in Permitted Maximum in Transitional Cases) Order 2005 (S.I. 2005/723), **art. 2**

F1168 S. 590(3)(e)-(h) substituted for words in s. 590(3) by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 3(3), **18(2)** in respect of schemes not approved before 27 July 1989 (not applicable to certain employees of pre 14 March 1989 schemes). Previously: "In paragraph (d) above "the permitted maximum" means £100,000 or such other sum as may for the time being be specified in an order made by the Treasury."; and those words in s. 590(3) (as originally enacted) amended (6.4.2005) by The Retirement Benefits Schemes (Increase in Permitted Maximum in Transitional Cases) Order 2005 (S.I. 2005/723), **art. 2**

F1169 S. 590(4A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 34(3)(4)**

F1170 S. 590(5)(6) repealed (*retrospectively)* by Finance Act 1991 (c. 31, SIF 63:1), ss. 36(2)(3), 123, **Sch. 19**, Pt. V, Note 8

F1171 1989 s.75*and* Sch.6 paras.3(4)*and* 18(3)—*to have effect where a determination is made on or after* 27*July* 1989.*Previously*

"(7) For the purpose of determining whether a retirement benefits scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions —(a) that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and (b) if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them, but otherwise those conditions shall be taken to be satisfied in the case of none of them.".

Marginal Citations

M1577 Source-1970(F) s.19(1); 1971 s.21(2)

M1578 Source-1970(F) s.19(2)

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M1579 Source-1970(F) s.19(2A), (2B); 1971 s.21(3); 1987 (No.2) Sch.3 1

[[F1172] 590A Section 590: supplementary provisions.

(1) For the purposes of section 590(3)(e) and (f) two or more employments are relevant associated employments if they are employments in the case of which—
  (a) there is a period during which the employee has held both or all of them,
  (b) the period counts under the scheme in the case of both or all of them as a period in respect of which benefits are payable, and
  (c) the period is one during which both or all of the employers in question are associated.

(2) For the purposes of section 590(3)(g) and (h) the scheme is connected with another scheme in relation to an employee if—
  (a) there is a period during which he has been the employee of two persons who are associated employers,
  (b) the period counts under both schemes as a period in respect of which benefits are payable, and
  (c) the period counts under one scheme by virtue of service with one employer and under the other scheme by virtue of service with the other employer.

(3) For the purposes of subsections (1) and (2) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.

(4) In subsection (3) above the reference to control, in relation to a body corporate, shall be construed—
  (a) where the body corporate is a close company, in accordance with section 416, and
  (b) where it is not, in accordance with section 840.**]**

Textual Amendments
F1172 Ss. 590A-590C inserted by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 4, **18(4)**

590B Section 590: further supplementary provisions.

(1) For the purposes of section 590(3)(e) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{AyC}{60}$$

(2) For the purposes of section 590(3)(f) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3yAyC}{80}$$

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(3) For the purposes of section 590(3)(g) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{\mathrm{By}C}{60}$$

(4) For the purposes of section 590(3)(h) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3\mathrm{yBy}C}{80}$$

(5) For the purposes of this section A is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of the scheme at the time the benefits in respect of service in the employment become payable.

(6) But where the same year (or part of a year) counts for the purposes of the scheme by virtue of more than one of the relevant associated employments it shall be counted only once in calculating the aggregate number of years service for the purposes of subsection (5) above.

(7) For the purposes of this section B is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of any of the following—

(a) the scheme, and

(b) the other scheme or schemes with which the scheme is connected in relation to him,

at the time the benefits become payable.

(8) But where the same year (or part of a year) counts for the purposes of more than one scheme it shall be counted only once in calculating the aggregate number of years service for the purpose of subsection (7) above.

(9) For the purposes of this section C is the permitted maximum in relation to the year of assessment in which the benefits in question become payable, that is, the figure found for that year by virtue of subsections (10) and (11) below.

(10) For the years 1988-89 and 1989-90 the figure is £60,000.

(11) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F1173]to (5A)**]**.

Textual Amendments

F1173 Words in s. 590B(11) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

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590C Earnings cap.

(1) In arriving at an employee's final remuneration for the purposes of section 590(3)(a) or (d), any excess of what would be his final remuneration (apart from this section) over the permitted maximum for the year of assessment in which his participation in the scheme ceases shall be disregarded.

(2) In subsection (1) above "the permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (3) and (4) below.

(3) For the years 1988-89 and 1989-90 the figure is £60,000.

(4) For any subsequent year of assessment the figure is also £60,000, subject to **[**[F1174]subsections (5) and (5A)**]** below.

(5) If the retail prices index for the month of **[**[F1175]September**]** preceding a year of assessment falling within subsection (4) above is higher than it was for the previous **[**[F1175]September**]**, the figure for that year shall be an amount arrived at by—

(a) increasing the figure for the previous year of assessment by the same percentage as the percentage increase in the retail prices index, and

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

[[F1176](5A) If the retail prices index for the month of September preceding a year of assessment falling within subsection (4) above is not higher than it was for the previous September, the figure for that year shall be the same as the figure for the previous year of assessment.**]**

(6) The Treasury shall in the year of assessment 1989-90, and in each subsequent year of assessment, make an order specifying the figure which is by virtue of this section the figure for the following year of assessment.

Textual Amendments

F1174 Words in s. 590C(4) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(5)(8)**

F1175 Word in s. 590C(5) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(4)(8)**

F1176 S. 590C(5A) inserted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(5)(8)**

Modifications etc. (not altering text)

C569 S. 590C amended (1990-91) by S.I. 1990/679, **art. 2**
S. 590C amended (1991-92) by S.I. 1991/734, **art. 2**
S. 590C amended (1992-93) by S.I. 1992/624, **art. 2**
S. 590C amended (1993-94) by 1993 c. 34, **s.106** (in place of S.I. 1993/757, **art. 2**)
S. 590C amended (1994-95) by S.I. 1993/2950, **art. 2**
S. 590C amended (1995-96) by S.I. 1994/3009, **art. 2**
S. 590C amended (1996-97) by S.I. 1995/3034, **art. 2**
S. 590C amended (1997-98) by S.I. 1996/2951, **art. 2**
S. 590C amended (1998-99) by S.I. 1998/758, **art. 2**
S. 590C amended (1999-2000) by S.I. 1999/592, **art. 2**
S. 590C amended (2000-01) by S.I. 2000/807, **art. 2**
S. 590C amended (2001-02) by S.I. 2001/637, **art. 2**

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S. 590C amended (2002-03) by S.I. 2002/700, **art. 2**
S. 590C amended (2003-04) by S.I. 2003/843, **art. 2**
S. 590C amended (2004-05) by S.I. 2004/773, **art. 2**
S. 590C amended (2005-06) by S.I. 2005/720, **art. 2**

C570 S. 590C(1) applied (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 3(3)(a)(b)**, 31(2); S.I. 1995/631, **art. 2**

591 Discretionary approval.

(1) [M1580]The Board may, if they think fit having regard to the facts of a particular case, and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter notwithstanding that it does not satisfy one or more of the prescribed conditions; but this subsection has effect subject to subsection (5) below.

(2) [M1581]The Board may in particular approve by virtue of this section a scheme—

(a) which exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years; or

(b) which provides pensions for the widows of employees on death in service, or for the children or dependants of employees; or

(c) which provides on death in service a lump sum of up to four times the employee's final remuneration (exclusive of any refunds of contributions); or

(d) which allows benefits to be payable on retirement within ten years of the specified age, or on earlier incapacity; or

(e) which provides for the return in certain contingencies of employees' contributions; or

(f) which relates to a trade or undertaking carried on only partly in the United Kingdom and by a person not resident in the United Kingdom; or

(g) which provides in certain contingencies for securing relevant benefits (but no other benefits) by means of an annuity contract approved by the Board and made with an insurance company of the employee's choice; or

(h) to which the employer is not a contributor and which provides benefits additional to those provided by a scheme to which he is a contributor.

(3) [M1582]In subsection (2)(g) above "insurance company" means a company to which Part II of the [M1583]Insurance Companies Act 1982 applies.

(4) [M1584]In applying this section to a scheme which was in existence on 6th April 1980, the Board shall exercise their discretion, in such cases as appear to them to be appropriate, so as to preserve—

(a) benefits earned or rights arising out of service before 6th April 1980; and

(b) any rights to death-in-service benefits conferred by rules of the scheme in force on 26th February 1970.

(5) [M1585]The Board shall not approve a scheme by virtue of this section if to do so would be inconsistent with regulations made **[**[F1177]by the Board**]** for the purposes of this section.

(6) Regulations made **[**[F1177]by the Board**]** for the purposes of this section may restrict the Board's discretion to approve a scheme by reference to the benefits provided by the scheme, the investments held for the purposes of the scheme, the manner in which the scheme is administered or any other circumstances whatever.

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Textual Amendments

F1177 1988(F) s.146*and* Sch.13 para.6 (*deemed always to have had effect*).*And see* S.I. 1987 No.412 (*in* Part III Vol.5)*regn.*2— "*The Pension Scheme Surpluses* (*Valuation*)*Regulations* 1989".

Modifications etc. (not altering text)

C571 S. 591 restricted (5.8.1991) by S.I. 1991/1614, **reg. 3**

Marginal Citations

M1580 Source-1970(F) s.20(1); 1987 (No.2) Sch.3 3(2)
M1581 Source-1970(F) s.20(2); 1971 s.21(4); 1981 s.32; 1987 (No.2) Sch.3 3(3), (4)
M1582 Source-1970(F) s.20(2A); 1981 s.32
M1583 1982 c. 50.
M1584 Source-1970(F) s.20(3); 1987 Sch.15 3
M1585 Source-1970(F) s.20(4), (5); 1987 (No.2) Sch.3 3(5)

[591A [F1178]Effect on approved schemes of regulations under section 591.

(1) Subsection (2) below applies where on or after 17th April 1991 regulations are made for the purposes of section 591 ("section 591 regulations") which contain provisions restricting the Board's discretion to approve a retirement benefits scheme by reference to any circumstances other than the benefits provided by the scheme ("relevant provisions").

(2) Any retirement benefits scheme approved by the Board by virtue of section 591 before the day on which the section 591 regulations come into force shall cease to be approved by virtue of that section at the end of the period of 36 months beginning with that day if at the end of that period the scheme—

(a) contains a provision of a prohibited description, or

(b) does not contain a provision of a required description,

unless the description of provision is specified in regulations made by the Board for the purposes of this subsection.

(3) For the purposes of this section, a provision contained in a scheme shall not be treated as being of a prohibited description by reason only of the fact that it authorises the retention of an investment held immediately before the day on which the section 591 regulations are made.

(4) In determining for the purposes of this section whether any provision contained in a scheme is of a required description, the fact that it is framed so as not to require the disposal of an investment held immediately before the day on which the section 591 regulations are made shall be disregarded.

(5) In this section—

(a) references to a provision of a prohibited description are to a provision of a description specified in the relevant provisions of the section 591 regulations as a description of provision which, if contained in a retirement benefits scheme, would prevent the Board from approving the scheme by virtue of section 591;

(b) references to a provision of a required description are to a provision of a description specified in the relevant provisions of the section 591 regulations

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as a description of provision which must be contained in a retirement benefits scheme before the Board may approve the scheme by virtue of section 591.**]**

Textual Amendments

F1178 S. 591A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s.35**

Modifications etc. (not altering text)

C572 S. 591A(2) disapplied (30.7.1999) by The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) (Amendment) Regulations 1999 (S.I. 1999/1964), **regs. 1**, 6

[591B [F1179]Cessation of approval: general provisions.

(1) If in the opinion of the Board the facts concerning any approved scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time by notice to the administrator, withdraw their approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of their approval or 17th March 1987, whichever is the later), as may be specified in the notice.

(2) Where an alteration has been made in a retirement benefits scheme, no approval given by the Board as regards the scheme before the alteration shall apply after the date of the alteration unless—

(a) the alteration has been approved by the Board, or

(b) the scheme is of a class specified in regulations made by the Board for the purposes of this paragraph and the alteration is of a description so specified in relation to schemes of that class.**]**

Textual Amendments

F1179 S. 591B inserted (retrospectively) by Finance Act 1991 (c. 31), **s. 36(1)(3)**

Modifications etc. (not altering text)

C573 S. 591B modified (6.4.1996 for specified purposes and 6.4.1997 otherwise) by Pensions Act 1995 (c. 26), **ss. 68(5)**, s. 180(1); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. 5**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

VALID FROM 01/05/1995

[[F1180]591C Cessation of approval: tax on certain schemes.

(1) Where an approval of a scheme to which this section applies ceases to have effect, tax shall be charged in accordance with this section.

(2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme (taking that value as it stands immediately before that date).

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(3) Subject to section 591D(4), the person liable for the tax shall be the administrator of the scheme in his capacity as such.

(4) This section applies to a retirement benefits scheme in respect of which either of the conditions set out below is satisfied.

(5) The first condition is satisfied in respect of a scheme if, immediately before the date of the cessation of the approval of the scheme, the number of individuals who are members of the scheme is less than twelve.

(6) The second condition is satisfied in respect of a scheme if at any time within the period of one year ending with the date of the cessation of the approval of the scheme, a person who is or has been a controlling director of a company which has contributed to the scheme is a member of the scheme.

(7) For the purposes of subsection (6) above a person is a controlling director of a company if he is a director of it and within section 417(5)(b) in relation to it.**]**

Textual Amendments

F1180 Ss. 591C, 591D inserted (with effect in accordance with s. 61(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 61(1)**

Modifications etc. (not altering text)

C574 S. 591C applied by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 239A** (as inserted (with effect in accordance with **s. 61(3)** of the amending Act) by Finance Act 1995 (c. 4), s. 61(2))

VALID FROM 01/05/1995

[F1180 591D Section 591C: supplementary.

(1) For the purposes of section 591C(2) the value of an asset is, subject to subsection (2) below, its market value, construing "market value" in accordance with section 272 of the 1992 Act.

(2) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (3) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.

(3) The persons are—
   (a) any employer who has at any time contributed to the scheme;
   (b) any company connected with such an employer;
   (c) any member of the scheme;
   (d) any person connected with any member of the scheme.

(4) Where the administrator of the scheme is constituted by persons who include a person who is an approved independent trustee in relation to a scheme, that person shall not be liable for tax chargeable by virtue of section 591C.

(5) A person is an approved independent trustee in relation to a scheme only if he is—

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(a) approved by the Board to act as a trustee of the scheme; and
(b) not connected with—
(i) a member of the scheme;
(ii) any other trustee of the scheme; or
(iii) an employer who has contributed to the scheme.

(6) For the purposes of section 596A(9) income and gains accruing to a scheme shall not be regarded as brought into charge to tax merely because tax is charged in relation to the scheme in accordance with section 591C.

(7) The reference in section 591C(1) to an approval of a scheme ceasing to have effect is a reference to—
(a) the scheme ceasing to be an approved scheme by virtue of section 591A(2);
(b) the approval of the scheme being withdrawn under section 591B(1); or
(c) the approval of the scheme no longer applying by virtue of section 591B(2);
and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly.

(8) For the purposes of section 591C and this section a person is a member of a scheme at a particular time if at that time a benefit—
(a) is being provided under the scheme, or
(b) may be so provided,
in respect of any past or present employment of his.

(9) Section 839 shall apply for the purposes of this section.**]**

Textual Amendments

F1180 Ss. 591C, 591D inserted (with effect in accordance with s. 61(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 61(1)**

Tax reliefs

592 Exempt approved schemes.

M1586(1) This section has effect as respects—
(a) any approved scheme which is shown to the satisfaction of the Board to be established under irrevocable trusts; or
(b) any other approved scheme as respects which the Board, having regard to any special circumstances, direct that this section shall apply;
and any scheme which is for the time being within paragraph (a) or (b) above is in this Chapter referred to as an "exempt approved scheme".

(2) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Board are satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(3) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Board are satisfied

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that, the underwriting commissions are applied for the purposes of the schemes and would, but for this subsection, be chargeable to tax under Case VI of Schedule D.

(4) Any sum paid by an employer by way of contribution under the scheme shall, for the purposes of Case I or II of Schedule D and of sections 75 and 76, be allowed to be deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid **[**[F1181]but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the scheme.**]**.

(5) The amount of an employer's contributions which may be deducted under subsection (4) above shall not exceed the amount contributed by him under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to tax (that is to say, to United Kingdom income tax or corporation tax).

(6) A sum not paid by way of ordinary annual contribution shall for the purposes of subsection (4) above be treated, as the Board may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Board think proper.

[[F1182](6A) Where any sum is paid to the trustees of the scheme in or towards the discharge of any liability of an employer under section 58B of the [M1587]Social Security Pensions Act 1975 or section 144 of the Pension Schemes Act 1993 (deficiencies in the assets of a scheme) or under Article 68B of the [M1588]Social Security Pensions (Northern Ireland) Order 1975 or section 140 of the Pension Schemes (Northern Ireland) Act 1993 (which contain corresponding provision for Northern Ireland), the payment of that sum—

(a) shall be treated for the purposes of this section as an employer's contribution under the scheme; and

(b) notwithstanding (where it is the case) that the employer's trade, profession, vocation or business is permanently discontinued before the making of the payment, shall be allowed, in accordance with subsection (4) above, to be deducted as such a contribution to the same extent as it would have been allowed but for the discontinuance and as if it had been made on the last day on which the trade, profession, vocation or business was carried on.**]**

(7) Any contribution paid under the scheme by an employee shall, in assessing tax under Schedule E, be allowed to be deducted as an expense incurred in the year of assessment in which the contribution is paid.

(8) **[**[F1183]Subject to subsection (8A) below,**]** the amount allowed to be deducted by virtue of subsection (7) above in respect of contributions paid by an employee in a year of assessment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent., or such higher percentage as the Board may in a particular case prescribe, of his remuneration for that year.

[[F1184](8A) Where an employee's remuneration for a year of assessment includes remuneration in respect of more than one employment, the amount allowed to be deducted by virtue of subsection (7) above in respect of contributions paid by the employee in that year by virtue of any employment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board may in a particular case prescribe, of his remuneration for the year in respect of that employment.

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(8B) In arriving at an employee's remuneration for a year of assessment for the purposes of subsection (8) or (8A) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.

(8C) In subsection (8B) above "permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (8D) and (8E) below.

(8D) For the year 1989-90 the figure is £60,000.

(8E) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F1185]to (5A)**].]**

(9) Relief shall not be given under section 266 or 273 in respect of any payment in respect of which an allowance can be made under subsection (7) above.

(10) Subsection (2) of section 468 and subsection (3) of section 469 shall not apply to any authorised unit trust which is also an exempt approved scheme if the employer is not a contributor to the exempt approved scheme and that scheme provides benefits additional to those provided by another exempt approved scheme to which he is a contributor.

(11) Nothing in this section shall be construed as affording relief in respect of any sums to be brought into account under section 438.

(12) This section has effect only as respects income arising or contributions paid at a time when the scheme is an exempt approved scheme.

Textual Amendments

F1181 Words in s. 592(4) inserted (27.7.1993 with effect as mentioned in s. 112 of the amending Act) by 1993 c. 34, **s. 112(1)(2)**

F1182 S. 592(6A) inserted (with effect as mentioned in s. 112 of the amending Act) by Finance Act 1993 (c. 34), **s. 112(6)**

F1183 1989 s.75*and* Sch.6 paras.5(2), (3)*and* 18(4)*for* 1989-90*and subsequent years.*

F1184 1989 s.75*and* Sch.6 paras.5(4)*and* 18(4)*for* 1989-90*and subsequent years.* Subss.(8B)*to* (8E)*do not have effect as regards such remuneration as may be prescribed by regulations—for which see* Part III Vol.5 (*under* "*Retirement benefit schemes: tax relief for contributions*").

F1185 Words in s. 592(8E) substituted (with effect for the year 1994-95 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 107(6)(8)**

Modifications etc. (not altering text)

C575 *See* 1990 s.56*and* Sch.10 para.22*—convertible securities relieved of charge if held for purposes of exempt approved schemes.*

Marginal Citations

M1586 Source-1970(F) s.21(1)-(9); 1971 s.21(5); 1987 (No.2) Sch.3 4, 5

M1587 1975 c. 60.

M1588 S.I. 1975/1503 (N.I. 15).

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593 Relief by way of deductions from contributions.

[M1589](1) Relief under section 592(7) shall be given in accordance with subsections (2) and (3) below in such cases and subject to such conditions as the Board may prescribe by regulations under section 612(3) in respect of schemes—

(a) to which employees, but not their employers, are contributors; and

(b) which provide benefits additional to benefits provided by schemes to which their employers are contributors.

(2) An employee who is entitled to relief under section 592(7) 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 administrator of the scheme—

(a) shall accept the amount paid after the deduction in discharge of the employee'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 subsection (3) of section 612 may, without prejudice to the generality of that subsection—

(a) provide for the manner in which claims for the recovery of a sum under subsection (3)(b) above 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.

Modifications etc. (not altering text)

C576 *See* S.I. 1987 No.1749 (*in* Part III Vol.5).

C577 *See* S.I. 1987 No.1749 (*in* Part III Vol.5).

Marginal Citations

M1589 Source-1970(F) Sch.5 Part II 6A; 1987 (No.2) Sch.3 12

594 Exempt statutory schemes.

[M1590](1) Any contribution paid by any officer or employee under a **[**[F1186]relevant**]** statutory scheme established under a public general Act shall, in assessing tax under Schedule E, be allowed to be deducted as an expense incurred in the year of assessment in which the contribution is paid; and relief shall not be given under section 266 or 273 in respect of any contribution allowable as a deduction under this section.

(2) **[**[F1187]Subject to subsection (3) below,**]** the amount allowed to be deducted by virtue of subsection (1) above in respect of contributions paid by a person in a year of assessment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent., or such higher percentage as the Board may in a particular case prescribe, of his remuneration for that year.

[[F1188](3) Where a person's remuneration for a year of assessment includes remuneration in respect of more than one office or employment, the amount allowed to be deducted by virtue of subsection (1) above in respect of contributions paid by the person in that year by virtue of any office or employment (whether under a single scheme or under

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two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board may in a particular case prescribe, of his remuneration for the year in respect of that office or employment.

(4) In arriving at a person's remuneration for a year of assessment for the purposes of subsection (2) or (3) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.

(5) In subsection (4) above "permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (6) and (7) below.

(6) For the year 1989-90 the figure is £60,000.

(7) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F1189]to (5A)**].]**

Textual Amendments

F1186 1989 s.75*and* Sch.6 paras.6(2)*and* 18(1)*on and after* 14*March* 1989.

F1187 1989 s.75*and* Sch.6 paras.6(3)*and* 18(4)*for* 1989-90*and subsequent years.*

F1188 1989 s.75*and* Sch.6 paras.6(4)(5)*and* 18(4)*for* 1989-90*and subsequent years.* Subss.(4) to (7)*do not have effect as regards such remuneration as may be prescribed by regulations.*

F1189 Words in s. 594(7) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

Modifications etc. (not altering text)

C578 S. 594 applied (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 10(4)(b)(ii)**, 31(2); S.I. 1995/631, **art. 2**

Marginal Citations

M1590 Source-1970(F) s.22; 1972 s.74(3); 1987 (No.2) Sch.3 6

Charge to tax in certain cases

595 Charge to tax in respect of certain sums paid by employer etc.

[M1591](1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency)—

(a) the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for all purposes of the Income Tax Acts to be income of that employee for that year of assessment and assessable to tax under Schedule E; and

(b) where the payment is made under such an insurance or contract as is mentioned in section 266, relief, if not otherwise allowable, shall be given to that employee under that section in respect of the payment to the extent, if any, to which such relief would have been allowable to him if the payment had been made by him and the insurance or contract under which the payment is made had been made with him.

(2) *Subject to the provisions of this Chapter, where—*

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(a) *the circumstances in which any relevant benefits under a retirement benefits scheme are to accrue are not such as will render the benefits assessable to income tax under Schedule E as emoluments of the employee in respect of whom the benefits are paid, and*

(b) *the provision of those benefits is not, or is not fully, secured by the payment of sums by the employer with a view to the provision of those benefits, then* (*whether or not the accrual of the benefits is dependent on any contingency*)*an amount equal to the cost, estimated in accordance with subsection* (3)*below, of securing the provision by a third person of the benefits or, as the case may be, of the benefits so far as not already secured by the payment of such sums as are mentioned in subsection* (1)*above, shall be deemed for all purposes of the Income Tax Acts to be income of the employee for the year or years of assessment specified in subsection* (3)*below and assessable to income tax under Schedule E.*

(3) *The cost referred to in subsection* (2)*above shall be estimated either—*

(a) *as an annual sum payable in each year of assessment in which the scheme in question is in force or the employee is serving, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual thereof, or*

(b) *as a single sum payable in the year of assessment in which falls the date when the employee acquired the right to the relevant benefits, or the date when he acquired the right to any increase in the relevant benefits;*

as may be more appropriate in the circumstances of the case[F1190].

(4) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(5) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.

Textual Amendments

F1190 *Repealed by* 1989 ss.75*and* 187*and* Schs.6 paras.7*and* 18(5)*and* 17 Part IV*for* 1988-89*and subsequent years.*

Modifications etc. (not altering text)

C579 *See* s.189—*lump sum benefits on retirement.*

Marginal Citations

M1591 Source-1970(F) s.23(1)-(5)

596 Exceptions from section 595.

[M1592](1) **[**[F1191]Section 595(1) shall not**]** apply where the retirement benefits scheme in question is—

(a) an approved scheme, or

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(b) a **[**[F1192]relevant**]** statutory scheme, or

(c) a scheme set up by a government outside the United Kingdom for the benefit, or primarily for the benefit of, its employees.

(2) **[**[F1193]Section 595(1) shall not**]** apply for any year of assessment—

(a) where the employee performs the duties of his employment in such circumstances that no tax is chargeable under Case I or II of Schedule E in respect of the emoluments of his employment (or would be so chargeable were there such emoluments), or

(b) where the emoluments from the employment are foreign emoluments within the meaning of section 192 and the Board are satisfied, on a claim made by the employee, that the retirement benefits scheme in question corresponds to such a scheme as is mentioned in paragraph (a), (b) or (c) of subsection (1) above.

(3) Where, in respect of the provision for an employee of any relevant benefits—

(a) a sum has been deemed to be income of his by virtue*either*[F1194] of subsection (1)*or subsection* (2) [F1194] of section 595, and

(b) subsequently, the employee proves to the satisfaction of the Board that—

(i) no payment in respect of, or in substitution for, the benefits has been made, and

(ii) some event has occurred by reason of which no such payment will be made,

and makes application for relief under this subsection within six years from the time when that event occurred,

the Board shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate; and if the employee satisfies the Board as mentioned above in relation to some particular part, but not the whole, of the benefits, the Board may give such relief as may seem to them just and reasonable.

Textual Amendments

F1191 1989 s.75*and* Sch.6 para.8(2)(a), 8(3)*for* 1988-89*and subsequent years. Previously*
"Neither subsection (1) nor subsection (2) of section 595 shall"
in both places.

F1192 1989 s.75*and* Sch.6 paras.8(2)(b)*and* 18(1)*on and after* 14*March* 1989.

F1193 1989 s.75*and* Sch.6 para.8(2)(a), 8(3)*for* 1988-89*and subsequent years. Previously*
"Neither subsection (1) nor subsection (2) of section 595 shall"
in both places.

F1194 *Words repealed by* 1989 ss.75, 187*and* Schs. 6 paras.8(4)*and* 18(6)*and* 17 Part IV*except where a sum has been deemed to be income by virtue of* s.592(2)*before* 6*April* 1988.

Marginal Citations

M1592 Source-1970(F) s.24; 1974 s.21(7)

[F1195596A Charge to tax: benefits under non-approved schemes.

(1) Where in any year of assessment a person receives a benefit provided under a retirement benefits scheme which is not of a description mentioned in section 596(1)(a), (b) or (c), tax shall be charged in accordance with the provisions of this section.

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(2) Where the benefit is received by an individual, he shall be charged to tax under Schedule E for that year.

(3) Where the benefit is received by a person other than an individual, the administrator of the scheme shall be charged to tax under Case VI of Schedule D for that year.

(4) The amount to be charged to tax is—
  (a) in the case of a cash benefit, the amount received, and
  (b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(5) In the case of the charge under Case VI of Schedule D, the rate of tax is 40 per cent. or such other rate (whether higher or lower) as may for the time being be specified by the Treasury by order.

(6) Tax shall not be charged under this section in the case of a benefit which is chargeable to tax under Schedule E by virtue of section 19(1)1.

(7) But where the amount chargeable to tax by virtue of section 19(1)1 is less than the amount which would be chargeable to tax under this section—
  (a) subsection (6) above shall not apply, and
  (b) the amount chargeable to tax under this section shall be reduced by the amount chargeable to tax by virtue of section 19(1)1.

(8) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum—
  (a) which is deemed to be the income of a person by virtue of section 595(1), and
  (b) in respect of which that person has been assessed to tax.

(9) For the purpose of subsection (8) above the provision of a benefit shall be presumed not to be attributable to the payment of such a sum as is mentioned in that subsection unless the contrary is shown.**]**

Textual Amendments

F1195 Ss. 596A, 596B inserted (with effect in accordance with Sch. 6 para. 18(7) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 6 para. 9**

596B Section 596A: supplementary provisions.

(1) For the purposes of section 596A the cash equivalent of a benefit in kind is—
  (a) in the case of a benefit other than living accommodation, the amount which would be the cash equivalent of the benefit under Chapter II of Part V if it were chargeable under the appropriate provision of that Chapter (treating any sum made good by the recipient as made good by the employee), and
  (b) in the case of living accommodation, an amount equal to the value of the accommodation to the recipient determined in accordance with the following provisions of this section less so much of any sum made good by him to those at whose cost the accommodation is provided as is properly attributable to the provision of the accommodation.

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(2) Where the cost of providing the accommodation does not exceed £75,000, the value of the accommodation to the recipient in any period is the rent which would have been payable for the period if the premises had been let to him at an annual rent equal to their annual value as ascertained under section 837.

(3) But for a period in which those at whose cost the accommodation is provided pay rent at an annual rate greater than the annual value as so ascertained, the value of the accommodation to the recipient is an amount equal to the rent payable by them for the period.

(4) Where the cost of providing the accommodation does exceed £75,000, the value of the accommodation to the recipient shall be taken to be the aggregate of the value of the accommodation to him determined in accordance with subsections (2) and (3) above and the additional value of the accommodation to him determined in accordance with subsections (5) and (6) below.

(5) The additional value of the accommodation to the recipient in any period is the rent which would have been payable for that period if the premises had been let to him at an annual rent equal to the appropriate percentage of the amount by which the cost of providing the accommodation exceeds £75,000.

(6) Where throughout the period of six years ending with the date when the recipient first occupied the property any estate or interest in the property was held by a relevant person (whether or not it was the same estate, interest or person throughout), the additional value shall be calculated as if in subsection (7) below—
   (a) the amount referred to in paragraph (a) were the market value of that property as at that date, and
   (b) the amount referred to in paragraph (b) did not include expenditure on improvements made before that date.

(7) For the purposes of this section, the cost of providing any living accommodation shall be taken to be the aggregate of—
   (a) the amount of any expenditure incurred in acquiring the estate or interest in the property held by a relevant person, and
   (b) the amount of any expenditure incurred by a relevant person before the year of assessment in question on improvements to the property.

(8) The aggregate amount mentioned in subsection (7) above shall be reduced by the amount of any payment made by the recipient to a relevant person, so far as that amount represents a reimbursement of any such expenditure as is mentioned in paragraph (a) or (b) of that subsection or represents consideration for the grant to the recipient of a tenancy of the property.

(9) For the purposes of this section, any of the following persons is a relevant person—
   (a) the person providing the accommodation;
   (b) any person, other than the recipient, who is connected with a person falling within paragraph (a) above.

(10) In this section—

"the appropriate percentage" means the rate applicable for the purposes of section 160 as at the beginning of the year of assessment in question;

"market value", in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market

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with vacant possession, no reduction being made, in estimating the market value, on account of any option in respect of the property held by the recipient, or a person connected with him, or by any of the persons mentioned in subsection (9) above;

"property", in relation to any living accommodation, means the property consisting of that living accommodation;

"tenancy" includes a sub-tenancy;

and section 839 shall apply for the purposes of this section.

VALID FROM 31/07/1998

[F1196 596C Notional interest treated as paid if amount charged in respect of beneficial loan.

(1) This section applies where a person is chargeable to tax under section 596A in any year of assessment on an amount which consists of or includes an amount representing the cash equivalent of the benefit of a loan determined (by virtue of section 596B(1)(a)) in accordance with Part II of Schedule 7.

(2) Where this section applies, the person chargeable is treated as having paid interest on the loan of the same amount as the cash equivalent so determined.

(3) The interest is treated as paid for all the purposes of the Tax Acts (other than those relating to the charge under section 596A) but not so as to make it—

(a) income of the person making the loan, or

(b) relevant loan interest to which section 369 applies (mortgage interest payable under deduction of tax).

(4) The interest is treated as accruing during and paid at the end of the year of assessment or, if different, the period in that year during which the loan is outstanding.**]**

Textual Amendments

F1196 S. 596C inserted (with effect in accordance with s. 93(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 93(3)**

597 Charge to tax: pensions.

M1593 (1) Subject to subsection (2) below, all pensions paid under any scheme which is approved or is being considered for approval under this Chapter shall be charged to tax under Schedule E, and section 203 shall apply accordingly.

(2) As respects any scheme which is approved or is being considered for approval under this Chapter, the Board may direct that, until such date as the Board may specify, pensions under the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under sections 348 and 349 accordingly.

Modifications etc. (not altering text)

C580 *See* 1989 s.41—*tax charged on amount accruing* (1989-90*and subsequent years of assessment*).

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Marginal Citations
M1593 Source-1970(F) Sch.5 Part II 1

598 Charge to tax: repayment of employee's contributions.

M1594 (1) Subject to the provisions of this section, tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the payment is made under—

(a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a **[**F1197 relevant**]** statutory scheme established under a public general Act.

(2) Where any payment is chargeable to tax under this section, the administrator of the scheme shall be charged to income tax under Case VI of Schedule D and, subject to subsection (3) below, the rate of tax shall be 10 per cent.

(3) The Treasury may by order from time to time increase or decrease the rate of tax under subsection (2) above.

(4) The tax shall be charged on the amount paid or, if the rules permit the administrator to deduct the tax before payment, on the amount before deduction of tax, and the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.

(5) Subsection (1)(a) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an exempt approved scheme).

(6) This section shall not apply where the employee's employment was carried on outside the United Kingdom.

(7) In relation to a statutory scheme, "employee" in this section includes any officer.

Textual Amendments
F1197 1989 s.75*and* Sch.6 paras.10*and* 18(1)*on and after* 14*March* 1989.

Modifications etc. (not altering text)
C581 20*per cent. on and after* 6*April* 1988—*see* S.I. 1988 No.504*in* Part III Vol.5

Marginal Citations
M1594 Source-1970(F) Sch.5 Part II 2, 3; 1971 Sch.3 7; 1987 (No.2) Sch.3 9

599 Charge to tax: commutation of entire pension in special circumstances.

M1595 (1) Where a scheme to which this section applies contains a rule allowing, in special circumstances, a payment in commutation of an employee's entire pension, and any pension is commuted, whether wholly or not, under the rule, tax shall be charged on the amount by which the sum receivable exceeds—

(a) the largest sum which would have been receivable in commutation of any part of the pension if the scheme had secured that the aggregate value of the relevant benefits payable to an employee on or after retirement, excluding any pension which was not commutable, could not exceed three-eightieths of

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his final remuneration (disregarding any excess of that remuneration over the permitted maximum) for each year of service up to a maximum of 40; or

(b) the largest sum which would have been receivable in commutation of any part of the pension under any rule of the scheme authorising the commutation of part (but not the whole) of the pension, or which would have been so receivable but for those special circumstances;

whichever gives the lesser amount chargeable to tax.

(2) This section applies to—

(a) a scheme which is or has at any time been an approved scheme, or

(b) a **[**[F1198]relevant**]** statutory scheme established under a public general Act.

(3) Where any amount is chargeable to tax under this section the administrator of the scheme shall be charged to income tax under Case VI of Schedule D on that amount, and section 598(2), (3) and (4) shall apply as they apply to tax chargeable under that section.

(4) This section shall not apply where the employee's employment was carried on outside the United Kingdom.

(5) In relation to a statutory scheme, "employee" in this section includes any officer.

(6) In applying paragraph (a) or (b) of subsection (1) above—

(a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Board in applying section 590; and

(b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

(7) Where the pension has been secured by means of an annuity contract with an insurance company and the sum receivable is payable under that contract by the insurance company, the references to the administrator of the scheme in subsection (3) above and in section 598(2) and (4) as applied by that subsection are to be read as references to the insurance company.

(8) In subsection (7) above "insurance company" means—

(a) a person authorised under section 3 or 4 of the [M1596]Insurance Companies Act 1982 to carry on long term business and acting through a branch or agency in the United Kingdom; or

[[F1199](b) a friendly society within the meaning of the Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act).**]**

(9) In relation to payments made under schemes approved or established before 17th March 1987 to employees who became members before that date, subsection (1)(a) above shall have effect with the omission of the words "(disregarding any excess of that remuneration over the permitted maximum)".

[[F1200](10) In subsection (1)(a) above "the permitted maximum" means, as regards a charge to tax arising under this section in a particular year of assessment, the figure found for that year by virtue of subsections (11) and (12) below.

(11) For the years 1988-89 and 1989-90 the figure is £60,000.

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(12) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F1201]to (5A)**].]**

Textual Amendments

F1198 1989 s.75*and* Sch.6 paras.11(2)*and* 18(1)*on and after* 14*March* 1989.

F1199 S. 599(8)(b) substituted (19.12.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 16**; S.I. 1993/236, **art. 2**

F1200 1989 s.75*and* Sch.6 paras.11(3)*and* 18(8)*where the charge to tax under* s.559*arises on or after* 14*March* 1989*except where the scheme came into being before that date and the employee became a member before* 1*June* 1989.

F1201 Words in s. 599(12) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

Marginal Citations

M1595 Source-1970(F) Sch.5 Part II 2, 3; 1971 Sch.3 7; 197 (No.2) Sch.3 9

M1596 1982 c. 50.

[[F1202]599A Charge to tax: payments out of surplus funds.

(1) This subsection applies to any payment which is made to or for the benefit of an employee or to his personal representatives out of funds which are or have been held for the purposes of—

(a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a relevant statutory scheme established under a public general Act,

and which is made in pursuance of a duty to return surplus funds.

(2) On the making of a payment to which subsection (1) above applies, the administrator of the scheme shall be charged to income tax under Case VI of Schedule D at the relevant rate on such amount as, after deduction of tax at that rate, would equal the amount of the payment.

(3) Subject to subsection (4) below, the relevant rate shall be 35 per cent.

(4) The Treasury may by order from time to time increase or decrease the relevant rate.

(5) Where a payment made to or for the benefit of an employee is one to which subsection (1) above applies, it shall be treated in computing the total income of the employee for the year in which it is made as income for that year which is—

(a) received by him after deduction of income tax at the basic rate from a corresponding gross amount, and

(b) chargeable to income tax under Case VI of Schedule D.

(6) But, subject to subsection (7) below, no assessment to income tax shall be made on, and no repayment of income tax shall be made to, the employee.

(7) Subsection (6) above shall not prevent an assessment in respect of income tax at a rate other than the basic rate **[**[F1203]or the lower rate**]**.

(8) Subsection (5) above applies whether or not the employee is the recipient of the payment.

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(9) Any payment chargeable to tax under this section shall not be chargeable to tax under section 598, 599 or 600 or under the Regulations mentioned in paragraph 8 of Schedule 3 to the Finance Act 1971.

(10) In this section—

"employee", in relation to a relevant statutory scheme, includes any officer;

references to any payment include references to any transfer of assets or other transfer of money's worth.**]**

Textual Amendments

F1202 1989 s.75*and* Sch.6 paras.12*and* 18(9)*in relation to payments made on or after* 27*July* 1989.

F1203 Words in s. 599A(7) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(2)(7)**

600 Charge to tax: unauthorised payments to or for employees.

M1597(1) This section applies to any payment to or for the benefit of an employee, otherwise than in course of payment of a pension, being a payment made out of funds which are*or have been*[F1204] held for the purposes of a scheme which*is or has at any time been*[F1204] approved for the purposes of—

(a) this Chapter;

(b) Chapter II of Part II of the Finance Act 1970; or

(c) section 208 or Chapter II of Part IX of the 1970 Act.

(2) If the payment **[**[F1205]is not expressly authorised by the rules of the scheme or by virtue of paragraph 33 of Schedule 6 to the Finance Act 1989**]** the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on the amount of the payment under Schedule E for the year of assessment in which the payment is made.

(3) Any payment chargeable to tax under this section shall not be chargeable to tax under section 598 or 599 or under the Regulations mentioned in paragraph 8 of Schedule 3 to the Finance Act 1971.

(4) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

Textual Amendments

F1204 *Words repealed by* 1989 ss.75, 187*and* Schs.6 paras.13(2)*and* 18(9)*and* 17 Part IV*in relation to payments made on or after* 27*July* 1989.

F1205 1989 s.75*and* Sch.6 paras.13(3)*and* 18(9)*in relation to payments made on or after* 27*July* 1989.*Previously*

"—(a) is not expressly authorised by the rules of the scheme, or (b) is made at a time when the scheme is not approved for the purposes of any of the enactments mentioned in subsection (1) above, and would not have been expressly authorised by the rules of the scheme when it was last so approved,".

Modifications etc. (not altering text)

C582 *See* s.189—*lump sum benefit on retirement.*

Marginal Citations

M1597 Source-1971 Sch.3 9

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601 Charge to tax: payments to employers.

M1598 (1) Subsection (2) below applies where a payment is made to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme and whether or not the payment is made in pursuance of Schedule 22.

(2) An amount equal to 40 per cent. of the payment shall be recoverable by the Board from the employer.

(3) Subsection (2) above does not apply to any payment—

(a) to the extent that, if this section had not been enacted, the employer would have been exempt, or entitled to claim exemption, from income tax or corporation tax in respect of the payment; or

(b) made before the scheme became an exempt approved scheme; or

(c) of any prescribed description; or

(d) made in pursuance of the winding-up of the scheme where the winding-up commenced on or before 18th March 1986; or

(e) made in pursuance of an application which—

(i) was made to the Board on or before that date and was not withdrawn before the making of the payment, and

(ii) sought the Board's assurance that the payment would not lead to a withdrawal of approval under section 19(3) of the Finance Act 1970;

(4) Subsection (2) above does not apply where the employer is a charity (within the meaning of section 506).

(5) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme then—

(a) if the scheme relates to a trade, profession or vocation carried on by the employer, the payment shall be treated for the purposes of the Tax Acts as a receipt of that trade, profession or vocation receivable when the payment falls due or on the last day on which the trade, profession or vocation is carried on by the employer, whichever is the earlier;

(b) if the scheme does not relate to such a trade, profession or vocation, the employer shall be charged to tax on the amount of the payment under Case VI of Schedule D.

This subsection shall not apply to a payment which fell due before the scheme became an exempt approved scheme or to a payment to which subsection (2) above applies or would apply but for subsection (3)(a) or (4) above.

(6) In this section—

(a) references to any payment include references to any transfer of assets or other transfer of money's worth; and

(b) "prescribed" means prescribed by regulations made by the Treasury.

Marginal Citations

M1598 Source-1986 Sch.12 1; 1970(F) Sch.5 Part II 4; 1971 Sch.3 12(5)

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602 Regulations relating to pension fund surpluses.

M1599 (1) In relation to an amount recoverable as mentioned in section 601(2), the Treasury may by regulations make any of the provisions mentioned in subsection (2) below; and for this purpose the amount shall be treated as if it were—

(a) an amount of income tax chargeable on the employer under Case VI of Schedule D for the year of assessment in which the payment is made; or

(b) where the employer is a company, an amount of corporation tax chargeable on the company for the accounting period in which the payment is made.

(2) The provisions are—

(a) provision requiring the administrator of the scheme or the employer (or both) to furnish to the Board, in respect of the amount recoverable and of the payment concerned, information of a prescribed kind;

(b) provision enabling the Board to serve a notice or notices requiring the administrator or employer (or both) to furnish to the Board, in respect of the amount and payment, particulars of a prescribed kind;

(c) provision requiring the administrator to deduct out of the payment the amount recoverable and to account to the Board for it;

(d) provision as to circumstances in which the employer may be assessed in respect of the amount recoverable;

(e) provision that, in a case where the employer has been assessed in respect of an amount recoverable but has not paid it (or part of it) within a prescribed period, the administrator may be assessed and charged (in the employer's name) in respect of the amount (or part unpaid);

(f) provision that, in a case where the amount recoverable (or part of it) has been recovered from the administrator by virtue of an assessment in the employer's name, the administrator is entitled to recover from the employer a sum equal to the amount (or part);

(g) provision enabling the employer or administrator (as the case may be) to appeal against an assessment made on him in respect of the amount recoverable;

(h) provision as to when any sum in respect of the amount recoverable is payable to the Board by the administrator or employer and provision requiring interest to be paid on any sum so payable;

(j) provision that an amount paid to the Board by the administrator shall be treated as paid on account of the employer's liability under section 601(2).

(3) For the purpose of giving effect to any provision mentioned in subsection (2)(c) to (j) above, regulations under this section may include provision applying (with or without modifications) provisions of the enactments relating to income tax and corporation tax.

(4) Subject to any provision of regulations under this section—

(a) a payment to which section 601(2) applies shall not be treated as a profit or gain brought into charge to income tax or corporation tax and shall not be treated as part of the employer's income for any purpose of this Act; and

(b) the amount recoverable shall not be subject to any exemption or reduction (by way of relief, set-off or otherwise) or be available for set-off against other tax.

(5) If the employer is a company and a payment to which section 601(1) and (2) applies is made at a time not otherwise within an accounting period of the company, an

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accounting period of the company shall for the purposes of subsection (1)(b) above be treated as beginning immediately before the payment is made.

Modifications etc. (not altering text)

C583 *For regulations see* Part III Vol.5 (*under* "*Pension Schemes Surpluses: administration*").

Marginal Citations

M1599 Source-1986 Sch.12 2(1), (i), (2), (4)-(6)

603 Reduction of surpluses.

Schedule 22 (which provides for the reduction of certain pension fund surpluses) shall have effect.

Supplementary provisions

604 Application for approval of a scheme.

M1600 (1) An application for the approval for the purposes of this Chapter of any retirement benefits scheme shall be made in writing by the administrator of the scheme to the Board before the end of the first year of assessment for which approval is required, and shall be accompanied by—

(a) two copies of the instrument or other document constituting the scheme; and

(b) two copies of the rules of the scheme and, except where the application is being sought on the setting up of the scheme, two copies of the accounts of the scheme for the last year for which such accounts have been made up; and

(c) such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the setting up of the scheme) as the Board may consider relevant.

(2) The form in which an application for approval is to be made, or in which any information is to be given, in pursuance of this section may be prescribed by the Board.

Marginal Citations

M1600 Source-1970(F) Sch.5 Part II 6, 7, 8, 9; 1987 (No.2), Sch.3 11, 13-15

605 Information.

M1601 (1) In the case of every approved scheme, the administrator of the scheme, and every employer who pays contributions under the scheme, shall, within 30 days from the date of a notice from the inspector requiring them so to do—

(a) furnish to the inspector a return containing such particulars of contributions paid under the scheme as the notice may require;

(b) prepare and deliver to the inspector a return containing particulars of all payments under the scheme, being—

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(i) payments by way of return of contributions (including interest on contributions, if any);

(ii) payments by way of commutation of, or in lieu of, pensions, or other lump sum payments;

(iii) other payments made to an employer;

(c) furnish to the inspector a copy of the accounts of the scheme up to the last date previous to the notice to which such accounts have been made up together with such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the conduct of the scheme during the period to which the accounts relate) as the inspector considers relevant.

(2) Where benefits provided for an employee under an approved scheme or a **[**[F1206]relevant**]** statutory scheme have been secured by means of an annuity contract with an insurance company (within the meaning given by section 599(8)), the insurance company shall, within 30 days from the date of a notice from the inspector requiring it to do so, prepare and deliver to the inspector a return containing particulars of—

(a) any payments under the contract by way of commutation of, or in lieu of, a pension, or any other lump sum payments under the contract; and

(b) any payments made under the contract to the employer.

(3) It shall be the duty of every employer—

(a) if there subsists in relation to any of his employees a retirement benefits scheme to which he contributes and which is neither an approved scheme nor a **[**[F1206]relevant**]** statutory scheme, to deliver particulars of that scheme to the Board within three months beginning with the date on which the scheme first comes into operation in relation to any of his employees, and

(b) when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to—

(i) any retirement benefits scheme relating to the employer which is neither an approved scheme nor a **[**[F1206]relevant**]** statutory scheme; and

(ii) the employees of his to whom any such scheme relates.

(4) It shall be the duty of the administrator of a retirement benefits scheme which is neither an approved scheme nor a **[**[F1206]relevant**]** statutory scheme, when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to the scheme.

Textual Amendments

F1206 1989 s.75*and* Sch.6 paras.14*and* 18(1)*on and after* 14*March* 1989.

Marginal Citations

M1601 Source-1970(F) Sch.5 Part II 6, 7, 8, 9; 1987 (No.2) Sch.3 11, 13-15

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VALID FROM 03/05/1994

[F1207605A False statements etc.

(1) A person who fraudulently or negligently makes a false statement or false representation on making an application for the approval for the purposes of this Chapter of—

(a) a retirement benefits scheme, or

(b) an alteration in such a scheme,

shall be liable to a penalty not exceeding £3,000.

(2) In a case where—

(a) a person fraudulently or negligently makes a false statement or false representation, and

(b) in consequence that person, or any other person, obtains relief from or repayment of tax under this Chapter,

the person mentioned in paragraph (a) above shall be liable to a penalty not exceeding £3,000.**]**

Textual Amendments

F1207 S. 605A inserted (with application in accordance with s. 106(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 106(1)**

606 Responsibilities of administrator of scheme, and employer.

M1602 (1) If the administrator of a retirement benefits scheme defaults or cannot be traced or dies, the employer shall be responsible in his place for the discharge of all duties imposed on the administrator under this Chapter and shall be liable for any tax due from him in his capacity as administrator.

This subsection does not apply if the employer is not a contributor to the scheme.

(2) No liability incurred under this Chapter by the administrator of a scheme, or by an employer, shall be affected by the termination of the scheme or by it ceasing to be an approved scheme, or to be an exempt approved scheme.

(3) References in this section to the employer include, where the employer is resident outside the United Kingdom, references to any branch or agent of the employer in the United Kingdom, and in this subsection "branch or agent" has the meaning given by section 118(1) of the Management Act.

(4) This section does not apply for the purposes of sections 602 and 603 and Schedule 22.

Marginal Citations

M1602 Source-1970(F) Sch.5 Pt.II 6, 7, 8, 9; 1987 (No.2) Sch.3 11, 13-15

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VALID FROM 31/07/1998

[F1208 606A Recourse to scheme members.

(1) This section applies where—
- (a) an approval of a retirement benefits scheme has ceased to have effect;
- (b) a person ("the employer") has become liable by virtue of section 606 to any tax chargeable on the administrator of the scheme under section 591C;
- (c) the employer has failed, either in whole or in part, to pay that tax; and
- (d) a person falling within subsection (2) below ("the relevant member") was a member of the scheme at the time ("the relevant time") immediately before the date of the cessation of its approval.

(2) A person falls within this subsection in relation to any tax chargeable under section 591C if—
- (a) at the relevant time or at any time before that time he was a controlling director of the employer; or
- (b) he is a person by or in respect of whom any contributions were made by reference to which the condition in subsection (6A) of that section has been satisfied for the purpose of the charge to that tax.

(3) Subject to subsection (4) below, if in a case where this section applies—
- (a) the employer has ceased to exist, or
- (b) the Board notify the relevant member that they consider the failure of the employer to pay the unpaid tax to be of a serious nature,

the relevant member shall be treated as included in the persons on whom the unpaid tax was charged and shall be assessable accordingly.

(4) The amount of tax for which the relevant member shall be taken to be assessable by virtue of this section shall not exceed the amount determined by—
- (a) taking the amount equal to 40 per cent. of his share of the scheme; and
- (b) subtracting from that amount his share of any tax charged under section 591C that has already been paid otherwise than by another person on whom it is treated as charged in accordance with this section.

(5) For the purposes of this section the relevant member's share of the scheme is the amount equal to so much of the value of the assets held for the purposes of the scheme at the relevant time (taking the value at that time) as, on a just and reasonable apportionment, would have fallen to be treated as the value at that time of the assets then held for the purposes of the provision under the scheme of benefits to or in respect of the relevant member.

(6) For the purposes of this section the relevant member's share of an amount of tax already paid is such sum as bears the same proportion to the amount paid as is borne by his share of the scheme to the total value at the relevant time of the assets then held for the purposes of the scheme.

(7) The reference in subsection (5) above to the provision of benefits to or in respect of the relevant member includes a reference to the provision of a benefit to or in respect of a person connected with the relevant member.

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(8) For the purposes of this section a person is a controlling director of a company if he is a director of the company and is within section 417(5)(b) in relation to the company.

(9) A notification given to any person for the purposes of subsection (3)(b) above may be included in any assessment on that person of the tax to which he becomes liable by virtue of the notification.

(10) An assessment to tax made by virtue of this section shall not be out of time if it is made within three years after the date on which the tax which the employer has failed to pay first became due from him.

(11) Subsections (1) to (3) of section 591D shall apply to the determination of the value at any time of an asset held for the purposes of a scheme as they apply for the purposes of section 591C(2).

(12) Subsections (7) and (8) of section 591D shall apply for the purposes of this section as they apply for the purposes of subsection (1) of section 591C and section 591C, respectively.

(13) Section 839 (connected persons) shall apply for the purposes of this section.**]**

Textual Amendments

F1208 S. 606A inserted (with effect in accordance with Sch. 15 para. 6(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 6(1)**

607 Pilots' benefit fund.

M1603 (1) The Board may, if they think fit, and subject to such conditions as they think proper to attach to the approval, approve a pilots' benefit fund for the purposes of this Chapter as if it were a retirement benefits scheme and notwithstanding that it does not satisfy one or more of the conditions set out in section 590(2) and (3).

(2) If a fund is approved by virtue of this section—

(a) sections 592, 597 to 600 and 604 to 606 shall have effect in relation to the fund with the modifications specified in subsection (3) below;

(b) pensions paid out of the fund and any sums chargeable to tax in connection with the fund under section 600 shall be treated for the purposes of the Income Tax Acts as earned income; and

(c) Chapter III of this Part shall have effect as if a member of the fund were the holder of a pensionable office or employment and his earnings as a pilot (estimated in accordance with the provisions of Case II of Schedule D) were remuneration from such an office or employment.

(3) The modifications referred to in subsection (2)(a) above are as follows—

(a) in section 592, for the references in subsection (7) to an employee and Schedule E there shall be substituted respectively references to a member of the fund and Schedule D, and subsections (4) to (6), and in subsection (7) the words from "incurred" onwards, shall be omitted;

(b) in sections 597 to 606 (except sections 601 to 603)—

(i) for references to an employee there shall be substituted references to a member or former member of the fund;

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(ii) in section 599(1)(a) for the reference to a year of service there shall be substituted a reference to a year as a pilot licensed by a pilotage authority or authorised by a competent harbour authority;

(iii) section 606(1) and (3) and so much of any other provision as applies to an employer shall be omitted; and

(iv) in section 600, for references to Schedule E there shall be substituted references to Case VI of Schedule D.

(4) In this section "pilots' benefit fund" means a fund established under section 15(1)(i) of the [M1604]Pilotage Act 1983 or any scheme supplementing or replacing any such fund.

Modifications etc. (not altering text)

C584 *See* Sch.1 para.4 Pilotage Act 1987—continuation of fund following repeal of s.15(1)(i) Pilotage Act 1983 by Pilotage Act 1987 (*on and after* 1*February* 1988*by virtue of* S.I. 1987 No. 2138).

Marginal Citations

M1603 Source-1980 s.35

M1604 1983 c. 21.

608 Superannuation funds approved before 6th April 1980.

[M1605](1) This section applies to any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of the 1970 Act if—

(a) it has not been approved under this Chapter (or under Chapter II of Part II of the Finance Act 1970); and

(b) no sum has been paid to it by way of contribution since 5th April 1980.

(2) Subject to subsection (3) below, exemption from income tax shall, on a claim being made in that behalf, be allowed to a fund to which this section applies in respect of—

(a) income derived from investments or deposits of the fund;

(b) any underwriting commissions which apart from this subsection would be chargeable to tax under Case VI of Schedule D; and

(c) any profits or gains which (apart from this subsection) would be chargeable to tax under Case VI of Schedule D by virtue of section 56(1)(a) and (2);

if, or to such extent as the Board are satisfied that, the income, commissions, profits or gains are applied for the purposes of the fund.

(3) No claim under subsection (2) above shall be allowed unless the Board are satisfied that the terms on which benefits are payable from the fund have not been altered since 5th April 1980.

(4) An annuity paid out of a fund to which this section applies shall be charged to tax under Schedule E and section 203 shall apply accordingly.

Marginal Citations

M1605 Source-1980 s.36 (1), (2), (4), (6)

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609 Schemes approved before 23rd July 1987.

Schedule 23 to this Act, which makes provision with respect to retirement benefit schemes approved before 23rd July 1987, shall have effect.

610 Amendments of schemes.

M1606(1) This section applies to any amendment of a retirement benefits scheme proposed in connection with an application for the Board's approval for the purposes of this Chapter which is needed in order to ensure that approval is so given, or designed to enhance the benefits under the scheme up to the limits suitable in a scheme for which approval is sought.

(2) A provision, however expressed, designed to preclude any amendment of a scheme which would have prejudiced its approval under section 208 or 222 of the 1970 Act shall not prevent any amendment to which this section applies.

(3) In the case of a scheme which contains no powers of amendment, the administrator of the scheme may, with the consent of all the members of the scheme, and of the employer (or of each of the employers), make any amendment to which this section applies.

Marginal Citations

M1606 Source-1971 s.22(1)-(3)

611 Definition of "retirement benefits scheme".

(1) M1607In this Chapter "retirement benefits scheme" means, subject to the provisions of this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any national scheme providing such benefits.

(2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for relevant benefits notwithstanding that it relates or they relate only to—

(a) a small number of employees, or to a single employee, or

(b) the payment of a pension starting immediately on the making of the arrangements.

(3) The Board may, if they think fit, treat a retirement benefits scheme relating to employees of two or more different classes or descriptions as being for the purposes of this Chapter two or more separate retirement benefits schemes relating respectively to such one or more of those classes or descriptions of those employees as the Board think fit.

(4) For the purposes of this section, and of any other provision of this Chapter—

(a) employees may be regarded as belonging to different classes or descriptions if they are employed by different employers; and

(b) a particular class or description of employee may consist of a single employee, or any number of employees, however small.

(5) M1608Without prejudice to subsections (3) and (4) above, the Board may continue to treat as two different schemes, for the purposes of this Chapter, any retirement benefits

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scheme which, in pursuance of paragraph 5 of Schedule 3 to the Finance Act 1971 (schemes in existence before 5th April 1973), they treated, immediately before the coming into force of this Chapter, as two separate schemes for the purposes of Chapter II of Part II of the Finance Act 1970.

Marginal Citations

M1607 Source-1970(F) s.25

M1608 Source-1971 Sch.3 5

[F1209 611A Definition of relevant statutory scheme.

(1) In this Chapter any reference to a "relevant statutory scheme" is a reference to a statutory scheme—
   (a) established before 14th March 1989, or
   (b) established on or after that date and entered in the register maintained by the Board for the purposes of this section.

(2) The Board shall maintain a register for the purposes of this section and shall enter in it the relevant particulars of any statutory scheme established on or after 14th March 1989 which is reported to the Board by the authority responsible for establishing it as a scheme the provisions of which correspond with those of an approved scheme.

(3) The reference in subsection (2) above to the relevant particulars, in relation to a scheme, is a reference to—
   (a) the identity of the scheme,
   (b) the date on which it was established,
   (c) the authority responsible for establishing it, and
   (d) the date on which that authority reported the scheme to the Board.

(4) Where the Board enter the relevant particulars of a scheme in the register maintained by them for the purposes of this section, they shall inform the authority responsible for establishing the scheme of the date of the entry.

Textual Amendments

F1209 S. 611A inserted (14.3.1989) by Finance Act 1989 (c. 26), Sch. 6 paras. 15, **18(1)**

Modifications etc. (not altering text)

C585 *Definition employed for purposes of* S.I. 1987 No.1749, regn.5(2), ("The Occupational Pension Schemes (Addditional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

VALID FROM 03/05/1994

[F1210 611AA Definition of the administrator.

(1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.

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(2) Subject to subsection (7) below, where—
- (a) the scheme is a trust scheme, and
- (b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the trustee or trustees of the scheme.

(3) Subject to subsection (7) below, where—
- (a) the scheme is a non-trust scheme, and
- (b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.

(4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so resident, the trustee or trustees shall ensure that there is a person, or there are persons—
- (a) resident in the United Kingdom, and
- (b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—
- (a) resident in the United Kingdom, and
- (b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(6) Without prejudice to subsections (4) and (5) above—
- (a) the trustee or trustees of a trust scheme, or
- (b) the scheme sponsor or scheme sponsors of a non-trust scheme,

may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(7) Where at any time there is or are a person or persons—
- (a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and
- (b) resident in the United Kingdom,

the administrator of the scheme at that time shall be that person or those persons (and no other person).

(8) Any appointment under subsection (4), (5) or (6) above—
- (a) must be in writing, and
- (b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).

(9) In this section—

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(a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;

(b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;

(c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and

(d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons.**]**

Textual Amendments

F1210 S. 611AA inserted (with application in accordance with s. 103(3) of the amending Act) by Finance Act 1994 (c. 4), **s. 103(1)**

Modifications etc. (not altering text)

C586 S. 611AA excluded (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 9(2)

611A Definition of relevant statutory scheme.

(1) In this Chapter any reference to a "relevant statutory scheme" is a reference to a statutory scheme—

(a) established before 14th March 1989, or

(b) established on or after that date and entered in the register maintained by the Board for the purposes of this section.

(2) The Board shall maintain a register for the purposes of this section and shall enter in it the relevant particulars of any statutory scheme established on or after 14th March 1989 which is reported to the Board by the authority responsible for establishing it as a scheme the provisions of which correspond with those of an approved scheme.

(3) The reference in subsection (2) above to the relevant particulars, in relation to a scheme, is a reference to—

(a) the identity of the scheme,

(b) the date on which it was established,

(c) the authority responsible for establishing it, and

(d) the date on which that authority reported the scheme to the Board.

(4) Where the Board enter the relevant particulars of a scheme in the register maintained by them for the purposes of this section, they shall inform the authority responsible for establishing the scheme of the date of the entry.**]**

Textual Amendments

F1209 S. 611A inserted (14.3.1989) by Finance Act 1989 (c. 26), Sch. 6 paras. 15, **18(1)**

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Modifications etc. (not altering text)

C585 *Definition employed for purposes of* S.I. 1987 No.1749, regn.5(2), ("The Occupational Pension Schemes (Addditional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

612 Other interpretative provisions, and regulations for purposes of this Chapter.

(1) [M1609]In this Chapter, except where the context otherwise requires—

"administrator", in relation to a retirement benefits scheme, means the person or persons having the management of the scheme;

"approved scheme" means a retirement benefits scheme for the time being approved by the Board for the purposes of this Chapter;

"director" in relation to a company includes—

(a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(b) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,

(c) in the case of a company the affairs of which are managed by the members themselves, a member of that company;

and includes a person who is to be or has been a director;

"employee"—

(a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and

(b) in relation to any employer, includes a person who is to be or has been an employee;

and "employer" and other cognate expressions shall be construed accordingly;

"exempt approved scheme" has the meaning given by section 592(1);

"final remuneration" means the average annual remuneration of the last three years' service;

"pension" includes annuity;

"the permitted maximum" has the meaning given by section 590(3);

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason;

"remuneration" does not include—

(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; or

(b) anything in respect of which tax is chargeable by virtue of section 148;

"service" means service as an employee of the employer in question and other expressions, including "retirement", shall be construed accordingly; and

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"statutory scheme" means a retirement benefits scheme established by or under any enactment—

(a) the particulars of which are set out in any enactment, or in any regulations made under any enactment, or

(b) which has been approved as an appropriate scheme by a Minister or government department (including the head of a Northern Ireland department or a Northern Ireland department).

(2) [M1610]Any reference in this Chapter to the provision of relevant benefits, or of a pension, for employees of an employer includes a reference to the provision of relevant benefits or a pension by means of a contract between the administrator or the employer or the employee and a third person; and any reference to pensions or contributions paid, or payments made, under a scheme includes a reference to pensions or contributions paid, or payments made, under such a contract entered into for the purposes of the scheme.

(3) [M1611]The Board may make regulations generally for the purpose of carrying the preceding provisions of this Chapter into effect.

Modifications etc. (not altering text)

C587 *Definition employed for purposes of* S.I. 1987 No.1749, regn.2(1A) ("The Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

C588 *See* s.686—*liability to additional rate of certain income of discretionary trusts.*

C589 *Interpretation employed for purposes of* S.I. 1987 No.1749, regn.2(1) ("The Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987" *in* Part III Vol.5).

C590 *For regulations see* Part III Vol.5

Marginal Citations

M1609 Source-1970(F) s.26 (1); 1971 Sch.3 12(4); 1986 Sch.12 1(10); 1987 (No.2) Sch.3 7

M1610 Source-1970(F) s.26(2); 1987 (No.2) Sch.3 8

M1611 Source-1970(F) Sch.5 Part II 10; 1971 Sch.3 13(3)

CHAPTER II

OTHER PENSION FUNDS AND SOCIAL SECURITY BENEFITS AND CONTRIBUTIONS

613 Parliamentary pension funds.

(1) [M1612]The salary of a Member of the House of Commons shall, for all the purposes of the Income Tax Acts, be treated as reduced by the amounts deducted in pursuance of section 1 of the [M1613]House of Commons Members' Fund Act 1939; but a Member shall not by reason of any such deduction be entitled to relief under any other provision of the Income Tax Acts.

(2) In subsection (1) above the reference to salary shall be construed as mentioned in subsection (3) of section 1 of the House of Commons Members' Fund Act 1939, the reference to amounts deducted includes a reference to amounts required to be set aside under that subsection, and "deduction" shall be construed accordingly.

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(3) Periodical payments granted out of the House of Commons Members' Fund (including periodical payments granted out of sums appropriated from that Fund or out of the income from those sums) shall be charged to income tax under Schedule E.

(4) [M1614]The respective trustees of—

(a) the House of Commons Members' Fund established under section 1 of that Act of 1939;

(b) the Parliamentary Contributory Pension Fund;

(c) the Members' Contributory Pension (Northern Ireland) Fund constituted under section 3(2) of the [M1615]Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965; and

(d) the Assembly Contributory Pension Fund constituted under the [M1616]Assembly Pensions (Northern Ireland) Order 1976;

shall be entitled to exemption from income tax in respect of all income derived from those Funds or any investment of those Funds.

A claim under this subsection shall be made to the Board.

Marginal Citations

M1612 Source-1970 s.211(1), (4)

M1613 1939 c. 49.

M1614 Source-1970 s.211(2) 1981 s.50(1); PPA 1987 Sch.3 2(1)

M1615 1965 c. 18 (N.I.).

M1616 S.I. 1976/1779.

614 Exemptions and reliefs in respect of income from investments etc. of certain pension schemes.

(1) [M1617]All income receivable from any source whatsoever for the purposes of any supplementary scheme under section 158 of the [M1618]Social Security Act 1975 or section 149 of the [M1619]Social Security (Northern Ireland) Act 1975, or under the enactments replaced by those sections, by the body charged with the administration of the scheme shall be exempt from income tax.

(2) [M1620]Any interest or dividends received by the person in whom is vested any of the Family Pension Funds mentioned in section 273 of the [M1621]Government of India Act 1935, and having effect as a scheme made under section 2 of the [M1622]Overseas Pensions Act 1973, on sums forming part of that fund shall be exempt from income tax.

(3) [M1623]Income derived from investments or deposits of any fund referred to in paragraph (b), (c), (d) or (f) of subsection (2) of section 615 shall not be charged to income tax, and any income tax deducted from any such income shall be repaid by the Board to the persons entitled to receive the income.

(4) [M1624]In respect of income derived from investments or deposits of the Overseas Service Pensions Fund established pursuant to section 7(1) of the [M1625]Overseas Aid Act 1966, the Board shall give by way of repayment such relief from income tax as is necessary to secure that the income is exempt to the like extent (if any) as if it were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.

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(5) [M1626]In respect of dividends and other income derived from investments, deposits or other property of a superannuation fund to which section 615(3) applies the Board shall give by way of repayment such relief from income tax as is necessary to secure that the income is exempt to the like extent (if any) as if it were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.

(6) [M1627]A claim under this section shall be made to the Board.

Marginal Citations

M1617 Source-1970 s.212(1)
M1618 1975 c. 14.
M1619 1975 c. 15.
M1620 Source-1970 s.213(1)
M1621 1935 c. 2.
M1622 1973 c. 21.
M1623 Source-1970 s.214(2), 216(2); 1973 s.53(1)
M1624 Source-1970 s.217(2), (4)
M1625 1966 c. 21.
M1626 Source-1970 s.218(1)
M1627 Source-1970 s.212(3), 213(1), 214(3), 216(2), 217(2), 218(1); 1987 Sch.15 2(13)

615 Exemption from tax in respect of certain pensions.

(1) [M1628]A pension to which this subsection applies shall not be liable to charge to income tax if it is the income of a person who satisfies the Board that he is not resident in the United Kingdom.

A claim under this subsection shall be made to the Board.

(2) Subsection (1) above applies to any of the following pensions—

(a) [M1629]a pension paid under the authority of the [M1630]Pensions (India, Pakistan and Burma) Act 1955 (which has effect, by virtue of subsection (3) of section 2 of the Overseas Pensions Act 1973, as a scheme made under that section);

(b) [M1631]a pension paid out of any fund established in the United Kingdom by the government of any country which is, or forms part of, a country to which this paragraph applies, an associated state, a colony, a protectorate, a protected state or a United Kingdom trust territory, or by a government constituted for two or more such countries, if the fund was established for the sole purpose of providing pensions, whether contributory or not, payable in respect of service under that government;

(c) [M1632]a pension paid out of the fund formed under the Overseas Superannuation Scheme (formerly known as the Colonial Superannuation Scheme); **[**[F1211]or which would have been so paid had section 2(2)(e) and (4A) of the Overseas Pensions Act 1973 not been enacted;**]**

(d) a pension paid under section 1 of the [M1633]Overseas Pensions Act 1973, whether or not paid out of a fund established under a scheme made under that section;

(e) [M1634]so much of any pension paid to or in respect of any person—

(i) under an order made under section 2 of the [M1635]Overseas Service Act 1958 and having effect as if it were a scheme under section 2 of the

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Overseas Pensions Act 1973 or under a pension scheme originally provided and maintained under such an order and having such effect, or

(ii) under section 4(2) of the Overseas Service Act 1958, which has effect as if it were a scheme under section 2 of the Overseas Pensions Act 1973,

as may be certified by the Secretary of State to be attributable to the employment of that person in the public services of an overseas territory;

(f) [M1636]a pension paid out of the fund established under the name "the Central African Pension Fund" by section 24 of the [M1637]Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963;

(g) [M1638]a pension paid out of the Overseas Service Pensions Fund established under section 7(1) of the [M1639]Overseas Aid Act 1966.

(3) [M1640]Where an annuity is paid from a superannuation fund to which this subsection applies to a person who is not resident in the United Kingdom, income tax shall not be deducted from any payment of the annuity or accounted for under section 349(1) by the trustees or other persons having the control of the fund.

(4) [M1641]Subsection (1) above shall not apply to so much of any pension falling within paragraph (a) or (d) of subsection (2) above as is paid by virtue of the application to the pension of the Pensions (Increase) Acts.

(5) [M1642]Paragraph (b) of subsection (2) above applies to any country mentioned in Schedule 3 to the [M1643]British Nationality Act 1981 except Australia, Canada, New Zealand, India, Sri Lanka and Cyprus.

(6) [M1644]Subsection (3) above applies to any superannuation fund which—

(a) is bona fide established under irrevocable trusts in connection with some trade or undertaking carried on wholly or partly outside the United Kingdom;

(b) has for its sole purpose the provision of superannuation benefits in respect of persons' employment in the trade or undertaking wholly outside the United Kingdom; and

(c) is recognised by the employer and employed persons in the trade or undertaking;

and for the purposes of this subsection duties performed in the United Kingdom the performance of which is merely incidental to the performance of other duties outside the United Kingdom shall be treated as performed outside the United Kingdom.

(7) [M1645]In this section—

"pension" includes a gratuity or any sum payable on or in respect of death or, in the case of a pension falling within subsection (2)(g) above, ill-health, and a return of contributions with or without interest thereon or any other addition thereto;

"overseas territory" means any territory or country outside the United Kingdom;

"the Pensions (Increase) Acts" means the [M1646]Pensions (Increase) Act 1971 and any Act passed after that Act for purposes corresponding to the purposes of that Act;

"United Kingdom trust territory" means a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations.

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(8) In this section—

(a) [M1647]references to a government constituted for two or more countries include references to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more countries;

(b) [M1648]any reference to employment in the public services of an overseas territory shall be construed as if it occurred in the [M1649]Overseas Development and Cooperation Act 1980 and section 10(2) of that Act shall apply accordingly; and

(c) [M1650]any reference to an enactment or order having effect as if it were a scheme constituted under section 2 of the [M1651]Overseas Pensions Act 1973 includes a reference to a scheme made under that section and certified by the Secretary of State for the purpose of the 1970 Act or this Act to correspond to that enactment or order.

Textual Amendments

F1211 Words in s. 615(2)(c) added (16.8.1991) by Oversea Superannuation Act 1991 (c. 16, SIF 101A:1), **ss. 2**, 3(2)

Marginal Citations

M1628 Source-1970 s.214(1), (3), 215(1), (2), 216(1), 217(1)
M1629 Source-1970 s.214(1)(a); 1973 s.53(1)
M1630 1955 c. 22.
M1631 Source-1970 s.214(1)(b)
M1632 Source-1970 s.214(1)(c), (d); 1973 s.53(1)
M1633 1973 c. 21.
M1634 Source-1970 s.251(1); 1973 s.53(2)
M1635 1958 c. 14.
M1636 Source-1970 s.216(1), (4)
M1637 S.I. 1963/2085.
M1638 Source-1970 s.217(1), (4)
M1639 1966 c. 21.
M1640 Source-1970 s.218(3)
M1641 Source-1970 s.214(1); 1973 s.53(1)
M1642 Source-1970 s.214(6); 1987 Sch.15 2(14)
M1643 1981 c. 61.
M1644 Source-1970 s.218(4)
M1645 Source-1970 s.214(5), 215(3), 216(4), 217(4)
M1646 1971 c. 56.
M1647 Source-1970 s.214(5)
M1648 Source-1970 s.215(3)
M1649 1980 c. 63.
M1650 Source-1973 c.53(2)
M1651 1973 c. 21.

616 Other overseas pensions.

[M1652](1) If and so long as provision is made by double taxation relief arrangements for a pension of a description specified in subsection (2) below to be exempt from tax in the United Kingdom and, by reason of Her Majesty's Government in the United Kingdom having

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assumed responsibility for the pension, payments in respect of it are made under section 1 of the Overseas Pensions Act 1973, then, to the extent that those payments are made to, or to the widow or widower of, an existing pensioner, the provision made under the arrangements shall apply in relation to the pension, exclusive of any statutory increases in it, as if it continued to be paid by the government which had responsibility for it before that responsibility was assumed by Her Majesty's Government in the United Kingdom.

(2) The pensions referred to in subsection (1) above are pensions paid by—

(a) the Government of Malawi for services rendered to that Government or to the Government of the Federation of Rhodesia and Nyasaland in the discharge of governmental functions;

(b) the Government of Trinidad and Tobago in respect of services rendered to that Government in the discharge of governmental functions;

(c) the Government of the Republic of Zambia for services rendered to that Government or to the Government of Northern Rhodesia or to the Government of the Federation of Rhodesia and Nyasaland in the discharge of governmental functions.

(3) If—

(a) immediately before 6th April 1973 a person resident in the United Kingdom was entitled to receive a pension as or as the widow or widower of an existing pensioner, and

(b) by reason of Her Majesty's Government in the United Kingdom having assumed responsibility for the pension, payments in respect of it are made under section 1 of the [M1653]Overseas Pensions Act 1973,

then, if and so long as the pension is received by that person or, where that person is an existing pensioner, by his or her widow or widower, the provisions of this Act shall apply in relation to it, exclusive of any statutory increases in it, as if it continued to be paid by the government or other body or fund which had responsibility for it before that responsibility was assumed by Her Majesty's Government in the United Kingdom.

(4) In this section—

"double taxation relief arrangements" means arrangements specified in an Order in Council making any such provisions as are referred to in section 788;

"existing pensioner", in relation to a pension, means a person by virtue of whose service the pension is payable and who retired from that service before 6th April 1973; and

"statutory increases", in relation to a pension, means so much (if any) of the pension as is paid by virtue of the application to it of any provision of the [M1654]Pensions (Increase) Act 1971;

and in this subsection "pension" has the same meaning as in section 1 of the Overseas Pensions Act 1973.

Marginal Citations

M1652 Source-1973 s.53(3)-(5), (9)

M1653 1973 c. 21.

M1654 1971 c. 56.

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617 Social security benefits and contributions.

(1) Payments of benefit under **[**[F1212]Parts II to IV of the Social Security Contributions and Benefits Act 1992**]**, **[**[F1213]or Parts II to IV of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]**, except—

(a) sickness benefit, invalidity benefit, attendance allowance, [[F1214] mobility allowance,] **[**[F1215]disability living allowance,**]**severe disablement allowance, maternity allowance, widow's payments, child's special allowance and guardian's allowance; and

(b) so much of any benefit as is attributable to an increase in respect of a child,

shall be charged to income tax under Schedule E.

(2) [M1655]The following payments shall not be treated as income for any purpose of the Income Tax Acts—

(a) payments of income support, family credit **[**[F1216], disability working allowance**]**or housing benefit under **[**[F1217]Part VII of the Social Security Contributions and Benefits Act 1992**]** or **[**[F1218]Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]** other than payments of income support which are taxable by virtue of section 151;

[[F1219](aa) payments by way of an allowance under **[**[F1220]paragraph 18 of Schedule 7 to the Social Security Contributions and Benefits Act 1992**]** and **[**[F1221]paragraph 18 of Schedule 7 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]**;**]**

(b) payments of child benefit; and

(c) payments excepted by subsection (1) above from the charge to tax imposed by that subsection.

(3) [M1656]Subject to subsection (4) and (5) below, no relief or deduction shall be given or allowed in respect of any contribution paid by any person under—

(a) Part I of the Social Security **[**[F1222]Contributions and Benefits Act 1992**]**, or

(b) Part I of the Social Security **[**[F1223]Contributions and Benefits (Northern Ireland) Act 1992**]**.

(4) Subsection (3) above shall not apply to any secondary Class I contributions within the meaning of **[**[F1224]Part I of the Social Security Contributions and Benefits Act 1992**]** or **[**[F1225]Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]** which is allowable as a deduction in computing profits or gains, in computing expenses of management under section 75 or under that section as applied by section 76 or in computing expenses of management or supervision under section 121.

(5) [M1657]An individual making a claim in that behalf shall be entitled, in computing his total income for any year of assessment, to deduct one-half of any amount (as finally settled) which is determined under subsection **[**[F1226](3) of section 15 of the Social Security Contributions and Benefits Act 1992 or**]****[**[F1227]subsection (3) of section 15 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]** and which he is liable to pay in respect of that year by way of Class 4 contributions under either of those sections.

(6) [M1658]Until such day as may be appointed by the Secretary of State by order made by statutory instrument, subsection (1)(a) above shall have effect with the omission of the words "widow's payments".

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Textual Amendments

F1212 Words in s. 617(1) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(2)**

F1213 Words in s. 617(1) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(2)**

F1214 Words in s. 617(1)(a) repealed (N.I.) (6.4.1992) by S.I. 1991/2874, **art. 5**; S.R. 1992/94, **art. 2**

F1215 Words in s. 617(1)(a) inserted (3.2.1992 for certain purposes and 6.4.1992 so far as not in force) by Disablity Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 4(2), **Sch. 2 para. 18**; S.I. 1991/2167, **art. 2(c)(f)**

F1216 Words in s. 617(2)(a) inserted (10.3.1992 for certain purposes and 6.4.1992 so far as not in force) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 7(2), **Sch. 3 para. 11**; S.I. 1991/2617, **art. 2(e)(f)**

F1217 Words in s. 617(2)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(3)(a)**

F1218 Words in s. 617(2)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(3)(a)**

F1219 S. 617(2)(aa) inserted by virtue of Social Security Act 1988 (c. 7), s. 16, **Sch. 4 para. 1** and S.I. 1988 No. 520 (*not reproduced*).

F1220 Words in s. 617(2)(aa) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(3)(b)**

F1221 Words in s. 617(2)(aa) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(3)(b)**

F1222 Words in s. 617(3)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(4)**

F1223 Words in s. 617(3)(b) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(4)**

F1224 Words in s. 617(4) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(5)**

F1225 Words in s. 617(4) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(5)**

F1226 Words in s. 617(5) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(6)**

F1227 Words in s. 617(5) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(6)**

Modifications etc. (not altering text)

C591 *See* 1989 s.41—*tax charged on amount accruing* (1989-90*and subsequent years of assessment*).

C592 S. 617(5) excluded (N.I.)(1.7.1992) by Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), s. 15(3), **Sch. 2 para. 3(2)(e)**(with s. 108(5))

Marginal Citations

M1655 Source-1970 s.219(2); 1987 s.29(1)

M1656 Source-1970 s.219(3)

M1657 Source-1988 s.42(1)

M1658 Source-1970 s.219(1)

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VALID FROM 08/07/2002

[F1228 617A Tax credits under Part 1 of Tax Credits Act 2002

Payments of a tax credit, within the meaning of the Tax Credits Act 2002, shall not be treated as income for any purpose of the Income Tax Acts.**]**

Textual Amendments

F1228 S. 617A inserted (prosp.) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 14** (the insertion being brought into force at 6.4.2003 by S.I. 2003/962, **art. 2(3)(d)(iii)**)

CHAPTER III

RETIREMENT ANNUITIES

618 Termination of relief under this Chapter, and transitional provisions.

M1659 (1) Nothing in this Chapter shall apply in relation to—

(a) a contract made or trust scheme established on or after **[**F1229 1st July**]** 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) Subject to subsection (4) below, the terms of a contract made, or the rules of a trust scheme established, on or after 17th March 1987 and before **[**F1229 1st July**]** 1988 and approved by the Board under section 620 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 635(4).

(3) Subject to subsection (5) below, the rules of a trust scheme established before 17th March 1987 and approved by the Board under section 620 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 (2) above.

(4) Subsection (2) above shall not apply—

(a) to a contract if, before the end of January 1988, the persons by and to whom premiums are payable under it jointly give notice to the Board that subsection (2) 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 notice to the Board that subsection (2) 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.

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(5) Subsection (3) 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 notice to the Board that subsection (3) is not to apply; and where notice is given to the Board, 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.

Textual Amendments

F1229 1988(F) s.54(2)—*deemed always to have had effect. Previously* "4th January".

Marginal Citations

M1659 Source-1987 (No.2) s.54

619 Exemption from tax in respect of qualifying premiums.

(1) [M1660]Where in any year of assessment an individual is (or would but for an insufficiency of profits or gains be) chargeable to income tax in respect of relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, and pays a qualifying premium, then—

(a) relief from income tax shall be given under this section in respect of that qualifying premium, but only on a claim made for the purpose, and where relief is to be so given, the amount of that premium shall, subject to the provisions of this section, be deducted from or set off against his relevant earnings for the year of assessment in which the premium is paid; and

(b) any annuity payable to the same or another individual shall be treated as earned income of the annuitant to the extent to which it is payable in return for any amount on which relief is so given.

Paragraph (b) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the annuity contract under which it is paid.

(2) [M1661]Subject to the provisions of this section and section 626, the amount which may be deducted or set off in any year of assessment (whether in respect of one or more qualifying premiums, and whether or not including premiums in respect of a contract approved under section 621) shall not be more than 17.5 per cent. of the individual's net relevant earnings for that year.

(3) Subject to the provisions of this section, the amount which may be deducted or set off in any year of assessment in respect of qualifying premiums paid under a contract approved under section 621 (whether in respect of one or more such premiums) shall not be more than 5 per cent. of the individual's net relevant earnings for that year.

(4) [M1662]An individual who pays a qualifying premium in a year of assessment (whether or not a year for which he has relevant earnings) may before the end of that year elect that the premium shall be treated as paid—

(a) in the last preceding year of assessment; or

(b) if he had no net relevant earnings in the year referred to in paragraph (a) above, in the last preceding year of assessment but one;

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and where an election is made under this subsection in respect of a premium the other provisions of this Chapter shall have effect as if the premium had been paid in the year specified in the election and not in the year in which it was actually paid.

(5) [M1663]Where relief under this section for any year of assessment is claimed and allowed (whether or not relief then falls to be given for that year), and afterwards there is made any assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.

(6) Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of it under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract; and references in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under this section.

(7) If any person, for the purpose of obtaining for himself or any other person any relief from or repayment of tax under this section, knowingly makes any false statement or false representation, he shall be liable to a penalty not exceeding **[**[F1230]£3,000**]**.

Textual Amendments

F1230 1989 s.170(4)(a), (6)*in relation to things done or omitted to be done on or after* 27*July* 1989.*Previously*
"£500".

Marginal Citations

M1660 Source-1970 s.226(1), (4), 227(1)
M1661 Source-1970 s.227(1A), (1B); 1971 s.20(2); 1980 s.31(1), (2)
M1662 Source-1970 s.227(1BB); 1980 s.33(2)
M1663 Source-1970 s.227(10), (11), (13)

620 Qualifying premiums.

(1) [M1664]In this Chapter "qualifying premium" means, subject to subsection (5) below, a premium or other consideration paid by an individual—

(a) under an annuity contract for the time being approved by the Board under this section as having for its main object the provision for the individual of a life annuity in old age, or

(b) under a contract for the time being approved under section 621.

(2) [M1665]Subject to subsection (3) and (4) below, the Board shall not approve a contract under this section unless it appears to them to satisfy the conditions that it is made by the individual with a person lawfully carrying on in the United Kingdom the business of granting annuities on human life, and that it does not—

(a) provide for the payment by that person during the life of the individual of any sum except sums payable by way of annuity to the individual; or

(b) provide for the annuity payable to the individual to commence before he attains the age of 60 or after he attains the age of 75; or

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(c) provide for the payment by that person of any other sums except sums payable by way of annuity to the individual's widow or widower and any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower, are payable by way of return of premiums, by way of reasonable interest on premiums or by way of bonuses out of profits; or

(d) provide for the annuity, if any, payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual; or

(e) provide for the payment of any annuity otherwise than for the life of the annuitant;

and that it does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(3) A contract shall not be treated as not satisfying the requirements of subsection (2) above by reason only that it—

(a) gives the individual the right to receive, by way of commutation of part of the annuity payable to him, a lump sum not exceeding three times the annual amount of the remaining part of the annuity, taking, where the annual amount is or may be different in different years, the initial annual amount, and

(b) makes any such right depend on the exercise by the individual of an election at or before the time when the annuity first becomes payable to him.

(4) [M1666]The Board may, if they think fit, and subject to any conditions they think proper to impose, approve, under this section, a contract otherwise satisfying the preceding conditions, notwithstanding that the contract provides for one or more of the following matters—

(a) for the payment after the individual's death of an annuity to a dependant not the widow or widower of the individual;

(b) for the payment to the individual of an annuity commencing before he attains the age of 60, if the annuity 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;

(c) if the individual's occupation is one in which persons customarily retire before attaining the age of 60, for the annuity to commence before he attains that age;

(d) for the annuity payable to any person to continue for a term certain (not exceeding ten years), notwithstanding his death within that term, or for the annuity payable to any person to terminate, or be suspended, on marriage (or re-marriage) or in other circumstances;

(e) in the case of an annuity which is to continue for a term certain, for the annuity to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by his personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

(5) [M1667]Subject to section 621(5), section 619 and subsections (1) to (4) above shall apply in relation to a contribution under a trust scheme approved by the Board as they apply in relation to a premium under an annuity contract so approved, with the modification that, for the condition as to the person with whom the contract is made, there shall be substituted a condition that the scheme—

(a) is established under the law of any part of, and administered in, the United Kingdom; and

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(b) is established for the benefit of individuals engaged in or connected with a particular occupation (or one or other of a group of occupations), and for the purpose of providing retirement annuities for them, with or without subsidiary benefits for their families or dependants; and

(c) is so established under irrevocable trusts by a body of persons comprising or representing a substantial proportion of the individuals so engaged in the United Kingdom, or of those so engaged in England, Wales, Scotland or Northern Ireland;

and with the necessary adaptations of other references to the contract or the person with whom it is made.

(6) Exemption from income tax shall be allowed in respect of income derived from investments or deposits of any fund maintained for the purpose mentioned in subsection (5)(b) above under a scheme for the time being approved under that subsection.

(7) The Board may at any time, by notice given to the persons by and to whom premiums are payable under any contract for the time being approved under this section, or to the trustees or other persons having the management of any scheme so approved, withdraw that approval on such grounds and from such date as may be specified in the notice.

(8) [M1668]Nothing in sections 4 and 6 of the [M1669]Policies of Assurance Act 1867 (obligations of assurance companies in respect of notices of assignment of policies of life assurance) shall be taken to apply to any contract approved under this section.

(9) For the purposes of any provision applying this subsection "approved annuities" means—

(a) annuities under contracts approved by the Board under this section, being annuities payable wholly in return for premiums or other consideration paid by a person who (when the premiums or other consideration are or is payable) is, or would but for an insufficiency of profits or gains be, chargeable to tax in respect of relevant earnings from a trade, profession, vocation, office or employment carried on or held by him; and

(b) annuities or lump sums under approved personal pension arrangements within the meaning of Chapter IV of this Part.

Marginal Citations

M1664 Source-1970 s.226(1)(b), 1971 s.20(1)
M1665 Source-1970 s.226(2), 226A(5); 1976 s.30(2); 1971 s.20(3)
M1666 Source-1970 s.226(3), 226A(5)
M1667 Source-1970 s.226(5)-(7)
M1668 Source-1970 s.226(12), (13); 1987 (No.2) Sch.2 1
M1669 1867 c. 144.

621 Other approved contracts.

[M1670](1) The Board may approve under this section—

(a) a contract the main object of which is the provision of an annuity for the wife or husband of the individual, or for any one or more dependants of the individual,

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(b) a contract the sole object of which is the provision of a lump sum on the death of the individual before he attains the age of 75.

(2) The Board shall not approve the contract unless it appears to them that it is made by the individual with a person lawfully carrying on in the United Kingdom the business of granting annuities on human life.

(3) The Board shall not approve a contract under subsection (1)(a) above unless it appears to them to satisfy all the following conditions, that is to say—

(a) that any annuity payable to the wife or husband or dependant of the individual commences on the death of the individual,

(b) that any annuity payable to the individual commences at a time after the individual attains the age of 60, and, unless the individual's annuity is one to commence on the death of a person to whom an annuity would be payable under the contract if that person survived the individual, cannot commence after the time when the individual attains the age of 75;

(c) that the contract does not provide for the payment by the person contracting with the individual of any sum, other than any annuity payable to the individual's wife or husband or dependant, or to the individual, except, in the event of no annuity becoming payable under the contract, any sums payable by way of return of premiums, by way of reasonable interest on premiums or by way of bonuses out of profits;

(d) that the contract does not provide for the payment of any annuity otherwise than for the life of the annuitant;

(e) that the contract does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(4) The Board may, if they think fit, and subject to any conditions that they think proper to impose, approve a contract under subsection (1)(a) above notwithstanding that, in one or more respects, they are not satisfied that the contract complies with the provisions of paragraphs (a) to (e) of subsection (3) above.

(5) The main purpose of a trust scheme, or part of a trust scheme, within section 620(5) may be to provide annuities for the wives, husbands and dependants of the individuals, or lump sums payable on death and in that case—

(a) approval of the trust scheme shall be subject to subsections (1) to (4) above with any necessary modifications, and not subject to section 620(2) to (4);

(b) the provisions of this Chapter shall apply to the scheme or part of the scheme when duly approved as they apply to a contract approved under this section; and

(c) section 620(6) shall apply to any duly approved trust scheme, or part of a trust scheme.

(6) Except as otherwise provided in this Chapter (and in particular except in section 620), any reference in the Tax Acts to a contract or scheme approved under that section shall include a reference to a contract or scheme approved under this section.

Marginal Citations

M1670 Source-1970 s.226A(1)-(4), (6), (7); 1971 Sch.2 1; 1976 s.30(2)

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622 Substituted retirement annuity contracts.

[M1671](1) The Board may, if they think fit, and subject to any conditions they think proper to impose, approve an annuity contract under section 620 notwithstanding that the contract provides that the individual by whom it is made—

(a) may agree with the person with whom it is made that a sum representing the value of the individual's accrued rights under it should be applied as the premium or other consideration either under another annuity contract made between them and approved by the Board under section 620, or under personal pension arrangements made between them and approved by the Board under Chapter IV of this Part; or

(b) may require the person with whom it is made to pay such a sum to such other person as the individual may specify, to be applied by that other person as the premium or other consideration either under an annuity contract made beween the individual and him and approved by the Board under section 620, or under personal pension arrangements made between the individual and him and approved by the Board under Chapter IV of this Part.

(2) References in subsection (1) above to the individual by whom the contract is made include references to any widow, widower or dependant having accrued rights under the contract.

(3) Where in pursuance of any such provision as is mentioned in subsection (1) above of an annuity contract approved under section 620, or of a corresponding provision of a contract approved under section 621(1)(a), a sum representing the value of accrued rights under one contract ("the original contract") is paid by way of premium or other consideration under another contract ("the substituted contract"), any annuity payable under the substituted contract shall be treated as earned income of the annuitant to the same extent that an annuity payable under the original contract would have been so treated.

Marginal Citations

M1671 Source-1978 s.26(1)-(3); 1987 (No.2) Sch.2 4

623 Relevant earnings.

(1) [M1672]*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*[F1231].

(2) *Subject to subsection* (1)*above*[F1231], "relevant earnings", in relation to any individual, means, for the purposes of this Chapter, any income of his chargeable to tax for the year of assessment in question, being either—

(a) income arising in respect of remuneration from an office or employment held by him other than a pensionable office or employment; or

(b) income from any property which is attached to or forms part of the emoluments of any such office or employment held by him; or

(c) income which is chargeable under*Schedule B or*[F1232] Schedule D and is immediately derived by him from the carrying on or exercise by him of his trade, profession or vocation either as an individual or, in the case of a partnership, as a partner personally acting therein; or

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(d) income treated as earned income by virtue of section 529;

but does not include any remuneration as director of a company whose income consists wholly or mainly of investment income **[**[F1233](that is to say, income which, if the company were an individual, would not be earned income)**]**, being a company of which he is a controlling director.

(3) For the purposes of this Chapter, an office or employment is a pensionable office or employment if, and only if, service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death or disability before the age of 75 or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the United Kingdom or the holder is chargeable to tax in respect of it.

(4) Service in an office or employment shall not for the purposes of subsection (3) above be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he does not) participate in the scheme by exercising or refraining from exercising an option open to him by virtue of that service.

(5) [M1673]For the purposes of relief under section 619, an individual's relevant earnings are 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 any of the Capital Allowances Acts; and references to income in the following provisions of this section (other than references to total income) shall be construed similarly.

(6) Subject to the following provisions of this section "net relevant earnings" means, in relation to an individual, the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions falling to be made from the relevant earnings in computing for the purposes of income tax his total income for that year, being—

(a) deductions which but for section 74(m), (p) or (q) could be made in computing his profits or gains; or

(b) deductions in respect of relief under Schedule 9 of the Finance Act 1981 (stock relief); or

(c) deductions in respect of losses or capital allowances arising from activities profits or gains of which would be included in computing relevant earnings of the individual*or of the individual's wife or husband*[F1234].

(7) Where in any year of assessment for which an individual claims and is allowed relief under section 619—

(a) there falls to be made in computing the total income of the individual*or that of his wife or her husband*[F1235] a deduction in respect of any such loss or allowance of the individual as is mentioned in subsection (6)(c) above; 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 (being deducted as far as may be from those of the immediately following year, whether or not he claims or is entitled to claim relief under this section for that year, and so far as it cannot be so deducted, then from those of the next year, and so on).

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(8) [M1674]An individual's net relevant earnings for any year of assessment are to be computed without regard to any relief which falls to be given for that year under section 619*either*[F1235] to that individual*or to that individual's wife or husband*[F1235].

(9) An individual's relevant earnings, in the case of partnership profits, shall be taken to be his share of the partnership income, estimated in accordance with the Income Tax Acts, but the amount to be included in respect of those earnings in arriving at his net relevant earnings shall be his share of that income after making therefrom all such deductions (if any) in respect of payments made by the partnership or of relief given to the partnership under Schedule 9 of the Finance Act 1981 (stock relief) or in respect of capital allowances falling to be made to the partnership as would be made in computing the tax payable in respect of that income.

Textual Amendments

F1231 *S. 623(1) and words in s. 623(2) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F1232 *Words in s. 623(2)(c) repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

F1233 1989 s.107*and* Sch.12 para.15—*in relation to accounting periods beginning after* 31*March* 1989.*Previously*
"(construed in accordance with paragraph 7 of Schedule 19)".

F1234 *Words in s. 623(6)(c) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F1235 *Words in s. 623(7)(a)(8) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C593 S. 623(2)(c) extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), Sch. 6 paras. 1, **2**

Marginal Citations

M1672 Source-1970 s.226(8)-(10); 1976 s.30(2); 1972 Sch.24 17

M1673 Source-1970 s.227(4), (5)(a), (aa), (b), (6); 1971 Sch.8 16; 1970 s.33(3); 1981 s.35; 1986 s.56(7), Sch.13 2

M1674 Source-1970 s.227(8), (9); 1980 s.33(4); 1981 s.35

624 Sponsored superannuation schemes and controlling directors.

(1) [M1675]In section 623 "a sponsored superannuation scheme" means a scheme or arrangement—

(a) relating to service in particular offices or employments, and

(b) having for its object or one of its objects to make provision in respect of persons serving in those offices or employments against future retirement or partial retirement, against future termination of service through death or disability, or against similar matters,

being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement).

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(2) For the purposes of subsection (1) above a person shall be treated as bearing by reason of his service the cost of any payment made or agreed to be made in respect of his service, if that payment or the agreement to make it is treated under the Income Tax Acts as increasing his income, or would be so treated if he were chargeable to tax under Case I of Schedule E in respect of his emoluments from that service.

(3) [M1676]In section 623 "controlling director" means a director of a company, the directors of which have a controlling interest in the company, who is the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company; and for the purposes of this definition—

"company" means one within the [M1677]Companies Act 1985 or the [M1678]Companies (Northern Ireland) Order 1986; and

"director" means—

(a) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;

(b) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;

(c) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate;

and includes any person who is to be or has been a director.

Marginal Citations

M1675 Source-1970 s.226(11)
M1676 Source-1970 s.226(9), 224(1)
M1677 1985 c. 6.
M1678 S.I. 1986/1032 (N.I. 6).

625 Carry-forward of unused relief under section 619.

[M1679](1) Where—

(a) in any year of assessment an individual is (or would but for an insufficiency of profits or gains be) chargeable to income tax in respect of relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, but

(b) there is unused relief for that year, that is to say, an amount which could have been deducted from or set off against the individual's relevant earnings for that year under subsection (1) of section 619 if—

(i) he had paid a qualifying premium in that year; or

(ii) the qualifying premium or premiums paid by him in that year had been greater;

then, subject to section 655(1)(b), relief may be given under that section, up to the amount of the unused relief, in respect of so much of any qualifying premium or premiums paid by the individual in any of the next six years of assessment as exceeds the maximum applying for that year under subsection (2) of that section.

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(2) 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.

(3) 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 619, up to that amount, in respect of so much of any qualifying premium or premiums paid by him within that period as exceeds the maximum applying under subsection (2) of that section for the year of assessment in which they were paid;

   and to the extent to which relief in respect of any premium or premiums is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(4) 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.

Marginal Citations
M1679 Source-1970 s.277A; 1980 s.32(1)

626 Modification of section 619 in relation to persons over 50.

[M1680]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 Table set out below, section 619(2) shall have effect for that year with the substitution for the reference to 17.5 per cent. of a reference to the relevant percentage specified in the second column of the Table.

TABLE

Age range	*Percentage*
51 to 55	20
56 to 60	22½
61 or more	27½

Marginal Citations
M1680 Source-1970 s.228; 1987 (No.2) s.54(2)

627 Lloyd's underwriters.

[M1681](1) Where for any year of assessment an individual—

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(a) is chargeable to income tax in respect of relevant earnings derived from Lloyd's underwriting activities; and

(b) there is an amount of unused relief attributable to those earnings,

the individual may, subject to subsection (2) below, elect that there shall be treated as paid in that year any qualifying premium paid by him in the next year of assessment but two.

(2) An election under this section shall not have effect in relation to so much of any qualifying premium as exceeds the amount of unused relief referred to in subsection (1)(b) above.

(3) Any election under this section shall be made before the end of the year of assessment in which the premium is paid.

(4) Where an election is made under this section the provisions of this Chapter, other than section 619(4), shall have effect as if the premium or, as the case may be, the part of the premium in question had been paid in the year specified in the election and not in the year in which it was actually paid.

(5) In this section—

"unused relief" has the same meaning as in section 625; and

"relevant earnings derived from Lloyd's underwriting activities" means relevant earnings as an **[**[F1236]underwriting or former underwriting member.**]** of Lloyd's or by way of commission calculated by reference to the profits of Lloyd's underwriting business.

Textual Amendments

F1236 Words in s. 627(5) substituted (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 183(3)**, 184(3)

Marginal Citations

M1681 Source-1982 s.37

628 Partnership retirement annuities.

[M1682](1) Where a person ("the former partner") has ceased to be a member of a partnership on retirement, because of age or ill-health or on death and, under—

(a) the partnership agreement; or

(b) an agreement replacing the partnership agreement or supplementing it or supplementing an agreement replacing it; or

(c) an agreement made with an individual who acquires the whole or part of the business carried on by the partnership;

annual payments are made for the benefit of the former partner or **[**[F1237]a widow, widower or dependant of the former partner**]** and are for the purposes of income tax income of the person for whose benefit they are made, the payments shall be treated as earned income of that person, except to the extent that they exceed the limit specified in subsection (2) below.

(2) The limit mentioned in subsection (1) above is 50 per cent. of the average of the amounts which, in the best three of the relevant years of assessment, were the former partner's shares of the relevant profits or gains; and for this purpose—

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(a) the former partner's share in any year of the relevant profits or gains is, subject to subsection (3) below, so much of the relevant profits or gains as fell to be included in a return of his income for that year; and

(b) the relevant profits or gains are the profits or gains of any trade, profession or vocation on which the partnership or any other partnership of which the former partner was a member was assessed to income tax; and

(c) the relevant years of assessment are the last seven years of assessment in which he was required to devote substantially the whole of his time to acting as a partner in the partnership or those partnerships; and

(d) the best three of the relevant years of assessment are those three of them in which the amounts of his shares of the relevant profits were highest;

but where, in any of the relevant years, the circumstances were such that any of the profits or gains of a partnership were not assessable to income tax, paragraphs (a), (b) and (d) above shall apply as they would apply had those profits or gains been so assessable.

(3) If the retail prices index for the month of December in the last of the seven years referred to in paragraph (c) of subsection (2) above is higher than it was for the month of December in any of the other years referred to in that paragraph, the amount which, for that other year, was the former partner's share of the relevant profits or gains shall be treated for the purposes of that subsection as increased by the same percentage as the percentage increase in that index.

(4) If the retail prices index for the month of December preceding a year of assessment after that in which the former partner ceased to be a member of the partnership is higher than it was for the month of December in the year of assessment in which he ceased to be such a member, the amount which under subsection (2) above is the limit for the first-mentioned year of assessment shall be treated as increased by the same percentage as the percentage increase in that index.

(5) Where the former partner ceased to be a member of the partnership before the year 1974-75, subsection (4) above shall have effect as if he had ceased to be a member in that year.

Textual Amendments

F1237 1988(F) s.35*and* Sch.3 para.19*for* 1990-91*and subsequent years. Previously* "his widow or a dependant of his".

Marginal Citations

M1682 Source-1974 s.16; 1982 s.39(1); 1980 s.34(3)

629 Annuity premiums of Ministers and other officers.

M1683 (1) For the purposes of this Chapter so much of any salary which—

(a) is payable to the holder of a qualifying office who is also a Member of the House of Commons, and

(b) is 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,

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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 (3)(a) below) is payable to him as a Member holding that qualifying office shall be treated as remuneration from the office of Member and not from the qualifying office.

(2) 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 section 2(2)(b), (c) or (d) of the Parliamentary and other [M1684]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.

(3) In subsection (2) above "a Member's ordinary salary", in relation to any resolution of the House of Commons, means—

(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.

Modifications etc. (not altering text)

C594 S. 629 applied (with modifications) (with effect in accordance with s. 52(2) of the affecting Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 6**

Marginal Citations

M1683 Source-1970 s.229

M1684 1987 c. 45.

CHAPTER IV

PERSONAL PENSION SCHEMES

Preliminary

630 Interpretation.

[M1685]In this Chapter—

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"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 [M1686]Insurance Companies Act 1982 to carry on long term business and acting through a branch or office in the United Kingdom; or

[[F1238](b) a friendly society within the meaning of the Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act);**]**

"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 638(1).

[[F1239]and references to an employee or to an employer include references to the holder of an office or to the person under whom an office is held.**]**

Textual Amendments

F1238 Words in s. 630 para.(b) of the definition of "authorised insurance company" substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.17**; S.I. 1993/236, **art.2**

F1239 1988(F) s.55(1)—*from* 1*July* 1988.

Marginal Citations

M1685 Source-1987 (No.2) s.18

M1686 1982 c. 50.

631 Approval of schemes.

[M1687](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 632 to 638.

(3) The Board shall give 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.

(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.

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Modifications etc. (not altering text)

C595 *See* S.I. 1987 No.1765 (*in* Part III Vol.5)*for regulations governing the provisional approval of schemes where application is made before* 10*August* 1989.

Marginal Citations

M1687 Source-1987 (No.2) s.19

VALID FROM 28/07/2000

[F1240 631A Conversion of certain approved retirement benefits schemes.

Schedule 23ZA to this Act (which makes provision for or in connection with the conversion of certain retirement benefits schemes approved under Chapter I of this Part into personal pension schemes approved under this Chapter) shall have effect.**]**

Textual Amendments

F1240 S. 631A inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 7** (with Sch. 13 Pt. 2)

Restrictions on approval

632 Establishment of schemes.

M1688 (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 M1689 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 M1690 Building Societies Act 1986;

[F1241 (bb) a pension company within the meaning of the M1691 Building Societies (Designation of Pension Companies) Order 1987 which is an associate of a building society within the meaning of section 18(17) of the Building Societies Act 1986;**]**

(c) an institution authorised under the M1692 Banking Act 1987;

[F1241 (cc) a body corporate which is a subsidiary or holding company of an institution authorised under the Banking Act 1987, or is a subsidiary of the holding company of such an institution;**]**

(d) a recognised bank or licensed institution within the meaning of the M1693 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.

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[[F1242](2A) In subsection 1(cc) above "holding company" and "subsidiary" are to be construed in accordance with section 736 of the [M1694]Companies Act 1985 or Article 4 of the [M1695]Companies (Northern Ireland) Order 1986.**]**

(3) Subsection (1) above shall not apply in relation to a scheme approved by the Board by virtue of section 620(5) if it was established before **[**[F1243]1st July**]** 1988.

(4) The Treasury may by order amend this section as it has effect for the time being.

Textual Amendments

F1241 S.I. 1988 No.993

F1242 S.I. 1988 No.993

F1243 1988(F) s.54(2)(a)—*deemed always to have had effect. Previously* "4th January".

Marginal Citations

M1688 Source-1987 (No.2) s.20

M1689 1986 c. 60.

M1690 1986 c. 53.

M1691 S.I. 1987 No.1871

M1692 1987 c. 22.

M1693 1979 c. 37.

M1694 1985 c.6

M1695 S.I. 1986 No.1032.

VALID FROM 28/07/2000

[[F1244]**632A Eligibility to make contributions.**

(1) The Board shall not approve a personal pension scheme if it permits, in relation to arrangements made by a member in accordance with the scheme, the acceptance of—

(a) contributions by the member, or

(b) contributions by an employer of the member,

at a time when the member is not eligible to make contributions.

(2) The Board shall not approve a personal pension scheme unless it makes provision for ensuring, in relation to any such arrangements, that any contributions accepted at a time when the member is not eligible to make contributions are repaid—

(a) to the member, to the extent of his contributions; and

(b) as to the remainder, to his employer.

(3) The following provisions of this section, and the provisions of section 632B, have effect for determining for the purposes of subsections (1) and (2) above the times at which a member is eligible to make contributions (and, for those purposes, a member is not eligible to make contributions at any other time).

(4) A member is eligible to make contributions at any time during a year of assessment for which he has actual net relevant earnings.

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(5) A member who does not have actual net relevant earnings for a year of assessment ("the relevant year") is eligible to make contributions at any time during that year if—

(a) for at least some part of the year he does not hold an office or employment to which section 645 applies; and

(b) the condition in any of subsections (6) to (9) below is satisfied.

(6) Condition A is that at some time in the relevant year the member is resident and ordinarily resident in the United Kingdom.

(7) Condition B is that the member—

(a) at some time during the five years of assessment preceding the relevant year, has been resident and ordinarily resident in the United Kingdom; and

(b) was resident and ordinarily resident in the United Kingdom when he made the personal pension arrangements in question.

(8) Condition C is that at some time in the relevant year the member is a person who performs duties which, by virtue of section 132(4)(a), are treated as being performed in the United Kingdom.

(9) Condition D is that at some time in the relevant year the member is the spouse of a person who performs such duties as are mentioned in subsection (8) above.**]**

Textual Amendments

F1244 Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 8** (with Sch. 13 Pt. 2)

VALID FROM 28/07/2000

[F1244 632B Eligibility to make contributions: concurrent membership.

(1) A member who would not, apart from this section, be eligible to make contributions during a year of assessment shall be eligible to make contributions at any time during that year if—

(a) throughout the year he holds an office or employment to which section 645 applies;

(b) the condition in any of subsections (6) to (9) of section 632A is satisfied in his case as respects the year;

(c) he is not, and has not been, a controlling director of a company at any time in the year or in any of the five years of assessment preceding it;

(d) for at least one of the five years of assessment preceding the year, the aggregate of his grossed-up remuneration from each office and each employment held on 5th April in that preceding year does not exceed the remuneration limit for the relevant year; and

(e) the total relevant contributions made in the year do not exceed the earnings threshold for the year.

(2) For the purposes of paragraphs (c) and (d) of subsection (1) above, no account shall be taken of any year of assessment earlier than the year 2000-01.

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(3) For the purposes of paragraph (c) of subsection (1) above, a person is a controlling director of a company at any time if at that time—
- (a) he is a director, as defined by section 612(1); and
- (b) he is within paragraph (b) of section 417(5) in relation to the company.

(4) For the purposes of paragraph (d) of subsection (1) above—
- (a) "grossed up", in relation to a person's remuneration from an office or employment, means increased by being multiplied by a figure determined in accordance with an order made by the Treasury (or left unchanged, if that figure is unity);
- (b) "remuneration" shall be construed in accordance with an order made by the Treasury;
- (c) "the remuneration limit" for any year of assessment is £30,000;
- (d) "the relevant year" means the year of assessment first mentioned in subsection (1) above.

The Treasury may by order amend the definition of "the remuneration limit" in paragraph (c) above for any year of assessment by varying the amount there specified.

(5) For the purposes of paragraph (e) of subsection (1) above and the following provisions of this section, "the total relevant contributions", in the case of a year of assessment, means the aggregate amount of the contributions made in the year—
- (a) by the member in question, and
- (b) by any employer of his,

under arrangements made by the member under the scheme in question, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by that member.

(6) If—
- (a) in the case of a member, the total relevant contributions in a year of assessment, apart from this subsection, exceed the earnings threshold for the year, and
- (b) but for that, the member would be eligible to make contributions by virtue of subsection (1) above at any time in that year,

the repayment required by subsection (2) of section 632A is repayment of the relevant excess contributions only (so that the condition in subsection (1)(e) above becomes satisfied).

(7) In subsection (6) above "the relevant excess contributions" means—
- (a) to the extent that a contribution is the first which caused the total relevant contributions in the year to exceed the earnings threshold for the year, that contribution; and
- (b) all subsequent contributions in the year.

(8) The Treasury may by order make provision requiring any person who claims to be eligible to make contributions by virtue of this section to provide to—
- (a) the Board,
- (b) an officer of the Board, or
- (c) the scheme administrator of the personal pension scheme concerned,

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such declarations, certificates or other evidence in support of the claim as may be specified or described in, or determined in accordance with, the order.

(9) A person shall only be eligible to make contributions by virtue of this section in a year of assessment if he complies with any requirements imposed by order under subsection (8) above.**]**

Textual Amendments

F1244 Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 8** (with Sch. 13 Pt. 2)

Modifications etc. (not altering text)

C596 S. 632B(4)(a) modified (6.4.2001 in accordance with art. 1(1) of the modifying S.I.) by The Personal Pension Schemes (Concurrent Membership) Order 2000 (S.I. 2000/2318), **art. 3(1)**

633 Scope of benefits.

M1696 (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 634;

(b) the payment to a member of a lump sum satisfying the conditions in section 635;

(c) the payment after the death of a member of an annuity satisfying the conditions in section 636;

(d) the payment on the death of a member of a lump sum satisfying either the conditions in section 637(1) or those in section 637(2).

(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.

Marginal Citations

M1696 Source-1987 (No.2) s.21

634 Annuity to member.

M1697 (1) The annuity must be payable by an authorised insurance company which may be chosen by the member.

(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.

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(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 expiry of that term, on the happening of any of the following—
   (a) the marriage of the annuitant;
   (b) his attaining the age of 18;
   (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.

Marginal Citations
M1697 Source-1987 (No.2) s.22

VALID FROM 01/05/1995

[F1245 634A Income withdrawals by member.

(1) Where a member elects to defer the purchase of an annuity such as is mentioned in section 634, income withdrawals may be made by him during the period of deferral, subject as follows.

(2) Income withdrawals must not be made before the member attains the age of 50, unless—
   (a) they are available 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.

(3) Income withdrawals must not be made after the member attains the age of 75.

(4) The aggregate amount of income withdrawals by a member in each successive period of twelve months beginning with his pension date must be not less than 35 per cent. or more than 100 per cent. of the annual amount of the annuity which would have been purchasable by him on the relevant reference date.

(5) For the purposes of this section the relevant reference date for the first three years is the member's pension date, and for each succeeding period of three years is the first day of that period.

(6) The right to income withdrawals must not be capable of assignment or surrender.**]**

Textual Amendments
F1245 S. 634A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 4**

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635 Lump sum to member.

M1698(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 634 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.

[F1246(3) The lump sum must not exceed one quarter of the difference between—

(a) the total value, at the time when the lump sum is paid, of the benefits provided for by the arrangements made by the member in accordance with the scheme, and

(b) the value, at that time, of such of the member's rights under the scheme as are protected rights for the purposes of the **[**F1247Pension Schemes Act 1993**]** or the **[**F1248Pension Schemes (Northern Ireland) Act 1993**].]**

(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*F1249.

(5) The right to payment of the lump sum must not be capable of assignment or surrender.

Textual Amendments

F1246 1989 s.77*and* Sch.7 para.2(2)*in relation to the approval of a scheme on or after* 27*July* 1989*but if the scheme came into existence before* 27*July* 1989 para.2(2)*shall not have effect as regards arrangements made by a member in accordance with the scheme before that date. Previously*
"(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.".

F1247 Words in s. 635(3)(b) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(2)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F1248 Words in s. 635(3)(b) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(1)**; S.R. 1994/17, **art. 2**

F1249 *Words repealed by* 1989 ss.77, 187*and* Schs.7 para. 2(3)*and* 17 Part IV*in relation to approvals on or after* 27*July* 1989.

Marginal Citations

M1698 Source-1987 (No.2) s.23

636 Annuity after death of member.

M1699(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.

(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

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(b) where paragraph (a) 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 634(5) 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 18;

(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 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.

Marginal Citations

M169 Source-1987 (No.2) s.24

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VALID FROM 01/05/1995

[F1250 636A Income withdrawals after death of member.

(1) Where a person entitled to such an annuity as is mentioned in section 636 elects to defer the purchase of the annuity, income withdrawals may be made by him during the period of deferral, subject as follows.

(2) No such deferral may be made, and accordingly income withdrawals may not be made, if the person concerned elects in accordance with section 636(5)(a) to defer the purchase of an annuity.

(3) Income withdrawals must not be made after the person concerned if he had purchased such an annuity as is mentioned in section 636 would have ceased to be entitled to payments under it.

(4) Income withdrawals must not in any event be made after the member would have attained the age of 75 or, if earlier, after the person concerned attains the age of 75.

(5) The aggregate amount of income withdrawals by a person in each successive period of twelve months beginning with the date of the member's death must be not less than 35 per cent. or more than 100 per cent. of the annual amount of the annuity which would have been purchasable by him on the relevant reference date.

(6) For the purposes of this section the relevant reference date for the first three years is the date of the member's death, and for each succeeding period of three years is the first day of that period.

(7) The right to income withdrawals must not be capable of assignment or surrender.**]**

Textual Amendments

F1250 S. 636A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 7**

637 Lump sum on death of member.

(1) M1700 The lump sum—

(a) must be payable by an authorised insurance company; and

(b) must be payable on the death of the member before he attains the age of 75.

(2) M1701 The lump sum—

(a) must be payable only if no annuity satisfying the conditions in either section 634 or section 636 has become payable; and

(b) subject to subsection (3) below, 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 referred to in subsection (2) above may represent the sale or redemption price of the units.

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Marginal Citations

M1700 Source-1987 (No.2) s.25

M1701 Source-1987 (No.2) s.26

VALID FROM 01/05/1995

[F1251 637A Return of contributions on or after death of member.

(1) The lump sum must be payable on or after the death of the member and represent no more than the return of contributions together with reasonable interest on contributions or bonuses out of profits, after allowing for any income withdrawals.

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.

(2) The lump sum must be payable only if—

(a) no annuity has been purchased by the member under the arrangements in question,

(b) no such annuity as is mentioned in section 636 has been purchased by the person to whom the payment is made, and

(c) the person to whom the payment is made has not elected in accordance with subsection (5)(a) of section 636 to defer the purchase of such an annuity as is mentioned in that section.

(3) Where the member's death occurs after the date which is his pension date in relation to the arrangements in question, the lump sum must be payable not later than two years after the death.**]**

Textual Amendments

F1251 Ss. 637, 637A substituted for s. 637 (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 8**

638 Other restrictions on approval.

(1) M1702 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.

(2) 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.

(3) M1703 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 that member, does not exceed the permitted maximum for that year; and

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(b) any excess is repaid to the member of the extent of his contributions and otherwise to his employer.

(4) In subsection (3) above "the permitted maximum" for a year of assessment means an amount equal to the aggregate of—

(a) the relevant percentage of the member's net relevant earnings for the year; and

(b) so much of any relief given under section 639(1) for that year as is given by virtue of section 642;

and references in subsection (3) to contributions by the member do not include references to contributions treated by virtue of section 649(3) as paid by him.

(5) In subsection (4) above "the relevant percentage" means 17.5 per cent. or, in a case where section 640(2) applies, the relevant percentage there specified.

(6) [M1704]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 **[**[F1252]section 43 of the Pension Schemes Act 1993**]** or by the Department of Health and Social Services for Northern Ireland under **[**[F1253]section 39 of the Pension Schemes (Northern Ireland) Act 1993**]**.

[[F1254](7) The Board shall not approve a personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual's service as director of a company, if his emoluments as such are within section 644(5).

(8) A personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual's service in an office or employment to which section 645 applies may be approved by the Board only if—

(a) the scheme does not permit the acceptance of contributions from the individual or from the person who is his employer in relation to that office or employment; or

(b) at the time when the minimum contributions are paid the individual is not serving in an office or employment to which section 645 applies.**]**

Textual Amendments

F1252 Words in s. 638(6)(c) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(3)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F1253 Words in s. 638(6)(c) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(2)**; S.R. 1994/17, **art. 2**

F1254 S. 638(7)(8) substituted for s. 638(7) by Finance Act 1988 (c. 39), **s. 55(2)(4)**

Modifications etc. (not altering text)

C597 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M1702 Source-1987 (No.2) s.27

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M1703 Source-1987 (No.2) s.29
M1704 Source-1987 (No.2) s.30

VALID FROM 28/07/2000

[F1255 638Z2A Personal pension arrangements with more than one pension date etc.

(1) This section applies where a personal pension scheme makes provision for a personal pension arrangement under the scheme to make provision—
  (a) for the payment of more than one annuity satisfying the conditions in section 634 or 636 (a "qualifying annuity") and for different such annuities to commence, or be capable of commencing, on different days;
  (b) for elections such as are mentioned in section 634A(1) or 636A(1) ("elections for deferral") to be capable of being made at different times in relation to different portions of the personal pension fund; and
  (c) for a qualifying lump sum to be payable in connection with—
    (i) each qualifying annuity (other than one purchased pursuant to section 634A, 636 or 636A); and
    (ii) each election for deferral such as is mentioned in section 634A(1).

(2) The Board shall not refuse to approve a personal pension scheme by reason only that it makes such provision as is mentioned in subsection (1) above if they are satisfied that it makes provision in conformity with the provisions of this section.

(3) In this section—

"income withdrawal fund" means a portion of the personal pension fund which is specified or described in an election for deferral as the portion of that fund to which the election relates;

"qualifying lump sum" means a lump sum satisfying the conditions of section 635 (as that section has effect by virtue of and in accordance with this section);

"the relevant date", in relation to any qualifying annuity or election for deferral, means the date determined in accordance with the arrangement on which—
  (a) the qualifying annuity commences; or
  (b) the member makes the election for deferral.

(4) In the application of section 635 in relation to a qualifying lump sum, for the condition in subsection (3) there shall be substituted the conditions in subsections (5) and (6) below (as read with subsection (7) below).

(5) The first condition is that the lump sum must not exceed one-third of—
  (a) the difference between—
    (i) the value of the portion of the personal pension fund applied in the provision of the qualifying annuity in connection with which the lump sum is paid, determined as at the date on which that portion is so applied, and
    (ii) the value, determined as at that date, of so much of that portion as represents protected rights, or

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(b) the value, as at the relevant date, of the income withdrawal fund which relates to the election for deferral in connection with it is paid,

as the case may be.

(6) The second condition is that the lump sum must not represent any of the value, at the time when the lump sum is paid, of any protected rights.

(7) In subsections (5) and (6) above, "protected rights" means any of the member's rights under the personal pension arrangement which are protected rights for the purposes of the [M1705]Pension Schemes Act 1993 or the [M1706]Pension Schemes (Northern Ireland) Act 1993.

(8) Where a qualifying annuity commences, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been a separate personal pension arrangement and—

(a) the annuity, and any qualifying lump sum payable in connection with it, were benefits provided for by that separate arrangement (instead of by the personal pension arrangement by which it was actually provided (in this subsection referred to as "the relevant arrangement"));

(b) the portion of the personal pension fund applied in the provision of the annuity, together with the amount of any qualifying lump sum payable in connection with the annuity, had been the personal pension fund in the case of that separate arrangement (and were excluded from the personal pension fund in the case of the relevant arrangement);

(c) any election for the annuity, or for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement); and

(d) except in the case of an annuity satisfying the conditions in section 636, the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that annuity, the pension date in relation to the relevant arrangement).

(9) Where, in the case of any personal pension arrangement (in this subsection referred to as "the relevant arrangement"), an election for deferral is made, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been, and continued to be, a separate personal pension arrangement and—

(a) the income withdrawal fund which relates to the election, together with the amount of any qualifying lump sum payable in connection with the election, had been the personal pension fund in the case of that separate arrangement (and were excluded from the personal pension fund in the case of the relevant arrangement);

(b) the election for deferral, and any election for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement);

(c) the election for deferral had been made in respect of the whole of the income withdrawal fund which relates to the election; and

(d) except in the case of an election such as is mentioned in section 636A(1), the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that election, the pension date in relation to the relevant arrangement).**]**

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Textual Amendments

F1255 S. 638ZA inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 14** (with Sch 13 Pt. 2)

Marginal Citations

M1705 1993 c. 48.

M1706 1993 c. 49.

VALID FROM 31/07/1998

[F1256 638A Power to prescribe restrictions on approval.

(1) The Board—

(a) may by regulations restrict their discretion to approve a personal pension scheme; and

(b) shall not approve any such scheme if to do so would be inconsistent with any regulations under this section.

(2) The restrictions that may be imposed by regulations under this section may be imposed by reference to any one or more of the following, that is to say—

(a) the benefits for which the scheme provides;

(b) the investments held for the purposes of the scheme;

(c) the manner in which the scheme is administered;

(d) any other circumstances whatever.

(3) The following provisions of this section apply where—

(a) any regulations are made under this section imposing a restriction ("the new restriction") on the Board's discretion to approve a personal pension scheme;

(b) the new restriction did not exist immediately before the making of the regulations; and

(c) that restriction is one imposed by reference to circumstances other than the benefits for which the scheme provides.

(4) Subject to subsections (5) and (6) below, a personal pension scheme which is an approved scheme immediately before the day on which the regulations imposing the new restriction come into force shall cease to be approved at the end of the period of 36 months beginning with that day if, at the end of that period, the scheme—

(a) contains a provision of a prohibited description, or

(b) does not contain every provision which is a provision of a required description.

(5) The Board may by regulations provide that subsection (4) above is not to apply in the case of the inclusion of such provisions of a prohibited description, or in the case of the omission of such provisions of a required description, as may be specified in the regulations.

(6) For the purposes of subsection (4) above—

(a) a provision contained in a scheme shall not be treated as being of a prohibited description to the extent that it authorises the retention of an investment held immediately before the day of the making of the new regulations; and

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(b) so much of any provision contained in a scheme as authorises the retention of an investment held immediately before that day shall be disregarded in determining if any provision of the scheme is of a required description.

(7) In this section—

(a) references to a provision of a prohibited description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which, if contained in a personal pension scheme, would prevent the Board from approving it; and

(b) references to a provision of a required description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which must be contained in a personal pension scheme before the Board may approve it.**]**

Textual Amendments

F1256 S. 638A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 94(1)**

Tax reliefs

639 Member's contributions.

(1) [M1707]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.

Except where subsections (2) to (4) below apply, relief under this subsection in respect of a contribution shall be given only on a claim made for the purpose.

(2) [M1708]In such cases and subject to such conditions as the Board may prescribe in regulations, relief under subsection (1) above shall be given in accordance with subsections (3) and (4) below.

(3) 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.

(4) 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.

(5) Regulations under this section may make provision for carrying subsections (3) and (4) above into effect and, without prejudice to the generality of that, may provide—

(a) for the manner in which claims for the recovery of a sum under subsection (4)(b) may be made;

(b) for the giving of such information, in such form, as may be prescribed by or under the regulations;

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(c) for the inspection by persons authorised by the Board of books, documents and other records.

(6) [M1709]Where relief under this section 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 this section for that or any subsequent year as are appropriate.

(7) [M1710]Where relief under this section 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.

(8) References in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under this section.

Modifications etc. (not altering text)

C598 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M1707 Source-1987 (No.2) s.31, 46
M1708 Source-1987 (No.2) s.45
M1709 Source-1987 (No.2) s.48
M1710 Source-1987 (No.2) s.49

640 Maximum amount of deductions.

[M1711](1) The maximum amount that may be deducted or set off in any year of assessment by virtue of section 639(1) shall be 17.5 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 17.5 per cent. of the relevant percentage specified in the second column.

[[F1257]	20 per cent.
36 to 45	
46 to 50	25 per cent.
51 to 55	30 per cent.
56 to 60	35 per cent.
61 or more	40 per cent.**]**

(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

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to secure benefits satisfying the conditions in section 637(1) 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 649(3) as paid by the individual in respect of whom they are paid shall be disregarded for the purposes of this section.

Textual Amendments

F1257 1989 s.77*and* Sch.7 para.3*for* 1989-90*and subsequent years. Previously*
"51 to 55—20 per cent., 56 to 60—22.5 per cent., 61 or more—27.5 per cent.".

Marginal Citations

M1711 Source-1987 (No.2) s.32

[F1258 640A Earnings cap.

(1) In arriving at an individual's net relevant earnings for a year of assessment for the purposes of section 640 above, any excess of what would be his net relevant earnings for the year (apart from this subsection) over the allowable maximum for the year shall be disregarded.

(2) In subsection (1) above "the allowable maximum" means, as regards a particular year of assessment, the figure found for that year by virtue of subsections (3) and (4) below.

(3) For the year of assessment 1989-90 the figure is £60,000.

(4) For the year of assessment 1990-91 and any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[F1259** to (5A)**].]**

Textual Amendments

F1258 S. 640A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 7 para. 4(1)**

F1259 Words in s. 640A(4) substituted (27.7.1993 with effect for 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

641 Carry-back of contributions.

M1712 (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.

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(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) Subject to section 655(2), references in subsection (2) above 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 639(1) 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.

Marginal Citations

M1712 Source-1987 (No.2) s.33

VALID FROM 28/07/2000

[F1260 641A Election for contributions to be treated as paid in previous year.

(1) A person who pays a contribution under approved personal pension arrangements on or before the 31st January in any year of assessment may, at or before the time when he pays the contribution, irrevocably elect that the contribution, or part of it, shall be treated as paid in the preceding year of assessment.

(2) 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.**]**

Textual Amendments

F1260 S. 641A inserted (with effect in accordance with Sch. 13 para. 18(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 18(1)** (with Sch. 13 Pt. 2)

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642 Carry-forward of relief.

M1713(1) Where—

(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 639(1), 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 640.

(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 639(1) 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 639(1), 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 640 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.

Marginal Citations

M1713 Source-1987 (No.2) s.34

643 Employer's contributions and personal pension income etc.

(1) M1714Where 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.

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(2) [M1715]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.

(3) [M1716]An annuity payable under approved personal pension arrangements shall be treated as earned income of the annuitant.

(4) Subsection (3) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

Marginal Citations

M1714 Source-1987 (No.2) s.38
M1715 Source-1987 (No.2) s.39(1)
M1716 Source-1987 (No.2) s.41(1), (2)

644 Meaning of "relevant earnings".

[M1717](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 **[**[F1261](6F)**]** 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 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 529.

(3) Where section 645 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 148.

(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;

and section 840 shall apply for the purposes of this subsection.

(6) For the purposes of subsection (5) above—

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"director" includes any person occupying the position of director by whatever name called; and

[[F1262]"investment income" means income which if the company were an individual, would not be earned income.**]**

[[F1263](6A) Emoluments of an individual as an employee of a company are not income within subsection (2) above if—

(a) he is a controlling director of the company at any time in the year of assessment in question or has been a controlling director of the company at any time in the ten years immediately preceding that year of assessment, and

(b) any of subsections (6B) to (6E) below applies in his case.

(6B) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme, and

(b) the benefits are payable in respect of past service with the company.

(6C) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme.

(b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme, and

(c) the transfer payment is in respect of past service with the company.

(6D) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme,

(b) the benefits are payable in respect of past service with another company,

(c) the emoluments are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and

(d) the other company carried on the trade or business at anytime during the period of service in respect of which the benefits are payable.

(6E) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme,

(b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme,

(c) the transfer payment is in respect of past service with another company,

(d) the emoluments are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and

(e) the other company carried on the trade or business at any time during the period of service in respect of which the transfer payment was made.

(6F) For the purposes of subsections (6A) to (6E) above—

(a) a person is a controlling director of a company if he is a director (as defined by section 612(1)), and he is within paragraph (b) of section 417(5), in relation to the company;

(b) "relevant superannuation scheme" has the same meaning as in section 645(1);

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(c) references to benefits payable in respect of past service with a company include references to benefits payable partly in respect of past service with the company; and

(d) references to a transfer payment in respect of past service with a company include references to a transfer payment partly in respect of past service with the company.**]**

(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*[F1264].

Textual Amendments

F1261 1989 s.77*and* Sch.7 para.5(2)*from* 6*April* 1989.*Previously*
"(5)".

F1262 1989 s.107*and* Sch. 12 para.16*in relation to accounting periods beginning after* 31*March* 1989.*Previously*
" "investment income" shall be construed in accordance with paragraph 7 of Schedule 19.".

F1263 1989 s.77*and* Sch.7 para.5(3)*from* 6*April* 1989.

F1264 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C599 S. 644(2)(c) extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), Sch. 6 paras. 1, **2**

Marginal Citations

M1717 Source-1987 (No.2) s.35

645 Earnings from pensionable employment.

[M1718](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; and

(b) the individual is a participant in the scheme; and

(c) **[**[F1265]subsection (4) below does not apply**]** 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 612;*and*

[F1266](b) which is established by a person other than the individual **[**[F1265]; and

(c) which is of a description mentioned in section 596(1)(a), (b) or (c).**]**

(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.

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[[F1267](4A) Where the emoluments from an office or employment held by an individual are foreign emoluments within the meaning of section 192, this section shall have effect with the substitution of the following for paragraph (c) of subsection (3) above—

"(c) which corresponds to a scheme of a description mentioned in section 596(1)(a), (b) or (c).".**]**

(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*[F1268].

Textual Amendments

F1265 1989 s.77*and* Sch.7 para.6(2), (3)*from* 6*April* 1989.*Previously*
"neither subsection (4) nor subsection (5) below applies"
in subs.(1).

F1266 *Repealed by* 1989 ss.77*and* 187, Schs.7 para.6(3)*and* 17 Part IV*from* 6*April* 1989.

F1267 1989 s.77*and* Sch.7 para.6(4)*from* 6*April* 1989.

F1268 *Repealed by* 1989 ss.77*and* 187, Schs.7 para.6(5)*and* 17 Part IV*from* 6*April* 1989.

Marginal Citations

M1718 Source-1987 (No.2) s.36

646 Meaning of "net relevant earnings".

[M1719](1) Subject to subsections (3) to (7) below **[**[F1269]and section 646(A)**]**, 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 74(m), (p) or (q) could be made in computing the profits or gains of the individual;

(b) deductions made by virtue of section 198, 201 or 332(3);

(c) deductions in respect of relief under Schedule 9 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*[F1270].

(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 **[**[F1271]under the 1990 Act (including enactments which under this Act are to be treated as contained in the 1990 Act)**]**; 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

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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 to the Finance Act 1981; or

(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 639(1) against the net relevant earnings of an individual—

(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*[F1272]; 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 639(1) 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 639(1) which falls to be made for that year in respect of the individual*or the individual's wife or husband*[F1272].

Textual Amendments

F1269 1989 s.77*and* Sch.7 para.7*for the year* 1989-90*and subsequent years.*

F1270 *Words repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F1271 1990(C) s.164*and* Sch.1 para.8(29).*Previously*

"under the 1968 Act (including the enactments which under this Act or the 1970 Act are to be treated as contained in Part I of the 1968 Act)".

F1272 *Words repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Marginal Citations

M1719 Source-1987 (No.2) s.37

[[F1273]646A Earnings from associated employments.

(1) This section applies where in the year of assessment in question—

(a) an individual holds two or more offices or employments which are associated in that year,

(b) one or more of them is an office or employment to which section 645 applies ("pensionable job"), and

(c) one or more of them is an office or employment to which that section does not apply ("non-pensionable job").

(2) Where the emoluments for that year from the pensionable job (or jobs) are equal to or exceed the allowable maximum for that year, section 646(1) shall have effect in

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the case of the individual as if the references to relevant earnings were references to relevant earnings not attributable to the non-pensionable job (or jobs).

(3) Where the allowable maximum for that year exceeds the emoluments for that year from the pensionable job (or jobs), the individual's net relevant earnings, so far as attributable to the non-pensionable job (or jobs), shall not be greater than the amount of the excess.

(4) For the purposes of this section two or more offices or employments held by an individual in a year of assessment are associated in that year if the employers in question are associated at any time during it.

(5) For the purposes of subsection (4) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.

(6) In subsection (5) above the reference to control, in relation to a body corporate, shall be construed—

(a) where the body corporate is a close company, in accordance with section 416, and

(b) where it is not, in accordance with section 840.

(7) In this section "the allowable maximum" has the same meaning as in section 640A(1).**]**

Textual Amendments

F1273 S. 646A inserted (with effect in accordance with Sch. 7 para. 8(2) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 7 para. 8(1)**

VALID FROM 28/07/2000

[F1274 646B Presumption of same level of relevant earnings etc for 5 years.

(1) This section applies where an individual (the "relevant member") who is or becomes a member of a personal pension scheme provides to the scheme administrator the requisite evidence of the relevant amounts for any year of assessment (the "basis year").

(2) For the purposes of this section, the "relevant amounts" for any year of assessment are the amounts which need to be known in order to calculate the relevant member's net relevant earnings for that year.

(3) The basis year need not be a year of assessment in which the relevant member is a member of the personal pension scheme concerned.

(4) Where this section applies, it shall be presumed for the purposes of this Chapter in the case of the relevant member and the personal pension scheme concerned that, for each of the five years of assessment following the basis year, the relevant amounts (and, accordingly, the relevant member's net relevant earnings) are the same as for the basis year.

(5) Subsection (4) above is subject to—

(a) subsections (6) to (9) below; and

(b) such conditions or exceptions as may be prescribed.

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(6) For the purposes of this section, the requisite evidence provided for a later basis year (the "later basis year") supersedes the requisite evidence provided for an earlier basis year (the "earlier basis year").

(7) Subsection (6) above has effect subject to, and in accordance with, subsections (8) and (9) below.

(8) If—

(a) the actual net relevant earnings for the later basis year,

exceed

(b) the actual net relevant earnings for the earlier basis year,

the supersession effected by subsection (6) above has effect as respects the later basis year and subsequent years of assessment (and subsection (4) above applies accordingly).

(9) Where the condition in subsection (8) above is not satisfied, the supersession effected by subsection (6) above has effect only as respects years of assessment later than the last of the five years of assessment following the earlier basis year (and subsection (4) above applies accordingly).

(10) It is immaterial for the purposes of this section whether the requisite evidence for a later year of assessment is provided before or after, or at the same time as, the requisite evidence for an earlier year of assessment.

(11) This section is subject to section 646D.**]**

Textual Amendments

F1274 Ss. 646B, 646C inserted (with effect in accordance with Sch. 13 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 22(1)** (with Sch. 13 Pt. 2)

VALID FROM 28/07/2000

[F1274 646C Provisions supplementary to section 646B.

(1) In this section and section 646B, "requisite evidence" means evidence—

(a) of such a description as may be prescribed;

(b) in such form as may be prescribed; and

(c) satisfying such conditions as may be prescribed.

(2) Regulations may make further provision in connection with requisite evidence.

(3) The provision that may be made by regulations under subsection (2) above includes provision for or in connection with the provision, use, retention, production or inspection of, or of copies of,—

(a) requisite evidence;

(b) books, documents or other records relating to any requisite evidence; or

(c) extracts from requisite evidence or from such books, documents or other records.

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(4) Any power to make regulations under this section or section 646B includes power to make different provision for different cases or different purposes.

(5) In this section and section 646B—

"prescribed" means specified in or determined in accordance with regulations;

"regulations" means regulations made by the Board.]

Textual Amendments

F1274 Ss. 646B, 646C inserted (with effect in accordance with Sch. 13 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 22(1)** (with Sch. 13 Pt. 2)

VALID FROM 28/07/2000

[F1275 646D Higher level contributions after cessation of actual relevant earnings: modification of section 646B.

(1) This section applies where a member of a personal pension scheme—

(a) has no actual relevant earnings in a year of assessment (the "break year"); but

(b) had actual relevant earnings in the preceding year of assessment (the "cessation year"); and

(c) was entitled to make higher level contributions under arrangements under the scheme in any one or more of the six years of assessment preceding the break year (the "reference years").

(2) In the application of the presumption in subsection (4) of section 646B for any qualifying post-cessation year, in a case where this section applies, the basis year may be any one of the reference years for which the member provides or has provided the requisite evidence—

(a) notwithstanding anything in subsections (6) to (9) of that section; and

(b) whether or not the qualifying post-cessation year is included among the five years of assessment following the basis year.

(3) If the member provides or has provided the requisite evidence for two or more of the reference years, he may by notice in writing to the scheme administrator nominate that one of those years which is to be the basis year by virtue of subsection (2) above.

(4) In this section "post-cessation year", in the case of the member concerned, means any of the five years of assessment following the cessation year.

(5) For the purposes of this section any post-cessation year is a "qualifying" post-cessation year unless—

(a) it is a year for which the member has any actual relevant earnings;

(b) it is a year throughout which the member holds an office or employment to which section 645 applies; or

(c) it immediately follows a post-cessation year which is not a qualifying post-cessation year.

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(6) Subsection (5) above is without prejudice to the further application of this section in relation to the member if the conditions in subsection (1) above are again fulfilled.

(7) In this section—

"the basis year" shall be construed in accordance with section 646B;

"the requisite evidence" has the same meaning as in that section.**]**

Textual Amendments

F1275 S. 646D inserted (with effect in accordance with Sch. 13 para. 23(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 23(1)** (with Sch. 13 Pt. 2)

Charge to tax

647 Unauthorised payments.

M1720 (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

(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.

Marginal Citations

M1720 Source-1987 (No.2) s.44

648 Contributions under unapproved arrangements.

M1721 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

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Income Tax Acts as emoluments of the employment chargeable to tax under Schedule E.

Marginal Citations

M172 Source-1987 (No.2) s.53

VALID FROM 03/05/1994

Annuities: charge to tax

648A Annuities: charge under Schedule E.

(1) Subject to subsection (2) below, where funds held for the purposes of an approved personal pension scheme are used to acquire an annuity—

(a) the annuity shall be charged to tax under Schedule E and section 203 shall apply accordingly;

(b) the annuity shall not be charged to tax under Case III of Schedule D.

(2) As respects any approved personal pension scheme the Board may direct that, until such date as the Board may specify, annuities acquired with funds held for the purposes of the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under sections 348 and 349 accordingly.

VALID FROM 01/05/1995

[F1277 648B F1276 Return of contributions after pension date.]

(1) Tax shall be charged under this section on any payment to a person under approved personal pension arrangements of such a lump sum as is mentioned in section 637A in a case where the member's death occurred after his pension date in relation to the arrangement in question.

(2) Where a payment is chargeable to tax under this section, the scheme administrator shall be charged to income tax under Case VI of Schedule D and, subject to subsection (3) below, the rate of tax shall be 35 per cent.

(3) The Treasury may by order from time to time increase or decrease the rate of tax under subsection (2) above.

(4) The tax shall be charged on the amount paid or, if the rules of the scheme permit the scheme administrator to deduct the tax before payment, on the amount before deduction of tax; and the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.**]**

Textual Amendments

F1276 S. 648A and preceding cross-heading inserted (with application in accordance with s. 109(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 109(1)**

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F1277 S. 648B inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 12**

Miscellaneous

649 Minimum contributions under Social Security Act 1986.

M1722 (1) Where under **[**F1278 section 43 of the Pension Schemes Act 1993**]** 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 **[**F1279 so much of the aggregate amount mentioned in section 45(1) of the Pension Schemes Act 1993 as is attributable to the reduction which would fall to be made under section 41(1)(a) of that Act**]**;

"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 the 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;

(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) 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 **[**F1280 section 43, section 45(1) and section 41(1)(a) of the Pension Schemes Act 1993**]** were references to **[**F1281 sections 39, 41(1) and 37(1)(a) of the Pension Schemes (Northern Ireland) Act 1993, respectively**]**; and

(c) references to the National Insurance Fund were references to the Northern Ireland National Insurance Fund.

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Textual Amendments

F1278 Words in s. 649(1) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(3)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F1279 Words in s. 649(2) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(4)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F1280 Words in s. 649(6)(b) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(5)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F1281 Words in s. 649(6)(b) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(3)**; S.R. 1994/17, **art. 2**

Modifications etc. (not altering text)

C600 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M1722 Source-1987 (No.2) s.42.

650 Withdrawal of approval.

M1723 (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 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 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 (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).

Marginal Citations

M1723 Source-1987 (No.2) s.43

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 31/07/1998

[F1282 650A Charge on withdrawal of approval from arrangements.

(1) Where any personal pension arrangements cease to be approved arrangements by virtue of the exercise by the Board of their power under section 650(2), tax shall be charged in accordance with this section.

(2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value (taking that value at the relevant time) of the appropriate part of the assets held at that time for the purposes of the relevant scheme.

(3) In subsection (2) above—

"the appropriate part", in relation to the value of any assets, is so much of those assets as is properly attributable, in accordance with the provisions of the scheme and any just and reasonable apportionment, to the arrangements in question; and

"the relevant time" means the time immediately before the date from which the Board's approval is withdrawn.

(4) Subject to subsection (5) below, the person liable for the tax charged under this section shall be the scheme administrator for the relevant scheme.

(5) If, in any case where an amount of tax has been charged under this section and has not been paid—

(a) there is at any time no person who, as the scheme administrator for the relevant scheme, may be assessed to that amount of tax, or is liable to pay it,

(b) the scheme administrator for that scheme cannot for the time being be traced,

(c) there has been such a failure by the scheme administrator for that scheme to meet a liability to pay that amount as the Board consider to be a failure of a serious nature, or

(d) it appears to the Board that a liability of the scheme administrator for that scheme to pay that amount of tax is a liability that he will be, or (were there an assessment) would be, unable to meet out of assets held in accordance with the scheme for the purposes of those arrangements,

the Board shall be entitled to assess the unpaid tax on the person who made the arrangements in question as if the tax charged under this section, to the extent that it is unpaid, were assessable under this section on that person, instead of on the scheme administrator.

(6) An assessment to tax made by virtue of subsection (5)(c) above shall not be out of time if it is made within three years after the date on which the tax which the scheme administrator has failed to pay first became due from him.

(7) For the purposes of this section the value of an asset is, subject to subsection (8) below, its market value, construing "market value" in accordance with section 272 of the 1992 Act.

(8) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (9) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.

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(9) Those persons are—

(a) the person who (whether or not before the making of the loan) made the arrangements in relation to which the Board's approval has been withdrawn;

(b) any other person who has at any time (whether or not before the making of the loan) made contributions under those arrangements; and

(c) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (a) or (b) above.

(10) In this section "the relevant scheme", in relation to any personal pension arrangements, means the scheme in accordance with which those arrangements were made.

(11) Section 839 shall apply for the purposes of this section.**]**

Textual Amendments

F1282 S. 650A inserted (with effect in accordance with s. 95(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 95(1)**

651 Appeals.

M1724 (1) Where the Board—

(a) refuse an application by notice under section 631; or

(b) withdraw an approval by notice under section 650;

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 notice stating the grounds for the appeal and given to the Board before the end of the period of 30 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.

Marginal Citations

M1724 Source-1987 (No.2) s.47

VALID FROM 31/07/1998

[F1283 651A Information powers.

(1) The Board may by regulations make any of the following provisions—

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(a) provision requiring prescribed persons to furnish to the Board, at prescribed times, information relating to any of the matters mentioned in subsection (2) below;

(b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;

(c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;

(d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;

(e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.

(2) The matters referred to in subsection (1) above are—

(a) any personal pension scheme which is or has been approved; and

(b) any personal pension arrangements which are or have been approved.

(3) A person who fails to comply with regulations made under subsection (1)(e) above shall be liable to a penalty not exceeding £3,000.

(4) Regulations under this section may make different provision for different descriptions of case.

(5) In this section "prescribed" means prescribed by regulations made under this section.**]**

Textual Amendments

F1283 S. 651A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 96(1)**

652 Information about payments.

M1725 (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 30 days beginning with the day on which it is given.

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Marginal Citations

M1725 Source-1987 (No.2) s.50

653 Information: penalties.

[M1726] A person who knowingly makes a false statement or false representation on making an application under section 631 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 **[**[F1284] £3,000**]**.

Textual Amendments

F1284 1989 s.170(4)(b) *in relation to things done or omitted to be done on or after* 27 *July* 1989. *Previously* "£500".

Marginal Citations

M1726 Source-1987 (No.2) s.51(1)

VALID FROM 31/07/1998

[[F1285] **653A Notices to be given to scheme administrator.**

(1) Where—

(a) the Board, or any officer of the Board, is authorised or required by or in consequence of any provision of this Chapter to give a notice to the person who is the scheme administrator of a personal pension scheme, but

(b) there is for the time being no scheme administrator for that scheme or the person who is the scheme administrator for that scheme cannot be traced,

that power or duty may be exercised or performed by giving that notice, instead, to the person specified in subsection (2) below.

(2) That person is—

(a) the person who established the scheme; or

(b) any person by whom that person has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

(3) The giving of a notice in accordance with this section shall have the same effect as the giving of that notice to the scheme administrator and, without prejudice to section 650A(5), shall not impose an additional obligation or liability on the person to whom the notice is actually given.**]**

Textual Amendments

F1285 S. 653A inserted (with effect in accordance with s. 97(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 97(1)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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654 Remuneration of Ministers and other officers.

[M1727](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 [M1728]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—

(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.

Modifications etc. (not altering text)

C601 S. 654 applied (with modifications) (with effect in accordance with s. 52(2) of the affecting Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 6**

Marginal Citations

M1727 Source-1987 (No.2) s.52

M1728 1987 c. 45.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

655 Transitional provisions.

(1) [M1729]Where approved personal pension arrangements are made by an individual who pays qualifying premiums within the meaning of section 620(1)—

(a) the amount that may be deducted or set off by virtue of section 639(1) 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 619(1)(a); and

(b) the relief which, by virtue of section 625, may be given under section 619 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 641 that a contribution or part of a contribution shall be treated as paid in the year of assessment **[**[F1286]1985-86, 1986-87 or 1987-88**]**, the payment shall be treated as the payment of a qualifying premium for the purposes of Chapter III of this Part; and in such a case references in section 641 to an amount of unused relief shall be construed in accordance with section 625.

(3) The references in section 642 to unused relief for any year are, for years of assessment before **[**[F1287]1988-89**]**, references to unused relief within the meaning of section 625.

(4) [M1730]The Board shall not grant any application under section 631 so as to approve a scheme with effect from a date earlier than **[**[F1287]1st July**]** 1988.

(5) 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* 1*st* ***[***[F1287]*February* 1990**]** notwithstanding that the Board have not satisfied themselves that the schemes comply with the requirements of sections 632 to 638; 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 632 to 638, 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 632 to 638 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.

Textual Amendments

F1286 1988(F) s.54 (*which also specifies changes to* ss.20, 54, 55*and* 56 of 1987 (No.2)).*Deemed always to have had effect. Previously*
"1984-85, 1985-86 or 1986-87".

F1287 1988(F) s.54 (*which also specifies changes to* ss.20, 54, 55*and* 56*of* 1987 (No.2)).*Deemed always to have had effect. Previously*
"1987-88", "4th January"
and
"August 1989"

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respectively.

Modifications etc. (not altering text)

C602 *For regulations see* S.I. 1987 No.1765*in* Part III Vol.5.

Marginal Citations

M1729 Source-1987 (No.2) s.55.

M1730 Source-1987 (No.2) s.56

CHAPTER V

PURCHASED LIFE ANNUITIES

656 Purchased life annuities other than retirement annuities.

(1) [M1731]Subject to section 657, a purchased life annuity shall, for the purposes of the provisions of the Tax Acts relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of the Tax Acts in any circumstances in which a lump sum payment would be taken into account.

(2) [M1732]Where, in the case of any purchased life annuity to which this section applies, the amount of any annuity payment (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives—

(a) the capital element shall be determined by reference—

(i) to the amount or value of the payments made or other consideration given for the grant of the annuity ("the purchase price"); and

(ii) to the expected term of the annuity, as at the date when the first annuity payment began to accrue, expressed in years (and any odd fraction of a year), and determined by reference to the prescribed tables of mortality;

and in head (ii) above "term" means the period from the date when the first annuity payment begins to accrue to the date when the last payment becomes payable;

(b) the capital element in any annuity payment made in respect of a period of 12 months shall be a fraction—

$$\frac{1}{E}$$

of the purchase price, where E is the expected term referred to in paragraph (a)(ii) above;

(c) the capital element in any annuity payment made in respect of a period of less than, or more than, 12 months shall be the amount at (b) above reduced or, as the case may be, increased, in the same proportion as the length of that period bears to a period of 12 months;

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(d) subsection (3) below shall not apply but paragraphs (a) and (b) of subsection (4) below shall apply as they apply to that subsection.

(3) Subject to subsection (2) above, in the case of any purchased life annuity to which this section applies—

(a) [M1733]the capital element shall be determined by reference to the amount or value of the payments made or other consideration given for the grant of the annuity; and

(b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity; and

(c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with subsection (4) below; and

(d) [M1734]where either the term of the annuity or the amount of any annuity payment (but not both) depends on any contingency other than the duration of a human life or lives, that proportion shall be such as may be just, having regard to paragraph (c) above and to the contingencies affecting the annuity; and

(e) where both the term of the annuity and the amount of any annuity payment depend on any contingency other than the duration of a human life or lives, that proportion shall be such as may be just, having regard to subsection (2) above and to the contingencies affecting the annuity.

(4) [M1735]For the purposes of subsection (3) above—

(a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity);

(b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under paragraph (a) above accordingly; and

(c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

(5) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element (if any), and has not been notified of any alteration of that decision, the notice shall be conclusive as to those matters for the purpose of determining the amount of income tax which he is entitled or required to deduct from the payment, or for which he is chargeable in respect of it.

(6) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of the capital element, the amount of income tax which he is entitled or required to deduct

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from the payment, or for which he is chargeable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.

[[F1288](7) In using the prescribed tables of mortality to determine—

(a) the expected term of an annuity for the purposes of subsection (2)(a) above, or

(b) the actuarial value of any annuity payments for the purposes of subsection (4)(c) above,

the age, as at the date when the first of the annuity payments begins to accrue, of a person during whose life the annuity is payable shall be taken to be the number of years of his age at his last birthday preceding that date.

(8) In any case where it is not possible to determine the expected term of an annuity for the purposes of subsection (2)(a) above by reference to the prescribed tables of mortality, that term shall for those purposes be such period as may be certified by the Government Actuary or the Deputy Government Actuary.

(9) In any case where it is not possible to determine the actuarial value of any annuity payments for the purposes of subsection (4)(c) above by reference to the prescribed tables of mortality, that value shall for those purposes be such amount as may be certified by the Government Actuary or the Deputy Government Actuary.**]**

Textual Amendments

F1288 S. 656(7)-(9) inserted (retrospectively) by Finance Act 1991 (c. 31, SIF 63:1), **s. 76(1)**

Marginal Citations

M1731 Source-1970 s.230(1)
M1732 Source-1970 s.230(2A); 1970(F) Sch.4 8
M1733 Source-1970 s.230(2)(a)-(c)
M1734 Source-1970 s.230(2)(d), (2A); 1970(F) Sch.4 8
M1735 Source-1970 s.230(3)-(5)

657 Purchased life annuities to which section 656 applies.

[M1736](1) For the purposes of section 656—

"life annuity" means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances; and

"purchased life annuity" means a life annuity granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

(2) Section 656 does not apply—

(a) to any annuity which would, apart from that section, be treated for the purposes of the provisions of the Tax Acts relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum;

(b) to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief under

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section 266, 273 or 619 or to any annuity payable under a substituted contract within the meaning of section 622(3);

(c) to any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital);

(d) to any annuity purchased under or for the purposes of any sponsored superannuation scheme (as defined in section 624) or any scheme approved under section 620 or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with any such scheme or to any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment;

[[F1289](da) to any annuity purchased under or for the purposes of a scheme approved by virtue of section 591 or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with any such scheme;**]**

(e) to any annuity payable under approved personal pension arrangements within the meaning of Chapter IV of this Part.

Textual Amendments

F1289 S. 657(2)(da) substituted for word at the end of s. 657(2)(d) (retrospectively) by Finance Act 1999 (c. 16), **s. 80**

Marginal Citations

M1736 Source-1970 s.230(6), (7); 1978 s.26(4); 1987 (No.2), s.41(3)

658 Supplementary.

[M1737](1) Any question whether an annuity is a purchased life annuity to which section 656 applies, or what is the capital element in such an annuity, shall be determined by the inspector; but a person aggrieved by the inspector's decision on any such question may appeal within the prescribed time to the Special Commissioners.

(2) Save as otherwise provided in this Chapter, the procedure to be adopted in giving effect to this Chapter shall be such as may be prescribed.

(3) The Board may make regulations for prescribing anything which is to be prescribed under this Chapter, and the regulations may apply for the purposes of this Chapter or of the regulations any provision of the Income Tax Acts, with or without modifications.

(4) Regulations under subsection (3) above may in particular make provision as to the time limit for making any claim for relief from or repayment of tax under this Chapter and as to all or any of the following matters, that is to say—

(a) as to the information to be furnished in connection with the determination of any question whether an annuity is a purchased life annuity to which section 656 applies or what is the capital element in an annuity, and as to the persons who may be required to furnish any such information;

(b) as to the manner of giving effect to the decision on any such question, and (notwithstanding anything in section 348) as to the making of assessments for the purpose on the person entitled to the annuity; and

(c) as to the extent to which the decision on any such question is to be binding, and the circumstances in which it may be reviewed.

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(5) If any person, for the purpose of obtaining for himself or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, he shall be liable to a penalty not exceeding **[**[F1290]£3,000**]**.

Textual Amendments

F1290 1989 s.170(4)(c) *in relation to things done or omitted to be done on or after* 27 *July* 1989. *Previously* "£500".

Modifications etc. (not altering text)

C603 *For regulations see* Part III Vol.5 (*under* "*Life annuities, purchased*").

Marginal Citations

M173 Source-1970 s.231

CHAPTER VI

MISCELLANEOUS

[[F1291]658A Charges and assessments on administrators.

(1) Tax charged under Chapter I or IV of this Part on the administrator of a scheme—

(a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but

(b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.

(2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.

(3) Where tax charged under Chapter I of this Part on the administrator of a scheme is assessable by virtue of section 606 or 606A on a person who is not a relevant person for the purposes of subsection (1) above, the assessment shall be made by the Board.

(4) In this section "administrator", in relation to a scheme, means the person who is—

(a) the administrator of the scheme within the meaning given by section 611AA; or

(b) the scheme administrator, as defined in section 630.

(5) This section is without prejudice to section 591D(4).**]**

Textual Amendments

F1291 S. 658A inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 98(1)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F1292]659 Financial futures and traded options.

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Textual Amendments

F1292 S. 659 repealed (with effect in accordance with s. 81(7)(8) of the repealing Act) by Finance Act 1990 (c. 29), s. 81(4), **Sch. 19 Pt. 4**, Note 9

[[F1293]659A Futures and options.

(1) For the purposes of sections 592(2), 608(2)(a), 613(4), 614(3) and (4), 620(6) and 643(2)—
   (a) "investments" (or "investment") includes futures contracts and options contracts, and
   (b) income derived from transactions relating to such contracts shall be regarded as income derived from (or income from) such contracts,

   and paragraph 7(3)(a) of Schedule 22 to this Act shall be construed accordingly.

(2) For the purposes of subsection (1) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.]

Textual Amendments

F1293 S. 659A inserted (with effect in accordance with s. 81(5) of the amending Act) by Finance Act 1990 (c. 29), **s. 81(2)**

VALID FROM 01/05/1995

[[F1294]659B Definition of insurance company.

(1) In sections 591(2)(g) and 599(7) "insurance company" means one of the following—
   (a) a person authorised under section 3 or 4 of the [M1738]Insurance Companies Act 1982 (or any similar previous enactment) to carry on long term business;
   (b) a friendly society carrying on long term business;
   (c) an EC company falling within subsection (3) below.

(2) In Chapter IV of this Part "authorised insurance company" means a company that is an insurance company within the meaning given by subsection (1) above.

(3) An EC company falls within this subsection if it—
   (a) lawfully carries on long term business, or lawfully provides long term insurance, in the United Kingdom, and
   (b) fulfils the requirement under subsection (5) below or that under subsection (6) below or that under subsection (7) below.

(4) For the purposes of subsection (3) above an EC company—

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(a) lawfully carries on long term business in the United Kingdom if it does so through a branch in respect of which such of the requirements of Part I of Schedule 2F to the [M1739]Insurance Companies Act 1982 as are applicable have been complied with;

(b) lawfully provides long term insurance in the United Kingdom if such of those requirements as are applicable have been complied with in respect of the insurance.

(5) The requirement under this subsection is that—

(a) a person who falls within subsection (8) below is for the time being appointed by the company to be responsible for securing the discharge of the duties mentioned in subsection (9) below, and

(b) his identity and the fact of his appointment have been notified to the Board by the company.

(6) The requirement under this subsection is that there are for the time being other arrangements with the Board for a person other than the company to secure the discharge of those duties.

(7) The requirement under this subsection is that there are for the time being other arrangements with the Board designed to secure the discharge of those duties.

(8) A person falls within this subsection if—

(a) he is not an individual and has a business establishment in the United Kingdom, or

(b) he is an individual and is resident in the United Kingdom.

(9) The duties are the following duties that fall to be discharged by the company—

(a) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 597(3);

(b) any duty to pay tax charged under section 599(3) and (7);

(c) any duty imposed by regulations made under section 605;

(d) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 648A(1).

(10) For the purposes of this section—

(a) references to an EC company shall be construed in accordance with section 2(6) of the [M1740]Insurance Companies Act 1982;

(b) references to long term business shall be construed in accordance with section 1(1) of that Act;

(c) references to the provision of long term insurance in the United Kingdom shall be construed in accordance with section 96A(3A) of that Act;

(d) a friendly society is a friendly society within the meaning of the [M1741]Friendly Societies Act 1992 (including any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act).**]**

Textual Amendments

F1294 Ss. 659B, 659C inserted (with effect in accordance with s. 60 of the amending Act) by Finance Act 1995 (c. 4), **s. 59(5)**

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Marginal Citations

M1738 1982 c. 50.
M1739 1982 c. 50.
M1740 1982 c. 50.
M1741 1992 c. 40.

VALID FROM 01/05/1995

[F1294 659C Effect of appointment or arrangements under section 659B.

(1) This section shall have effect where—

(a) in accordance with section 659B(5) a person is for the time being appointed to be responsible for securing the discharge of duties, or

(b) in accordance with section 659B(6) there are for the time being arrangements for a person to secure the discharge of duties.

(2) In such a case the person concerned—

(a) shall be entitled to act on the company's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the company's behalf) the company's compliance with and discharge of the duties;

(c) shall be personally liable in respect of any failure of the company to comply with or discharge any such duty as if the duties imposed on the company were imposed jointly and severally on the company and the person concerned.]

Textual Amendments

F1294 Ss. 659B, 659C inserted (with effect in accordance with s. 60 of the amending Act) by Finance Act 1995 (c. 4), **s. 59(5)**

VALID FROM 27/07/1999

[F1295 659D Interpretation of provisions about pension sharing.

(1) In this Part "ex-spouse" means a party to a marriage that has been dissolved or annulled and, in relation to any person, means the other party to a marriage with that person that has been dissolved or annulled.

(2) References in this Part to a pension sharing order or provision are references to any such order or provision as is mentioned in section 24(1) of the Welfare Reform and Pensions Act 1999 (rights under pension sharing arrangements).]

Textual Amendments

F1295 S. 659D inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 17**

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VALID FROM 06/04/2001

[F1296 659E Treatment of income from property investment LLPs

(1) The exemptions specified below do not apply to income derived from investments, deposits or other property held as a member of a property investment LLP.

(2) The exemptions are those provided by—

section 592(2) (exempt approved schemes),
section 608(2)(a) (former approved superannuation funds),
section 613(4) (Parliamentary pension funds),
section 614(3) (certain colonial, &c. pension funds),
section 614(4) (the Overseas Service Pension Fund),
section 614(5) (other pension funds for overseas employees),
section 620(6) (retirement annuity trust schemes), and
section 643(2) (approved personal pension schemes).

(3) The income to which subsection (1) above applies includes relevant stock lending fees, in relation to any investments, to which any of the provisions listed in subsection (2) above would apply by virtue of section 129B.

(4) Section 659A (treatment of futures and options) applies for the purposes of subsection (1) above.**]**

Textual Amendments

F1296 S. 659E inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 2**

PART XV

SETTLEMENTS

Modifications etc. (not altering text)

C604 *See also*—1970(M) s.31(3)—*appeals on application of* ss.660*to* 685*to go to Special Commissioners.*1974 s.43—*development gains accruing to trustees to be charged at basic plus additional rates.*1988 s.339(6), (7)—*treatment for corporation tax of covenanted donation to charity.*1988 s.762—*offshore income gains.*1989 s.110—*residence of trustees.*

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VALID FROM 01/05/1995

[F1297 CHAPTER IA

LIABILITY OF SETTLOR

Textual Amendments

F1297 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

Modifications etc. (not altering text)

C605 Pt. 15 Ch. 1A excluded (with effect in accordance with s. 44(6) of the affecting Act) by Finance Act 2000 (c. 17), **s. 44(1)**

C606 Pt. 15 Ch. 1A modified (with effect in accordance with s. 45(3) of the modifying Act) by Finance Act 2000 (c. 17), **s. 45(1)**

Main provisions

660A Income arising under settlement where settlor retains an interest.

(1) Income arising under a settlement during the life of the settlor shall be treated for all purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person unless the income arises from property in which the settlor has no interest.

(2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in property if that property or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever.

(3) The reference in subsection (2) above to the spouse of the settlor does not include—

(a) a person to whom the settlor is not for the time being married but may later marry, or

(b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or

(c) the widow or widower of the settlor.

(4) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as none of that property, and no derived property, can become payable or applicable as mentioned in that subsection except in the event of—

(a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or

(b) an assignment of or charge on the property or any derived property being made or given by some such person, or

(c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or

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(d) the death of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.

(5) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as some person is alive and under the age of 25 during whose life that property, or any derived property, cannot become payable or applicable as mentioned in that subsection except in the event of that person becoming bankrupt or assigning or charging his interest in the property or any derived property.

(6) The reference in subsection (1) above to a settlement does not include an outright gift by one spouse to the other of property from which income arises, unless—

(a) the gift does not carry a right to the whole of that income, or

(b) the property given is wholly or substantially a right to income.

For this purpose a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.

(7) The reference in subsection (1) above to a settlement does not include an irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).

(8) Subsection (1) above does not apply to income arising under a settlement made by one party to a marriage by way of provision for the other—

(a) after the dissolution or annulment of the marriage, or

(b) while they are separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent,

being income payable to or applicable for the benefit of that other party.

(9) Subsection (1) above does not apply to income consisting of—

(a) annual payments made by an individual for bona fide commercial reasons in connection with his trade, profession or vocation; or

(b) covenanted payments to charity (as defined by section 347A(7)).

(10) In this section "derived property", in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.

660B Payments to unmarried minor children of settlor.

(1) Income arising under a settlement which does not fall to be treated as income of the settlor under section 660A but which during the life of the settlor is paid to or for the benefit of an unmarried minor child of the settlor in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) Where income arising under a settlement is retained or accumulated by the trustees, any payment whatsoever made thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of an unmarried minor child of the settlor shall be deemed for the purposes of subsection (1) above to be a payment of income if or to the extent that there is available retained or accumulated income.

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(3) There shall be taken to be available retained or accumulated income at any time when the aggregate amount of the income which has arisen under the settlement since it was made or entered into exceeds the aggregate amount of income so arising which has been—
  (a) treated as income of the settlor or a beneficiary, or
  (b) paid (whether as income or capital) to or for the benefit of a beneficiary other than an unmarried minor child of the settlor, or
  (c) applied in defraying expenses of the trustees which were properly chargeable to income (or would have been so chargeable but for any express provisions of the trust).

(4) Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a trustee holding them for a person who would be absolutely entitled as against the trustee but for being a minor, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this section be deemed to be paid to that person.

(5) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for a year of assessment in which the aggregate amount paid to or for the benefit of that child which but for this subsection would be so treated does not exceed £100.

(6) In this section—
  (a) "child" includes a stepchild and an illegitimate child;
  (b) "minor" means a person under the age of 18 years, and "minor child" shall be construed accordingly; and
  (c) references to payments include payments in money or money's worth.

660C Nature of charge on settlor.

(1) Tax chargeable by virtue of this Chapter shall be charged under Case VI of Schedule D.

(2) In computing the liability to income tax of a settlor chargeable by virtue of this Chapter the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of this Chapter had been received by him.

(3) Subject to section 833(3), income which is treated by virtue of this Chapter as income of a settlor shall be deemed for the purposes of this section to be the highest part of his income.

660D Adjustments between settlor and trustees, &c.

(1) Where by virtue of this Chapter income tax becomes chargeable on and is paid by a settlor, he is entitled—
  (a) to recover from any trustee, or any other person to whom the income is payable by virtue or in consequence of the settlement, the amount of the tax so paid; and
  (b) for that purpose to require an officer of the Board to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

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A certificate so furnished is conclusive evidence of the facts stated therein.

(2) Where a person obtains, in respect of an allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for this Chapter, have been entitled, an amount equal to the excess shall be paid by him to the trustee, or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of a payment or as to an apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision shall be final.

(3) Nothing in this Chapter shall be construed as excluding a charge to tax on the trustees as persons by whom any income is received.

*Supplementary provisions***]**

660E Application to settlements by two or more settlors.

(1) In the case of a settlement where there is more than one settlor, this Chapter shall have effect in relation to each settlor as if he were the only settlor, as follows.

(2) In this Chapter, in relation to a settlor—
- (a) references to the property comprised in a settlement include only property originating from that settlor, and
- (b) references to income arising under the settlement include only income originating from that settlor.

(3) For the purposes of section 660B there shall be taken into account, in relation to a settlor, as income paid to or for the benefit of a child of the settlor only—
- (a) income originating from that settlor, and
- (b) in a case in which section 660B(2) applies, payments which are under that provision (as adapted by subsection (4) below) to be deemed to be payments of income.

(4) In applying section 660B(2) to a settlor—
- (a) the reference to income arising under the settlement includes only income originating from that settlor; and
- (b) the reference to any payment made by virtue or in consequence of the settlement or any enactment relating thereto includes only a payment made out of property originating from that settlor or income originating from that settlor.

(5) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
- (b) property representing that property; and
- (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.

(6) References in this section to income originating from a settlor are references to—

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(a) income from property originating from that settlor; and
(b) income provided directly or indirectly by that settlor.

(7) In subsections (5) and (6) above—
(a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
(b) references to property which represents other property include references to property which represents accumulated income from that other property.

660F Power to obtain information.

An officer of the Board may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

660G Meaning of "settlement" and related expressions.

(1) In this Chapter—

"settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets, and

"settlor", in relation to a settlement, means any person by whom the settlement was made.

(2) A person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(3) References in this Chapter to income arising under a settlement include, subject to subsection (4) below, any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom.

(4) Where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in a year of assessment, references in this Chapter to income arising under a settlement do not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

But where such income is remitted to the United Kingdom in circumstances such that, if the settlor were actually entitled to that income when remitted, he would be chargeable to income tax by reason of his residence in the United Kingdom, it shall be treated for the purposes of this Chapter as arising under the settlement in the year in which it is remitted.

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CHAPTER I

DISPOSITIONS FOR SHORT PERIODS

660 Dispositions for period which cannot exceed six years.

(1) [M1742]Subject to subsection (2) below, any income which by virtue or in consequence of any disposition made, directly or indirectly, by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years shall be deemed for all the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made, and not to be the income of any other person.

(2) [M1743]Subsection (1) above shall not apply in relation to income which is payable as a covenanted payment to charity.

(3) [M1744]In this Chapter, unless the context otherwise requires—

"disposition" includes any trust, covenant, agreement or arrangement, and

"a covenanted payment to charity" means a payment made under a covenant made otherwise than for consideration in money or money's worth in favour of a body of persons or trust established for charitable purposes only whereby the like annual payments (of which the payment in question is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.

(4) [M1745]For the purposes of subsection (3) above **[**[F1298]the bodies mentioned in section 507**]** shall each be treated as a body of persons established for charitable purposes only.

Textual Amendments

F1298 1989 s.60(3)*in respect of payments due on or after* 14*March* 1989.*Previously* "the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England".

Modifications etc. (not altering text)

C607 *See*—1989 s.59—*rights of admission disregarded in the case of certain covenanted subscriptions.*1990 s.25—*definition employed for purposes of* s.25 (*donations to charity by individuals*).

Marginal Citations

M1742 Source-1970 s.434(1); 1980 s.55(1)(a)
M1743 Source-1970 s.434(1A); 1980 s.55(1)(b); 1987 Sch.15 2(16)
M1744 Source-1970 s.434(2); 1980 s.55(1)(c)
M1745 Source-1980 s.118(3); 1983 s.46(3)(a).

661 Adjustments between disponor and trustees.

[M1746](1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a disposition was made, that person shall be entitled—

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid; and

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(b) for that purpose to require an inspector to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid;

and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(3) Subject to section 833(3), any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

Marginal Citations

M1746 Source-1970 s.435.

662 Application of Chapter I to dispositions by two or more disponors.

M1747 (1) In the case of any disposition where there is more than one person who made the disposition, this Chapter shall, subject to the provisions of this section, have effect in relation to each person who made the disposition as if he were the only person who had made it.

(2) In the case of any such disposition, references in this Chapter to income payable or applicable by virtue or in consequence of the disposition include, in relation to any person making the disposition, only—

(a) income from property which that person has provided directly or indirectly for the purposes of the disposition ("the settled property"); and

(b) income from property representing the settled property; and

(c) income from so much of any property which represents both the settled property and other property as, on a just apportionment, represents the settled property; and

(d) income provided directly or indirectly by that person.

(3) In this section references to property which represents other property include references to property which represents accumulated income from that other property.

Marginal Citations

M1747 Source-1970 s.436.

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CHAPTER II

SETTLEMENTS ON CHILDREN

663 The general rule. E+W+N.I.

(1) [M1748]Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and below the age of 18, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) [M1749]Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a person holding them as trustee for a person who would be absolutely entitled as against the trustee but for being an infant, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this Chapter be deemed to be paid to the infant; and in this subsection, in relation to Scotland, "infant" means pupil or minor.

(3) [M1750]This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 10 of Schedule 30 shall have effect as respects certain earlier settlements on children.

(4) [M1751]Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.

(5) [M1752]This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

Extent Information

E1 This version of this provision extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only.

Modifications etc. (not altering text)

C608 £100*for the year* 1991-92*and subsequent years of assessment—see* 1990 s.82.

Marginal Citations

M1748 Source-1970 s.437(1); 1971 s.16(2)(b)
M1749 Source-1984 s.100(3)
M1750 Source-1970 s.437(2)
M1751 Source-1970 s.437(3); 1971 s.16(2)(d)
M1752 Source-1970 s.437(5)

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663 The general rule. S

(1) [M2390]Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and below the age of 18, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) [M2391]Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a person holding them as trustee for a person who would be absolutely entitled as against the trustee but for being an infant, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this Chapter be deemed to be paid to the infant; and in this subsection, in relation to Scotland, "infant" means [[F2068]person under the age of eighteen years].

(3) [M2392]This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 10 of Schedule 30 shall have effect as respects certain earlier settlements on children.

(4) [M2393]Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.

(5) [M2394]This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

Textual Amendments

F2068 Words in s. 663(2) substituted (S.)(25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para. 48** (with s. 1(3))

Modifications etc. (not altering text)

C937 £100*for the year* 1991-92*and subsequent years of assessment—see* 1990 s.82.

Marginal Citations

M2390 Source-1970 s.437(1); 1971 s.16(2)(b)
M2391 Source-1984 s.100(3)
M2392 Source-1970 s.437(2)
M2393 Source-1970 s.437(3); 1971 s.16(2)(d)
M2394 Source-1970 s.437(5)

664 Accumulation settlements.

(1) [M1753]Subject to the provisions of this section, for the purposes of this Chapter—

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(a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and

(b) any income so dealt with which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.

(2) [M1754]Where any income is dealt with as mentioned in subsection (1) above by virtue or in consequence of a settlement to which this Chapter applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—

(a) subsection (1) above shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which are allowable as deductions in computing his total income; and

(b) subject to subsection (3) below, any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the time of the payment is unmarried and below the age of 18, shall be deemed for the purposes of section 663 to be paid as income.

(3) [M1755]Subsection (2)(b) above shall not apply if and to the extent that the sum paid as mentioned in that paragraph together with any other sums previously so paid (whether to that child or to any other child who, at the time of the payment, was unmarried and below the age of 18) exceeds the aggregate amount of the income which, by virtue or in consequence of the settlement, has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (1) above, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

Marginal Citations

M1753 Source-1970 s.438(1)
M1754 Source-1970 s.438(2); 1971 s.16(2)(c)
M1755 Source-1970 s.438(2)(b); 1971 s.16(2)(c); 1987 Sch.15 2(17)

665 Meaning of "irrevocable".

[M1756](1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if its terms provide—

(a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of the settlor's child; or

(b) for the determination of the settlement by the act or on the default of any person; or

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(c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement.

In this section "the settlor's child", in relation to any settlement, means any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement.

(2) For the purposes of this Chapter, a settlement shall not be deemed to be revocable by reason only—

(a) that it contains a provision under which any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of the settlor's child or in the event of an assignment of or charge on that income or those assets being executed by the settlor's child; or

(b) that it provides for the determination of the settlement by the act or on the default of any person in such a manner that the determination will not, during the lifetime of the settlor's child, benefit the settlor or the wife or husband of the settlor; or

(c) in the case of a settlement to which section 33 of the [M1757]Trustee Act 1925 applies, that it directs income to be held for the benefit of the settlor's child on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive all or part of the income.

Marginal Citations

M1756 Source-1970 s.439(1).

M1757 1925 c. 19.

666 Interest paid by trustees.

(1) [M1758]Where interest is paid by the trustees of a settlement to which this Chapter applies there shall be deemed for the purposes of this Chapter to be paid to or for the benefit of a child of the settlor who at the time of the payment is unmarried and below the age of 18 (in addition to any other amount deemed to be so paid) an amount equal to a fraction—

$$\frac{B}{A}$$

of the interest, where—

A is the whole of the income arising under the settlement in the year of assessment, less any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, and

B is such part of A as is paid to or for the benefit of any child of the settlor who is unmarried and below the age of 18.

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(2) [M1759]This section shall not apply to interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).

(3) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.

(4) [M1760]For the purpose of this section "income arising under the settlement" has the meaning given by section 681, which for that purpose shall be deemed to apply in relation to settlements to which this Chapter applies as it applies in relation to settlements to which Chapter III of this Part applies.

(5) In this section the reference to the trustees' expenses excludes sums mentioned in section 682(1)(a).

Marginal Citations

M1758 Source-1970 s.440(1); 1971 s.16(2)(c)
M1759 Source-1970 s.440(2), (3)
M1760 Source-1970 s.440(4)

667 Adjustments between disponor and trustees.

[M1761](1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a settlement was made or entered into, that person shall be entitled—

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and

(b) for that purpose to require an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid,

and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(3) Subject to section 833(3), any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

Marginal Citations

M1761 Source-1970 s.441

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668 Application of Chapter II to settlements by two or more settlors.

(1) [M1762]In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.

(2) [M1763]In the case of any such settlement, only the following can, for the purposes of this Chapter, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say—

(a) income originating from that settlor; and

(b) in a case in which section 664(2)(b) applies, any sums which are under that paragraph to be deemed to be paid as income.

(3) In applying section 664(2)(b) to any settlor—

(a) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor; and

(b) the reference to income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in section 664(1) includes only income originating from that settlor.

(4) [M1764]References in this section to property originating from a settlor are references to—

(a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and

(b) property representing that property; and

(c) so much of any property which represents both property provided as mentioned in paragraph (a) above and other property as, on a just apportionment, represents the property so provided.

(5) References in this section to income originating from a settlor are references to—

(a) income from property originating from that settlor; and

(b) income provided directly or indirectly by that settlor.

(6) In subsections (4) and (5) above—

(a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and

(b) references to property which represents other property include references to property which represents accumulated income from that other property.

Marginal Citations

M1762 Source-1970 s.442(1)

M1763 Source-1970 s.442(2)

M1764 Source-1970 s.442(3)-(5)

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669 Power to obtain information under Chapter II.

[M1765]An inspector may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

Marginal Citations
M1765 Source-1970 s.443; 1971 Sch.6 62

670 Interpretation of Chapter II.

[M1766]In this Chapter—

"child" includes a stepchild and an illegitimate child;

"settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

"settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the preceding words of this definition) includes any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

"income", except in the phrase (occurring in section 663(1)) "be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person", includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom.

Marginal Citations
M1766 Source-1970 s.444(1), (2)

CHAPTER III

REVOCABLE SETTLEMENTS ETC.

671 Revocable settlements allowing release of obligation.

(1) [M1767]If and so long as the terms of any settlement (wherever made) are such that—

(a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or

(b) the settlor or the wife or husband of the settlor may, whether immediately or in the future, cease, on the payment of a penalty, to be liable to make any

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annual payments payable by virtue or in consequence of any provision of the settlement,

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) [M1768]Where any such power as is referred to in subsection (1)(a) above cannot be exercised—

(a) in the case of a covenanted payment to charity (as defined by section 660(3)), within the period of three years, or

(b) in any other case, within the period of six years,

from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, subsection (1)(a) above shall not apply **[**[F1299]in the case of a covenanted payment to charity so long as that power has not been exercised, and in any other case**]** so long as that power cannot be exercised.

(3) [M1769]In subsections (1) and (2) above—

(a) the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof and to any power to diminish the amount of any annual payments which the settlor or the wife or husband of the settlor is or may be liable to make by virtue or in consequence of any provision of the settlement;

(b) the references to the settlor or the wife or husband of the settlor ceasing to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement shall be deemed to include references to a diminution of the amount of any such annual payments which the settlor or the wife or husband of the settlor is or may be liable to make;

but the sums to be treated under subsections (1) and (2) above as the income of the settlor for any year of assessment and not as the income of any other person shall, where those subsections would not apply but for paragraph (b) above, be such part only of the sums payable as mentioned in that paragraph by the settlor or the wife or husband of the settlor in that year as corresponds to the diminution mentioned in that paragraph.

Textual Amendments

F1299 Words in s. 671(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 27(1)(2)**

Marginal Citations

M1767 Source-1970 s.445(1)

M1768 Source-1970 s.445(1)(1A); 1980 s.55(2)

M1769 Source-1970 s.445(2)

672 Revocable settlements allowing reversion of property.

(1) [M1770]If and so long as the terms of any settlement (wherever made) are such that—

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(a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and

(b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised,

any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall, subject to subsection (2) below, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(2) Where any such power cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, subsection (1) above shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.

(3) [M1771]In subsection (1) above the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to—

(a) any power to diminish the property comprised in the settlement; and

(b) any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof to any person other than the settlor and the wife or husband of the settlor.

Marginal Citations

M1770 Source-1970 s.446(1)

M1771 Source-1970 s.446(2)

673 Settlements where settlor retains an interest.

(1) [M1772]If and so long as the settlor has an interest in any income arising under or property comprised in a settlement (wherever made), any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person except that—

(a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this paragraph, would be so treated as is proportionate to the extent of that interest; and

(b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of section 671 or 672, that amount shall be deducted from the amount of income which, but for this paragraph, would be treated as his for that year by virtue of this subsection.

(2) [M1773]Subject to subsection (3) below, the settlor shall, for the purpose of subsection (1) above, be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be

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comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever.

(3) The settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—

(a) if and so long as that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of—

(i) the bankruptcy of some person who is or may become beneficially entitled to that income or property; or

(ii) any assignment of or charge on that income or property being made or given by some such person; or

(iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or

(iv) the death under the age of 25 or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or

(b) if and so long as some person is alive and under the age of 25 during whose life that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

Marginal Citations

M1772 Source-1970 s.447(1)

M1773 Source-1970 s.447(2)

674 Settlements: discretionary power for benefit of settlor etc.

(1) [M1774]This section applies to any settlement (wherever made) if and so long as the terms of the settlement are such that any person has or may have power, exercisable at his discretion, whether immediately or in the future, and whether with or without the consent of any person—

(a) to pay or apply to or for the benefit of the settlor or the wife or husband of the settlor the whole or any part of the income or property which may at any time arise under or be comprised in the settlement; or

(b) to secure the payment or application to or for the benefit of the settlor or the wife or husband of the settlor of the whole or any part of that income or property.

(2) Subject to subsections (3) and (4) below, any income arising in any year of assessment under a settlement to which this section applies or, as the case may be, any income so arising from the property comprised in any such settlement or from a corresponding part of that property, or a corresponding part of any such income, shall (so far as it is not so treated apart from this section) be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

(3) [M1775]Where the power mentioned in subsection (1) of this section cannot be exercised within six years from the time when any income or class of income first arises under the settlement or from the time when any particular property first becomes comprised in the settlement, then, so long as the power cannot be exercised, subsection (2) above

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shall not apply to any income arising under the settlement or, as the case may be, any income of that class or income from that property or property representing that property.

(4) Where, under section 673(3), the settlor is not deemed to have an interest in any income arising under or property comprised in the settlement, subsection (2) above shall not apply to that income or, as the case may be, to income arising from that property.

Marginal Citations

M1774 Source-1970 s.448(1)

M1775 Source-1970 s.448(2), (3)

[F1300 674A Other settlements where settlor retains interest in settled property.

(1) Where, during the life of the settlor, income arising under a settlement is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income—

(a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or

(b) is of a kind excluded from subsection (1) of section 683 by subsection (6) or (9) of that section; or

(c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or

(d) is income from property of which the settlor has divested himself absolutely by the settlement; or

(e) consists of covenanted payments to charity (as defined by section 660(3)); or

(f) is income which, by virtue of any provision of the Income Tax Acts other than this section, is to be treated for all the purposes of those Acts as income of the settlor;

the income shall be treated for all the purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person.

(2) Subsections (6) to (10) of section 683 shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of that section.

(3) Subsections (1), (2), (3) and (for the year 1990-91 and subsequent years of assessment) (4A) to (4C) of section 685 shall have effect for the purposes of this section as they have effect for the purposes of section 683, but with the omission from subsections (1) and (2) of the words “in the case of a settlement made after 6th April 1965”.

(4) For the year 1990-91 and subsequent years of assessment subsection (1)(a) above shall have effect with the insertion after the word “widow” of the word “ widower ”.

(5) This section applies in relation to income—

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(a) which arises on or after 14th March 1989 under a settlement made on or after that day, or

(b) which arises on or after 6th April 1990 under a settlement made before 14th March 1989, so far as it is payable to or applicable for the benefit of the settlor's husband or wife,

except income consisting of annual payments made under an obligation which is an existing obligation for the purposes of section 36(3) of the Finance Act 1988.**]**

Textual Amendments

F1300 1989 s.109(1).

675 Provisions supplementary to sections 671 to 674.

M1776 (1) Tax chargeable by virtue of section 671, 672, 673 **[**F1301 674 or 674A**]** shall be charged under Case VI of Schedule D.

(2) In computing the liability to income tax of a settlor chargeable by virtue of any of those sections the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that section had been received by him.

(3) Where, by virtue of any of those sections, any income tax becomes chargeable on and is paid by a settlor, he shall be entitled—

(a) to recover from any trustee, or other person to whom income arises under the settlement, the amount of the tax so paid; and

(b) for that purpose to require an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

Any certificate so furnished shall be conclusive evidence of the facts stated therein.

(4) Where any person obtains, in respect of any allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for section 671, 672, 673 **[**F1301 674 or 674A**]**, have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom income arises under the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(5) Subject to section 833(3), any income which is treated by virtue of section 671, 672, 673 **[**F1302 674 or 674A**]** as income of a settlor shall be deemed for the purpose of this section to be the highest part of his income.

Textual Amendments

F1301 1989 s.109(3).*Previously*
"or 674".

F1302 1989 s.109(3).*Previously*
"or 674".

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Marginal Citations

M1776 Source-1970 s.449

676 Disallowance of deduction from total income of certain sums paid by settlor.

[M1777](1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount of income arising under the settlement in that year which has not been distributed, less—

(a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of section 671, 672 **[**[F1303]674 or 674A**]**, and

(b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of section 673.

(2) For the purposes of subsection (1) above, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.

(3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.

(4) This section shall apply to any settlement (wherever made) made after 26th April 1938, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of section 671 or 672 but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.

(5) In this section, references to sums paid by a settlor include references to sums paid by the wife or husband of the settlor.

Textual Amendments

F1303 1989 s.109(3).*Previously*
"or 674".

Marginal Citations

M1777 Source-1970 s.450

677 Sums paid to settlor otherwise than as income.

(1) [M1778]Any capital sum paid directly or indirectly in any year of assessment by the trustees of a settlement to which this section applies to the settlor shall—

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(a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;

(b) to the extent to which the amount of that sum is not by virtue of this subsection treated as his income for that year and falls within the amount of the income available up to the end of the next following year, be treated for those purposes as the income of the settlor for the next following year;

and so on for each subsequent year up to a maximum of ten subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

(2) [M1779]For the purposes of subsection (1) above, the amount of income available up to the end of any year shall, in relation to any capital sum paid as mentioned in that subsection, be taken to be the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less—

(a) the amount of that income taken into account under that subsection in relation to that sum in any previous year or years; and

(b) [M1780]the amount of any other capital sums paid to the settlor in any year before that sum was paid; and

(c) so much of any income arising under the settlement in that year and any previous year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 671, 672, 674 **[**[F1304]674A**]** or 683; and

(d) any income arising under the settlement in that year and any previous year which has been treated as the income of the settlor by virtue of section 673; and

(e) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 676, as deductions in computing the settlor's income for that year or any previous year; and

(f) [M1781]any sums paid by virtue or in consequence of the settlement in that year or any previous year which have been treated as the income of the settlor by virtue of section 664(2)(b); and

(g) any sums included in the income arising under the settlement as amounts which have been or could have been apportioned to a beneficiary as mentioned in section 681(1)(b); and

(h) [M1782]an amount equal to **[**[F1305]tax at the rate applicable to trusts**]**on—

(i) the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less

(ii) the aggregate amount of the income and sums referred to in paragraphs (c), (d), (e), (f) and (g) above.

(3) [M1783]Where any amount is included in a person's income by virtue of section 421 in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.

(4) [M1784]Where the capital sum paid to the settlor is a sum paid by way of loan, then—

(a) if the whole of it is repaid, no part of that sum shall by virtue of subsection (1) above be treated as the settlor's income for any year of assessment after that in which the repayment occurs; and

(b) if one or more capital sums have previously been paid to him by way of loan and wholly repaid, the amount of that capital sum shall be treated as equal

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to its excess, if any, over so much of the sum or sums previously paid as has already fallen to be treated as his income by virtue of that subsection.

(5) Where the capital sum paid to the settlor is a sum paid by way of complete repayment of a loan, then, if an amount not less than that sum is thereafter lent by the settlor to the trustees of the settlement, no part of that sum shall by virtue of subsection (1) above be treated as his income for any year of assessment after that in which the further loan is made.

(6) [M1785]Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of **[**[F1306]tax at the rate applicable to trusts**]** for that year, would be equal to that sum or that part of that sum.

(7) [M1786]Tax chargeable by virtue of this section shall be charged under Case VI of Schedule D; and there shall be set off against the tax charged on any amount treated by virtue of this section as income of the settlor for any year an amount equal to—

(a) **[**[F1305]tax at the rate applicable to trusts**]** for that year on the amount so treated as his income; or

(b) so much of **[**[F1307]the amount of tax at that rate**]** as is equal to the tax charged,

whichever is the less.

(8) [M1787]In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.

(9) [M1788]This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—

(a) "capital sum" means, subject to subsection (10) below—

(i) any sum paid by way of loan or repayment of a loan; and

(ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money's worth,

but does not include any sum which could not have become payable to the settlor except in one of the events specified in section 673(3); and

(b) references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor or to the settlor (or the husband or wife of the settlor) jointly with another person.

(10) [M1789]For the purposes of this section there shall be treated as a capital sum paid to the settlor by the trustees of the settlement any sum which—

(a) is paid by them to a third party at the settlor's direction or by virtue of the assignment by him of his right to receive it where the direction or assignment was given or made on or after 6th April 1981; or

(b) is otherwise paid or applied by them for the benefit of the settlor,

and which would not apart from this subsection be treated as a capital sum paid to him.

Textual Amendments

F1304 1989 s.109(4).

F1305 Words in s. 677(2)(h)(7)(a) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(1), **25(1)**

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F1306 Words in s. 677(6) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(2), **25(1)**

F1307 Words in s. 677(7)(b) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(3), **25(1)**

Modifications etc. (not altering text)

C609 *See*—s.161—*waiver of loans to directors or employees.*s.421—*loan by close company to participator.*

Marginal Citations

M1778 Source-1970 s.451(1); 1981 s.42(2)(a), (b); 1982 s.63(3)
M1779 Source-1970 s.451(2)(*aa*); 1981 s.42(3)(a)
M1780 Source-1970 s.451(2)(a)-(d); 1981 s.42(3)(b)
M1781 Source-1970 s.451(2)(*dd*), (*ddd*); 1981 s.42(3)(c)
M1782 Source-1970 s.451(2)(e); 1971 Sch.6 64, 1973 s.16(7)(a); 1981 s.42(3)(d)
M1783 Source-1970 s.451(3)
M1784 Source-1970 s.451(3A), (3B); 1981 s.42(4)
M1785 Source-1970 s.451(5); 1971 Sch.6 64; 1973 s.16(7)(b)
M1786 Source-1970 s.451(6); 1981 s.42(5)
M1787 Source-1970 s.451(7)
M1788 Source-1970 s.451(8); 1981 s.42(6)
M1789 Source-1970 s.451(9); 1981 s.42(7), (8)

678 Capital sums paid by body connected with settlement.

(1) [M1790]Where—

(a) a capital sum is paid after 5th April 1981 to the settlor in a year of assessment by any body corporate connected with the settlement in that year; and

(b) an associated payment has been or is made directly or indirectly to that body by the trustees of the settlement,

the capital sum shall, in accordance with subsection (2) below, be treated for the purposes of section 677 as having been paid to the settlor by the trustees of the settlement.

(2) A capital sum to which subsection (1) above applies shall—

(a) to the extent to which the amount of that sum falls within the total of the associated payment or payments made up to the end of the year of assessment in which it is paid, be treated as having been paid to the settlor in that year;

(b) to the extent to which the amount of that sum is not treated as paid to the settlor in that year and falls within the total of the associated payment or payments made up to the end of the next following year (less what was taken into account under this subsection in relation to that sum in the previous year), be treated as having been paid to the settlor in the next following year,

and so on for each subsequent year, taking the references in paragraph (b) to the year mentioned in paragraph (a) as references to that and any other year before the subsequent year in question.

(3) In this section "associated payment", in relation to any capital sum paid to the settlor by a body corporate, means—

(a) any capital sum paid to that body by the trustees of the settlement; and

(b) any other sum paid or asset transferred to that body by those trustees which is not paid or transferred for full consideration in money or money's worth,

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being a sum paid or asset transferred in the five years ending or beginning with the date on which the capital sum is paid to the settlor.

(4) For the purposes of this section any capital sum paid by a body corporate, and any associated payment made to a body corporate, at a time when it is, within the meaning of section 416, associated with another body corporate may be treated as paid by or made to that other body corporate.

(5) In this section "capital sum" has the same meaning as in section 677; and any question whether a capital sum has been paid to the settlor by a body corporate or to a body corporate by the trustees shall be determined in the same way as any question under that section whether a capital sum has been paid to the settlor by the trustees.

(6) Subsection (1) above does not apply to any sum paid to the settlor by way of loan or repayment of a loan if—
   (a) the whole of the loan is repaid within 12 months of the date on which it was made; and
   (b) the period for which amounts are outstanding in respect of loans made to the settlor by that or any other body corporate connected with the settlement, or by him to that or any other such body, in any period of five years does not exceed 12 months.

(7) Where a capital sum is paid to the settlor in a year of assessment by a body corporate connected with the settlement in that year it shall be assumed until the contrary is shown that an associated payment of an amount not less than that of the capital sum has been made to that body by the trustees of the settlement.

Marginal Citations
M1790 Source-1970 s.451A; 1981 s.43(2)

679 Application of Chapter III to settlements by two or more settlors.

M1791 (1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.

(2) In this Chapter—
   (a) references to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor, and
   (b) references to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.

(3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.

(4) References in sections 671(1) and 676 to sums payable by virtue or in consequence of any provision of the settlement or sums paid by virtue or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.

(5) References in this section to property originating from a settlor are references to—

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(a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
(b) property representing that property; and
(c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.

(6) References in this section to income originating from a settlor are references to—
(a) income from property originating from that settlor; and
(b) so much of any such income of a body corporate as is mentioned in section 681(1)(b) as corresponds to property originating from the settlor which is comprised in the settlement; and
(c) income provided directly or indirectly by that settlor.

(7) In subsections (5) and (6) above—
(a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
(b) references to property which represents other property include references to property which represents accumulated income from that other property.

Marginal Citations
M1791 Source-1970 s.452

680 Power to obtain information for purposes of Chapter III.

[M1792]An inspector may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of any of the provisions of this Chapter.

Marginal Citations
M1792 Source-1970 s.453; 1971 Sch.6 65

681 Interpretation of Chapter III.

(1) [M1793]In this Chapter, "income arising under a settlement" includes—
(a) any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom;*and*
(b) *where the amount of the income of any body corporate has been apportioned under section* 423*for any year or period, or could have been so apportioned if the body corporate were incorporated and resident in any part of the United Kingdom, so much of the income of the body corporate for that year or period*

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as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement[F1308].

but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

(2) *Where the income of a body corporate has been, or could have been, apportioned under section* 423*any amount of that income which by virtue of subsection* (1)(b)*above is to be included in the income arising under a settlement shall be increased by such proportion thereof as corresponds to the rate of advance corporation tax applicable to a distribution made at the end of the accounting period to which the apportionment relates*[F1309].

(3) [M1794]*In subsections* (1)*and* (2)*above references to income that could have been apportioned to a person if a body corporate were incorporated and resident in any part of the United Kingdom include references to income that could have been apportioned to that person indirectly through any other body corporate if that other body had also been so incorporated and resident*[F1309].

(4) [M1795]In this Chapter—

"settlement" includes any disposition, trust, covenant, agreement or arrangement, and

"settlor", in relation to a settlement, means any person by whom the settlement was made;

and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(5) [M1796]For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of the settlement; or

(b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.

(6) [M1797]The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act.

Textual Amendments

F1308 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to income of bodies corporate for accounting periods beginning after* 31*March* 1989.

F1309 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to income of bodies corporate for accounting periods beginning after* 31*March* 1989.

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Modifications etc. (not altering text)

C610 *Definition applied for purposes of*—1970(M) s.27—*return of particulars of settled property for purposes of* 1979(C).1979(C) s.17—*chargeable gains accruing to non-resident trusts.*1979(C) s.63—*connected persons* (*capital gains tax*).1988 s.417—*close companies.*1988 s.745—*information.*1988 s.839—*connected persons.*

C611 *See* s.454(6)—*Underwriter's special reserve funds excluded from treatment as settlement.*

Marginal Citations

M1793 Source-1970 s.454(1); 1972 Sch.24 26; 1981 s.44(1)
M1794 Source-1970 s.454(1A); 1981 s.44(1)
M1795 Source-1970 s.454(3)
M1796 Source-1970 s.454(4); 1981 s.44(2)
M1797 Source-1970 s.454(6)

682 Ascertainment of undistributed income.

(1) [M1798]For the purposes of this Chapter, income arising under a settlement in any year of assessment shall be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—

(a) the sums, excluding all payments of interest, paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of section 677, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them there, and

(b) subject to subsections (2) to (5) below, any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, in so far as such expenses are not included in the sums mentioned in paragraph (a) above, and

(c) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section 505 exceeds the aggregate amount of any such sums or expenses as are mentioned in paragraphs (a) and (b) above paid in that year which are properly chargeable to that income.

(2) [M1799]Subsection (1)(b) above shall apply to any interest paid by the trustees of the settlement subject to subsections (3) to (6) below.

(3) If no sums within subsection (1)(a) were paid to any person other than the settlor, or the wife or husband of the settlor, the whole of any interest paid by the trustees of the settlement shall be excluded from subsection (1)(b) above.

(4) If any sum was so paid, there shall be excluded from subsection (1)(b) above a fraction—

$$\frac{A - B}{A}$$

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of any interest paid by the trustees of the settlement where—

A is the whole of the income arising under the settlement in the year of assessment, less the sums referred to in subsection (1)(b) above apart from subsections (2), (3) and (5) of this section; and

B is so much of the sums within subsection (1)(a) above as is paid to persons other than the settlor, or the wife or husband of the settlor.

(5) Subsections (2) to (4) above shall not apply to interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor if living with the settlor.

(6) Nothing in subsections (2) to (5) above shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.

Marginal Citations

M1798 Source-1970 s.455

M1799 Source-1970 s.456

VALID FROM 01/05/1995

[F1310 682A Supplementary provisions.

(1) The provisions of sections 660E to 660G apply for the purposes of this Chapter as they apply for the purposes of Chapter IA.

(2) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of the settlement; or

(b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.**]**

Textual Amendments

F1310 S. 682A inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 11**

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CHAPTER IV

LIABILITY TO HIGHER RATE AND ADDITIONAL RATE TAX

Liability of settlors

683 Settlements made after 6th April 1965.

(1) [M1800]Where, during the life of the settlor, income arising under a settlement made after 6th April 1965 is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income either—

(a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow **[**[F1311], widower**]** or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or

(b) is excluded by subsection (3), (6) or (9) below; or

(c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or

(d) is income from property of which the settlor has divested himself absolutely by the settlement; or

(e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;

the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.

(2) In subsection (1) above "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F1312]not chargeable at the lower rate**][**[F1313]by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

(3) [M1801]Subject to subsection (4) below, subsection (1) above shall not apply to so much of an individual's income as consists of covenanted payments to charity.

(4) [M1802]If at least £1,000 of an individual's income for any year of assessment consists of covenanted payments to charity which, in the hands of the charities receiving them, constitute income for which, by virtue of subsection (3) of section 505, relief is not available under subsection (1) of that section, so much of the individual's income as consists of those payments shall not be excluded from the operation of subsection (1) above by virtue of subsection (3) above.

(5) If, for any chargeable period of a charity—

(a) the income of the charity includes two or more covenanted payments to charity; and

(b) only a part of the aggregate of those payments constitutes income for which, by virtue of subsection (3) of section 505 relief is not available under subsection (1) of that section,

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each of the payments which make up the aggregate shall be treated for the purposes of subsection (4) above as apportioned rateably between the part of the aggregate referred to in paragraph (b) above and the remainder.

(6) [M1803]Subsection (1) above shall not apply to income consisting of annual payments made by an individual, in connection with the acquisition by him of the whole or part of a business—

(a) to or for the benefit of the individual from whom it is acquired or, if **[**[F1314]that individual is dead, to or for the benefit of that individual's widow, widower**]** or dependants, or

(b) if the acquisition was from a partnership, to or for the benefit of a former member, or the widow **[**[F1314], widower**]** or dependants of a deceased former member, of that or any preceding partnership, or to or for the benefit of an individual from whom the business or part was acquired by that or any preceding partnership or, if **[**[F1315]such an individual is dead, to or for the benefit of that individual's widow, widower or dependants**]**;

being payments made under a liability incurred for full consideration.

(7) Payments made in respect of any individual under a liability incurred in connection with an acquisition from a partnership shall only be excluded from the operation of subsection (1) above by virtue of subsection (6)(b) above if, and to the extent that, they are made in substitution for, or matched by reductions in, other payments which would themselves be excluded from its operation.

(8) Where the right of a former member of a partnership to payments falling due not more than ten years after he ceased to be a member of that partnership has devolved on his death, subsections (1)(a) and (6) above shall apply to the payments as they would apply if he had not died.

(9) [M1804]Where for any year of assessment there is made to or for the benefit of a former member, or the widow **[**[F1315], widower**]** or a dependant of a deceased former member, of a partnership an annual payment which—

(a) is excluded from the operation of subsection (1) above by virtue of paragraph (a) of that subsection or by virtue of subsection (6) above; and

(b) falls short of the limit applying for that year under section 628;

any additional annual payment made to or for the benefit of that person shall, notwithstanding that it is not made under a liability incurred for full consideration, be excluded from the operation of subsection (1) above to the extent to which it makes good that shortfall.

(10) [M1805]For the purposes of this section—

(a) "former member", in relation to a partnership, means an individual who has ceased to be a member of that partnership on retirement or death;

(b) a partnership becomes a "preceding partnership" of another if it transfers its business or part of its business to another and one or more individuals are members of both, and any preceding partnership of the transferor by reference to any part of the business transferred shall also become a preceding partnership of the transferee;

(c) "covenanted payments to charity" has the meaning given by section 660(3).

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Textual Amendments

F1311 1988(F) s.35*and* Sch.3 para.20(2)*for* 1990-91*and subsequent years.*

F1312 Words in s. 683(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1313 Words in s. 683(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

F1314 1988(F) s.35*and* Sch.3 para.20(3), (4)*for* 1990-91*and subsequent years. Previously*
"he is dead, to or for the benefit of his widow"
in subs.6(a).

F1315 1988(F) s.35*and* Sch.3 para.20(4), (5)*for* 1990-91*and subsequent years. Previously*
"he is dead, to or for the benefit of the widow or dependants of such an individual"
in subs.(6).

Modifications etc. (not altering text)

C612 *See* s.125(3)—*annual payments for non taxable consideration.*

C613 *See* s.628—*certain partnership retirement annuities not to reduce investment income.*

C614 *See* s.125(3)—*annual payments for non taxable consideration.*

Marginal Citations

M1806 Source-1970 s.457(1); 1971 Sch.6 67; 1978 Sch.2 12; 1980 s.56(1); 1986 s.32(1)

M1801 Source-1970 s.457(1A); 1980 s.56(2); 1985 s.49(1); 1986 s.32(1)

M1802 Source-1970 s.457(1B), (1C); 1986 s.32(2)

M1803 Source-1970 s.457(2)-(4)

M1804 Source-1970 s.457(4A); 1980 s.34(4)

M1805 Source-1970 s.457(5); 1980 s.56(3)

684 Settlements made before 7th April 1965 but after 9th April 1946.

[M1806](1) Where, during the life of the settlor, income arising under a settlement made before 7th April 1965, but after 9th April 1946, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless under the settlement and in those events, the income either—

(a) is payable to an individual for his own use; or

(b) is applicable for the benefit of an individual named in that behalf in the settlement or of two or more individuals so named; or

(c) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement; or

(d) is income from property of which the settlor has divested himself absolutely by the settlement; or

(e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;

the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.

(2) In subsection (1) above "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F1316]not chargeable at the lower rate**][**[F1317]by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

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(3) The exceptions provided for by paragraphs (a), (b) and (c) of subsection (1) above shall not apply where the named individual or individuals or, in the case of paragraph (c), either the named individual or the child or any of the children in question, is in the service of the settlor or accustomed to act as the solicitor or agent of the settlor.

Textual Amendments

F1316 Words in s. 684(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1317 Words in s. 684(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

Marginal Citations

M1806 Source-1970 s.458(1); 1971 Sch.6 68; 1978 Sch.2 13

685 Provisions supplementary to sections 683 and 684.

(1) [M1807]For the purposes of sections 683 and 684, the settlor shall not be deemed to have divested himself absolutely of any property if that property or any derived property is, or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the settlor or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor.

(2) For those purposes, the settlor shall not be deemed not to have divested himself absolutely of any property by reason only that the property or any derived property may become payable to or applicable for the benefit of the settlor, or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor, in the event of—

(a) the bankruptcy of some person who is or may become beneficially entitled to the property or any of the derived property; or

(b) an assignment of or charge on the property or any of the derived property being made or given by some such person; or

(c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage; or

(d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property or the derived property on attaining that age.

(3) In subsections (1) and (2) above **[**[F1318]and subsection (4B) below**]**"derived property", in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom.

(4) [M1808]In sections 683 and 684 and this section "income arising under a settlement", "settlement" and "settlor" have the meanings assigned to them for the purposes of Chapter III of this Part by section 681 **[**[F1318]but subject to subsections (4A) and (4C) below**]**.

[[F1318](4A) References in section 683 to a settlement do not include references to an outright gift by one spouse to the other of property from which income arises unless—

(a) the gift does not carry a right to the whole of that income, or

(b) the property given is wholly or substantially a right to income.

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(4B) For the purposes of subsection (4A) above a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.

(4C) References in section 683 to a settlement do not include references to the irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).**]**

(5) Section 679 shall have effect in relation to sections 683 and 684 and this section as it has effect in relation to Chapter III of this Part.

Textual Amendments

F1318 1989 s.108 *for* 1990-91 *and subsequent years.*

Marginal Citations

M1807 Source-1970 ss.457(6), 458(2)

M1808 Source-1970 s.459

Liability of trustees

VALID FROM 06/04/2006

[F1319 685A Meaning of "settled property"

(1) For the purposes of the Tax Acts, unless the context otherwise requires,

(a) "settled property" means any property held in trust other than—

(i) property held by a person as nominee for another,

(ii) property held by a person as trustee for another person who is absolutely entitled as against the trustee, and

(iii) property held by a person as trustee for another person who would be absolutely entitled as against the trustee if he were not an infant or otherwise under a disability, and

(b) references, however expressed, to property comprised in a settlement are references to settled property.

(2) For the purposes of the Tax Acts, a reference to a person who is or would be absolutely entitled to property as against the trustee—

(a) means a person who has the exclusive right (subject to satisfying the right of the trustees to resort to the property for the payment of duty, taxes, costs or other outgoings) to direct how the property shall be dealt with, and

(b) includes two or more persons who are or would be jointly absolutely entitled as against the trustee.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

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VALID FROM 06/04/2006

[F1319 685B Meaning of "settlor"

(1) In the Tax Acts, unless the context otherwise requires—
- (a) "settlor" in relation to a settlement means the person, or any of the persons, who has made or is treated for the purposes of the Tax Acts as having made the settlement, and
- (b) a person is a settlor of property which—
  - (i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or
  - (ii) derives from property to which sub-paragraph (i) applies.

(2) A person is treated for the purposes of the Tax Acts as having made a settlement if—
- (a) he has made or entered into the settlement, directly or indirectly, or
- (b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death and the settlement arose on his death, whether by will, on his intestacy, or otherwise.

(3) A person is, in particular, treated for the purposes of the Tax Acts as having made a settlement if—
- (a) he has provided property directly or indirectly for the purposes of the settlement, or
- (b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.

(4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of the Tax Acts—
- (a) B shall be treated as having made the settlement, and
- (b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.

(5) In subsection (2)(b) the reference to property of which a deceased person was competent to dispose is a reference to property of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the property were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and includes references to his severable share in any property to which, immediately before his death, he was beneficially entitled as a joint tenant.

(6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of the Tax Acts as having ceased to be a settlor in relation to the settlement if—
- (a) no property of which he is the settlor is comprised in the settlement,
- (b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and
- (c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

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(7) For the purpose of this section and sections 685C and 685D property is derived from other property—
  (a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and
  (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.

(8) In this section "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F1319 685C Transfer between settlements: identification of settlor

(1) This section applies in relation to a transfer of property from the trustees of one settlement ("Settlement 1") to the trustees of another ("Settlement 2") otherwise than—
  (a) for full consideration, or
  (b) by way of a bargain made at arm's length.

(2) In this section "transfer of property" means—
  (a) a disposal of property by the trustees of Settlement 1, and
  (b) the acquisition by the trustees of Settlement 2 of—
    (i) property disposed of by the trustees of Settlement 1, or
    (ii) property created by the disposal;

  and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.

(3) For the purposes of the Tax Acts, except where the context otherwise requires—
  (a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and
  (b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.

(4) For the purposes of the Tax Acts, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.

(5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2—

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(a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and

(b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.

(6) But subsections (3) and (4) do not apply in relation to a transfer of property—

(a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,

(b) which occurs by reason only of the exercise of a general power of appointment, or

(c) to which section 685D(6) applies.

(7) There is an acquisition or disposal of property for the purposes of this section if there would be an acquisition or disposal of property for the purposes of the 1992 Act.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F1319 685D Variation of will or intestacy, etc: identification of settlor

(1) This section applies where—

(a) a disposition of property following a person's death is varied, and

(b) section 62(6) of the 1992 Act applies in respect of the variation.

(2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of the Tax Acts, except where the context otherwise requires—

(a) as having made the settlement, and

(b) as having provided the property for the purposes of the settlement.

(3) Those persons are—

(a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,

(b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,

(c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and

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(d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.

(4) For the purposes of this section—

(a) "legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee,

(b) property taken under a testamentary disposition or on an intestacy or partial intestacy includes any property appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy, and

(c) a person taking under a donatio mortis causa shall be treated as a legatee and his acquisition as made at the time of the donor's death.

(5) Where—

(a) property would have become comprised in a settlement—

(i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise, or

(ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but

(b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.

(6) Where—

(a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and

(b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.

(7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of the Tax Acts he shall be treated as having made the settlement immediately before his death.

(8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

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VALID FROM 06/04/2006

[F1319 685H Trustees of settlements

(1) For the purposes of the Tax Acts the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).

(2) The deemed person referred to in subsection (1) shall be treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom at any time when a condition in subsection (3) or (4) is satisfied.

(3) Condition 1 is that all the trustees are resident in the United Kingdom.

(4) Condition 2 is that—
- (a) at least one trustee is resident in the United Kingdom,
- (b) at least one is not resident in the United Kingdom, and
- (c) a settlor in relation to the settlement was resident, ordinarily resident or domiciled in the United Kingdom at a time which is a relevant time in relation to him.

(5) In subsection (4)(c) "relevant time" in relation to a settlor means—
- (a) where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and
- (b) in any other case, a time when the settlor made the settlement (or was treated for the purposes of the Tax Acts as making the settlement);

and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 685C applies, "relevant time" in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.

(6) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (3) and (4) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.

(7) If the deemed person referred to in subsection (1) is not treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom, then for the purposes of the Tax Acts it shall be treated as neither resident nor ordinarily resident in the United Kingdom.

(8) If part of the settled property in relation to a settlement is vested in one trustee or body of trustees and another part of the settled property in relation to that settlement is vested in another trustee or body of trustees (and in particular where settled land within the meaning of the Settled Land Act 1925 (c. 18) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement) they shall together be treated for the purposes of this section as constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

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(9) If the trustees of a settlement are carrying on a trade, profession or vocation, a change in the trustees of the settlement by reason of the coming into force of this section and section 685A shall not result in—

(a) any of the trustees before the change permanently ceasing to carry on the trade, profession or vocation, or

(b) any of the trustees after the change starting to carry on the trade, profession or vocation.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F1319 685F Application of section 739 and 740

(1) Section 685E(2) and (7) shall not apply for any of the purposes of section 739 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—

(a) the capital sum mentioned in that subsection was received, or the right to receive it was acquired, before that date, and

(b) the sum was wholly repaid, or the right to it waived, before 1st October 1989.

(2) Section 685E shall not apply for any of the purposes of section 740 in relation to benefits received before 15th June 1989; and, in relation to benefits received on or after that date, "relevant income" includes income arising to the trustees of a settlement before 6 April 1989, notwithstanding that one or more trustees was not resident outside the United Kingdom, unless the trustees have been charged to tax in relation to that income.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F1319 685G Sub-funds

(1) If the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to the 1992 Act, then for the purposes of the Tax Acts, unless the context otherwise requires—

(a) the sub-fund settlement shall be treated as a settlement,

(b) the sub-fund settlement shall be treated as having been created at the time when the sub-fund election is treated as having taken effect,

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(c) each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement,

(d) a person who is a trustee of the sub-fund settlement shall be treated, from the time when the election is to be treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held,

(e) a person who is a trustee of the principal settlement shall not be treated as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held, and

(f) the trustees of the sub-fund settlement shall be treated as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.

(2) References in subsection (1) to the time when the sub-fund election is treated as having taken effect are references to the time when the sub-fund election is treated as having taken effect under paragraph 2 of Schedule 4ZA to the 1992 Act.

(3) In this section—

"principal settlement" has the meaning given by paragraph 1 of Schedule 4ZA to the 1992 Act,

"sub-fund election" has the meaning given by paragraph 2 of that Schedule, and

"sub-fund settlement" has the meaning given by paragraph 1 of that Schedule.**]**

Textual Amendments

F1319 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

686 Liability to additional rate tax of certain income of discretionary trusts.

(1) [M1809] So far as income arising to trustees is income to which this section applies it shall, **[**[F1320]be chargeable to income tax at the rate applicable to trusts, instead of at the basic rate or, in accordance with section 207A, at the lower rate.**]**.

[[F1321](1A) The rate applicable to trusts for any year of assessment shall be the rate equal to the sum of the basic rate and the additional rate in force for that year; and, for the purposes of assessments for the year 1993-94 and in relation to years of assessment for which tax at the basic rate and the additional rate was separately chargeable, references to the charging of income with tax at the rate applicable to trusts shall be taken to include references to the charging of income with tax both at the basic rate and at the additional rate.**]**

(2) This section applies to income arising to trustees in any year of assessment so far as it—

(a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person (whether or not the trustees have power to accumulate it); and

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(b) is neither (before being distributed) the income of any person other than the trustees nor treated for any of the purposes of the Income Tax Acts as the income of a settlor; and

[[F1322](c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held—

(i) for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; or

(ii) for the purposes of a personal pension scheme (within the meaning of section 630) which makes provision only for benefits such as are mentioned in section 633; and**]**

(d) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income (or would be so chargeable but for any express provisions of the trust).

[[F1323](2A) For the purposes of this section where—

(a) any trustees have expenses in any year of assessment ("management expenses") which are properly chargeable to income or would be so chargeable but for any express provisions of the trust, and

(b) there is income arising to them in that year ("the untaxed income") which does not bear income tax for that year by reason wholly or partly of the trustees not having been resident in the United Kingdom or being deemed under any arrangements under section 788, or any arrangements having effect by virtue of that section, to have been resident in a territory outside the United Kingdom,

there shall be disregarded for the purposes of subsection (2)(d) above such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to all the income arising to the trustees in that year.**]**

(3) *This section also applies to sums apportioned to the trustees under section* 423*and treated, under* 426(2)*as applied by subsection* (4)*below, as income received by the trustees*[F1324].

(4) *Sections* 426(1)*and* (2), 427*and* 428*shall, with the omission in section* 426(2)(a)*of the words following "the apportionment relates", the substitution of*" *income* " *for "total income" and all other necessary modifications, apply to a sum apportioned to trustees as they apply to sums apportioned to an individual; and section* 429*shall apply accordingly*[F1325].

(5) For the purposes of this section sums paid or credited to trustees in any year of assessment in respect of dividends or interest payable in respect of shares in or deposits with or loans to a building society being sums in respect of which the society is required to account for and pay an amount in accordance with regulations under section 476(1) shall be treated as income for that year received by the trustees after deduction of income tax from a corresponding gross amount.

In this subsection expressions used in section 476 have the same meanings as in that section.

(6) In this section "trustees" does not include personal representatives; but where personal representatives, on or before the completion of the administration of the estate, pay to trustees any sum representing income which, if personal representatives were trustees within the meaning of this section, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the **[**[F1326]applicable rate**]**.

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This subsection shall be construed as if it were contained in Part XVI.

Textual Amendments

F1320 Words in s. 686(1) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(1), **25(1)**

F1321 S. 686(1A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(2), **25(1)**

F1322 1988(F) s.55(3)—*from* 1*July* 1988.*Previously*
"(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; and".

F1323 S. 686(2A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(3), **25(1)**

F1324 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F1325 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F1326 Words in s. 686(6) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(4), **25(1)**

Modifications etc. (not altering text)

C615 *See*—s.186(11)—*approved profit sharing schemes.*s.454—*underwriter's special reserve fund not to be treated as settlement.*s.469(1)—*unit trusts.*s.832— "additional rate" *defined.*1990 s.56*and* Sch.10 para.19—*convertible securities.*Vol.1. Table D(2).

C616 *See* 1990 s.30*and* Sch.5 para.13*and* s.132*and* Sch.19 Part IV—subs.(5)*repealed as regards a sum paid or credited on or after* 6*April* 1991.

Marginal Citations

M1809 Source-1973 s.16(1)-(6); 1986 s.47(4)(a)

VALID FROM 31/07/1997

[F1327 686A Certain distributions to be treated as income to which section 686 applies.

(1) This section applies where—
- (a) a qualifying distribution is made to trustees;
- (b) the trustees are not the trustees of a unit trust scheme; and
- (c) the qualifying distribution falls within subsection (2) below.

(2) A qualifying distribution falls within this subsection if it is a payment made by a company—
- (a) on the redemption, repayment or purchase of its own shares; or
- (b) on the purchase of rights to acquire its own shares.

(3) The relevant part of the distribution shall be treated for the purposes of the Tax Acts as if it were income to which section 686 applies.

(4) In subsection (3) above the reference to the relevant part of the distribution is a reference to so much (if any) of the distribution as—

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(a) is not income falling within paragraph (a) of section 686(2);

(b) does not fall to be treated for the purposes of the Income Tax Acts as income of a settlor;

(c) is not income arising under a trust established for charitable purposes; and

(d) is not income from investments, deposits or other property held for any such purposes as are mentioned in sub-paragraph (i) or (ii) of section 686(2)(c).

(5) Subsection (6) of section 686 shall apply for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F1327 S. 686A inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(9)**

VALID FROM 06/04/2003

[F1328 686B Share incentive plans: distributions in respect of unappropriated shares

(1) This section applies to income of the trustees of an approved share incentive plan consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met.

(2) Income to which this section applies is income to which section 686 applies only if and when—

(a) the period applicable to the shares under the following provisions of this section comes to an end without the shares being awarded to a participant in accordance with the plan, or

(b) if earlier, the shares are disposed of by the trustees.

(3) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to subsection (5).

(4) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the period applicable to the shares is—

(a) the period of five years beginning with the date on which the shares were acquired by the trustees, or

(b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to subsection (5).

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(5) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA (deduction for contribution to plan trust), the period applicable to the shares is the period of ten years beginning with the date of acquisition.

(6) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.

(7) For the purposes of this section shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.

(8) In relation to shares acquired by the trustees before 11th May 2001 this section has effect with the substitution—
   (a) in subsection (3), of "Subject to subsection (4)" for the words before "the period applicable", and
   (b) in subsection (4)(b), of "the shares in question" for "any of the shares in that company".**]**

Textual Amendments

F1328 Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

VALID FROM 06/04/2003

[F1328 686C Interpretation of section 686B

(1) Section 686B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in section 686B or this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) References in section 686B to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.

(4) In section 686B, "readily convertible assets" has the meaning given by sections 701 and 702 of ITEPA 2003, but this is subject to subsection (5).

(5) In determining for the purposes of section 686B whether shares are readily convertible assets, any market for the shares that—
   (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
   (b) exists solely for the purposes of the plan,

   shall be disregarded.**]**

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Textual Amendments

F1328 Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

VALID FROM 07/04/2005

[F1329 686B Special trust rates not to apply to first slice of trust income

(1) This section applies where income arising (or treated as arising) to the trustees of a trust in a year of assessment consists of or includes income subject to a special trust tax rate ("the special trust tax rate income").

(2) "Income subject to a special trust tax rate" means any income which is (or apart from this section would be) chargeable to income tax at—
  (a) the dividend trust rate, or
  (b) the rate applicable to trusts.

(3) So much of the special trust tax rate income as does not exceed £500 is not chargeable to income tax at the dividend trust rate or the rate applicable to trusts (but is instead chargeable to income tax at the basic rate, the lower rate or the dividend ordinary rate, depending on the nature of the income).

(4) In the following provisions "the relevant purposes" means the purposes of—
  (a) determining (in accordance with section 1A(5)) which of the special trust tax rate income is not chargeable to income tax at the dividend trust rate, or the rate applicable to trusts, by virtue of subsection (3), and
  (b) determining at which of the basic rate, the lower rate and the dividend ordinary rate that special trust tax rate income is chargeable to income tax.

(5) For the relevant purposes the fact that any amount forming part of the special trust tax rate income is subject to a special trust tax rate is to be disregarded if, in any circumstances, an amount of that description is chargeable on trustees at the basic rate, the lower rate or the dividend ordinary rate.

(6) For the relevant purposes any of the special trust tax rate income that consists of—
  (a) an amount which, by virtue of section 686A, is treated for the purposes of the Tax Acts as if it were income to which section 686 applies, or
  (b) income treated as arising under Chapter 5 of Part 4 of ITTOIA 2005 (stock dividends from UK resident companies),

  is to be regarded as income to which section 1A applies and which is chargeable at the dividend ordinary rate.

(7) For the relevant purposes any of the special trust tax rate income that consists of—
  (a) income treated as arising under section 761(1) (offshore income gains),
  (b) income treated as received under section 68 of FA 1989 (employee share ownership trusts), or
  (c) profits or gains which are treated as income under Chapter 12 of Part 4 of ITTOIA 2005 (guaranteed returns on disposals of futures and options) and in relation to which section 568 of that Act applies (profits or gains not meeting conditions of that section),

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is or are to be regarded as chargeable at the basic rate.

(8) For the relevant purposes any of the special trust tax rate income that consists of—

(a) income treated as received under section 714(2) or 716(3) (transfers of securities),

(b) profits taken to be income arising under Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities), or

(c) gains which are treated as arising under Chapter 9 of that Part and on which tax is charged at the rate applicable to trusts under section 467(7)(b) of that Act (gains from contracts for life assurance),

is or are chargeable at the lower rate.**]**

Textual Amendments

F1329 S. 686D inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 14(1)**

VALID FROM 06/04/2006

[F1330 686E Application of section 686D where settlor has made more than one settlement

(1) If a settlor in relation to a settlement has made more than one settlement, section 686D shall have effect in relation to each settlement made by him with the following modification.

(2) The reference in subsection (3) to £1000 shall be treated as a reference to—

(a) £200, or

(b) such amount as may be obtained by dividing £1000 by the total number of settlements in the class, provided that the amount is not less than £200.

(3) If there is more than one settlor in relation to a settlement, the amount shall be the amount obtained under subsection (2)(b) in relation to the largest class of settlements.

(4) In this section a reference to a class of settlements is a reference to the class of settlements which were made by a settlor and which are in existence during any part of the year of assessment.**]**

Textual Amendments

F1330 S. 686E inserted (6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 4(2)(3)**

687 Payments under discretionary trusts.

(1) [M1810] Where, in any year of assessment, trustees make a payment to any person in the exercise of a discretion exercisable by them or any person other than the trustees, then, if the sum paid is for all the purposes of the Income Tax Acts income of the person to whom it is paid (but would not be his income apart from the payment), the following provisions of this section shall apply with respect to the payment in lieu of section 348 or 349(1).

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(2) The payment shall be treated as a net amount corresponding to a gross amount from which tax has been deducted at **[**[F1331]the rate applicable to trusts**]** for the year in which the payment is made; and the sum treated as so deducted shall be treated—

(a) as income tax paid by the person to whom the payment is made; and

(b) so far as not set off under the following provisions of this section, as income tax assessable on the trustees.

(3) [M1811]The following amounts, so far as not previously allowed, shall be set against the amount assessable (apart from this subsection) on the trustees in pursuance of subsection (2)(b) above—

(a) the amount of any tax on income arising to the trustees **[**[F1332]which (not being income the tax on which falls within paragraph (aa) or (b) below) is charged at the rate applicable to trusts**]** in pursuance of section 686;

[[F1333](aa) the amount of tax which, by virtue of section 233(1B), is charged, at a rate equal to the difference between the lower rate and the rate applicable to trusts, on the amount or value of the whole or any part of any non-qualifying distribution included in the income arising to the trustees;**]**

(b) *the amount of tax at **[**[F1334] a rate equal to the difference between the low rate and the rate applicable to trusts**]**on any sum treated, **[**[F1335]under section* 426(2)*as applied by section* 686(4)*or**]** under section* 249(6),*as income of the trustees;*

(c) *the amount of tax at the basic rate on any amount taken for the purposes of sections* 426*to* 428*as applied by section* 686(4)*to be the amount to be excluded from the income of the trustees in accordance with section* 427(4) [F1335];

(d) an amount of tax in respect of income found on a claim made by the trustees to have been available to them for distribution at the end of the year 1972-73, which shall be taken to be two-thirds of the net amount of that income;

(e) the amount of any tax on income arising to the trustees by virtue of section 761(1) and charged **[**[F1336]at the rate applicable to trusts**]** by virtue of section 764; and

(f) the amount of any tax on annual profits or gains treated as received by trustees by virtue of section 714(2) or 716(3) of this Act or paragraph 2(2) or (3) of Schedule 22 to the Finance Act 1985 and charged **[**[F1336]at the rate applicable to trusts**]** by virtue of section 720(5) of this Act or paragraph 8(1) of Schedule 23 to that Act;

(g) the amount of any tax on income which arose to the trustees by virtue of section 38(2) of the Finance Act 1974 (development gains) and charged at a rate equal to the basic rate and the additional rate in pursuance of section 43(1) of that Act;

[[F1337](h) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 4 of Schedule 4 and is charged to tax **[**[F1336]at the rate applicable to trusts**]** by virtue of paragraph 17 of that Schedule;

(i) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989 and is charged to tax **[**[F1336]at the rate applicable to trusts**]** by virtue of paragraph 11 of that Schedule;**]**

[[F1338](j) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 12 of Schedule 10 to the [M1812]Finance Act 1990 and is charged to tax **[**[F1336]at the rate applicable to trusts**]** by virtue of paragraph 19 of that Schedule;**]**

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but tax on any income represented by amounts paid or credited as mentioned in section 686(5) shall be taken into account under paragraph (a) above only on production of a certificate from the building society concerned specifying those amounts and stating that an amount representing income tax on that income calculated at the basic rate has been or will be accounted for.

(4) [M1813]In this section "trustees" does not include personal representatives within the meaning of section 701(4).

Textual Amendments

F1331 Words in s. 687(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(1), **25(1)**

F1332 Words in s. 687(3)(a) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(2)(a), **25(1)**

F1333 S. 687(3)(aa) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(2)(b), **25(1)**

F1334 Words in s. 687(3)(b) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(2)(c), **25(1)**

F1335 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989

F1336 Words in s. 687(3)(e)(f)(h)(i) and (j), as it so has effect, substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(2)(d), **25(1)**

F1337 1989 s.96(2)*in relation to certain deep discount securities and certain deep gain securities from* 14*March* 1989.

F1338 S. 687(3)(j) inserted (*retrospectively* s. 687(3) has effect, and is deemed always to have had effect, as if s. 687(3) included para. (j)) by 1993 c. 34, **s. 79(2)**

Modifications etc. (not altering text)

C617 *See* 1990 s.30*and* Sch.5 para.14*and* s.132*and* Sch.19 Part IV—*words following* paragraph (i)*repealed as regards an amount paid or credited on or after* 6*April* 1991.

C618 S. 687(3) amended (*retrospectively*) by 1993 c. 34, s. 79(1)(2), **Sch. 6 para. 9(2)(d)**

Marginal Citations

M1810 Source-1973 s.17(1), (2)

M1811 Source-1973 s.17(3)(a)-(d), (f), (g); 1975 (No.2) s.34 (6); 1984 s.100(2); 1985 Sch.23 8(3); 1974 Sch.7 8

M1812 1990 c. 29.

M1813 Source-1973 s.17(5)

VALID FROM 31/07/1997

[F1339 687A Payments to companies under section 687.

(1) This section applies where—

(a) trustees make a payment to a company;

(b) section 687 applies to the payment; and

(c) the company is chargeable to corporation tax and does not fall within subsection (2) below.

(2) A company falls within this subsection if it is—

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(a) a charity, as defined in section 506(1);
(b) a body mentioned in section 507 (heritage bodies); or
(c) an Association of a description specified in section 508 (scientific research organisations).

(3) Where this section applies—
(a) none of the following provisions, namely—
(i) section 7(2),
(ii) section 11(3),
(iii) paragraph 5(1) of Schedule 16,
shall apply in the case of the payment;
(b) the payment shall be left out of account in calculating the profits of the company for the purposes of corporation tax; and
(c) no repayment shall be made of the amount treated under section 687(2) as income tax paid by the company in the case of the payment.

(4) If the company is not resident in the United Kingdom, this section applies only in relation to so much (if any) of the payment as is comprised in the company's chargeable profits for the purposes of corporation tax.**]**

Textual Amendments

F1339 S. 687A inserted (with effect in accordance with s. 27(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 27(1)**

688 Schemes for employees and directors to acquire shares.

[M1814]Where under a scheme set up to comply with section 153(4)(b) of the [M1815]Companies Act 1985 or Article 163(4)(b) of the [M1816]Companies (Northern Ireland) Order 1986 (financial assistance for company employees and salaried directors acquiring shares) trustees receive interest from such employees or directors then, if and so far as the scheme requires an equivalent amount to be paid by way of interest by the trustees to the company, the trustees shall be exempt from tax under Case III of Schedule D on that interest received by them.

Marginal Citations

M1814 Source-1970 s.64A; 1970(F) Sch.4 9(5)
M1815 1985 c. 6.
M1816 S.I. 1986/1032 (N.I. 6).

689 Recovery from trustees of discretionary trusts of higher rate tax due from beneficiaries.

(1) [M1817] The provisions of this section shall have effect in relation to the excess amount of the income tax due from any person ("the beneficiary") to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.

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(2) In this section "the excess amount" means so much of the income tax payable in respect of the beneficiary's income as exceeds what would be the amount thereof if all income tax **[**[F1340]not chargeable at the lower rate**][**[F1341]by virtue of section 1(2)(aa) were chargeable at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

(3) If the whole or part of the excess amount of the income tax charged in respect of the income of the beneficiary is not paid before the expiry of six months from the date when it became due and payable, the Board may at any time thereafter, so long as the excess amount or any part thereof remains unpaid, cause to be served on the trustees of the trust a notice that the excess amount or any part thereof remains unpaid.

(4) Where such a notice is served in accordance with the provisions of this section on the trustees of the trust, it shall be the duty of the trustees, as soon as may be, and if necessary from time to time, to pay to the Board in or towards satisfaction of the excess amount or any part thereof from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.

(5) Any payments made out of income by trustees on account of tax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.

(6) Any sum which the trustees are liable to pay by virtue of this section shall be recoverable from them as a debt due to the Crown.

(7) Where there are two or more trustees under the trust, a notice under this section shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.

Textual Amendments

F1340 Words in s. 689(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s.19(3)(7)**

F1341 Words in s. 689(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.6, **25(1)**

Marginal Citations

M1817 Source-1970 s.36; 1971 Sch.6 16; 1978 Sch.2 3

VALID FROM 29/04/1996

[[F1342]CHAPTER ID

TRUST MANAGEMENT EXPENSES

Textual Amendments

F1342 Pt. 15 Ch. 1D (ss. 689A, 689B) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 16**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

689A Disregard of expenses where beneficiary non-resident.

(1) This section applies where—

(a) there is income ("the distributed income") arising to trustees in any year of assessment which (before being distributed) is income of a person ("the beneficiary") other than the trustees;

(b) the trustees have any expenses in that year ("the management expenses") which are properly chargeable to that income or would be so chargeable but for any express provisions of the trust; and

(c) the beneficiary is not liable to income tax on an amount of the distributed income ("the untaxed income") by reason wholly or partly of—

(i) his not having been resident in the United Kingdom, or

(ii) his being deemed under any arrangements under section 788, or any arrangements having effect by virtue of that section, to have been resident in a territory outside the United Kingdom.

(2) Where this section applies, there shall be disregarded in computing the income of the beneficiary for the purposes of the Income Tax Acts such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to the distributed income.

(3) For the purpose of computing the proportion mentioned in subsection (2) above, the amounts of the distributed income and of the untaxed income shall not, in either case, include so much (if any) of the income as is equal to the amount of income tax, or of any foreign tax, chargeable on the trustees (by way of deduction or otherwise) in respect of that income.

(4) In subsection (3) above, "foreign tax" means any tax which is—

(a) of a similar character to income tax; and

(b) imposed by the laws of a territory outside the United Kingdom.

(5) For the purposes of this section, where the income tax chargeable on any person is limited in accordance with section 128 of the [M1818]Finance Act 1995 (limit on income chargeable on non-residents), the income of that person on which he is not liable to tax by reason of not having been resident in the United Kingdom shall be taken to include so much of any income of his as—

(a) is excluded income within the meaning of that section; and

(b) is not income which is treated for the purposes of subsection (1)(b) of that section as income the tax on which is deducted at source.

Marginal Citations

M1818 1995 c. 4.

689B Order in which expenses to be set against income.

(1) The expenses of any trustees in any year of assessment, so far as they are properly chargeable to income (or would be so chargeable but for any express provisions of the trust), shall be treated—

(a) as set against so much (if any) of any income as is income falling within subsection (2) or (3) below before being set against other income; and

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(b) as set against so much (if any) of any income as is income falling within subsection (2) below before being set against income falling within subsection (3) below.

(2) Income falls within this subsection if it is—

(a) so much of the income of the trustees as is income the amount or value of which is determined in accordance with section 233(1A);

(b) income which is treated as having arisen to the trustees by virtue of section 246D(4) or 249(6); or

(c) income which is treated as received by the trustees by virtue of section 421(1)(a).

(3) Income falls within this subsection if it is income to which section 1A applies but which does not fall within subsection (2) above.

(4) This section has effect—

(a) subject to sections 686(2A) and 689A, but

(b) notwithstanding anything in section 1A(5) and (6).**]**

CHAPTER V

MAINTENANCE FUNDS FOR HISTORIC BUILDINGS

690 Schedule 4 directions.

In this Chapter "a Schedule 4 direction" means a direction under paragraph 1 of Schedule 4 to the [M1819]Inheritance Tax Act 1984 (maintenance funds for historic buildings); and any reference in this Chapter to paragraph 1 or Schedule 4 is a reference to that paragraph or that Schedule, as the case may be.

Modifications etc. (not altering text)
C619 *See* Inheritance Tax Acts.

Marginal Citations
M1819 1984 c. 51.

691 Certain income not to be income of settlor etc.

(1) [M1820]This section applies to any settlement in relation to which a Schedule 4 direction has effect.

(2) [M1821]The trustees of the settlement may elect that this subsection shall have effect in relation to any year of assessment, and if they do so—

(a) any income arising in that year from the property comprised in the settlement which, apart from this subsection, would be treated by virtue of this Part as income of the settlor shall not be so treated; and

(b) no sum applied in that year out of the property for the purposes mentioned in paragraph 3(1)(a)(i) of Schedule 4 (maintenance etc. of qualifying property)

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shall be treated for any purposes of the Income Tax Acts as the income of any person—

(i) by virtue of any interest of that person in, or his occupation of, the qualifying property in question; or

(ii) by virtue of section 677.

(3) [M1822]Where income arising from the property comprised in the settlement in a year of assessment for which no election is made under subsection (2) above is treated by virtue of this Part as income of the settlor, paragraph (b) of that subsection shall have effect in relation to any sums in excess of that income which are applied in that year as mentioned in that paragraph.

(4) Any election under subsection (2) above shall be by notice to the Board in such form as the Board may require and shall be made within two years of the end of the year of assessment to which it relates.

(5) [M1823]Where—

(a) for part of a year of assessment a Schedule 4 direction has effect and circumstances obtain by virtue of which income arising from property comprised in the settlement is treated as income of a settlor under this Part; and

(b) for the remainder of that year either no such direction has effect, or no such circumstances obtain, or both,

subsections (1) to (4) above shall apply as if each of those parts were a separate year of assessment and separate elections may be made accordingly.

Marginal Citations

M1820 Source-1977 s.38(1); 1982 Sch.10 1; ITA Sch.8 8

M1821 Source-1977 s.38(2); 1980 s.88(7); 1987 Sch.15 10

M1822 Source-1977 s.38(3), (4)

M1823 Source-1977 s.38(5); 1982 Sch.10 1(3); ITA Sch.8 8

692 Reimbursement of settlor.

(1) [M1824]This section applies to income arising from settled property in respect of which a Schedule 4 direction has effect if the income—

(a) is treated by virtue of this Part as income of the settlor, and

(b) is applied in reimbursing the settlor for expenditure incurred by him for a purpose within paragraph 3(1)(a)(i) of Schedule 4,

and if that expenditure is (or would apart from the reimbursement be) deductible in computing the profits of a trade carried on by the settlor.

(2) Income to which this section applies shall not be treated as reducing the expenditure deductible in computing the profits referred to in subsection (1) above, and shall not be regarded as income of the settlor otherwise than by virtue of this Part.

Marginal Citations

M1824 Source-1982 s.61; ITA Sch.8 21

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693 Severance of settled property for certain purposes.

[M1825]Where settled property in respect of which a Schedule 4 direction has effect constitutes part only of the property comprised in a settlement, it and the other property shall be treated as comprised in separate settlements for the purposes of sections 27 and 380 to 387 and this Part.

Marginal Citations

M1825 Source-1982 s.62(1), (2); ITA Sch.8 22

694 Trustees chargeable to income tax at 30 per cent. in certain cases.

(1) [M1826]If in the case of a settlement in respect of which a Schedule 4 direction has effect—

(a) any of the property comprised in the settlement (whether capital or income) is applied otherwise than as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4; or

(b) any of that property on ceasing to be comprised in the settlement devolves otherwise than on any such body or charity as is mentioned in paragraph 3(1)(a)(ii) of that Schedule; or

(c) the direction ceases to have effect;

then, unless subsection (6) below applies, income tax shall be charged under this section in respect of the settlement.

(2) Subject to subsection (3) below, tax chargeable under this section shall be charged*at the rate of* 30*per cent.*[F1343] on the whole of the income which has arisen in the relevant period from the property comprised in the settlement and has not been applied (or accumulated and then applied) as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4.

In this subsection "the relevant period" means, if tax has become chargeable under this section in respect of the settlement on a previous occasion, the period since the last occasion and, in any other case, the period since the settlement took effect.

[[F1344](2A) The rate at which tax is charged under this section shall be equivalent to the higher rate of income tax for the year of assessment during which the charge arises, reduced by the **[**[F1345]amount of the rate applicable to trusts**]** for that year.**]**

(3) [M1827]Tax shall not be chargeable under this section in respect of income which by virtue of Chapters I to IV of this Part is treated as income of the settlor; but where income arising in any year of assessment is exempted by this subsection any sums applied in that year as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4 shall be treated as paid primarily out of that income and only as to the excess, if any, out of income not so exempted.

(4) Tax charged under this section shall be in addition to any tax chargeable apart from this section and—

(a) the persons assessable and chargeable with tax under this section shall be the trustees of the settlement; and

(b) all the provisions of the Income Tax Acts relating to assessments and to the collection and recovery of income tax shall, so far as applicable, apply to the charge, assessment, collection and recovery of tax under this section.

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(5) Tax shall also be chargeable in accordance with subsections (1) to (4) above if—

(a) any of the property comprised in a settlement to which subsection (1) above applies, on ceasing at any time to be comprised in the settlement, devolves on any such body or charity as is referred to in paragraph (b) of that subsection, and

(b) at or before that time an interest under the settlement is or has been acquired for a consideration in money or money's worth by that or another such body or charity;

but for the purposes of this subsection any acquisition from another such body or charity shall be disregarded.

(6) Tax shall not be chargeable under this section in respect of a settlement on an occasion when the whole of the property comprised in it is transferred tax-free into another settlement; but on the first occasion on which tax becomes chargeable under this section in respect of a settlement ("the current settlement") comprising property which was previously comprised in another settlement or settlements and has become comprised in the current settlement as a result of, or of a series of, tax-free transfers, the relevant period for the purposes of subsection (2) above shall, as respects that property, be treated as having begun—

(a) on the last occasion on which tax became chargeable under this section in respect of the other settlement or any of the other settlements; or

(b) if there has been no such occasion, when the other settlement or the first of the other settlements took effect.

(7) [M1828] For the purposes of subsection (6) above, property is transferred tax-free from one settlement into another if either—

(a) it ceases to be comprised in the first-mentioned settlement and becomes comprised in the other settlement in circumstances such that by virtue of paragraph 9(1) of Schedule 4 there is (or, but for paragraph 9(4), there would be) no charge to capital transfer tax or inheritance tax in respect of the property; or

(b) both immediately before and immediately after the transfer it is property in respect of which a Schedule 4 direction has effect.

Textual Amendments

F1343 *Repealed by* 1988(F) s.24(3) *for* 1988-89 *and subsequent years.*

F1344 1988(F) s.24(3).

F1345 Words in s. 694(2A) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.10, **25(1)**

Marginal Citations

M1826 Source-1980 s.52(1), (2); 1982 Sch.10 2(2) (3); ITA Sch.8 17

M1827 Source-1980 s.52(3)-(6); ITA Sch.8 17

M1828 Source-1980 s.52(7); 1982 Sch.10 2(4); ITA Sch.8 17

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PART XVI

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

Modifications etc. (not altering text)

C620 *See*—1970(M) s.31(3)—*appeals on application of* Part XVI*to go to Special Commissioners.*1974 s.43(1)—*development gains accruing to personal representatives to be charged at basic plus additional rate.*1989 s.111—*residence of personal representations.*

695 Limited interests in residue.

M1829(1) The following provisions of this section shall have effect in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of his estate ("the administration period") or during a part of that period, has a limited interest in the residue of the estate or in a part thereof.

(2) When any sum has been paid during the administration period in respect of that limited interest, the amount of that sum shall, subject to subsection (3) below, be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which it was subsisting.

(3) On the completion of the administration of the estate—

(a) the aggregate amount of all sums paid before, or payable on, the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part of that period during which he had that interest, as the case may be, and to have been paid to him as it accrued due; and

(b) the amount deemed to have been paid to that person by virtue of paragraph (a) above in any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year; and

(c) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (2) above, such adjustments shall be made as are provided in section 700.

(4) Any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall—

(a) in the case of a United Kingdom estate, be deemed to be income of such an amount as would after deduction of income tax for that year be equal to the amount deemed to have been so paid, and to be income which has borne income tax at the **[**[F1346]applicable rate**]**; and

(b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to income tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.

(5) Where—

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(a) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate ("the deemed income"), and

(b) any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise ("the aggregate income"),

the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the deemed income which has borne United Kingdom income tax, less the tax so borne, bears to the amount of the aggregate income, less the tax so borne.

(6) Where relief has been given under subsection (5) above, such part of the amount in respect of which he has been charged to income tax as corresponds to the proportion mentioned in that subsection shall, for the purpose of computing his total income, be deemed to represent income of such an amount as would after deduction of income tax be equal to that part of the amount charged.

Textual Amendments

F1346 Words in s. 695(4)(a) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(1), **25(1)**

Modifications etc. (not altering text)

C621 *See* 1974 s.44(4) and Sch.7 para.9(1)(2)*—development gains to be excluded from aggregate income and United Kingdom tax thereon to be left out of account.*

Marginal Citations

M1829 Source-1970 s.426; 1971 Sch.6 52

696 Absolute interests in residue.

M1830 (1) The following provisions of this section shall have effect in relation to a person who, during the administration period or during a part of that period, has an absolute interest in the residue of the estate of a deceased person or in a part thereof.

(2) There shall be ascertained in accordance with section 697 the amount of the residuary income of the estate for each whole year of assessment, and for each broken part of a year of assessment, during which—

(a) the administration period was current, and

(b) that person had that interest;

and the amount so ascertained in respect of any year or part of a year or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Part referred to as the "residuary income" of that person for that year of assessment.

(3) When any sum or sums has or have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to subsection (5) below, be deemed for all tax purposes to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, he would have been treated for those purposes as having received income if he had had a right to receive in each year of assessment—

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(a) in the case of a United Kingdom estate, his residuary income for that year less income tax at the **[**[F1347]applicable rate**]** for that year; and

(b) in the case of a foreign estate, his residuary income for that year;

and that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

(4) In the case of a United Kingdom estate, any amount which is deemed to have been paid to that person as income for any year by virtue of subsection (3) above shall be deemed to be income of such an amount as would, after deduction of income tax for that year, be equal to the amount deemed to have been so paid, and to be income that has borne income tax at the **[**[F1347]applicable rate**]**.

(5) On the completion of the administration of the estate—

(a) the amount of the residuary income of that person for any year of assessment shall be deemed for all tax purposes to have been paid to him as income for that year, and in the case of a United Kingdom estate shall be deemed to have borne income tax at the **[**applicable rate**]**; and

(b) where the amount which is deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to him as income for that year by virtue of subsection (3) above, such adjustments shall be made as are provided in section 700.

(6) In the case of a foreign estate, any amount which is deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount and shall be chargeable to income tax under Case IV of Schedule D as if it were income arising from securities in a place out of the United Kingdom.

(7) Where—

(a) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to him as income in respect of an interest in a foreign estate ("the deemed income"), and

(b) any part of the aggregate income of that estate for that year has borne United Kingdom income tax by deduction or otherwise ("the aggregate income"),

the tax so charged on him shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the deemed income which has borne United Kingdom income tax bears to the amount of the aggregate income.

(8) For the purposes of any charge to corporation tax under this section, the residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

Textual Amendments

F1347 Words in s. 696(3)-(5) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(1), **25(1)**

Marginal Citations

M1836 Source-1970 s.427; 1971 Sch.6 53

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697 Supplementary provisions as to absolute interests in residue.

M1831 (1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—

(a) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate; and

(b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.

(2) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, his residuary income for each year shall be reduced for the purpose of section 696 by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of his residuary income.

(3) In subsection (2) above "benefits received" in respect of an absolute interest means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest, that is to say—

(a) as regards a sum paid before the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of income tax for the year of assessment in which that sum was paid, be equal to that sum, or in the case of a foreign estate the amount of that sum; and

(b) as regards a sum payable on the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of income tax for the year of assessment in which the administration is completed, be equal to that sum, or in the case of a foreign estate the amount of that sum.

(4) In the application of subsection (2) above to a residue or a part of a residue in which a person other than the person having an absolute interest at the completion of the administration had an absolute interest at any time during the administration period, the aggregates mentioned in that subsection shall be computed in relation to those interests taken together, and the residuary income of that other person also shall be subject to reduction under that subsection.

Marginal Citations

M1831 Source-1970 s.428; 1971 Sch.6 54

698 Special provisions as to certain interests in residue.

M1832 (1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them

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for their own benefit, they would have an absolute or limited interest in the residue of that estate or in a part of that residue, they shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Part shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.

(2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part of such residue, sums paid during that period in respect of the residue or of that part, as the case may be, shall be treated for the purposes of this Part as having been paid in respect of the interest of the person who first had an absolute interest in that residue or that part up to the amount of—

(a) in the case of a United Kingdom estate, the aggregate for all years of that person's residuary income less income tax at the **[**[F1348]applicable rate**]**; or

(b) in the case of a foreign estate, the aggregate for all years of that person's residuary income;

and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest in that residue or part, and so on.

(3) Where, upon the exercise of a discretion, any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part of the administration period) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person—

(a) the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for all tax purposes to have been paid to that person as income for the year of assessment in which it was paid; and

(b) section 695(4) to (6) shall have effect in relation to an amount which is deemed to have been paid as income by virtue of paragraph (a) above.

Textual Amendments

F1348 Words in s. 698(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(1), **25(1)**

Marginal Citations

M1832 Source-1970 s.429; 1971 Sch.6 55

[[F1349]**698A Taxation at the lower rate of the income of beneficiaries.**

(1) Subject to subsection (2) below, in so far as the income of any person is treated under this Part as having borne income tax at the lower rate, section 207A shall apply to that income as it applies to income chargeable under Schedule F.

(2) Subsection (1) above shall not apply to income paid indirectly through a trustee and treated as having borne income tax at the lower rate by virtue of section 698(3); but (subject to section 686(1)) section 207A shall apply as if the payment made to the trustee were income of the trustee chargeable under Schedule F.**]**

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Textual Amendments

F1349 S. 698A inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(2), **25(1)**

699 Relief from higher rate tax for inheritance tax on accrued income.

M1833 (1) Where any income, having accrued before the death of any person, is taken into account both—

(a) in determining the value of his estate for the purposes of any inheritance tax chargeable on his death; and

(b) in ascertaining for the purposes of this Part the residuary income of his estate for any year of assessment;

then, in ascertaining the excess liability of any person having an absolute interest in the residue of that or any other estate or part thereof, that residuary income shall be treated as reduced by an amount calculated in accordance with the following provisions of this section.

(2) In subsection (1) above "excess liability" means the excess of liability to income tax over what it would be if all income tax **[**[F1350]not chargeable at the lower rate**][**[F1351]by virtue of section 1(2)(aa) were chargeable at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]**to the exclusion of any higher rate.

(3) The amount of the reduction shall be an amount which, after deduction of income tax for the year of assessment in question, would be equal to the amount of inheritance tax attributable to so much of the income taken into account as mentioned in subsection (1) above as exceeds any liabilities so taken into account.

(4) The amount of any income accruing before the death of any person and taken into account in estimating the value of an estate shall (whether or not the income was valued separately or its amount known at the date of the death) be taken to be the actual amount so accruing less income tax at the basic rate for the year of assessment in which the death occurred.

(5) The amounts agreed between the persons liable for inheritance tax and the Board, or determined in the proceedings between them, as being respectively the value of an estate and the amount of any inheritance tax payable shall be conclusive for the purposes of this section; and evidence of those amounts and of any facts relevant to their computation may be given by the production of a document purporting to be a certificate from the Board.

(6) In this section—

(a) references to liabilities taken into account in ascertaining the amount of the residuary income of an estate include references to liabilities allowed or allowable in computing its aggregate income; and

(b) references to inheritance tax include references to capital transfer tax.

Textual Amendments

F1350 Words in s. 699(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1351 Words in s. 699(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.6, **25(1)**

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Marginal Citations

M1833 Source-1970 s.430; 1971 Sch.6 56; 1975 Sch.12 16; 1978 Sch.2 11; 1986 s.100

VALID FROM 01/05/1995

[F1352 699A Untaxed sums comprised in the income of the estate.

(1) In this section "a relevant amount" means so much of any amount which a person is deemed by virtue of this Part to receive or to have a right to receive as is or would be paid out of sums which—

(a) are included in the aggregate income of the estate of the deceased by virtue of any of sections 246D(3), 249(5), 421(2) and 547(1)(c); and

(b) are sums in respect of which the personal representatives are not directly assessable to United Kingdom income tax.

(2) In determining for the purposes of this Part whether any amount is a relevant amount—

(a) such apportionments of any sums to which subsection (1)(a) and (b) above applies shall be made between different persons with interests in the residue of the estate as are just and reasonable in relation to their different interests; and

(b) subject to paragraph (a) above, the assumption in section 701(3A)(b) shall apply, but (subject to that) it shall be assumed that payments are to be made out of other sums comprised in the aggregate income of the estate before they are made out of any sums to which subsection (1)(a) and (b) above applies.

(3) In the case of a foreign estate, and notwithstanding anything in section 695(4)(b) or 696(6), a relevant amount shall be deemed—

(a) to be income of such amount as would, after deduction of income tax for the year in which it is deemed to be paid, be equal to the relevant amount; and

(b) to be income that has borne tax at the applicable rate.

(4) Sums to which subsection (1)(a) and (b) above applies shall be assumed, for the purpose of determining the applicable rate in relation to any relevant amount, to bear tax—

(a) in the case of sums included by virtue of section 246D(3), 249(5) or 421(2), at the lower rate, and

(b) in the case of sums included by virtue of section 547(1)(c), at the basic rate.

(5) No repayment shall be made of any income tax which by virtue of this Part is treated as having been borne by the income that is represented by a relevant amount.

(6) For the purposes of sections 348 and 349(1) the income represented by a relevant amount shall be treated as not brought into charge to income tax.**]**

Textual Amendments

F1352 S. 699A inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 76(4)**

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700 Adjustments and information.

M1834(1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part to have been paid to any person as income for any year of assessment and—

(a) that amount is greater than the amount that has previously been deemed to have been paid to him as income for that year by virtue of this Part; or

(b) no amount has previously been so deemed to have been paid to him as income for that year;

an assessment may be made upon him for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which he may be entitled shall be allowed accordingly.

(2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part to have been paid to any person as income for any year of assessment, and that amount is less than the amount that has previously been so deemed to have been paid to him, then—

(a) if an assessment has already been made upon him for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Part which take effect on the completion of the administration, and any tax overpaid shall be repaid; and

(b) if—

(i) any relief has been allowed to him by reference to the amount which has been previously deemed by virtue of this Part to have been paid to him as income for that year, and

(ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to him as income for that year,

the relief so given in excess may, if not otherwise made good, be charged under Case VI of Schedule D and recovered from that person accordingly.

(3) Notwithstanding anything in the Tax Acts, the time within which an assessment may be made for the purposes of this Part, or an assessment may be adjusted for those purposes, or a claim for relief may be made by virtue of this Part, shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.

(4) An inspector may by notice require any person being or having been a personal representative of a deceased person, or having or having had an absolute or limited interest in the residue of the estate of a deceased person or in a part of such residue, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Part.

Marginal Citations

M1834 Source-1970 s.431; 1971 Sch.6 57

701 Interpretation.

(1) M1835 The following provisions of this section shall have effect for the purpose of the interpretation of sections 695 to 700.

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(2) A person shall be deemed to have an absolute interest in the residue of the estate of a deceased person, or in a part of such residue, if and so long as the capital of the residue or of that part would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person.

(3) A person shall be deemed to have a limited interest in the residue of the estate of a deceased person, or in a part of such residue, during any period, being a period during which he has not an absolute interest in the residue or in that part, where the income of the residue or of that part for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to him, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person.

[[F1353](3A) "Applicable rate", in relation to any amount which a person is deemed by virtue of this Part to receive or to have a right to receive, means the basic rate or the lower rate according as the income of the residue of the estate out of which that amount is or would be paid bears tax at the basic rate or the lower rate; and in determining for the purposes of this Part whether or how much of any payment is or would be deemed to be made out of income that bears tax at one rate rather than another—

(a) such apportionments of the amounts bearing tax at different rates shall be made between different persons with interests in the residue of the estate as are just and reasonable in relation to their different interests; and

(b) subject to paragraph (a) above, it shall be assumed that payments are to be made out of income bearing tax at the basic rate before they are made out of income bearing tax at the lower rate.**]**

(4) "Personal representatives" means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England and Wales by section 55 of the [M1836]Administration of Estates Act 1925, and persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under the law of England and Wales of personal representatives as so defined; and references to "personal representatives as such" shall be construed as references to personal representatives in their capacity as having such functions.

(5) "Specific disposition" means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section 46 of the Administration of Estates Act 1925 and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England and Wales.

Real estate included (either by a specific or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

(6) Subject to subsection (7) below, "charges on residue" means, in relation to the estate of a deceased person, the following liabilities, properly payable thereout and interest payable in respect of those liabilities, that is to say—

(a) funeral, testamentary and administration expenses and debts, and

(b) general legacies, demonstrative legacies, annuities and any sum payable out of residue to which a person is entitled under the law of intestacy of any part of the United Kingdom or any other country, and

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(c) any other liabilities of his personal representatives as such.

(7) Where, as between persons interested under a specific disposition or in a general or demonstrative legacy or in an annuity and persons interested in the residue of the estate, any such liabilities as are mentioned in subsection (6) above fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the legacy or annuity, only such part (if any) of those liabilities as falls ultimately upon the residue shall be treated as charges on residue.

(8) References to the aggregate income of the estate of a deceased person for any year of assessment shall be construed as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(a) any such income which is chargeable to United Kingdom income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year; and

(b) any such income which would have been so chargeable if it had arisen in the United Kingdom to a person resident and ordinarily resident there, such income being computed at the full amount thereof actually arising during that year, less such deductions as would have been allowable if it had been charged to United Kingdom income tax;

but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased.

This subsection has effect subject to sections 249(5), 421(2), 426(3) [F1354] and 547(1)(c).

(9) "United Kingdom estate" means, as regards any year of assessment, an estate the income of which comprises only income which either—

(a) has borne United Kingdom income tax by deduction, or

(b) in respect of which the personal representatives are directly assessable to United Kingdom income tax,

not being an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from United Kingdom income tax by reference to the fact that they are not resident, or not ordinarily resident, in the United Kingdom.

(10) "Foreign estate" means, as regards any year of assessment, an estate which is not a United Kingdom estate.

(11) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part shall have effect in relation to each of those parts with the substitution—

(a) for references to the estate of references to that part of the estate; and

(b) for references to the personal representatives of the deceased as such of references to his personal representatives in their capacity as having the functions referred to in subsection (4) above in relation to that part of the estate.

(12) In this Part—

(a) references to sums paid include references to assets that are transferred or that are appropriated by a personal representative to himself, and to debts that are set off or released;

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(b) references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself is subsisting on the completion of the administration and to debts as to which an obligation to release or set off, or a right of a personal representative so to do in his own favour, is then subsisting; and

(c) references to amount shall be construed, in relation to such assets as are referred to in paragraph (a) or (b) above, as references to their value at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts as are so referred to, as references to the amount thereof.

(13) [M1837]In this Part references to the administration period shall be construed in accordance with section 695(1).

(14) [M1838]In relation to so much of any residuary income for any year of assessment which has borne income tax at a rate equal to the sum of the basic rate and the additional rate for that year, section 696(3) shall have effect with the substitution for paragraph (a) of the following paragraph—

"(a) in the case of a United Kingdom estate—

(i) in the first instance, as regards so much of his residuary income for that year as has borne income tax at the basic rate for that year, that much of that income less income tax at that rate; and

(ii) subject to sub-paragraph (i), as regards so much of his residuary income for that year as has borne income tax at a rate equal to the sum of the basic rate and the additional rate for that year, that much of that income less income tax at the sum of those rates; and";

and the references in sections 696(4) and (5)(a) and 698(2)(a) to income tax at the basic rate shall have effect as references to income tax at a rate equal to that sum.

Textual Amendments

F1353 S. 701(3A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(3), **25(1)**

F1354 *Words*
"426(3)"
repealed by 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Modifications etc. (not altering text)

C622 *Definition applied for purposes of* 1979(C)—*see* 1979(C) s.155(1).

C623 *See* 1974 s.44(4)*and* Sch.7 para.9(5)—*means the additional rate mentioned in* s.1(2)*ante, or, if more than one, the higher or highest of them.*

Marginal Citations

M1835 Source-1970 s.432; 1972 Sch.24 25; 1975 (No.2) s.34(5)

M1836 1925 c. 23.

M1837 Source-1970 s.426(1)

M1838 Source-1974 Sch.7 9(3), (4), (5)

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702 Application to Scotland.

[M1839]For the purpose of the application of this Part to Scotland—

(a) any reference to the completion of the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including, without prejudice to the generality of the foregoing, debts, legacies immediately payable, prior rights of surviving spouse on intestacy and legal rights of surviving spouse or children), the free balance held in trust for behoof of the residuary legatees has been ascertained;

(b) for paragraph (b) of section 697(1) the following paragraph shall be substituted—

"(b) the amount of any of the aggregate income of the estate for that year to which a person has become entitled by virtue of a specific disposition";

(c) "real estate" means heritable estate, and

(d) "charge on residue" shall include, in addition to the liabilities specified in section 701(6), any sums required to meet claims in respect of prior rights by surviving spouse or in respect of legal rights by surviving spouse or children.

Marginal Citations

M1839 Source-1970 s.433; 1987 Sch.15 2(15)

PART XVII

TAX AVOIDANCE

CHAPTER I

CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

Modifications etc. (not altering text)

C624 Pt. 17 Ch. 1 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 35(5)**

703 Cancellation of tax advantage.

(1) [M1840]Where—

(a) in any such circumstances as are mentioned in section 704, and

(b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax

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advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions.

(2) For the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

(3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice served on him as being requisite for counteracting the tax advantage so obtained or obtainable.

(4) [M1841]Where, by virtue of an assessment under subsection (3) above to counteract a tax advantage obtained in circumstances falling within paragraph D or paragraph E of section 704 and consisting of the avoidance of a charge to income tax, income tax has been paid by any person on an amount specified in the assessment and it appears to the Board that, as a result of that payment, it is just and reasonable in the circumstances that an amount should be treated as having been paid by way of advance corporation tax, the Board shall serve a notice under subsection (5) below on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained.

(5) A notice under this subsection—

(a) shall provide that, for the purposes of section 239 (but not for the purposes of entitling any person to a tax credit under section 231), such company or each of such companies as may be specified in the notice is to be treated as having paid, on such date as may be so specified, such amount of advance corporation tax as may be so specified in relation to that company;

(b) shall specify the amount which is equal to income tax at the **[**[F1355]lower rate**]** on the amount on which income tax has been paid as mentioned in subsection (4) above; and

(c) may contain such supplementary or incidental directions as appear to the Board to be appropriate;

but the total amount of advance corporation tax which, by virtue of paragraph (a) above, a notice under this subsection may treat as having been paid shall not exceed the amount specified in accordance with paragraph (b) above.

(6) If, in a case falling within subsection (4) above, it does not appear to the Board that any amount should be treated as having been paid by way of advance corporation tax, the Board shall serve on every company which appears to them to be concerned in the transaction or transactions in consequence of which the tax advantage was obtained in a notice informing the company of the Board's decision that no amount is to be treated as having been paid by way of advance corporation tax.

(7) [M1842]*In the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall, subject to subsection* (8)*below, be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities*

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in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her[F1356].

(8) *No adjustment made under subsection* (3)*above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of subsection* (7)*above be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them*[F1357].

(9) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that person, being of opinion that this section does not so apply to him, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to him in respect of the transaction or transactions.

(10) If, when a statutory declaration has been sent to the Board under subsection (9) above, they see reason to take further action in the matter—

(a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;

(b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions;

but any such determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.

(11) Any notice or notification under subsection (3) or subsection (9) above, or under section 708, concerning the application of this section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.

(12) This section applies whether the tax advantage in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates; and no other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section.

Textual Amendments

F1355 Words in s. 703(5)(b) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.12, **25(1)**

F1356 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F1357 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

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Marginal Citations

M1840 Source—1970 s.460(1)-(3)
M1841 Source—1970 s.460(4), (4A), (4B), 1973 Sch.11 1
M1842 Source—1970 s.460(5)-(9)

704 The prescribed circumstances.

[M1843]The circumstances mentioned in section 703(1) are—

(A) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question receives an abnormal amount by way of dividend, and the amount so received is taken into account for any of the following purposes—

(a) any exemption from tax, or
(b) the setting-off of losses against profits or income, or
(c) the giving of group relief, or
(d) the application of franked investment income in calculating a company's liability to pay advance corporation tax, or
(e) the application of a surplus of franked investment income under section 242 or 243, or
(f) the computation of profits or gains out of which are made payments falling within section 348 or 349(1), or
(g) the deduction from or set-off against income of interest under section 353.

OR

(B) (1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—

(a) in respect of securities held or sold by him, or
(b) in respect of securities formerly held by him (whether sold by him or not),

to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.

(2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 703 shall apply in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

(C) (1) That the person in question receives, in consequence of a transaction whereby any other person—

(a) subsequently receives, or has received, an abnormal amount by way of dividend; or

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(b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above, a consideration which either—

(i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or

(ii) is received in respect of future receipts of the company, or

(iii) is, or represents the value of, trading stock of the company,

and the person in question so receives the consideration that he does not pay or bear tax on it as income.

(2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

(D) (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.

(2) The companies to which this paragraph applies are—

(a) any company under the control of not more than five persons, and

(b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), are authorised to be dealt in on the Stock Exchange, and are so dealt in (regularly or from time to time),

so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.

(3) Subsections (2) to (6) of section 416 shall apply for the purposes of this paragraph.

OR

(E) (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 254(1)) issued by such a company.

(2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and, where section 703 applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to tax under subsection (3) of that section shall be an assessment to tax for the year in which the share capital is repaid.

(3) In this paragraph—

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"assets available for distribution" means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company;

"non-taxable", in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter);

"share" includes stock and any other interest of a member in a company;

and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

Marginal Citations

M1843 Source—1970 s.461; 1973 s.54, Sch.11 2(a), (b)

705 Appeals against Board's notices under section 703.

(1) [M1844]Any person to whom notice has been given under section 703(3) may within 30 days by notice to the Board appeal to the Special Commissioners on the grounds that section 703 does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.

(2) If he or the Board are dissatisfied with the determination of the Special Commissioners he or they may, on giving notice to the clerk to the Special Commissioners within 30 days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.

(3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive.

(4) [F1358] . . . . . .

(5) On an appeal under subsections (1) to (3) above the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 703 or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of that subsection pending the determination of the proceedings.

(6) [M1845]A company on which a notice has been served under section 703(5) or (6) may within 30 days by notice to the Board appeal to the Special Commissioners on the ground that it is just and reasonable in the circumstances that the company should be treated, for the purposes specified in section 703(6), as having paid an amount of advance corporation tax or, as the case may require, a greater amount of advance corporation tax than is specified in the notice.

(7) Notwithstanding that a company on which a notice has been served as mentioned in subsection (6) above has made no appeal under that subsection, the company—

(a) shall be entitled, to the same extent as the appellant, to receive notice of, and to appear and be heard in, any proceedings arising from the notice referred

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to in subsection (6) above, whether the proceedings are before the Special Commissioners, by way of further appeal or otherwise;

(b) if it does appear, shall be treated as a party to the proceedings and as having the same rights in respect of those proceedings and any decision made therein as the appellant; and

(c) whether or not it so appears, shall be bound by any order made in any such proceedings;

and no agreement under section 54 of the Management Act (settling of appeals by agreement) shall have effect except with the consent of each company which, by virtue of this subsection, would have been entitled to appear and be heard on the appeal if it had been proceeded with.

(8) On an appeal under subsection (6) above, the Special Commissioners—

(a) may cancel or vary any notice served under section 703(5), or

(b) if no such notice was served, may by order make any provision which could have been made by the Board in such a notice.

Textual Amendments

F1358 S. 705(4) repealed (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), Sch. 1 para. 23, **Sch. 2 Pt. 1**

Marginal Citations

M1844 Source—1970 s.462

M1845 Source—1970 s.462A; 1973 Sch.11 3

[F1359 705A Statement of case by tribunal for opinion of High Court.

(1) Immediately after the determination by the tribunal of an appeal re-heard by them under section 705 of this Act, the appellant or the Board, if dissatisfied with the determination as being erroneous in point of law, may declare his or their dissatisfaction to the tribunal.

(2) The appellant or the Board, as the case may be, having declared his or their dissatisfaction, may, within thirty days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court.

(3) The party requiring the case shall pay to the tribunal a fee of £25 for and in respect of the same, before he is entitled to have the case stated.

(4) The case shall set forth the facts and the determination of the tribunal, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within thirty days after receiving the same.

(5) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(6) The High Court shall hear and determine any question of law arising on the case, and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the tribunal with the Court's opinion on it, or make such other order in relation to the matter as the Court thinks fit.

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(7) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) Subject to subsection (9) below and to Part II of the Administration of Justice Act 1969 (appeal from High Court to House of Lords), an appeal shall, in England and Wales, lie from the decision of the High Court to the Court of Appeal and thence to the House of Lords.

(9) No appeal shall lie to the House of Lords from the Court of Appeal unless leave has been given under and in accordance with section 1 of the Administration of Justice (Appeals) Act 1934.

(10) Subject to subsection (11) below, where the determination of the tribunal is in respect of an assessment made in accordance with a notice under subsection (3) of section 703, then notwithstanding that a case has been required to be stated or is pending before the High Court in respect of the determination, tax shall be paid in accordance with the determination.

(11) If the amount charged by the assessment is altered by the order or judgment of the High Court, then—
   (a) if too much tax has been paid the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or
   (b) if too little tax has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning with the date on which the Board issue to the other party a notice of the total amount payable in accordance with the order or judgment of that Court.

(12) All matters within the jurisdiction of the High Court under this section shall be assigned in Scotland to the Court of Session sitting as the Court of Exchequer (references in this section to the High Court being construed accordingly); and an appeal shall lie from the decision under this section of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.**]**

Textual Amendments

F1359 Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**

[F1359 705B Proceedings in Northern Ireland.

(1) A case which is stated by the tribunal under section 705A in proceedings in Northern Ireland shall be a case for the opinion of the Court of Appeal in Northern Ireland, and the Taxes Acts (as defined in section 118(1) of the Management Act F1360 shall have effect as if that section applied in relation to such proceedings—
   (a) with the substitution for references to the High Court of references to the Court of Appeal in Northern Ireland;
   (b) with the omission of subsections (4), (5), (8) and (9) of that section.

(2) The procedure relating to the transmission of the case to, and the hearing and determination of the case by, the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county court in

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exercise of its general jurisdiction, and an appeal shall lie from the Court of Appeal to the House of Lords in accordance with section 42 of the Judicature (Northern Ireland) Act 1978.

(3) Where in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.

(4) For the purposes of this section "proceedings in Northern Ireland" means proceedings as respects which the place given by the rules in Schedule 3 to the Management Act is in Northern Ireland.**]**

Textual Amendments

F1359 Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**

F1360 The definition of "the Taxes Act" in section 118(1) was amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c.24), **paragraph 8** of Schedule 7 to the Capital Gains Tax Act 1979 (c.14), **Schedule 31** to the Income and Corporation Taxes Act 1988, and paragraph 2(11)(b) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c.12).

706 The tribunal.

M1846 For the purposes of this Chapter the tribunal shall consist of—

(a) a chairman, appointed by the Lord Chancellor, and

(b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

Modifications etc. (not altering text)

C625 *See*—1970(M) s.6(1)—*declaration to be made by member of tribunal on appointment.*1989 s.182—*disclosure of information* (*in* Part II Vol.5).

Marginal Citations

M1846 Source—1970 s.463; 1982 Sch.21 3(1)

707 Procedure for clearance in advance.

M1847 (1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

(a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within 30 days of the receipt thereof notify to that person what further information they require for those purposes, and unless that further information is furnished to the Board within 30 days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section;

(b) subject to paragraph (a) above, the Board shall within 30 days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify that person whether or not they are satisfied that

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the transaction or transactions as described in the particulars were or will be such that no notice under section 703(3) ought to be given in respect of it or them;

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied, section 703 shall not apply to him in respect of that transaction or those transactions.

(2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.

(3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 703 applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

Marginal Citations
M1847 Source—1970 s.464

708 Power to obtain information.

[M1848]Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 703 applies, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under section 703(3) should be given in respect of him.

Marginal Citations
M1848 Source—1970 s.465

709 Meaning of "tax advantage" and other expressions.

(1) [M1849]In this Chapter "tax advantage" means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of a charge to tax or an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.

(2) [M1850]In this Chapter—

"company" includes any body corporate,

"securities"—

(a) includes shares and stock, and

(b) in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest;

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"trading stock" has the same meaning as in section 100(1);

"transaction in securities" includes transactions, of whatever description, relating to securities, and in particular—

(i) the purchase, sale or exchange of securities;

(ii) the issuing or securing the issue of, or applying or subscribing for, new securities;

(iii) the altering, or securing the alteration of, the rights attached to securities;

and references to dividends include references to other qualifying distributions and to interest.

(3) In section 704—

(a) references to profits include references to income, reserves or other assets;

(b) references to distribution include references to transfer or realisation (including application in discharge of liabilities); and

(c) references to the receipt of consideration include references to the receipt of any money or money's worth.

(4) For the purposes of section 704 an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—

(a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities; or

(b) in any case, that it substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities, that is to say, the securities in respect of which the dividend was received and, if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.

(5) For the purposes of subsection (4)(a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

(6) For the purposes of subsection (4)(b) above—

(a) if the consideration provided by the recipient for any of the relevant securities was in excess of their market value at the time he acquired them, or if no consideration was provided by him for any of the relevant securities, the recipient shall be taken to have provided for those securities consideration equal to their market value at the time he acquired them; and

(b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount that the recipient first acquired any of the relevant securities

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and to any dividends and other distributions made in respect of them during that time.

Modifications etc. (not altering text)
C626 *Definition applied for purposes of* 1990 Sch.10*—convertible securities.*

Marginal Citations
M1849 Source—1970 s.466(1); 1973 Sch.11 4
M1850 Source—1970 s.467; 1973 Sch.11 5

CHAPTER II

TRANSFERS OF SECURITIES

Transfers with or without accrued interest: introductory

710 Meaning of "securities", "transfer" etc. for purposes of sections 711 to 728.

(1) [M1851]This section has effect for the interpretation of sections 711 to 728.

(2) "Securities" does not **[**[F1361], except as provided by subsection (2A) below,**]** include shares in a company but, subject to subsection (3) below, includes any loan stock or similar security—

(a) whether of the government of the United Kingdom, any other government, any public or local authority in the United Kingdom or elsewhere, or any company or other body; and

(b) whether or not secured, whether or not carrying a right to interest of a fixed amount or at a fixed rate per cent. of the nominal value of the securities, and whether or not in bearer form.

[[F1362](2A) "Securities" includes shares in a building society which are qualifying shares for the purposes of section **[**[F1363]117(4) of the 1992 Act**]]** (qualifying corporate bonds).

(3) "Securities" does not include—

(a) securities on which the whole of the return is a distribution by virtue of section 209(2)(e)(iv) and (v);

(b) national savings certificates (including Ulster Savings Certificates);

(c) war savings certificates;

(d) certificates of deposit (within the meaning of section 56(5));

[[F1364](da) any security which fulfils the following conditions, namely, it is a right to receive an amount (with or without interest) in pursuance of a deposit of money, it subsists under an arrangement falling within section 56A, and no certificate of deposit (as defined in section 56(5)) has been issued in respect of it at the time of the transfer concerned;**]**

(e) any security which fulfils the following conditions, namely, it is redeemable, the amount payable on its redemption exceeds its issue price, and no return other than the amount of that excess is payable on it.

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(4) Securities are to be taken to be of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

(5) [M1852] "Transfer", in relation to securities, means transfer by way of sale, exchange, gift or otherwise.

(6) [M1853]Where an agreement for the transfer of securities is made, they are transferred, and the person to whom they are agreed to be transferred becomes entitled to them, when the agreement is made and not on a later transfer made pursuant to the agreement; and "entitled", "transfer" and cognate expressions shall be construed accordingly.

(7) [M1854]A person holds securities—

(a) at a particular time if he is entitled to them at the time;

(b) on a day if he is entitled to them throughout the day or he becomes and does not cease to be entitled to them on the day.

(8) [M1855]A person acquires securities when he becomes entitled to them.

(9) [M1856]Where—

(a) one individual holds securities at a particular time, and

(b) any interest on them would, if it became payable at that time, be treated for the purposes of the Tax Acts as part of another individual's income,

then, for the purposes of section 715(1)(b) and section 715(2)(b) so far as relating to section 715(1)(b), each of them shall be treated as holding at that time the securities which the other holds as well as those which he actually holds.

(10) [M1857]Where in Scotland two or more persons carry on a trade or business in partnership, any partnership dealings shall be treated as dealings by the partners and not by the firm as such and the partners as being entitled to securities held by the firm.

(11) [M1858]The nominal value of securities is—

(a) where the interest on them is expressed to be payable by reference to a given value, that value; and

(b) in any other case, the price of the securities when they were issued.

(12) [M1859]Where apart from this subsection the nominal value of securities would be a value ("the foreign value") expressed in a currency other than sterling, then, for the purposes of section 715, their nominal value on a particular day is the sterling equivalent on that day of the foreign value.

For the purposes of this subsection the sterling equivalent of a value on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

(13) [M1860]Where there is a conversion of securities then,—

(a) the person who was entitled to them immediately before the conversion shall be treated as transferring them on the day of the conversion (if there is no actual transfer); and

(b) the interest period in which the conversion is made shall be treated as ending on the day on which it would have ended had the conversion not been made.

In this subsection "conversion" means a conversion within the meaning of section **[**[F1363]132 of the 1992**]** Act.

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[F1365](14) . . . . . .

Textual Amendments

F1361 Words in s. 710(2) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(2)(4)**

F1362 S. 710(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(3)(4)**

F1363 Words in s. 710(2A)(13) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(36)(a)(b)** (with ss. 60, 101(1), 171, 201(3)).

F1364 S. 710(3)(da) inserted (16.7.1992 with effect as mentioned in Sch. 8 para. 6 of the amending Act) by Finance (No.2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 5, **6**.

F1365 S. 710(14) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

Modifications etc. (not altering text)

C627 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1851 Source—1985 Sch.23 1
M1852 Source—1985 Sch.23 2(2)
M1853 Source—1985 Sch.23 2(3), (4)
M1854 Source—1985 Sch.23 2(5), (6)
M1855 Source—1985 Sch.23 2(7)
M1856 Source—1985 Sch.23 2(8), (9)
M1857 Source—1985 Sch.23 2(10)
M1858 Source—1985 Sch.23 5
M1859 Source—1985 Sch.23 10(6), (7)
M1860 Source—1985 Sch.23 14(1), (3), (4)

711 Meaning of "interest", "transfers with or without accrued interest" etc.

(1) [M1861]This section has effect for the interpretation of sections 710 and 712 to 728.

(2) An interest payment day, in relation to securities, is a day on which interest on them is payable; and, in a case where a particular payment of interest may be made on one of a number of days, the interest is for the purposes of this subsection payable on the first of those days.

(3) Subject to subsection (4) below, the following are interest periods in relation to securities—
  (a) the period beginning with the day following that on which they are issued and ending with the first interest payment day to fall;
  (b) the period beginning with the day following one interest payment day and ending with the next to fall.

(4) A period which would (apart from this subsection) be an interest period exceeding 12 months ("a long period") is not an interest period, but the following shall apply to it—

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(a) the period of 12 months beginning with the day on which it begins is an interest period;

(b) each successive period (if any) of 12 months falling within it is an interest period;

(c) any period of it which remains after applying paragraphs (a) and (b) above is an interest period.

(5) Securities are transferred with accrued interest if they are transferred with the right to receive interest payable on—

(a) the settlement day, if that is an interest payment day; or

(b) the next (or first) interest payment day to fall after the settlement day, in any other case;

and they are transferred without accrued interest if they are transferred without that right.

(6) [M1862]Where section 710(13), 715(3), 720(4), 721(1), **[**[F1366],722(1) or (2) or 724(1A)**]** applies, the transfer shall be treated as made with accrued interest if the person treated as making the transfer was entitled to receive in respect of the securities interest payable on—

(a) the settlement day, if that is an interest payment day; or

(b) the next (or first) interest payment day to fall after that day, in any other case;

and they shall be treated as transferred without accrued interest if he was not so entitled.

(7) [M1863]The interest applicable to securities for an interest period is, subject to subsection (8) below, the interest payable on them on the interest payment day with which the period ends.

(8) In the case of a period which is an interest period by virtue only of subsection (4) above [F1367]. . .—

(a) the interest applicable to securities for the period is the interest payable on them on the interest payment day with which the long [F1367]. . . period concerned ends; and

(b) section 713(6) shall have effect as if the references to the period were to the long [F1367]. . . period concerned.

(9) "Interest" includes dividends and any other return (however described) except a return consisting of an amount by which the amount payable on a security's redemption exceeds its issue price.

Textual Amendments

F1366 1990 s.41*and* Sch.6 para.9(2)*on and after* 24*May* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"or 722(1) or (2)".

F1367 Words in s. 711(8) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt.III(12)** Note 2

Modifications etc. (not altering text)

C628 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**

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Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1861 Source—1985 Sch.23 3(1)-(5)
M1862 Source—1985 Sch.23 14(2), 31(2), 12(2), 13(3), 7(2)
M1863 Source—1985 Sch.23 3(6)-(8)

712 Meaning of "settlement day" for purposes of sections 711 to 728.

M1864 (1) This section has effect to determine, for the purposes of sections 711 and 713 to 728, the settlement day in relation to a transfer of securities.

(2) Where the securities are transferred in accordance with the rules of a recognised market, the settlement day is the day on which the transferee agrees to settle or, if he may settle on one of a number of days, the day on which he settles; and, where they are transferred otherwise, subsections (3) to (5) below apply.

(3) Where the consideration for the transfer is money alone, and the transferee agrees to pay the whole of it on or before the next (or first) interest payment day to fall after an agreement for transfer is made, the settlement day is the day on which he agrees to make the payment or, if payment may be made on one of a number of days, or on a number of different days, the latest of them to fall.

(4) Where there is no consideration for the transfer, or the transfer is a transfer by virtue of sections 710(13), 715(3), 717(8), 720(4), 721 **[**F1368, 722 and 724(1A)**]**, the settlement day is the day on which the securities are transferred.

(5) In any other case, the settlement day is such day as an inspector decides; and the jurisdiction of the General Commissioners or the Special Commissioners on any appeal shall include jurisdiction to review such a decision of the inspector.

Textual Amendments

F1368 1990 s.41*and* Sch.6 para.9(3)*on and after* 24*May* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"and 722".

Modifications etc. (not altering text)

C629 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1864 Source—1985 Sch.23 4; 1986 Sch.17 3(2)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Transfers with or without accrued interest: charge to tax and reliefs

713 Deemed sums and reliefs.

M1865(1) Subject to sections 714 to 728, this section applies whether the securities in question are transferred before, on or after 6th April 1988; and in this section references to a period are references to the interest period in which the settlement day falls.

(2) If securities are transferred with accrued interest—

(a) the transferor shall be treated as entitled to a sum on them in the period of an amount equal to the accrued amount; and

(b) the transferee shall be treated as entitled to relief on them in the period of the same amount.

(3) If securities are transferred without accrued interest—

(a) the transferor shall be treated as entitled to relief on them in the period of an amount equal to the rebate amount; and

(b) the transferee shall be treated as entitled to a sum on them in the period of the same amount.

(4) In subsection (2) above "the accrued amount" means—

(a) if the securities are transferred under an arrangement by virtue of which the transferee accounts to the transferor separately for the consideration for the securities and for gross interest accruing to the settlement day, an amount equal to the amount (if any) of gross interest so accounted for; and

(b) in any other case, an amount equal to the accrued proportion of the interest applicable to the securities for the period.

(5) In subsection (3) above "the rebate amount" means—

(a) if the securities are transferred under an arrangement by virtue of which the transferor accounts to the transferee for gross interest accruing from the settlement day to the next interest payment day, an amount equal to the amount (if any) of gross interest so accounted for; and

(b) in any other case, an amount equal to the rebate proportion of the interest applicable to the securities for the period.

(6) In this section—

(a) the accrued proportion is—

$$\frac{A}{B}$$

(b) the rebate proportion is—

$$\frac{B-A}{B}$$

where—

A is the number of days in the period up to (and including)the settlement day, and

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B is the number of days in the period.

(7) [M1866]For the purposes of subsection (2) above, in a case where the interest on the securities is payable in a currency other than sterling the accrued amount is to be determined as follows—

(a) if subsection (4)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the accrued amount is the sterling equivalent so shown;

(b) if subsection (4)(a) applies but paragraph (a) above does not, or if subsection (4)(b) above applies, the accrued amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (4)(a) or (b) (as the case may be).

(8) For the purposes of subsection (3) above, in a case where the interest on the securities is payable in a currency other than sterling the rebate amount is to be determined as follows—

(a) if subsection (5)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the rebate amount is the sterling equivalent so shown;

(b) if subsection (5)(a) applies but paragraph (a) above does not, or if subsection (5)(b) above applies, the rebate amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (5)(a) or (b) (as the case may be).

(9) [M1867]For the purposes of subsections (7) and (8) above the sterling equivalent of an amount on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

Modifications etc. (not altering text)

C630 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C631 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C632 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C633 S. 713(2)(3) excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 4**; S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M1865 Source—1985 s.73

M1866 Source—1985 Sch.23 10(1)-(3)

M1867 1985 Sch.23 10(7)

714 Treatment of deemed sums and reliefs.

[M1868](1) Subsection (2) below applies if a person is treated as entitled under section 713 to a sum on securities of a particular kind in an interest period, and either—

(a) he is not treated as entitled under that section to relief on securities of that kind in the period; or

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(b) the sum (or total sum) to which he is treated as entitled exceeds the amount (or total amount) of relief to which he is treated as entitled under that section on securities of that kind in the period.

(2) The person shall be treated as receiving on the day the period ends annual profits or gains whose amount is (depending on whether subsection (1)(a) or (1)(b) above applies) equal to the sum (or total sum) to which he is treated as entitled or equal to the amount of the excess; and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the chargeable period in which they are treated as received.

(3) Subsection (4) below applies if a person is treated as entitled under section 713 to relief on securities of a particular kind in an interest period, and either—

(a) he is not treated as entitled under that section to a sum on securities of that kind in the period; or

(b) the amount (or total amount) of relief to which he is treated as entitled exceeds the sum (or total sum) to which he is treated as entitled under that section on securities of that kind in the period.

(4) The person shall be entitled to an allowance whose amount is (depending on whether subsection (3)(a) or (3)(b) above applies) equal to the amount (or total amount) of relief to which he is treated as entitled or equal to the amount of the excess; and subsection (5) below shall apply.

(5) Any amount to which the person is entitled by way of interest which—

(a) falls due on the securities at the end of the interest period, and

(b) is taken into account in computing tax charged for the chargeable period in which the interest period ends,

shall for the purposes of the Tax Acts be treated as reduced by the amount of the allowance; but if the period is one which does not end with an interest payment day, he shall be treated as becoming, in the next interest period, entitled under section 713 to relief on the securities of an amount equal to the amount of the allowance.

(6) Where, but for this subsection, a company would by virtue of subsection (2) above be treated as receiving profits or gains on a day which does not fall within an accounting period of the company, the profits or gains shall instead be treated as received by the company on the latest day of the interest period which does so fall.

Modifications etc. (not altering text)

C634 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1868 Source—1985 s.74

715 Exceptions from sections 713 and 714

(1) [M1869]Section 713(2)(a) or (3)(a) (as the case may be) does not apply—

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(a) if the transferor carries on a trade and the transfer falls to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade;

(b) if the transferor is an individual and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him exceeded £5,000;

(c) if the securities transferred form part of the estate of a deceased person, the transferor is that person's personal representative and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as the deceased's personal representative exceeded £5,000;

(d) [M1870]where—

(i) if the transferor became entitled to any interest on the securities transferred and applied it for charitable purposes only, exemption could be granted under section 505(1)(c) in respect of the interest;

(ii) if the transferor became entitled to any interest on the securities transferred and applied it for the purposes mentioned in paragraph (d) of section 505(1), exemption could be granted under that paragraph in respect of the interest;

(e) [M1871]if the securities transferred are held on a disabled person's trusts, the transferor is trustee of the settlement and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as trustee of the settlement exceeded £5,000;

(f) if the transferor does not fulfil the residence requirement for the chargeable period in which the transfer is made and is not a non-resident United Kingdom trader in that period;

(g) if the transferor is not ordinarily resident in the United Kingdom during the chargeable period in which the transfer occurs and, if he became entitled in the period to any interest on the securities transferred, it would not be liable to income tax by virtue of section 47;

(h) if the securities transferred are FOTRA securities, the transferor is not domiciled in the United Kingdom at any time in the chargeable period in which the transfer occurs, and he is either not ordinarily resident in the United Kingdom during that period or a non-resident United Kingdom trader in that period;

(j) if the transferor is an individual who, if he became entitled in the year of assessment in which the transfer occurs to any interest on the securities transferred, would be liable, in respect of the interest, to tax chargeable under Case IV or V of Schedule D and computed on the amount of sums received in the United Kingdom; or

(k) [M1872]where, if the transferor became entitled to any interest on the securities transferred, exemption could be allowed under section 592(2) in respect of the interest.

(2) [M1873]Section 713(2)(b) or (3)(b) (as the case may be) does not apply if—

(a) the transferee carries on a trade, and if at the time he acquired the securities he were to transfer them that transfer would fall to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade; or

(b) any provision of subsection (1) above except paragraph (a) would apply if "transferor" read "transferee".

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(3) [M1874]If securities held on charitable trusts cease to be subject to charitable trusts the trustees shall be treated for the purposes of sections 710 to 728 as transferring the securities (in their capacity as charitable trustees) to themselves (in another capacity) at the time when the securities cease to be so subject.

(4) [M1875]For the purposes of this section a person fulfils the residence requirement for a chargeable period if he is resident in the United Kingdom during any part of the period or is ordinarily resident in the United Kingdom during the period.

(5) For the purposes of this section a person is a non-resident United Kingdom trader in a chargeable period if during any part of it he is (though neither resident during any part of it nor ordinarily resident during it) carrying on a trade in the United Kingdom through a branch or agency and the securities transferred—

(a) were situated in the United Kingdom and used or held for the purposes of the branch or agency at or before the time of the transfer (where the person concerned is a transferor); or

(b) were so situated at the time of the transfer and were acquired for use by or for the purposes of the branch or agency (where the person concerned is a transferee);

but the provisions of this subsection relating to the situation of the securities in the United Kingdom do not apply where the person concerned is a company.

(6) [M1876]In any case where securities are transferred without accrued interest to a person ("the seller") and a contract is made for the sale by the seller of securities of that kind ("the seller's contract") and the seller's contract or any contract under which the securities are transferred to the seller is one in the case of which section 737 has effect and in relation to which the seller is the dividend manufacturer, then—

(a) where the nominal value of the securities subject to the seller's contract is greater than or equal to that of the securities transferred, the seller shall not be treated as entitled to any sum to which, but for this subsection, he would be treated as entitled under section 713(3)(b) on the securities transferred;

(b) where the nominal value of the securities subject to the seller's contract is less than that of the securities transferred, any sum (or the aggregate of any sums) to which he is treated as entitled under section 713(3)(b) on the securities transferred shall be reduced by the amount of any part of the sum (or aggregate) attributable to securities ("relevant securities") of a nominal value equal to that of the securities subject to the seller's contract;

and for the purposes of sections 710 to 728 the securities which the seller contracts to sell shall not be treated as transferred by him (though treated as transferred to the person to whom he contracts to sell).

(7) In determining for the purposes of subsection (6)(b) above which of the securities transferred are relevant securities, those transferred to the seller earlier must be chosen before those transferred to him later.

(8) [M1877]For the purposes of this section—

"disabled person's trusts" means trusts falling within paragraph **[**[F1369]1(1) of Schedule 1 to the 1992**]** Act;

"branch or agency" has the meaning given by section **[**[F1369]10(6) of the 1992**]** Act;

"FOTRA securities" means securities issued with the condition mentioned in section 22(1) of the [M1878]Finance (No.2) Act 1931 (securities free of tax for

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residents abroad) as modified by virtue of section 60(1) of the [M1879]Finance Act 1940;

and the place where securities are situated shall be determined in accordance with section **[**[F1369]275 of the 1992**]** Act.

Textual Amendments

F1369 Words in s. 715(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(37)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C635 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C636 S. 715(1)(a) restricted (*retrospectively*) by Finance (No.2) Act 1992 (c. 48), **s. 65(2)(b)(5)(6)**
S. 715(2)(a) restricted (*retrospectively*) by Finance (No.2) Act 1992 (c. 48), **s. 65(2)(c)(5)(6)**

C637 *These provisions are reproduced in* Part II Vol.5.

Marginal Citations

M1869 Source—1985 s.71(1) (a)-(c)
M1870 Source—1985 Sch.23 30(1), (4)
M1871 Source—1985 s.75(1)(d)-(h)
M1872 Source—1985 Sch.23 32(1)
M1873 Source—1985 s.75(2), Sch.23 30(2), (5), 32(2)
M1874 Source—1985 Sch.23 31(1)
M1875 Source—1985 s.75(3), (4)
M1876 Source—1985 Sch.23 43; 1986 Sch.17 5
M1877 Source—1985 s.75(5), (6)
M1878 1931 c. 49.
M1879 1940 c. 29.

716 Transfer of unrealised interest.

[M1880](1) This section applies where securities are transferred (whether before or after 6th April 1988) with the right to receive interest ("unrealised interest") payable on them on an interest payment day falling before the settlement day.

(2) Where the settlement day falls within an interest period, section 714 shall (subject to subsection (5) below) apply as if the transferor were entitled under section 713 to a sum on them in the period of an amount equal to the unrealised interest (in addition to any other sum to which he may be treated as so entitled).

(3) Where the settlement day falls after the end of the last interest period in relation to the securities, the transferor shall be treated as receiving on the settlement day annual profits or gains of an amount equal to the unrealised interest; and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the chargeable period in which they are treated as received.

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(4) Where the transferee receives the unrealised interest, and but for this subsection it would be taken into account in computing tax charged for the chargeable period in which the interest is received, it shall for the purposes of the Tax Acts be left out of account.

(5) [M1881]Section 715 shall apply for the purposes of this section as if—

(a) in subsection (1)—

(i) the reference to section 713(2)(a) or (3)(a) were a reference to subsection (2) or (3) above; and

(ii) references to the year of assessment in which the interest period ends were references to the year in which the settlement day falls; and

(b) in subsection (2) the reference to section 713(2)(b) or (3)(b) were a reference to subsection (4) above.

Paragraph (b) above does not apply where the securities in question were transferred before 19th March 1986.

(6) [M1882]Where the unrealised interest is payable in a currency other than sterling its amount is for the purposes of this section the sterling equivalent on the settlement day of the amount it would be apart from this subsection; and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day.

Modifications etc. (not altering text)

C638 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C639 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C640 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C641 S. 716 excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 4**; S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M1880 Source—1985 Sch.23 15(1)-(4)

M1881 Source—1985 Sch.23 15(5); 1986 Sch.17 2(2)

M1882 Source—1985 Sch.23 15(8)

717 Variable interest rate.

[M1883](1) This section applies to securities other than securities falling within subsection (2) or (4) below.

(2) Securities fall within this subsection if their terms of issue provide that throughout the period from issue to redemption (whenever redemption might occur) they are to carry interest at a rate which falls into one, and one only, of the following categories—

(a) a fixed rate which is the same throughout the period;

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(b) a rate which bears to a standard published base rate the same fixed relationship throughout the period;

(c) a rate which bears to a published index of prices the same fixed relationship throughout the period.

(3) In subsection (2)(c) above "published index of prices" means the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom.

(4) Securities fall within this subsection if they are deep discount securities and the rate of interest for each (or their only) interest period is equal to or less than the yield to maturity.

(5) In subsection (4) above "deep discount securities" and "yield to maturity" have the same meanings as in Schedule 4; and for the purposes of that subsection the rate of interest for an interest period is, in relation to securities, the rate of return (expressed as a percentage) attributable to the interest applicable to them for the interest period.

(6) Subsections (7) to (11) below apply if securities to which this section applies are transferred at any time between the time they are issued and the time they are redeemed.

(7) If the securities are transferred without accrued interest they shall be treated for the purposes of sections 710 to 728 as transferred with accrued interest.

(8) The person entitled to the securities immediately before they are redeemed shall be treated for the purposes of those sections as transferring them with accrued interest on the day they are redeemed.

(9) Where there is a transfer as mentioned in subsection (6) above or by virtue of subsection (8) above, section 713 shall have effect with the omission of subsection (2)(b) and with the substitution for subsections (3) to (6) of the following subsection—

"(3) In subsection (2) above "the accrued amount" means such amount (if any) as an inspector decides is just and reasonable; and the jurisdiction of the General Commissioners or the Special Commissioners on any appeal shall include jurisdiction to review such a decision of the inspector.".

(10) Subsection (11) below applies where there is a transfer by virtue of subsection (8) above and the settlement day in relation to the transfer falls after the end of a period which would (by virtue of section 711(3) and (4) and apart from this subsection) be the only or last interest period in relation to the securities.

(11) For the purposes of sections 710 to 728 the period beginning with the day following that interest period and ending with the settlement day shall be treated as an interest period in relation to the securities; and section 711(4) shall not apply to it.

Modifications etc. (not altering text)

C642 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

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Marginal Citations

M1883 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

718 Interest in default.

M1884 (1) This section applies where, because of any failure to fulfil the obligation to pay interest on securities, the value (on a day mentioned in section 711(7) or (8)(a), as the case may be) of the right to receive the interest payable on them on that day is less than the interest so payable.

(2) Section 711(7) or (8)(a), as the case may be, shall be construed as if the reference to that interest were to an amount equal to that value.

Modifications etc. (not altering text)

C643 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C644 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C645 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M1884 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

719 Unrealised interest in default

M1885 (1) Where securities are transferred as mentioned in section 716(1) and, because of any failure to fulfil the obligation to pay interest on them, the value (on the day of the transfer) of the right to receive the unrealised interest is less than the amount of the unrealised interest, section 716 shall have effect as modified by subsections (2) to (4) below.

(2) In subsections (2) and (3) for "the unrealised interest" there shall be substituted " amount A ".

(3) For subsection (4) there shall be substituted—

"(4) Where the transferee receives an amount by way of the unrealised interest (amount B) and that amount falls to be taken into account in computing tax charged for the chargeable period in which it is received, it shall for the purposes of the Tax Acts be treated as reduced by an amount (amount C) equal to—

(a) nil, if the amounts have been previously received by the transferee by way of the unrealised interest and their aggregate is equal to or greater than the value (on the day of the transfer to the transferee) of the right to receive the unrealised interest;

(b) amount B, if that value is equal to or greater than amount B (aggregated with other amounts previously so received, if any);

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(c) that value, if no amount has been previously so received and that value is less than amount B; or

(d) so much of that value as exceeds the aggregate of amounts previously so received, in any other case.".

(4) The following shall be substituted for subsection (6)—

"(6) In this section "amount A" means, in a case where the transferor acquired the securities on or after 28th February 1986 with the right to received unrealised interest—

(a) an amount equal to amount D less amount E; or

(b) if amount D is equal to or less than amount E, nil.

(7) In this section "amount A" means, in a case not falling within subsection (6) above, an amount equal to amount D.

(8) In this section "amount D" means an amount equal to the value (on the day of the transfer by the transferor) of the right to receive the unrealised interest.

(9) In this section "amount E" means, in a case where the transferor (as transferee) has received in respect of the securities an amount or amounts falling within subsection (4) above—

(a) an amount equal to amount F less the total received; or

(b) if amount F is equal to or less than the total received, nil.

(10) In this section "amount E" means, in any other case, an amount equal to amount F.

(11) In this section "amount F" means an amount equal to the value (on the day of the transfer to the transferor) of the right to receive the unrealised interest.

(12) In determining for the purposes of this section which securities of a particular kind a person has transferred, he is to be taken to have transferred securities of that kind which he acquired later before securities of that kind which he acquired earlier.

(13) Where the unrealised interest is payable in a currency other than sterling—

(a) any amount received by way of the interest is for the purposes of this section the sterling equivalent on the day it is received of the amount it would be apart from this subsection; and

(b) the value (on the day of a transfer) of the right to receive the interest is for the purposes of this section the sterling equivalent (on that day) of the value it would be apart from this subsection;

and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day concerned."

Modifications etc. (not altering text)

C646 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

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C647 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C648 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M1885 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

Transfers with or without accrued interest: supplemental

720 Nominees, trustees etc.

(1) [M1886]Where securities are transferred by or to a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability, or for two or more persons who are or would be jointly so entitled, sections 713, 715 and 716 shall apply as if references to the transferor or the transferee (as the case may be) were to the person or persons for whom the nominee or trustee disposes or acquires.

(2) [M1887]It is hereby declared that for the purposes of subsection (1) above—

(a) securities are transferred by a person as trustee for another person absolutely entitled as against the trustee if that other person has immediately before the transfer the exclusive right to direct how the securities shall be dealt with, subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to the securities for payment of duty, taxes, costs or other outgoings; and

(b) securities are t ransferred to a person as trustee for another person so entitled if that other person has that right immediately after the transfer.

[F1370](3) . . . . . .

(4) [M1888]Where a person who is entitled to securities becomes trustee of them, he shall be treated for the purposes of sections 710 to 728 as transferring them (in a capacity other than trustee) to himself (in his capacity as trustee), or to himself and any other trustees, at the time he becomes trustee.

(5) [M1889]Annual profits or gains which by virtue of 714(2) or 716(3) are treated as received in a year of assessment by trustees shall be chargeable to income tax **[**[F1371]at the rate applicable to trusts**]** for that year.

This subsection does not apply where the profits or gains are treated as received by the investment manager of a common investment fund for the time being designated as mentioned in section 328(1).

(6) [M1890]In any case where—

(a) a trustee of a settlement is treated as receiving annual profits or gains under section 714(2), or

(b) a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,

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Chapters II to IV of Part XV shall have effect as if the amount which the trustee is or would be treated as receiving were income (within Chapter II) or income arising under the settlement (within Chapter III or IV).

(7) [M1891]In any case where income of a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest which—

(a) falls due at the end of the interest period; and

(b) would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period;

then, for the purposes of Chapters II to IV of Part XV, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).

(8) [M1892]In subsections (6) and (7) above—

(a) "settlement" means settlement within the meaning of Chapter II, III or IV of Part XV (as the case may be); and

(b) references to a trustee of a settlement are, where there is no trustee of the settlement, to any person entitled to securities comprised in the settlement.

Textual Amendments

F1370 S. 720(3) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

F1371 Words in s. 720(5) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 13, **25**

Modifications etc. (not altering text)

C649 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1886 Source—1985 Sch.23 6(1), 15(6)
M1887 Source—1985 Sch.23 6(2)
M1888 Source—1985 Sch.23 7(1)
M1889 Source—1985 Sch.23 8(1), (2), (4); 1986 Sch.17 1(1)
M1890 Source—1985 Sch.23 9(1), (2)
M1891 Source—1985 Sch.23 9(3), (4)
M1892 Source—1985 Sch.23 9(5)

721 Death.

(1) [M1893]Where an individual who is entitled to securities dies, he shall be treated for the purposes of sections 710 to 728 as transferring the securities to his personal representatives immediately before his death.

(2) Where the securities are transferred with accrued interest by the personal representatives to a legatee in the interest period in which the individual died—

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(a) section 713 shall not apply to the transfer, and

(b) the transfer of the securities which the individual is treated as making by virtue of subsection (1) above shall be treated as made to the legatee (and not to the personal representatives).

(3) In subsection (2) above "legatee" includes any person taking (whether beneficially or as trustee) under a testamentary disposition or on an intestacy or partial intestacy, including any person taking by virtue of an appropriation by the personal representatives in or towards satisfaction of a legacy or other interest or share in the deceased's property.

(4) In the case of an individual who dies in an interest period, section 714(2) shall have effect as if the reference to the day the period ends were to the day he dies.

F1372(5) . . . . . .

F1372(6) . . . . . .

Textual Amendments

F1372 S. 721(5)(6) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

Modifications etc. (not altering text)

C650 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C651 S. 721(1)-(4) excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(3)(a)**, 184(3)

Marginal Citations

M1893 Source—1985 Sch.23 12(1), (3)-(5)

722 Trading stock.

M1894(1) Where securities acquired by a person otherwise than as trading stock of a trade carried on by him are appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), he shall be treated for the purposes of sections 710 to 728 as transferring them otherwise than in the course of the trade and re-acquiring them in the course of the trade on the day the appropriation is made.

(2) Where securities forming part of the trading stock of a person's trade are appropriated by him for any other purpose, or are retained by him on his ceasing to carry on the trade, he shall be treated for the purposes of sections 710 to 728 as transferring them in the course of the trade and re-acquiring them otherwise than in the course of the trade on the day the appropriation is made or (as the case may be) he ceases to carry on the trade.

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Modifications etc. (not altering text)

C652 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C653 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C654 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M1894 Source—1985 Sch.23 (13) (1), (2)

VALID FROM 29/04/1996

[F1373 722A Gilt strips: deemed transfer.

(1) For the purposes of sections 710 to 728, where a gilt-edged security is exchanged by any person for strips of that security the security shall be deemed to have been transferred by that person.

(2) Nothing in subsection (1) above shall have effect to cause any person to be treated as the transferee of any securities for the purposes of section 713(2)(b).

(3) For the purposes of sections 710 to 728, where strips of gilt-edged securities are exchanged by any person for a single gilt-edged security consolidating those strips, that security shall be deemed to have been transferred to that person.

(4) Nothing in subsection (3) above shall have effect to cause any person to be treated as the transferor of any securities for the purposes of section 713(2)(a).

(5) In this section—

"gilt-edged security" has the same meaning as in section 51A; and

"strip" means anything which, within the meaning of section 47 of the [M1895] Finance Act 1942, is a strip of a gilt-edged security.**]**

Textual Amendments

F1373 S. 722A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 6**

Modifications etc. (not altering text)

C655 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

Marginal Citations

M1895 1942 c. 21.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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723 Foreign securities: delayed remittances

M1896 (1) This section applies where in an interest period a person is treated as entitled to a sum or sums under section 713(2)(a) in respect of a transfer or transfers of securities of a particular kind which are situated outside the United Kingdom.

(2) Subject to subsection (3) below, the amount of any annual profits or gains which the person is treated under section 714 as receiving on the day the period ends in respect of securities of that kind shall be reduced—

(a) if the amount of the sum or aggregate of the sums exceeds the amount of the profits or gains, to nil; or

(b) in any other case, by the amount of the sum or aggregate.

(3) No reduction shall be made unless the person makes a claim and shows that the conditions in subsection (5) below are, so far as applicable, satisfied in the chargeable period in which the profits or gains are treated as received.

(4) The claimant (or his personal representatives) shall be charged to tax under Case VI of Schedule D on the amount of the reduction for the chargeable period in which the conditions in subsection (5) below cease to be satisfied.

(5) The conditions are—

(a) that the claimant was unable to remit the proceeds of the transfer or transfers to the United Kingdom;

(b) that the inability was due to the laws of the territory in which the securities are situated, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and

(c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.

(6) No claim under this section shall be made in respect of a transfer more than six years after the end of the interest period in which the transfer occurred.

(7) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.

(8) For the purposes of this section the place where securities are situated shall be determined in accordance with section **[**F1374 275 of the 1992**]** Act.

Textual Amendments

F1374 Words in s. 723(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(38)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C656 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C657 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C658 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

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Marginal Citations

M1896 Source—1985 Sch.23 11

724 Insurance companies.

(1) [M1897]The references in section 715(1)(a) and (2)(a) to computing the profits or losses of a trade shall not be taken as applying to a computation of income for the purposes of section 76(2).

[[F1375](1A) If at any time securities held by an insurance company cease to be within one of the categories set out in section 440(4) and come within another of those categories, the company shall be treated for the purposes of sections 710 to 728 as transferring the securities to itself at that time.**]**

(2) *Where an insurance company carrying on life assurance business is treated as receiving annual profits or gains under section* 714(2)*or* 716(3)*in respect of securities held as investments in connection with that business, the profits or gains shall be treated for the purposes of section* 434(3)*to* (5)*as if they were income from investments held in connection with that business*[F1376].

(3) [M1898]Section 713(2)(a) or (3)(a) (as the case may be) shall not apply if the transferor is an insurance company **[**[F1377]to the extent that the securities transferred are immediately before the transfer referable to a business the profits of which are computed in accordance with section 436 or 441.**]**

(4) [M1899]Section 713(2)(b) or (3)(b) (as the case may be) shall not apply **[**[F1378]if the transferee is an insurance company to the extent that the securities transferred are immediately after the transfer referable to a business the profits of which are computed in accordance with section 436 or 441.**]**

[F1379](5) . . . . . .

[F1379](6) . . . . . .

[F1379](7) . . . . . .

[F1379](8) . . . . . .

Textual Amendments

F1375 1990 s.41*and* Sch.6 para.9(1)*on and after* 24*May* 1990*subject to the commencement provisions of* paras.11*and* 12.

F1376 *Repealed by* 1990 s.132*and* Sch.19 Part IV.

F1377 1990 s.42*and* Sch.7 para.4(a)*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*
"and—(a) the transfer falls to be taken into account in computing its profits or losses for the purposes of section 436; or (b) if the company became entitled to any interest on the securities transferred, it would by virtue of section 441(1) be liable, in respect of the interest, to tax computed by reference to the amount of income received in the United Kingdom; or (c) if the company became entitled to any interest on the securities transferred and applied the interest for the purposes of its foreign life assurance fund, it would by virtue of section 441(2) not be liable to tax in respect of the interest."

F1378 1990 s.42*and* Sch.7 para.4(b)*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*
"if subsection (3) above would apply if in that subsection "transferor" read "transferee".".

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F1379 S. 724(5)-(8) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(f)(3)(4), 213, **Sch. 23 Pt. III(9)**

Modifications etc. (not altering text)

C659 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C660 S. 724(1A) excluded by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 6(4)**

Marginal Citations

M1897 Source—1985 Sch.23 16, 17
M1898 Source—1985 Sch.23 18(1), 19(1), (4)
M1899 Source—1985 Sch.23 18(2), 19(2), (5)

F1380 725 . . . . . .

Textual Amendments

F1380 S. 725 repealed (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 5

F1381 726 . . . . . .

Textual Amendments

F1381 S. 726 repealed (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 6

[726A F1382 New issues of securities.

(1) This section applies where—

(a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,

(b) on a later occasion securities (new securities) of the same kind are issued,

(c) a sum (the extra return) is payable in respect of the new securities, by the person issuing them, to reflect the fact that interest is accruing on the old securities,

(d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and

(e) the extra return is equal to the amount of interest payable for the relevant period on so many old securities as there are new (or, if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new).

(2) For the purposes of sections 710 to 728—

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(a) the new securities shall be treated as having been issued on the relevant day;
(b) they shall be treated as transferred to the person to whom they are in fact issued (though not treated as transferred by any person);
(c) the transfer shall be treated as a transfer with accrued interest and as made on the day on which the new securities are in fact issued;
(d) that day shall be treated as the settlement day (notwithstanding section 712);

but this subsection is subject to subsection (7) below.

(3) If the new securities are in fact issued under an arrangement by virtue of which the acquirer accounts to the issuer separately for the extra return mentioned in subsection (1) above and the rest of the issue price, in relation to the transfer mentioned in subsection (2)(b) above—
(a) section 713(4) shall not apply, and
(b) for the purposes of section 713(2) the accrued amount shall be the amount found under subsection (4) or (5) below (as the case may be);

and here "the acquirer" means the person to whom the new securities are in fact issued and "the issuer" means the person by whom they are in fact issued.

(4) Subject to subsection (5) below, the amount is one equal to the amount (if any) of the extra return separately accounted for.

(5) If the interest on the new securities is payable in a currency other than sterling, the amount is the sterling equivalent on the settlement day of the amount found under subsection (4) above; and for this purpose the sterling equivalent of an amount on the settlement day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

(6) If the new securities are in fact issued otherwise than as mentioned in subsection (3) above, section 713(4)(b) shall apply in relation to the transfer mentioned in subsection (2)(b) above.

(7) If the new securities are securities to which section 717 applies (after applying subsection (2)(a) above) subsection (2)(b) to (d) above shall not apply.

(8) For the purposes of this section the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are in fact issued.

(9) For the purposes of this section the relevant day is—
(a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are in fact issued, or
(b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are in fact issued.**]**

Textual Amendments

F1382 S. 726A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 paras. 2, **5**

Modifications etc. (not altering text)

C661 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**

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Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C662 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C663 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

727 Stock lending.

M1900(1) The effect of section 129(3) shall be disregarded in construing section 715(1)(a) and (2)(a).

(2) Where securities are transferred in circumstances such that by virtue of section [F1383271(9) of the 1992] Act (capital gains tax exemption) any disposal and acquisition are disregarded for the purposes of capital gains tax, sections 713(2) and (3) and 716 shall not apply.

Textual Amendments

F1383 Words in s. 727(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(39)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C664 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C665 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C666 *See* S.I. No.1299 (*in* Part III Vol.5)—The Income Tax (Stock Lending) Regulations 1989.

Marginal Citations

M1900 Source—1985 Sch.23 32C; 1986 Sch.17 4

VALID FROM 01/05/1995

[F1384727A Exception for sale and repurchase of securities.

(1) Where securities are transferred under an agreement to sell them, and under the same or any related agreement the transferor or a person connected with him—

(a) is required to buy back the securities, or

(b) acquires an option, which he subsequently exercises, to buy back the securities,

section 713(2) and (3) and section 716 do not apply to the transfer by the transferor or the transfer back.

(2) For the purposes of this section agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

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(3) Section 839 (connected persons) applies for the purposes of this section.

(4) References in this section to buying back securities include buying similar securities.

For this purpose securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital and interest, and

(b) to the same remedies for the enforcement of those rights,

notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) For the purposes of this section—

(a) a person connected with the transferor who is required to buy securities sold by the transferor shall be treated as being required to buy the securities back, and

(b) a person connected with the transferor who acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back,

notwithstanding that it was not he who sold them.**]**

Textual Amendments

F1384 S. 727A inserted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 79(1)** (with s. 79(4))

Modifications etc. (not altering text)

C667 S. 727A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C668 S. 727A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C669 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C670 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C671 S. 727A(1) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 14

728 Information.

M1901 (1) In order to obtain for the purposes of sections 710 to 727 particulars relating to securities, an inspector may by notice require a return under subsection (2) or (3) below.

(2) A member of the Stock Exchange, other than a market maker, may be required to make a return giving, in relation to any transactions effected by him in the course of his business in the period specified in the notice, such particulars as may be so specified.

In relation to transactions before 27th October 1986 this subsection shall have effect with the substitution of " jobber " for "market maker".

(3) A person (other than a member of the Stock Exchange), who acts as an agent or broker in the United Kingdom in transactions in securities, may be required to make a return

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giving, in relation to any such transactions effected by him in the period specified in the notice, such particulars as may be so specified.

(4) No person shall be required under subsection (2) or (3) above to include in a return particulars of any transaction effected more than three years before the service of the notice requiring him to make the return.

(5) In order to obtain for the purposes of sections 710 to 727 particulars relating to securities, the Board or an inspector may by notice require any person in whose name any securities are registered to state whether or not he is the beneficial owner of those securities and, if he is not the beneficial owner of them or any of them, to furnish the name and address of the person or persons on whose behalf the securities are registered in his name.

(6) In this section "market maker", in relation to securities, means a person who—
- (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of the kind concerned at a price specified by him; and
- (b) is recognised as doing so by the Council of the Stock Exchange.

(7) The Board may by regulations provide that—
- (a) subsections (2), (3) and (6)(a) above shall have effect as if references to the Stock Exchange were to any recognised investment exchange (within the meaning of the [M1902]Financial Services Act 1986) or to any of those exchanges specified in the regulations; and
- (b) subsection (6)(b) shall have effect as if the reference to the Council of the Stock Exchange were to the investment exchange concerned.

(8) Regulations under subsection (7) above shall apply in relation to transactions effected on or after such day as may be specified in the regulations.

Modifications etc. (not altering text)

C672 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

Marginal Citations

M1901 Source—1985 Sch.23 44(1)-(5A); 1986 Sch.17 6
M1902 1986 c. 60.

Other transfers of securities

729 Sale and repurchase of securities.

(1) [M1903]Where the owner of any securities ("the owner") agrees to sell or transfer those securities and by the same or any collateral agreement—
- (a) agrees to buy back or re-acquire the securities, or
- (b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

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then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the following provisions shall have effect—

(i) the interest so payable shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of the Tax Acts to be the income of the owner and not to be the income of any other person; and

(ii) if the securities are of such a character that the interest payable in respect thereof may be paid without deduction of tax, the owner shall be chargeable to tax under Case VI of Schedule D in respect of the interest which is so deemed to be his income, but shall be entitled to credit for any tax which that income is shown to have borne.

(2) In relation to corporation tax—

(a) subject to the provisions of the Tax Acts about distributions, interest deemed under subsection (1)(i) above to be the income of the owner shall be chargeable under Case VI of Schedule D, and

(b) subsection (1)(ii) above shall not apply.

(3) The references in subsection (1) above to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(4) Where any person carrying on a trade which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities, or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade.

(5) Subsection (4) above shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(6) This section shall not apply to any income to which section 786(4) applies.

(7) [M1904]Subsections (1) and (2) above shall not apply where—

(a) the securities are Eurobonds or foreign government stock; and

(b) the owner of the securities carries on a trade which consists wholly or partly in dealing in securities and the person who agrees to buy or acquire the securities carries on such a trade.

(8) Subsection (4) above shall not apply where—

(a) the securities are Eurobonds or foreign government stock; and

(b) the person from whom the person there mentioned agrees to buy or acquire the securities carries on a trade which consists wholly or partly in dealing in securities.

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(9) In subsections (7) and (8) above—

"Eurobond" has the same meaning as in section 732(5); and

"foreign government stock" means stock which is issued by a government other than that of the United Kingdom and is denominated in a currency other than sterling.

(10) [M1905]For the purposes of this section—

(a) "interest" includes a dividend;

(b) "securities" includes stocks and shares, except securities which are securities for the purposes of sections 710 to 728; and

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(11) [M1906]The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all securities of which he was the owner at any time during the period specified in the notice, such particulars as they consider necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities.

(12) [M1907]In any case where the owner agrees to sell or transfer before such day as the Board may by order appoint for the purposes of this section or the person referred to in subsection (4) above agreed to buy or acquire before that day—

(a) subsections (1) and (2) above shall not apply if the owner's agreement to sell or transfer constitutes a transfer to which section 713(2)(a) applies; and

(b) subsection (10)(b) above shall have effect with the omission of the words "except securities which are securities for the purposes of sections 710 to 728".

Modifications etc. (not altering text)

C673 *By* S.I. 1988 No.1002 (*not reproduced*)*the appointed day is* 9*June* 1988.

Marginal Citations

M1903 Source—1970 s.469(1)-(6); 1971 Sch.6 70

M1904 Source—1970 S.469(6A), (6B), (6C); 1986 Sch.18 1(1)

M1905 Source—1970 s.469(7); 1986 Sch.18 1(4)

M1906 Source—1970 s.469(8)

M1907 Source—1986 Sch.18 1(5)

730 Transfers of income arising from securities

[M1908](1) Where in any chargeable period the owner of any securities ("the owner") sells or transfers the right to receive any interest payable (whether before or after the sale or transfer) in respect of the securities without selling or transferring the securities, then, for all the purposes of the Tax Acts, that interest, whether it would or would not be chargeable to tax apart from the provisions of this section—

(a) shall be deemed to be the income of the owner or, in a case where the owner is not the beneficial owner of the securities and some other person ("a

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beneficiary") is beneficially entitled to the income arising from the securities, the income of the beneficiary, and

(b) shall be deemed to be the income of the owner or beneficiary for that chargeable period, and

(c) shall not be deemed to be the income of any other person.

(2) For the purposes of subsection (1) above, in the case of a sale or other realisation the proceeds of which are chargeable to tax under Schedule C or under section 123(3) the interest so deemed to be the income of the owner or beneficiary shall be deemed to be equal in amount to the amount of those proceeds.

(3) Nothing in subsection (1) above shall affect any provision of this Act authorising or requiring the deduction of income tax—

(a) from any interest which, under that subsection, is deemed to be the income of the owner or beneficiary, or

(b) from the proceeds of any subsequent sale or other realisation of the right to receive that interest;

but the proceeds of any such subsequent sale or other realisation shall not, for any of the purposes of the Tax Acts, be deemed to be the income of the seller or the person on whose behalf the right is otherwise realised.

(4) Where—

(a) the securities are of such a character that the interest payable in respect thereof may be paid without deduction of income tax, and

(b) the owner or beneficiary does not show that the proceeds of any sale or other realisation of the right to receive the interest which is deemed to be his income by virtue of this section have been charged to tax under Schedule C or under section 123(3),

then the owner or beneficiary shall be chargeable to tax under Case VI of Schedule D in respect of that interest, but shall be entitled to credit for any tax which that interest is shown to have borne.

(5) For the purposes of subsection (4) above, in any case where, if the interest had been chargeable under Case IV or Case V of Schedule D, the computation of tax would have been made by reference to the amount received in the United Kingdom, the tax under Case VI shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the securities.

(6) In relation to corporation tax, subsections (4) and (5) above shall not apply but, subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any interest which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that interest have been charged to tax under Schedule C or under section 123(3).

(7) In this section—

"interest" includes dividends, annuities and shares of annuities, and

"securities" includes stocks and shares.

(8) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all securities of which he was the owner at any time during the period specified in the notice, with such particulars

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as they consider necessary for the purposes of this section and for the purpose of discovering whether—

(a) tax has been borne in respect of the interest on all those securities; or

(b) the proceeds of any sale or other realisation of the right to receive the interest on the securities have been charged to tax under Schedule C or section 123(3).

Marginal Citations

M1908 Source—1970 s.470; 1971 Sch.6 71

VALID FROM 01/05/1995

[F1385 730A Treatment of price differential on sale and repurchase of securities.

(1) Subject to subsection (8) below, this section applies where—

(a) a person ("the original owner") has transferred any securities to another person ("the interim holder") under an agreement to sell them;

(b) the original owner or a person connected with him is required to buy them back either—

(i) in pursuance of an obligation to do so imposed by that agreement or by any related agreement, or

(ii) in consequence of the exercise of an option acquired under that agreement or any related agreement;

and

(c) the sale price and the repurchase price are different.

(2) The difference between the sale price and the repurchase price shall be treated for the purposes of the Tax Acts—

(a) where the repurchase price is more than the sale price, as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price; and

(b) where the sale price is more than the repurchase price, as a payment of interest made by the interim holder on a deemed loan from the repurchaser of an amount equal to the repurchase price.

(3) Where any amount is deemed under subsection (2) above to be a payment of interest, that payment shall be deemed for the purposes of the Tax Acts to be one that becomes due at the time when the repurchase price becomes due and, accordingly, is treated as paid when that price is paid.

(4) Where any amount is deemed under subsection (2) above to be a payment of interest, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

(a) in a case falling within paragraph (a) of that subsection, as reduced by the amount of the deemed payment; and

(b) in a case falling within paragraph (b) of that subsection, as increased by the amount of the deemed payment.

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(5) For the purposes of section 209(2)(d) and (da) any amount which is deemed under subsection (2)(a) above to be a payment of interest shall be deemed to be interest in respect of securities issued by the repurchaser and held by the interim holder.

(6) Any amount which—

(a) is deemed under subsection (2) above to be a payment of interest, and

(b) does not fall (apart from this subsection) to be treated as yearly interest,

shall be treated for the purposes of section 338 as if the reference to yearly interest in subsection (3)(a) of that section included a reference to that amount.

(7) The Treasury may by regulations provide for any amount which is deemed under subsection (2) above to be received as a payment of interest to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(8) Except where regulations under section 737E otherwise provide, this section does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) all of the benefits or risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(9) In this section references to the repurchase price are to be construed—

(a) in cases where section 737A applies, and

(b) in cases where section 737A would apply if it were in force in relation to the securities in question,

as references to the repurchase price which is or, as the case may be, would be applicable by virtue of section 737C(3)(b), (9) or (11)(c).]

Textual Amendments

F1385 Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**

Modifications etc. (not altering text)

C674 S. 730A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C675 S. 730A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C676 S. 730A modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 263A** (as inserted (with effect in accordance with s. 80(5) of the 1995 amending Act) by Finance Act 1995 (c. 4), **s. 80(4)**)

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VALID FROM 01/05/1995

[F1385 730B Interpretation of section 730A.

(1) For the purposes of section 730A agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(2) References in section 730A to buying back securities—

(a) shall include references to buying similar securities; and

(b) in relation to a person connected with the original owner, shall include references to buying securities sold by the original owner or similar securities,

notwithstanding (in each case) that the securities bought have not previously been held by the purchaser; and references in that section to repurchase or to a repurchaser shall be construed accordingly.

(3) In section 730A and this section "securities" has the same meaning as in section 737A.

(4) For the purposes of this section securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital, interest and dividends, and

(b) to the same remedies for the enforcement of those rights,

notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) Section 839 (connected persons) applies for the purposes of section 730A.**]**

Textual Amendments

F1385 Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**

VALID FROM 10/07/2003

[F1386 730BB Exchange gains and losses on sale and repurchase of securities

(1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—

(a) the circumstances are as set out in section 730A(1)(a) and (b);

(b) the company is the repurchaser of the securities or (subject to subsection (11) below) the interim holder;

(c) the conditions in subsection (2) or (3) below are satisfied; and

(d) subsection (10) below does not prevent this section from applying,

and references to a relationship to which this section applies, and to a company's being a party to such a relationship, shall be construed accordingly.

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(2) The conditions in this subsection are that—

(a) the sale price and the repurchase price are expressed in a currency other than sterling;

(b) there is a difference between—

(i) the sterling equivalent of the sale price as at the date of the transfer of the securities to the interim holder ("the first sum"); and

(ii) the sterling equivalent of the sale price as at the date they are bought back by the repurchaser ("the second sum"); and

(c) the case is not one where section 93 of the Finance Act 1993 (accounts of a company in a currency other than sterling) applies in relation to the company.

(3) The conditions in this subsection are that—

(a) the case is one where section 93 of the Finance Act 1993 applies in relation to the company;

(b) the sale price and the repurchase price are expressed in a currency other than the relevant foreign currency (within the meaning of that section) in relation to the company; and

(c) there is a difference between—

(i) the relevant foreign currency equivalent of the sale price as at the date of the transfer of the securities to the interim holder ("the first sum"); and

(ii) the relevant foreign currency equivalent of the sale price as at the date they are bought back by the repurchaser ("the second sum").

(4) Where a company has a relationship to which this section applies and—

(a) the company is the repurchaser and the first sum exceeds the second sum; or

(b) the company is the interim holder and the second sum exceeds the first sum,

the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange gain (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.

(5) Where a company has a relationship to which this section applies and—

(a) the company is the repurchaser and the second sum exceeds the first sum; or

(b) the company is the interim holder and the first sum exceeds the second sum,

the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange loss (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.

(6) Where an exchange gain or loss is treated by virtue of subsection (4) or (5) above as arising to a company from a relationship to which this section applies—

(a) Chapter 2 of Part 4 of the Finance Act 1996 shall have effect in relation to the exchange gain or loss as it would have effect if it were an exchange gain or loss (as the case may be) arising to the company from a loan relationship to which it is a party; but

(b) the only debits and credits to be brought into account for the purposes of that Chapter by virtue of this section in respect of the relationship to which this section applies are those relating to the exchange gains and losses,

and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.

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(7) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 730A, 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

(a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and

(b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.

(8) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—

(a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships); or

(b) are to be treated as non-trading debits or credits,

shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by that company.

(9) To the extent that debits or credits fall to be brought into account by a company under section 82(2) of that Act in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being a party to the relationship for the purposes of a trade carried on by the company.

(10) Except where regulations under section 737E otherwise provide, this section does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) all of the benefits and risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(11) Where—

(a) the repurchase price is more than the sale price, so that by virtue of section 730A(2)(a) a payment of interest is treated as made by the repurchaser on a deemed loan from the interim holder; but

(b) the payment of interest is treated as made to a person other than the interim holder,

references to the "interim holder" in subsections (1), (4) and (5) above shall be read as references to the person to whom the payment of interest is treated as made.

(12) Any reference in this section to the "relevant foreign currency equivalent" of an amount is, in the case of any company, a reference to the amount's equivalent expressed in the relevant foreign currency (within the meaning of section 93 of the Finance Act 1993) in relation to the company.

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(13) Expressions used in this section and in section 730A have the same meaning in this section as in that section.**]**

Textual Amendments

F1386 S. 730BB inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 12**

VALID FROM 29/04/1996

[F1387 730C Exchanges of gilts: traders etc.

(1) This section has effect for the purposes of computing the profits and gains arising from any trade, profession or vocation carried on by any person in so far as the computation is such as to require amounts in respect of the acquisition or redemption of a gilt-edged security (including any strip) to be brought into account.

(2) Where a gilt-edged security is exchanged by any person for strips of that security—
  (a) the security shall be deemed to have been redeemed at the time of the exchange by the payment to that person of its market value; and
  (b) that person shall be deemed to have acquired each strip for the amount which bears the same proportion to that market value as is borne by the market value of the strip to the aggregate of the market values of all the strips received in exchange for the security.

(3) Where strips of a gilt-edged security are consolidated into a single security by being exchanged by any person for that security—
  (a) each of the strips shall be deemed to have been redeemed at the time of the exchange by the payment to that person of the amount equal to its market value; and
  (b) that person shall be deemed to have acquired the security for the amount equal to the aggregate of the market values of the strips given in exchange for the security.

(4) References in this section to the market value of a security given or received in exchange for another are references to its market value at the time of the exchange.

(5) Subsections (3) and (4) of section 473 shall not apply in the case of any exchange to which subsection (2) or (3) above applies.

(6) Without prejudice to the generality of any power conferred by section 202 of the Finance Act 1996, the Treasury may by regulations make provision for the purposes of this section as to the manner of determining the market value at any time of any gilt-edged security (including any strip).

(7) Regulations under subsection (6) above may—
  (a) make different provision for different cases; and
  (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury may think fit.

(8) This section does not apply for the purposes of corporation tax.

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(9) In this section—

"gilt-edged security" has the same meaning as in section 51A; and

"strip" means anything which, within the meaning of section 47 of the [M1909]Finance Act 1942, is a strip of a gilt-edged security.**]**

Textual Amendments

F1387 S. 730C inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 7**

Marginal Citations

M1909 1942 c. 21.

Purchase and sale of securities

731 Application and interpretation of sections 732 to 734.

[M1910](1) In this section "the relevant provisions" means sections 732, 733, 734 and this section.

(2) Subject to subsections (3) to (10) below, the relevant provisions relate to cases of a purchase by a person ("the first buyer") of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities ("the interest") is receivable by the first buyer.

(3) The relevant provisions do not relate to cases where—

(a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or

(b) that time exceeded one month and it is shown to the satisfaction of the Board that the purchase and sale were each effected at the current market price, and that the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

The jurisdiction of the General Commissioners or Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this subsection.

(4) The reference in subsection (3) above to the first buyer taking steps to dispose of the securities shall be construed—

(a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,

(b) in any other case, as a reference to his selling them.

[[F1388](4A) For the purposes of subsection (3) above, where a purchase or sale is effected as a direct result of the exercise of a qualifying option, it shall be treated as effected at the current market price if the terms under which the first buyer acquired the option, or, as the case may be, became subject to it, were arm's length terms.

(4B) For the purposes of subsection (4A) above an option is a "qualifying option" if it would be a traded option or financial option as defined in subsection **[**[F1389](8) of section 144 of the 1992 Act**]]** were the reference in paragraph (b) of that subsection to the time of the abandonment or other disposal a reference to the time of exercise.

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(4C) In subsection (4A) above the reference to arm's length terms is to terms—

(a) agreed between persons dealing at arm's length, or

(b) not so agreed, but nonetheless such as might reasonably be expected to have been agreed between persons so dealing.

(5) For the purposes of the relevant provisions, a sale of securities similar to, and of the like nominal amount as, securities previously bought ("the original securities") shall be equivalent to a sale of the original securities, and subsection (4) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall, so far as may be, be related to the last to be bought of the parcels, and then to the last but one, and so on.

(6) A person shall be under no greater liability to tax by virtue of subsection (5) above than he would have been under if instead of selling the similar securities he had sold the original securities.

(7) Where at the time when a trade is, or is deemed to be, set up and commenced any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section—

(a) as having been sold at that time in the open market by the person to whom they belonged immediately before that time, and

(b) as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade.

(8) Subject to subsection (7) above, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, the provisions of this section shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.

(9) [M1911]For the purposes of the relevant provisions—

"interest" includes a qualifying distribution and any dividend which is not a qualifying distribution, and in applying references to interest in relation to a qualifying distribution—

(a) "gross interest" means the qualifying distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it; and

(b) "net interest" means the qualifying distribution exclusive of any such tax credit;

"person" includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

"securities" includes stocks and shares, except securities which are securities for the purposes of sections 710 to 728.

(10) For the purposes of the relevant provisions, securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and for the purposes of this subsection, rights guaranteed by the Treasury shall be treated as rights against the Treasury.

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Textual Amendments

F1388 S. 731(4A)(4B)(4C) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 55(1)(2)**

F1389 Words in s. 731(4B) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(40)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C677 *See* s.343—*company reconstruction without change of ownership.*

Marginal Citations

M1910 Source—1970 s.471(1)-(5)

M1911 Source—1970 s.471(6); 1973 sch.11 6; 1986 Sch.18 2(1)

732 Dealers in securities.

M1912 (1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealing in securities, then, in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade, the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 735.

(2) Subsection (1) above shall not apply if the subsequent sale is carried out by the first buyer after 26th October 1986 in the ordinary course of his business as a market maker in securities of the kind concerned.

[F1390 (2A) Subsection (1) above shall not apply in prescribed circumstances if—

(a) the first buyer is—

(i) a prescribed recognised clearing house, or

(ii) a member, of a prescribed class or description, of a prescribed recognised investment exchange, and

(b) the subsequent sale is carried out by the first buyer after a prescribed date and in the ordinary course of his business.]

(3) Subsection (1) above shall not apply if the purchase of the securities by the first buyer and their resale, or as the case may be the subsequent sale of similar securities, constitute a transaction which is to be left out of account in computing profits or losses by virtue of section 729(4), or a transaction which would fall to be so left out of account apart from section 729(8).

(4) Subsection (1) above shall not apply if the securities are overseas securities bought by the first buyer on a stock exchange outside the United Kingdom in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—

(a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and

(b) where credit against tax would fall to be allowed in respect of the interest under section 788 or 790, the first buyer elects that credit shall not be so allowed.

In this subsection "overseas securities" means securities of the government of, or of a body of persons resident in, any country or territory outside the United Kingdom and the Republic of Ireland.

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(5) Subsection (1) above shall not apply if the securities are Eurobonds bought by the first buyer in the ordinary course of his trade as a dealer in Eurobonds; and in this subsection "Eurobond" means a security—

(a) which is neither preference stock nor preference share capital; and

(b) which is issued in bearer form; and

(c) which carries a right to interest either at a fixed rate or at a rate bearing a fixed relationship to a standard published base rate; and

(d) which does not carry a right to any other form of benefit, whether in the nature of interest, participation in profits or otherwise; and

(e) the interest on which is payable without any deduction in respect of income tax or of any tax of a similar character imposed by the laws of a territory outside the United Kingdom;

but, notwithstanding anything in paragraph (d) above, a security is not prevented from being a Eurobond by reason only that it carries a right to convert into a security of another description or to subscribe for further securities (whether of the same description or not).

[[F1391](5A) Subsection (1) above shall not apply if the securities are rights in a unit trust scheme and the subsequent sale is carried out by the first buyer in the ordinary course of his business as manager of the scheme.**]**

(6) For the purposes of subsection (2) above a person is a market maker in securities of a particular kind if he—

(a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of that kind at a price specified by him; and

(b) is recognised as doing so by the Council of the Stock Exchange.

[[F1392](7) For the purposes of subsection (2A) above—

"prescribed" means prescribed in regulations made by the Treasury;

"recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986;

"recognised investment exchange" means a recognised investment exchange within the meaning of that Act.**]**

Textual Amendments

F1390 S. 732(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 56(1)**

F1391 S. 732(5A) inserted (retrospectively) by Finance Act 1990 (c. 29), **s.53(1)**

F1392 S. 732(7) added by Finance Act 1991 (c. 31, SIF 63:1), **s. 56(2)**

Marginal Citations

M1912 Source—1970 s.472; 1982 s.57; 1986 Sch.18 1, 3

733 Persons entitled to exemptions.

[M1913](1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 735.

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(2) If the first buyer is so entitled and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 349(1) shall apply accordingly.

Marginal Citations

M1913 Source—1970 s.473

734 Persons other than dealers in securities.

M1914 (1) If the first buyer carries on a trade not falling within section 732, then in ascertaining whether any or what repayment of income tax is to be made to him under section 380 or 381 by reference to any loss sustained in the trade and the amount of his income for the year of assessment his income for which includes the interest, there shall be left out of account—

(a) the appropriate amount in respect of the interest, as determined in accordance with section 735, and

(b) any tax paid on that amount.

(2) Where the first buyer is a company which does not carry on a trade falling within section 732—

(a) the appropriate amount in respect of the interest, as determined in accordance with section 735(2), and

(b) any tax paid in respect of or deducted from that amount,

shall be disregarded except that, for the purposes of corporation tax on chargeable gains, the appropriate proportion of the net interest receivable by the first buyer as mentioned in section 735(2) shall be treated as if it were a capital distribution within the meaning of section **[**F1393 122(5)(b) of the 1992 Act**]** received in respect of the holding of the securities concerned.

(3) In applying references in this section to interest in relation to a qualifying distribution, references to any tax paid on or in respect of an amount shall be construed as references to so much of any related tax credit as is attributable to that amount; and for this purpose "related tax credit", in relation to an amount, means the tax credit to which the recipient of the distribution of which that amount is a proportion is entitled.

Textual Amendments

F1393 Words in s. 734(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(41)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1914 Source—1970 s.474; 1973 Sch.11 7; 1979(C) Sch.7; 1978 s.30(7)

735 Meaning of "appropriate amount in respect of" interest.

M1915 (1) For the purposes of section 732 the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.

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(2) For the purposes of sections 733 and 734 the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.

(3) For the purposes of this section the appropriate proportion is the proportion which—
  (a) the period beginning with the date on which the securities were first listed in The Stock Exchange Daily Official List at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities, bears to—
  (b) the period beginning with that date and ending with the day before the first date after the purchase by the first buyer on which the securities are quoted in that List at a price excluding the value of the interest receivable by the first buyer.

(4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first quoted as mentioned in paragraph (a), of the beginning of the period for which the interest was payable; except that where the capital amount of the securities was not fully paid at the beginning of that period and one or more instalments of capital were paid during that period—
  (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of that period and the amount thereof attributable to each such instalment, and
  (b) treating each of those parts as interest payable for that period or, where the part was calculated by reference to any such instalment, as interest payable for the part of that period beginning with the payment of the instalment, there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and
  (c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of those amounts.

(5) In relation to securities not listed in the Stock Exchange Daily Official List, subsection (3) above shall have effect with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.

Marginal Citations
M1915 Source—1970 s.475; 1973 Sch.21 7

Miscellaneous provisions relating to securities

736 Company dealing in securities: distribution materially reducing value of holding.

M1916 (1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—
  (a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and

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(b) a distribution is, or two or more distributions are, made in respect of the holding, and

(c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above;

and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as "the dealing company" and so much of any reduction in the value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as "the relevant reduction".

(2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—

(a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation;

(b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and

(c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.

(3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—

(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(4) For the purposes of subsection (2) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class;

and section 839 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

(5) Where this section applies in relation to a distribution which consists of or includes interest to which section 732 applies, any reduction under that section in the price paid for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.

(6) For the purposes of this section "security" includes a share or other right and a company is a "dealing company" in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

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Modifications etc. (not altering text)

C678 *See* s.237—*disallowance of reliefs in respect of bonus issues etc.*

Marginal Citations

M1916 Source—1970 s.476

[F1394 736A Manufactured dividends and interest.

Schedule 23A to this Act shall have effect in relation to certain cases where under a contract or other arrangements for the transfer of shares or other securities a person is required to pay to the other party an amount representative of a dividend or payment of interest on the securities.**]**

Textual Amendments

F1394 S. 736A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 58(1)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(a)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(a), 4(1))

VALID FROM 19/03/1997

[F1395 736B Deemed manufactured payments in the case of stock lending arrangements.

(1) This section applies where—

(a) any interest on securities transferred by the lender under a stock lending arrangement is paid, as a consequence of the arrangement, to a person other than the lender; and

(b) no provision is made for securing that the lender receives payments representative of that interest.

(2) Where this section applies, Schedule 23A and the provisions for the time being contained in any regulations under that Schedule shall apply as if—

(a) the borrower were required under the stock lending arrangement to pay the lender an amount representative of the interest mentioned in subsection (1)(a) above;

(b) a payment were made by the borrower in discharge of that requirement; and

(c) that payment were made on the same date as the payment of the interest of which it is representative.

(3) In this section—

"interest" includes dividends; and

"stock lending arrangement" and "securities" have the same meanings as in section 263B of the 1992 Act.**]**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F1395 S. 736B inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 3**; S.I. 1997/991, **art. 2**

VALID FROM 19/07/2006

[F1396 736C Deemed interest: cash collateral under stock lending arrangements

(1) This section applies where—

(a) the borrower under a stock lending arrangement is treated under section 736B(2) as paying under that arrangement an amount representative of interest on any securities ("the relevant securities"),

(b) an amount of money ("cash collateral") is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,

(c) the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and

(d) the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage.

(2) Where this section applies—

(a) the Tax Acts are to apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and

(b) the amount of the interest is calculated in accordance with the following provisions of this section (see, in particular, subsections (3) to (7)).

(3) The interest is treated for the purposes of the Tax Acts as if it were received on the date ("the return date") on which the borrower transfers the relevant securities back to the lender.

(4) The interest is treated for the purposes of the Tax Acts as if it were payable in respect of the period ("the interest period")—

(a) beginning with the date on which the lender transfers the relevant securities to the borrower, and

(b) ending with the return date.

(5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.

(6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—

(a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and

(b) in any other case, the amount of the cash collateral as at the return date.

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(7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.

(8) If the borrower is a person within the charge to income tax, the interest which the borrower is treated as receiving is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).

(9) If the borrower is a company within the charge to corporation tax—

(a) the interest which the borrower is treated as receiving is treated for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) as payable to it on a money debt,

(b) that money debt is treated for those purposes as a relationship to which section 100 of the Finance Act 1996 applies (money debts etc not arising from the lending of money), and

(c) the credits to be brought into account for those purposes in respect of the interest must be determined using an amortised cost basis of accounting.

(10) The fact that the borrower is treated as receiving an amount of interest is not to be taken as implying that the interest is payable by the lender or any other person.

(11) For the purposes of this section—

"money" includes money expressed in a currency other than sterling,

"stock lending arrangement" and "securities" have the same meanings as in section 263B of the 1992 Act,

"tax advantage" has the meaning given by section 709(1).

(12) For the purposes of this section—

(a) any reference to the transfer of securities back has the same meaning as in section 263B of the 1992 Act (see, in particular, sections 263B(5) and 263C(1) of that Act), but

(b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as if he transfers them back on the date on which it becomes so apparent.

(13) For the purposes of this section it does not matter—

(a) whether the cash collateral is payable by the borrower or by any other person,

(b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement,

(c) whether collateral in another form is also provided in connection with the stock lending arrangement.

[See section 736D—

F1397(14) (a) for provision treating certain arrangements as stock lending arrangements for the purposes of this section, and

(b) for provision treating certain amounts as cash collateral for those purposes.**]]**

Textual Amendments

F1396 S. 736C inserted (with effect in accordance with Sch. 6 para. 3(2)-(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 3(1)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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F1397 S. 736C(14) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 4(2)**

VALID FROM 19/07/2006

[F1398 736D Quasi-stock lending arrangements and quasi-cash collateral

(1) In this section "quasi-stock lending arrangement" means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—
  (a) a person ("the lender") transfers securities to another person ("the borrower"), and
  (b) a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person,

  and it does not matter whether the person on whom that requirement is imposed is the borrower or any other person.

(2) In this section "quasi-cash collateral", in relation to any stock lending arrangement or quasi-stock lending arrangement, means—
  (a) any money which is payable for a relevant purpose, plus
  (b) any other property which is transferable for a relevant purpose.

(3) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—
  (a) the lender under the stock lending arrangement or quasi-stock lending arrangement, or
  (b) a person connected with that lender,

  for the purpose of securing the discharge of the requirement to transfer any or all of the securities, or any other property, back to that lender or any other person.

(4) For the purposes of sections 736B and 736C, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.

(5) For the purposes of section 736C, in relation to any stock lending arrangement or quasi-stock lending arrangement,—
  (a) quasi-cash collateral is treated as if it were cash collateral, and
  (b) the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement is taken to be the amount of the cash collateral.

(6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.

(7) In any case where—
  (a) section 736C applies in relation to a quasi-stock lending arrangement, and
  (b) the person for whom the tax advantage was designed to be obtained is a person ("the other person") other than the borrower under that arrangement,

  that section has effect as if the other person were the person who receives the amount of interest mentioned in that section.

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(8) In any case where section 736C applies in relation to a quasi-stock lending arrangement—

(a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,

(b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and

(c) any reference in that section to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.

(9) Section 839 (connected persons) applies for the purposes of this section.

(10) In this section—

"money" includes money expressed in a currency other than sterling,

"property" means property in any form,

"stock lending arrangement" and "securities" have the same meaning as in section 263B of the 1992 Act,

"transfer" means a transfer otherwise than by way of sale.**]**

Textual Amendments

F1398 S. 736D inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 4(3)**

737 Manufactured dividends: treatment of tax deducted.

[[F1399](1) Subject to the provisions of this section and of Schedule 23A, where, under a contract or other arrangements for the transfer of securities, one of the parties (the "dividend manufacturer") is required to pay to the other an amount representative of a periodical payment of interest on the securities, section 350(1) and Schedule 16 shall apply as if the payment by the dividend manufacturer (the "manufactured dividend") were an annual payment made, after due deduction of tax, wholly out of a source other than profits or gains brought into charge to income tax.**]**

[[F1400](1A) In the case of any payment which under Schedule 23A is such that, in relation to a recipient chargeable to income tax, it would be chargeable under Schedule F, the deduction of tax which (apart from this subsection) would be deemed by virtue of subsection (1) above to have been made at the basic rate shall be deemed to have been made—

(a) at a rate of 22.5 per cent., if the payment is made on or after 6th April 1993 and before 6th April 1994; and

(b) at the lower rate, if the payment is made on or after 6th April 1994;

and, accordingly, section 350(1) shall have effect by virtue of that subsection in relation to any such payment so as to make the dividend manufacturer assessable and chargeable with income tax on the gross amount of the payment at the rate specified in paragraph (a) or, as the case may be, paragraph (b) above, instead of at the basic rate.**]**

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(2) Subsection (1) of this section shall not apply where [F1401] . . . the interest in question is payable without deduction of tax or where, under the rules of the stock exchange governing the transaction, the payment required to be made in respect of the interest is of the amount of the interest before deduction of tax.

[[F1402](3) Subsection (1) above shall not apply in any case where—

(a) the dividend manufacturer is a company resident in the United Kingdom; or

(b) the manufactured dividend is a manufactured overseas dividend, within the meaning of Schedule 23A.**]**

[F1403](4) . . . . . .

[[F1404](5) Where the dividend manufacturer in relation to the contract or other arrangements mentioned in subsection (1) above is not resident in the United Kingdom and the manufactured dividend is paid by him otherwise than in the course of a trade which he carries on through a branch or agency in the United Kingdom, that subsection shall not apply; but if the manufactured dividend is received by a person resident in the United Kingdom (the "United Kingdom recipient"), then unless the United Kingdom recipient shows either—

(a) that the dividend manufacturer was entitled to payment of the dividend as the registered holder of the securities, or

(b) that the dividend manufacturer was entitled to payment of the dividend directly or indirectly from a person from whom he acquired the securities, or to whom he transferred them, and who was so entitled to the payment,

the United Kingdom recipient shall be assessable and chargeable with an amount of income tax in respect of the manufactured dividend equal to that which the dividend manufacturer would have been required to account for and pay had he been resident in the United Kingdom.**]**

[[F1405](5A) Where this section applies in relation to a manufactured dividend, relief shall not be given to any person under any provision of the Tax Acts in respect of any amount which he is required to deduct from the manufactured dividend on account of income tax; and in this subsection "relief" means relief by way of—

(a) deduction in computing profits or gains; or

(b) deduction or set off against income or total profits.**]**

(6) In this section—

[[F1406]"dividend manufacturing regulations" means regulations made by the Treasury under Schedule 23A;

"prescribed" means prescribed in dividend manufacturing regulations;

"recognised investment exchange" means a recognised investment exchange within the meaning of the Financial Services Act 1986;**]**

"securities" includes shares and stock;

[[F1407]"transfer" includes any sale or other disposal;**]**

and references to a periodical payment of interest include references to a qualifying distribution and any dividend which is not a qualifying distribution.

(7) In the application of this section in a case where the references in subsection (1) above to a periodical payment of interest are construed as references to a qualifying distribution, subsection (2) above shall be omitted.

[[F1408](7A) Where the dividend manufacturer—

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(a) is not resident in the United Kingdom but carries on a trade through a branch or agency in the United Kingdom, or

(b) is a member, of a prescribed class or description, of a prescribed recognised investment exchange,

dividend manufacturing regulations may make provision for this section and such other provisions of the Tax Acts as may be prescribed to apply with prescribed modifications in connection with the manufactured dividend or any tax required to be deducted or accounted for in respect of it.

(7B) Without prejudice to the generality of subsection (7A) above, dividend manufacturing regulations made by virtue of that subsection may, in particular, include provision—

(a) entitling the dividend manufacturer to any prescribed relief to which he would not otherwise be entitled;

(b) denying the dividend manufacturer any prescribed relief to which he would otherwise be entitled;

(c) prescribing the manner in which amounts required to be deducted or accounted for on account of tax are to be accounted for and paid;

and, without prejudice to the generality of paragraph (c) above, any regulations made for the purpose specified in that paragraph may include provision, in a case falling within subsection (7A)(a) above, for the manufactured dividend to be a relevant payment for the purposes of Schedule 16 and for that Schedule to apply in relation to it with such modifications as may be prescribed.**]**

(8) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability.

Textual Amendments

F1399 S. 737(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(2)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c),4

F1400 S. 737(1A) inserted (27.7.1993 with effect in relation to any payment of a manufactured dividend made on or after 6.4.1993) by 1993 c. 34, s. 79, Sch. 6 paras.14, **25(4)**

F1401 Words in s. 737(2) repealed (for the year 1991-92 and the subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 6

F1402 S. 737(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(3)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1403 S. 737(4) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 58(2), 123, Sch. 13 para. 3(4), **Sch. 19 Pt. V**, Note 9 (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1404 S. 737(5) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(4)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992

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specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1405 S. 737(5A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(5)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1406 Definitions in s. 737(6) substituted for definitions of "broker" and "market maker" by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(6)(a)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1407 Definition in s. 737(6) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(6)(b)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

F1408 S. 737(7A)(7B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 3(7)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(b)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(c), 4(1))

Modifications etc. (not altering text)

C679 S. 737 applied (with modifications) (24.9.1992) by S.I. 1992/2074, **reg. 14(1)**

C680 S. 737(1) modified (22.3.1992) by S.I. 1992/569, **reg. 13(2)**

C681 S. 737(5A) modified (22.3.1992) by S.I. 1992/569, **reg. 14(1)(2)**

VALID FROM 03/05/1994

[F1409 737A Sale and repurchase of securities: deemed manufactured payments.

(1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, and under the same or any related agreement the transferor or another person connected with him—

(a) is required to buy back the securities, or

(b) acquires an option, which he subsequently exercises, to buy back the securities;

but this section does not apply unless the conditions set out in subsection (2) below are fulfilled.

(2) The conditions are that—

(a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,

(b) the dividend is not, by virtue of any other provision of the Tax Acts, treated as income of the transferor,

(c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and

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(d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.

(3) For the purposes of subsection (2) above the relevant date is the date when the repurchase price of the securities becomes due.

(4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.

(5) Where this section applies, section 737 and Schedule 23A and dividend manufacturing regulations shall apply as if—

(a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) above,

(b) a payment were made by that person to the transferor in discharge of that requirement, and

(c) the payment were made on the date when the repurchase price of the securities becomes due.

(6) In subsection (5) above "the relevant person" means—

(a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;

(b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;

and in that subsection "dividend manufacturing regulations" means regulations under Schedule 23A (whenever made).**]**

Textual Amendments

F1409 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

Modifications etc. (not altering text)

C682 S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C683 S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

VALID FROM 03/05/1994

[F1409 737B Interpretation of section 737A.

(1) In section 737A and this section "securities" means United Kingdom equities, United Kingdom securities or overseas securities; and—

(a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;

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(b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.

(2) In this section "United Kingdom equities", "United Kingdom securities", "overseas securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A.

(3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) In section 737A "the repurchase price of the securities" means—

(a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or

(b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.

(5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.

(6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and "interest" here includes dividends.

(7) For the purposes of section 737A and subsection (4) above—

(a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and

(b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.

(8) Section 839 shall apply for the purposes of section 737A and this section.

(9) In section 737A "the appointed day" means such day as the Treasury may by order appoint, and different days may be appointed in relation to—

(a) United Kingdom equities,

(b) United Kingdom securities, and

(c) overseas securities.**]**

Subordinate Legislation Made

P7 S. 737B(9) power exercised: 1.5.1995 appointed by S.I. 1995/1007, **art. 2**

P8 S. 737B(9) power exercised: 6.11.1996 appointed by S.I. 1996/2645, **art. 2**

Textual Amendments

F1409 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

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VALID FROM 03/05/1994

[F1409 737C Deemed manufactured payments: further provisions.

(1) This section applies where section 737A applies.

(2) Subsection (3) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a dividend on United Kingdom equities, and

(b) by virtue of section 737A(5), section 737 and paragraph 2 of Schedule 23A apply, or paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (3) below "the deemed manufactured dividend" means that payment.

(3) Where this subsection applies—

(a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a);

(b) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by an amount equal to the gross amount of the deemed manufactured dividend.

(4) In subsection (3) above the reference to the gross amount of the deemed manufactured dividend is to the aggregate of—

(a) the amount of the deemed manufactured dividend, and

(b) the amount of the tax credit that would have been issued in respect of the deemed manufactured dividend had the deemed manufactured dividend in fact been a dividend on the United Kingdom equities.

(5) Subsection (6) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and

(b) by virtue of section 737A(5), section 737 applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (6) below "the deemed manufactured interest" means the payment referred to in paragraph (b) above.

(6) Where this subsection applies, the amount of the deemed manufactured interest shall be taken to be an amount equal to the gross amount of the periodical payment referred to in subsection (5)(a) above reduced by an amount equal to income tax thereon at the basic rate for the year of assessment in which that periodical payment is made.

(7) Subsection (8) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is a periodical payment of interest on United Kingdom securities, and

(b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made (whether or not section 737 also applies in relation to that payment);

and in subsection (8) below "the deemed manufactured interest" means the payment referred to in paragraph (b) above.

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(8) Where this subsection applies—

(a) the gross amount of the deemed manufactured interesthall be taken to be the amount found under paragraph 3(4) of Schedule 23A;

(b) any deduction which, by virtue of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.

(9) Where subsections (6) and (8) above apply, or where subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured interest.

(10) Subsection (11) below applies where—

(a) the dividend mentioned in section 737A(2)(a) is an overseas dividend, and

(b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (11) below "the deemed manufactured overseas dividend" means that payment.

(11) Where this subsection applies—

(a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;

(b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;

(c) the repurchase price of the securities shall be treated, for the purposes of the Tax Acts other than section 737A and of the 1992 Act, as increased by the gross amount of the deemed manufactured overseas dividend.

(12) In this section—

(a) "United Kingdom equities", "United Kingdom securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A;

(b) "the repurchase price of the securities" shall be construed in accordance with section 737B(4).**]**

Textual Amendments

F1409 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

Modifications etc. (not altering text)

C684 S. 737C applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

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Supplemental

VALID FROM 01/05/1995

[F1410 737D Power to provide for manufactured payments to be eligible for relief.

(1) The Treasury may by regulations provide for any manufactured payment made to any person to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income of that person that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(2) In this section "manufactured payment" means any manufactured dividend, manufactured interest or manufactured overseas dividend, within the meaning of Schedule 23A.**]**

Textual Amendments

F1410 Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 83(1)**

VALID FROM 01/05/1995

[F1410 737E Power to modify sections 727A, 730A and 737A to 737C.

(1) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where—

(a) the obligation to make the repurchase is not performed or the option to repurchase is not exercised;

(b) provision is made by or under any agreement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

(c) provision is made by or under any agreement for any securities to be treated as not included with securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

(d) provision is made by or under any agreement for the sale price or repurchase price to be determined or varied wholly or partly by reference to fluctuations, occurring in the period after the making of the agreement for the original sale, in the value of securities transferred in pursuance of that sale, or in the value of securities treated as representing those securities; or

(e) provision is made by or under any agreement for any person to be required, in a case where there are any such fluctuations, to make any payment in the course of that period and before the repurchase price becomes due.

(2) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation to cases where—

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(a) arrangements, corresponding to those made in cases involving an arrangement for the sale and repurchase of securities, are made by any agreement, or by one or more related agreements, in relation to securities that are to be redeemed in the period after their sale; and

(b) those arrangements are such that the person making the sale or a person connected with him (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will accrue from their redemption.

(3) The Treasury may by regulations provide that section 730A is to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where there is an agreement relating to the sale or repurchase which is not such as would be entered into by persons dealing with each other at arm's length.

(4) The powers conferred by subsections (1) and (2) above shall be exercisable in relation to section 263A of the 1992 Act as they are exercisable in relation to section 730A of this Act.

(5) Regulations made for the purposes of this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.

(6) The supplementary, incidental and consequential provision that may be made by regulations under this section shall include—

(a) in the case of regulations relating to section 730A, provision modifying subsections (3)(b), (9), (11)(c) and (11A) of section 737C; and

(b) in the case of regulations relating to section 263A of the 1992 Act, provision modifying the operation of that Act in relation to cases where by virtue of the regulations any acquisition or disposal is excluded from those which are to be disregarded for the purposes of capital gains tax.

(7) In this section "modifications" includes exceptions and omissions; and any power under this section to provide for an enactment to have effect with modifications in any case shall include power to provide for it not to apply (if it otherwise would do) in that case.

(8) References in this section to a case involving an arrangement for the sale and repurchase of securities are references to any case where—

(a) a person makes a sale of any securities under any agreement ("the original sale"); and

(b) that person or a person connected with him either—

(i) is required under that agreement or any related agreement to buy them back; or

(ii) acquires, under that agreement or any related agreement, an option to buy them back.

(9) Section 730B shall apply for the purposes of this section as it applies for the purposes of section 730A.**]**

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Textual Amendments

F1410 Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 83(1)**

738 Power to amend sections 732, 735 and 737.

(1) [M1917]The Board may by regulations provide for all or any of the following—

(a) that section 732(2) shall not apply unless the subsequent sale is carried out in compliance with further conditions specified in the regulations;

(b) that section 732(6) shall have effect as if the reference to the Stock Exchange in paragraph (a) were to any recognised investment exchange or to any of those exchanges specified in the regulations, and as if the reference to the Council of the Stock Exchange in paragraph (b) were to the investment exchange concerned;

(c) that for section 735(3) and (5) (which refer to the Stock Exchange Daily Official List) there shall be substituted such provisions as the Board think fit to take account of recognised investment exchanges.

Regulations under this subsection shall apply where the subsequent sale is carried out by the first buyer on or after such day as is specified in the regulations.

[F1411](2) . . . . . .

(3) [M1918]The Board may by regulations substitute for subsection (3) of section 737 a provision that subsection (1) of that section shall not apply to such persons and in such circumstances as are specified in the substituted provision, and make such incidental and consequential provisions (which may include the amendment of other provisions of section 737) as appear to the Board to be appropriate.

(4) [M1919]Regulations under **[**[F1412]subsection**]** (3) above shall apply where the **[**[F1413]contract or other arrangements for the transfer of securities**]** is made on or after such day as is specified in the regulations.

(5) [M1920]In this section "recognised investment exchange" means a recognised investment exchange within the meaning of the [M1921]Financial Services Act 1986.

Textual Amendments

F1411 S. 738(2) repealed (with effect as mentioned in s. 58(3) of the repealing Act) by Finance Act 1991 (c. 31, SIF 63:1), ss. 58(2), 123, Sch. 13 para. 4, **Sch. 19 Pt. V**, Note 9; S.I. 1992/1346, **reg. 5**

F1412 Word in s. 738(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 4(a)**(with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified)

F1413 Words in s. 738(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 58(2), **Sch. 13 para. 4(b)**(with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified)

Marginal Citations

M1917 Source—1986 Sch.18 4

M1918 Source—1986 Sch.18 9(1)(a), (c)

M1919 Source—1986 Sch.18 6(6), 9(2)

M1920 Source—1986 Sch.18 10(2)

M1921 1986 c. 60.

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CHAPTER III

TRANSFER OF ASSETS ABROAD

739 Prevention of avoidance of income tax.

M1922(1) Subject to section 747(4)(b), the following provisions of this section shall have effect for the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled outside the United Kingdom.

(2) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled outside the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(3) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled outside the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(4) In subsection (3) above "capital sum" means, subject to subsection (5) below—
- (a) any sum paid or payable by way of loan or repayment of a loan, and
- (b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

(5) For the purposes of subsection (3) above, there shall be treated as a capital sum which an individual receives or is entitled to receive any sum which a third person receives or is entitled to receive at the individual's direction or by virtue of the assignment by him of his right to receive it.

(6) Income shall not by virtue of subsection (3) above be deemed to be that of an individual for any year of assessment by reason only of his having received a sum by way of loan if that sum has been wholly repaid before the beginning of that year.

Modifications etc. (not altering text)

C685 *See* 1989 s.110—*residence of trustees; and* s.111—*residence of personal representatives.*

C686 Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 12** (with Sch. 13 para. 16, Sch. 15)

Marginal Citations

M1922 Source—1970 s.478(1), (2), (2A), (2B); 1981 s.46(3), (4)

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740 Liability of non-transferors.

[M1923](1) This section has effect where—

(a) by virtue or in consequence of a transfer of assets, either alone or in conjunction with associated operations, income becomes payable to a person resident or domiciled outside the United Kingdom; and

(b) an individual ordinarily resident in the United Kingdom who is not liable to tax under section 739 by reference to the transfer receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations.

(2) Subject to the provisions of this section, the amount or value of any such benefit as is mentioned in subsection (1) above, if not otherwise chargeable to income tax in the hands of the recipient, shall—

(a) to the extent to which it falls within the amount of relevant income of years of assessment up to and including the year of assessment in which the benefit is received, be treated for all the purposes of the Income Tax Acts as the income of the individual for that year;

(b) to the extent to which it is not by virtue of this subsection treated as his income for that year and falls within the amount of relevant income of the next following year of assessment, be treated for those purposes as his income for the next following year,

and so on for subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

(3) Subject to subsection (7) below and section 744(1), the relevant income of a year of assessment, in relation to an individual, is any income which arises in that year to a person resident or domiciled outside the United Kingdom and which by virtue or in consequence of the transfer or associated operations referred to in subsection (1) above can directly or indirectly be used for providing a benefit for the individual or for enabling a benefit to be provided for him.

(4) Income tax chargeable by virtue of this section shall be charged under Case VI of Schedule D.

(5) An individual who is domiciled outside the United Kingdom shall not, in respect of any benefit not received in the United Kingdom, be chargeable to tax under this section by reference to relevant income which is such that if he had received it he would not, by reason of his being so domiciled, have been chargeable to income tax in respect of it; and subsections (6) to (9) of section 65 shall apply for the purposes of this subsection as they would apply for the purposes of subsection (5) of that section if the benefit were income arising from possessions outside the United Kingdom.

(6) Where—

(a) the whole or part of the benefit received by an individual in a year of assessment is a capital payment within the meaning of section **[**[F1414]87 or 89(2) of the 1992 Act**]** (chargeable gains: non-resident and migrant settlements) (because not falling within the amount of relevant income referred to in paragraph (a) of subsection (2) above); and

(b) chargeable gains are by reason of that payment treated under either of those sections as accruing to him in that or a subsequent year,

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paragraph (b) of that subsection shall apply in relation to any year of assessment ("a year of charge") after one in which chargeable gains have been so treated as accruing to him as if a part of the amount or value of the benefit corresponding to the amount of those gains had been treated under that subsection as his income for a year of assessment before the year of charge.

(7) This section applies irrespective of when the transfer or associated operations referred to in subsection (1) above took place, but applies only to relevant income arising on or after 10th March 1981.

Textual Amendments

F1414 Words in s. 740(6)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(42)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C687 *See* 1989 s.110—*residence of trustees; and* s.111—*residence of personal representatives.*

C688 Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 12** (with Sch. 13 para. 16, Sch. 15)

C689 *See* 1981 s.83(3)—*treatment of capital sums for capital gains tax.*

Marginal Citations

M1923 Source—1981 s.45(1)-(6), (9)

741 Exemption from sections 739 and 740.

[M1924]Sections 739 and 740 shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

Marginal Citations

M1924 Source—1970 s.478(3); 1981 s.45(7)

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VALID FROM 05/12/2005

[F1415741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)

(1) The individual is not liable to income tax by virtue of section 739 or 740 for the year of assessment by reference to the relevant transactions if he satisfies an officer of the Board—
  (a) that Condition A is met, or
  (b) in a case where Condition A is not met, that Condition B is met.

(2) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.

(3) Condition B is that—
  (a) all the relevant transactions were genuine commercial transactions, and
  (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.

(4) The intentions and purposes of any person who, whether or not for consideration,—
  (a) designs or effects the relevant transactions or any of them, or
  (b) provides advice in relation to the relevant transactions or any of them,

  are to be taken into account in determining the purposes for which those transactions or any of them were effected.

(5) A relevant transaction is a commercial transaction only if it is effected—
  (a) in the course of a trade or business, or
  (b) with a view to setting up and commencing a trade or business,

  and, in either case, for the purposes of that trade or business.

(6) For that purpose, the making and managing of investments, or the making or managing of investments, is not a trade or business except to the extent that—
  (a) the person by whom it is done, and
  (b) the person for whom it is done,

  are independent persons dealing at arm's length.

(7) In this section—

  "commercial transaction" does not include—
  (a) a transaction on terms other than those that would have been made between independent persons dealing at arm's length, or
  (b) a transaction that would not have been entered into between independent persons dealing at arm's length;

  "independent persons" means persons who are not connected with each other (within the meaning given by section 839);

  "relevant transactions" means—
  (a) the transfer, and
  (b) any associated operations;

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"revenue" includes taxes, duties and national insurance contributions;

"taxation" includes any revenue for whose collection and management the Commissioners for Her Majesty's Revenue and Customs are responsible.

(8) Any associated operation that would not (apart from this subsection) fall to be taken into account for the purposes of this section must be taken into account for those purposes if, were it to be so taken into account, the conditions in subsection (1) above would be failed by reference to—

(a) that associated operation, or

(b) that associated operation taken together with the transfer or any one or more other associated operations.

(9) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.

(10) This section is subject to sections 741B and 741C (application of section 741 and this section etc).**]**

Textual Amendments

F1415 S. 741A inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 3**

VALID FROM 05/12/2005

[F1416 741B Application of sections 741 and 741A

(1) This section makes provision with respect to the application for the year of assessment of—

(a) section 741,

(b) section 741A, or

(c) section 741C,

in the case of the individual and the relevant transactions.

(2) In this section—

"new transaction" means a relevant transaction effected on or after the relevant date;

"old transaction" means a relevant transaction effected before the relevant date;

"the relevant date" means 5th December 2005;

"relevant transactions" means—

(a) the transfer, and

(b) any associated operations.

(3) If all the relevant transactions are old transactions, section 741 is the provision to be applied.

(4) If all the relevant transactions are new transactions, section 741A is the provision to be applied.

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(5) If—

(a) any one or more of the relevant transactions are old transactions, and

(b) any one or more of the relevant transactions are new transactions,

section 741C is the provision to be applied.**]**

Textual Amendments

F1416 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 4**

VALID FROM 05/12/2005

[F1416 741C Cases where there are both old transactions and new transactions

(1) This section applies by virtue of section 741B if the case falls within subsection (5) of that section.

(2) Sections 739 and 740 do not apply, unless subsection (3) below applies.

(3) This subsection applies if—

(a) the conditions in section 741(1) are failed by reference to the old transactions or any of them, or

(b) the conditions in section 741A(1) are failed by reference to the new transactions or any of them.

(4) Where subsection (3) above applies, the general rule is that sections 739 and 740 apply as they would have applied apart from any exemption by virtue of sections 741 to 741C.

(5) In any case where subsection (3) above applies by virtue only of paragraph (b) of that subsection, the general rule has effect subject to, and in accordance with, the Rules in subsections (6) to (8) below.

(6) Rule 1 is that, for the purposes of section 739(2) or (3), any income arising before the relevant date must not be brought into account as income of the person resident or domiciled outside the United Kingdom.

(7) Rule 2 is that for the purposes of section 740, where—

(a) a benefit is received by the individual in a year of assessment ending after the relevant date, and

(b) relevant income of years of assessment up to and including that year falls to be determined,

the general rule requires years ending before the relevant date to be brought into account as well as years ending after that date.

(8) Rule 3 is that, for the purposes of section 740, a benefit received by the individual in the year 2005-06 is to be left out of account to the extent that, on a time apportionment basis, it fell to be enjoyed in any part of the year that falls before the relevant date.

(9) This section is to be read as one with section 741B.**]**

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Textual Amendments

F1416 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 4**

VALID FROM 05/12/2005

[F1417 741B Section 739: just and reasonable apportionment in certain cases

(1) This section applies where—
  (a) an individual is liable to tax by virtue of section 739 for a year of assessment (the "taxable year"), but
  (b) the conditions in subsections (2) to (4) below are met.

(2) Condition 1 is that since the making of the transfer there have been one or more years of assessment when the circumstances were such that, so far as relating to such of the relevant transactions as were effected before the end of the year, the individual—
  (a) was not liable to tax by virtue of section 739, or
  (b) would not have been liable to tax by virtue of section 739 if there had been any deemed income of his under that section,

  because an appropriate exemption applied or, in a case falling within paragraph (b) above, would have applied.

(3) Condition 2 is that the individual is liable to tax under section 739 in the taxable year in consequence of Condition B in section 741A(3) not being met.

(4) Condition 3 is that the income by reference to which the individual is liable to tax for the taxable year is attributable—
  (a) partly to relevant transactions by reference to which the appropriate exemption applied for the last exempt year of assessment, and
  (b) partly to associated operations not falling within paragraph (a) above ("chargeable operations").

(5) For the purposes of this section, a year of assessment is "exempt" if it is one of the years of assessment mentioned in subsection (2) and there is no earlier year of assessment for which—
  (a) the individual was liable to tax by virtue of section 739, or
  (b) the individual would have been liable to tax by virtue of section 739, if there had been any deemed income of his under that section.

(6) Where this section applies, the liability of the individual is to be reduced as if it fell to be determined by reference to only so much of the income as appears to an officer of the Board to be justly and reasonably attributable to chargeable operations in all the circumstances of the case.

(7) The facts and matters that may be taken into account in determining for the purposes of subsection (6) above whether income may be regarded as justly and reasonably attributable to chargeable operations include whether, and to what extent, the chargeable operations or any of them directly or indirectly affect any of the following—
  (a) the character, description or amount of any income of any person,

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(b) any person's power to enjoy any income,

(c) the character, description or amount of any income which a person has power to enjoy.

(8) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.

(9) In this section—

"appropriate exemption" means exemption by virtue of—

(a) paragraph (b) of section 741(1), or

(b) Condition B in section 741A(3);

"relevant transactions" means—

(a) the transfer, and

(b) any associated operations.**]**

Textual Amendments

F1417 S. 741D inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 5**

742 Interpretation of sections 739 to 741.

(1) [M1925]For the purposes of sections 739 to 741 "an associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.

(2) An individual shall, for the purposes of section 739, be deemed to have power to enjoy income of a person resident or domiciled outside the United Kingdom if—

(a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual; or

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or

(c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or

(d) the individual may, in the event of the exercise or successive exercise of one or more powers, by whomsoever exercisable and whether with or without the consent of any other person, become entitled to the beneficial enjoyment of the income; or

(e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

(3) In determining whether an individual has power to enjoy income within the meaning of subsection (2) above—

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(a) regard shall be had to the substantial result and effect of the transfer and any associated operations, and

(b) all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) [M1926]Subsection (5) below applies where a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period.

(5) Sections 739 to 741 shall have effect as if the amount which the person would be treated as receiving or the additional amount (as the case may be) were income becoming payable to him; and, accordingly, any reference in those sections to income of (or payable or arising to) such a person shall be read as including a reference to such an amount.

(6) Where income of a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest—

(a) which falls due at the end of the interest period, and

(b) which would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,

then for the purposes of sections 739 to 741, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).

(7) In subsections (4) to (6) above "interest period" has the meaning given by section 711.

(8) [M1927]For the purposes of sections 739 to 741, any body corporate incorporated outside the United Kingdom **[**[F1418], or regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom**]** shall be treated as if it were resident outside the United Kingdom whether it is so resident or not.

(9) For the purposes of sections 739 to 741—

(a) a reference to an individual shall be deemed to include the wife or husband of the individual;

(b) "assets" includes property or rights of any kind and "transfer", in relation to rights, includes the creation of those rights;

(c) "benefit" includes a payment of any kind;

(d) *references to income of a person resident or domiciled outside the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section* 423*,include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person, and that amount shall be treated as increased by such proportion of itself as corresponds to the rate of advance corporation*

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tax applicable to a distribution made at the end of the accounting period to which the apportionment relates[F1419],

(e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(10) *Any amount which by virtue of subsection* (9)(d)*above is treated as the income of any person for the purposes of sections* 739*to* 741*shall also be treated for those purposes as payable to that person*[F1419].

Textual Amendments

F1418 1990 s.66*in relation to transfers of assets and associated operations on or after* 20*March* 1990.

F1419 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Marginal Citations

M1925 Source—1970 s.478(4)-(6); 1981 ss.45(7), 46(5)

M1926 Source—1985 Sch. 23 39

M1927 Source—1970 s.478(7)-(9); 1972 Sch.24 27; 1981 s.46(6)

743 Supplemental provisions.

[M1928](1) Income tax at the basic rate shall not be charged by virtue of section 739 in respect of income which has borne tax at the basic rate by deduction or otherwise but, subject to that, income tax so chargeable shall be charged under Case VI of Schedule D.

(2) In computing the liability to income tax of an individual chargeable by virtue of section 739, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of that section had actually been received by him.

(3) An individual who is domiciled outside the United Kingdom shall not be chargeable to tax in respect of any income deemed to be his by virtue of that section if he would not, by reason of his being so domiciled, have been chargeable to tax in respect of it if it had in fact been his income.

(4) Where an individual has been charged to income tax on any income deemed to be his by virtue of section 739 and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.

(5) In any case where an individual has for the purposes of that section power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in section 742(2)(c), then notwithstanding anything in subsection (1) above, the individual shall be chargeable to income tax by virtue of section 739 for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

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Modifications etc. (not altering text)
C690 *See* 1970(M) s.31(3)—*appeals to go to Special Commissioners.*

Marginal Citations
M1928 Source—1970 s.480; 1971 Sch.6 72; 1981 s.46(7)

744 No duplication of charge.

M1929 (1) No amount of income shall be taken into account more than once in charging tax under the provisions of sections 739 and 740; and where there is a choice as to the persons in relation to whom any amount of income can be so taken into account—

(a) it shall be so taken into account in relation to such of them, and if more than one in such proportions respectively, as appears to the Board to be just and reasonable; and

(b) the jurisdiction of the Special Commissioners on any appeal against an assessment charging tax under those provisions shall include jurisdiction to review any relevant decision taken by the Board under this subsection.

(2) In subsection (1) above references to an amount of income taken into account in charging tax are—

(a) in the case of tax which under section 739 is charged on income, to the amount of that income;

(b) in the case of tax charged under that section by virtue of section 743(5), to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged;

(c) in the case of tax charged under section 740, to the amount of relevant income taken into account under subsection (2) of that section in charging the benefit.

Marginal Citations
M1929 Source—1981 s.46(1), (2)

745 Power to obtain information.

M1930 (1) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.

(2) The particulars which a person must furnish under this section, if he is required by such a notice so to do, include particulars—

(a) as to transactions with respect to which he is or was acting on behalf of others;

(b) as to transactions which in the opinion of the Board it is proper that they should investigate for the purposes of this Chapter notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.

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(3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of his client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of the client and also—

(a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom to or by any such body corporate as is mentioned in subsection (4) below, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee or of the persons concerned in the associated operations, as the case may be;

(b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is mentioned in subsection (4) below, the name and address of the body corporate;

(c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled outside the United Kingdom, the names and addresses of the settlor and of that person.

(4) The bodies corporate mentioned in subsection (3) above are bodies corporate resident or incorporated outside the United Kingdom [F1420]. . . which are, or if resident in the United Kingdom would be, close companies, but not **[**[F1421]companies whose business consists wholly or mainly of the carrying on of a trade or trades.**]**.

(5) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in subsection (4) above or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in subsection (3)(c) above.

(6) In this section "settlement" and "settlor" have the meanings given by section 681(4).

Textual Amendments

F1420 Words in s. 745(4) repealed (partly retrospective to 30.11.1993 and otherwise with effect in accordance with s. 251(3)(a) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(1)(3), **Sch. 16 Pt. 8(1)**, Note

F1421 1989 s.107*and* Sch.12 para.17.*Previously*
"trading companies (as defined in paragraph 7 of Schedule 19)".

Modifications etc. (not altering text)

C691 *See*—1981 s.84—s.745*to have effect for* 1981 ss.80 to 82 (*capital gains of non-resident settlements*).1984 Sch.14 para.15(2)—s.745*to have effect for* 1984 Sch.14 para.15(1)*as for* s.745,*but references to* Part XVII Ch.III*to be construed as references to* 1984 s.70*and* Sch.14.

C692 S. 745(2)-(5) applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 98(2)**, 289 (with ss. 60, 101(1), 171, 201(3))

C693 *See* S.I. 1989 No. 1343 (N.I.14) Art.10(2)*and* Sch.1 para.38(3)*for construction in the case of a solicitor who is an officer or employee of a recognised body.*

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Marginal Citations
M1930 Source—1970 s.481; 1972 Sch.24 28; 1981 s.45(8)

746 Persons resident in the Republic of Ireland.

[M1931]In relation to amounts which by virtue of any provision of section 34, 35 or 36 would, in the case of a person resident in the Republic of Ireland and not resident in the United Kingdom, be included in his income if he were not resident in the Republic of Ireland, sections 739, 742(1) to (3), 743 and 745 shall apply—

(a) as if his income included those amounts; and

(b) as if references to an individual included references to any person (and so that in accordance with section 9 those sections then apply for corporation tax as well as for income tax);

but section 741 shall not apply in any such case.

Marginal Citations
M1931 Source—1970 s.479.

CHAPTER IV

CONTROLLED FOREIGN COMPANIES

Modifications etc. (not altering text)
C694 Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by 1993 c. 34, **s. 119(3)**

747 Imputation of chargeable profits and creditable tax of controlled foreign companies

[M1932](1) If the Board have reason to believe that in any accounting period a company—

(a) is resident outside the United Kingdom, and

(b) is controlled by persons resident in the United Kingdom, and

(c) is subject to a lower level of taxation in the territory in which it is resident,

and the Board so direct, the provisions of this Chapter shall apply in relation to that accounting period.

(2) A company which falls within paragraphs (a) to (c) of subsection (1) above is in this Chapter referred to as a “controlled foreign company”.

(3) Where, by virtue of a direction under subsection (1) above, the provisions of this Chapter apply in relation to an accounting period of a controlled foreign company, the chargeable profits of that company for that period and its creditable tax (if any) for that period shall each be apportioned in accordance with section 752 among the persons (whether resident in the United Kingdom or not) who had an interest in that company at any time during that accounting period.

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(4) Where, on such an apportionment of a controlled foreign company's chargeable profits for an accounting period as is referred to in subsection (3) above, an amount of those profits is apportioned to a company resident in the United Kingdom then, subject to subsection (5) below—

(a) a sum equal to corporation tax at the appropriate rate on that apportioned amount of profits, less the portion of the controlled foreign company's creditable tax for that period (if any) which is apportioned to the resident company, shall be assessed on and recoverable from the resident company as if it were an amount of corporation tax chargeable on that company; and

(b) if, apart from this paragraph, section 739 would deem any sum forming part of the company's chargeable profits for that accounting period to be the income of an individual for the purposes of the Income Tax Acts, that section shall not apply to such portion of that sum as corresponds to the portion of those chargeable profits which is apportioned to companies which are resident in the United Kingdom and which, by virtue of paragraph (a) above, have a liability to tax in respect thereof;

and for the purposes of paragraph (a) above "the appropriate rate" means the rate of corporation tax applicable to profits of that accounting period of the resident company in which ends the accounting period of the controlled foreign company to which the direction under subsection (1) above relates or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.

(5) Tax shall not, by virtue of subsection (4) above, be assessed and recoverable from a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—

(a) the amount of the controlled foreign company's chargeable profits for the accounting period in question which is apportioned to the resident company, and

(b) any amounts of those chargeable profits which are apportioned to persons who are connected or associated with the resident company,

is at least 10 per cent. of the total of those chargeable profits.

(6) In relation to a company resident outside the United Kingdom—

(a) any reference in this Chapter to its chargeable profits for an accounting period is a reference to the amount which, on the assumptions in Schedule 24, would be the amount of the total profits of the company for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable; and

(b) any reference in this Chapter to profits does not include a reference to chargeable gains but otherwise (except as provided by paragraph (a) above) has the same meaning as it has for the purposes of corporation tax.

Marginal Citations

M1932 Source—1984 s.82

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VALID FROM 01/05/1995

[F1422 747A Special rule for computing chargeable profits.

(1) Subsection (2) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for—
  (a) the first relevant accounting period of the company, or
  (b) any subsequent accounting period of the company.

(2) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for its first relevant accounting period.

(3) Subsection (4) below applies where for the purposes of this Chapter a company's chargeable profits fall to be determined for any accounting period of the company which—
  (a) begins on or after the appointed day, and
  (b) falls before the company's first relevant accounting period.

(4) Notwithstanding any other rule (whether statutory or otherwise) the chargeable profits for any such period shall be computed and expressed in the currency used in the accounts of the company for the accounting period concerned.

(5) For the purposes of this section the first relevant accounting period of the company shall be found in accordance with subsections (6) to (8) below.

(6) Where a direction has been given under section 747 as regards an accounting period of the company which begins before its commencement day, its first relevant accounting period is its accounting period which begins on its commencement day.

(7) Where the company is a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which a direction has been given under section 747.

(8) Where the company is not a trading company and subsection (6) above does not apply, its first relevant accounting period is its first accounting period which begins on or after its commencement day and as regards which—
  (a) a direction has been given under section 747, or
  (b) it can reasonably be assumed that a direction would have been given under section 747 but for the fact that it pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.

(9) For the purposes of this section—
  (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
  (b) the appointed day is such day as may be appointed under section 165(7)(b) of the [M1933]Finance Act 1993 (which relates to exchange gains and losses).

(10) References in this section to the accounts of a company—
  (a) are to the accounts which the company is required by the law of its home State to keep, or

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(b) if the company is not required by the law of its home State to keep accounts, are to the accounts of the company which most closely correspond to the individual accounts which companies formed and registered under the [M1934]Companies Act 1985 are required by that Act to keep;

and for the purposes of this subsection the home State of a company is the country or territory under whose law the company is incorporated or formed.**]**

Textual Amendments

F1422 S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 2**

Marginal Citations

M1933 1993 c. 34.

M1934 1985 c. 6.

748 Limitations on direction-making power

[M1935](1) No direction may be given under section 747(1) with respect to an accounting period of a controlled foreign company if—

(a) in respect of that period the company pursues, within the meaning of Part 1 of Schedule 25, an acceptable distribution policy; or

(b) throughout that period the company is, within the meaning of Part II of that Schedule, engaged in exempt activities; or

(c) the public quotation condition set out in Part III of that Schedule is fulfilled with respect to that period; or

(d) the chargeable profits of the accounting period do not exceed £20,000 or, if the accounting period is less than 12 months, a proportionately reduced amount.

(2) Without prejudice to any right of appeal, nothing in subsection (1) above prevents the Board from giving a direction with respect to an accounting period after the end of that period but before it is known whether the company has paid such a dividend as establishes that it is pursuing an acceptable distribution policy in respect of the profits arising in that period.

(3) Notwithstanding that none of paragraphs (a) to (d) of subsection (1) above applies to an accounting period of a controlled foreign company, no direction may be given under section 747(1) with respect to that accounting period if it appears to the Board that—

(a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, or any two or more of those transactions taken together, achieved a reduction in United Kingdom tax, either the reduction so achieved was minimal or it was not the main purpose or one of the main purposes of that transaction or, as the case may be, of those transactions taken together to achieve that reduction, and

(b) it was not the main reason or, as the case may be, one of the main reasons for the company's existence in that accounting period to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom,

and Part IV of Schedule 25 shall have effect with respect to the preceding provisions of this subsection.

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Marginal Citations

M1935 Source—1984 s.83

VALID FROM 19/07/2011

[F1423 748ZA Exclusion of small profits exemptions

(1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company ("X") if condition A, B or C is met.

(2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and

(b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.

(3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in consequence of the scheme profits are shifted to X from another company ("Y"),

(b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and

(c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.

(4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.

(5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—

(a) [F1424 section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X, for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or]

(b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(6) For the purposes of this section—

"apportionment" means an apportionment under section 747(3);

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"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.**]**

Textual Amendments

F1423 S. 748ZA inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 5**

F1424 S. 748ZA(5)(a) omitted (with effect in accordance with Sch. 5 paras. 6(3), 7(3)(4) of the repealing Act) by Finance Act 2011 (c. 11), **Sch. 5 para. 7(2)(a)**

VALID FROM 24/07/2002

[F1425 748A Territorial exclusions from exemption under section 748

(1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—

(a) is a company incorporated in a territory to which this section applies as respects that accounting period; or

(b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or

(c) at any time in that accounting period carries on business through a branch or agency in such a territory.

(2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through branches or agencies in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.

(3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.

(4) Regulations under subsection (3) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.

(5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

Textual Amendments

F1425 S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 89(2)**

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749 Residence and interest.

[M1936](1) Subject to subsections (2) and (4) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.

(2) If, in the case of any company, there are in any accounting period two or more territories falling within subsection (1) above, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of them, namely—

(a) if, throughout the accounting period, the company's place of effective management is situated in one of those territories only, in that territory; and

(b) if, throughout the accounting period, the company's place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company's assets is situated; and

(c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company's assets is situated; and

(d) if paragraph (a) above does not apply and neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories, in that one of them which may be specified in a direction under section 747(1) relating to that accounting period.

(3) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.

(4) In any case where it becomes necessary for the purposes of subsection (2) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period, account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories and the amount of them shall be determined by reference to their market value at that time.

[[F1426](4A) [F1427]. . . . . **]**

(5) For the purposes of this Chapter, the following persons have an interest in a controlled foreign company—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,

(b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,

(c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit, and

(d) any other person who, either alone or together with other persons, has control of the company,

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and for the purposes of paragraph (b) above the definition of "distribution" in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

(6) References in subsection (5) above to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it; but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.

(7) Without prejudice to subsection (5) above, the Board may, if they think it appropriate, treat a loan creditor of a controlled foreign company as having an interest in the company for the purposes of this Chapter.

Textual Amendments

F1426 S. 749(4A) inserted by Finance Act 1990 (c. 29), **s.67(1)(4)**

F1427 S. 749(4A) repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(4), **Sch. 26 Pt. 8(1)**, Note

Marginal Citations

M1936 Source—1984 s.84

VALID FROM 31/07/1998

[F1428 749A Elections and designations under section 749: supplementary provisions.

(1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—

(a) the accounting period in relation to which it is made ("the original accounting period"), and

(b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,

and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.

(2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—

(a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or

(b) some other territory also falls within that subsection.

(3) Any election under section 749(3)(d)—

(a) must be made by notice given to an officer of the Board;

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(b) must be made no later than twelve months after the end of the controlled foreign company's accounting period in relation to which it is made;

(c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;

(d) must be signed by the persons making it; and

(e) is irrevocable.

(4) Nothing in—

(a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).

(5) A designation under section 749(3)(e) is irrevocable.

(6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.

(7) A notice under subsection (6) above shall specify—

(a) the date on which the designation was made;

(b) the controlled foreign company to which the designation relates;

(c) the accounting period of the controlled foreign company in relation to which the designation is made; and

(d) the territory designated.

(8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.**]**

Textual Amendments

F1428 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 4**; S.I. 1998/3173, **art. 2**

VALID FROM 31/07/1998

[F1428 749B Interests in companies.

(1) For the purposes of this Chapter, the following persons have an interest in a company—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;

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(c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and

(d) any other person who, either alone or together with other persons, has control of the company.

(2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.

(3) For the purposes of subsection (1)(b) above, the definition of "distribution" in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

(4) References in subsection (1) above to being entitled to do anything apply where a person—

(a) is presently entitled to do it at a future date, or

(b) will at a future date be entitled to do it;

but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.

(5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.

(6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.

(7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person's interest in that company, the same interest as the first company has in the second company.

(8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.**]**

Textual Amendments

F1428 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 4**; S.I. 1998/3173, **art. 2**

750 Territories with a lower level of taxation.

M1937 (1) Without prejudice to subsection (3) of section 749, a company which, by virtue of subsection (1) or subsection (2) of that section, is to be regarded as resident in a particular territory outside the United Kingdom shall be considered to be subject to a lower level of taxation in that territory if the amount of tax ("the local tax") which is

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paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than **[**[F1429]three-quarters**]**of the corresponding United Kingdom tax on those profits.

(2) For the purposes of this Chapter, the amount of the corresponding United Kingdom tax on the profits arising in an accounting period of a company resident outside the United Kingdom is the amount of corporation tax which, on the assumptions set out in Schedule 24 and subject to subsection (3) below, would be chargeable in respect of the chargeable profits of the company for that accounting period.

(3) In determining the amount of corporation tax which, in accordance with subsection (2) above, would be chargeable in respect of the chargeable profits of an accounting period of a company resident outside the United Kingdom—

(a) it shall be assumed for the purposes of Schedule 24—

(i) that a direction has been given under section 747(1) in respect of that period; and

(ii) that the Board have made any declaration which they could have made under sub-paragraph (3) of paragraph 11 of that Schedule and of which they gave notice as mentioned in that sub-paragraph; and

(b) there shall be disregarded so much of any relief from corporation tax in respect of income as would be attributable to the local tax and would fall to be given by virtue of any provision of Part XVIII other than section 810; and

(c) there shall be deducted from what would otherwise be the amount of that corporation tax—

(i) any amount which (on the assumptions set out in Schedule 24) would fall to be set off against corporation tax by virtue of section 7(2); and

(ii) any amount of income tax or corporation tax actually charged in respect of any of those chargeable profits.

(4) The references in subsection (3)(c) above to an amount falling to be set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the company whether on the making of a claim or otherwise.

Textual Amendments

F1429 Words in s. 750(1) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 16.3.1993) by 1993 c. 34, **s. 119(1)(2)**

Marginal Citations

M193 Source—1984 s.85

VALID FROM 28/07/2000

[[F1430]**750A Deemed lower level of taxation: designer rate tax provisions.**

(1) Where—

(a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and

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(b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but

(c) that local tax is determined under designer rate tax provisions,

the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.

(2) In subsection (1) above "designer rate tax provisions" means provisions—

(a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and

(b) which are specified in regulations made by the Board.

(3) Regulations under subsection (2) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.**]**

Textual Amendments

F1430 S. 750A inserted (with effect in accordance with Sch. 31 para. 9(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 3**

751 Accounting periods and creditable tax

M1938 (1) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall begin—

(a) whenever the company comes under the control of **[**F1431 persons**]** resident in the United Kingdom;

(b) whenever the company, not being the subject of an earlier direction under section 747(1), commences to carry on business; and

(c) whenever an accounting period of the company ends without the company then ceasing either to carry on business or to have any source of income whatsoever.

(2) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall end if and at the time when—

(a) the company ceases to be under the control of persons resident in the United Kingdom; or

(b) the company becomes, or ceases to be, liable to tax in a territory; or

[F1432 (bb) F1433 . . . . . **]**

(c) the company ceases to have any source of income whatsoever;

and for the purposes of paragraph (b) above "liable to tax" means liable to tax by reason of domicile, residence or place of management.

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(3) Without prejudice to subsections (1) and (2) above, subsections (3), (5) and (7) of section 12 shall apply for the purposes of this Chapter as they apply for the purposes of corporation tax, but with the omission of so much of those provisions as relates to a company coming or ceasing to be within the charge to corporation tax.

(4) Where it appears to the Board that the beginning or end of any accounting period of a company resident outside the United Kingdom is uncertain, a direction under section 747(1) may specify as an accounting period of the company such period, not exceeding 12 months, as appears to the Board to be appropriate, and that period shall be treated for the purposes of this Chapter as an accounting period of the company unless the direction is subsequently amended under subsection (5) below.

(5) If, on further facts coming to the knowledge of the Board after the making of a direction (including facts emerging on an appeal against notice of the making of the direction), it appears to the Board that any accounting period specified in the direction is not the true accounting period, the Board shall amend the direction so as to specify the true period.

(6) In this Chapter, in relation to an accounting period of a controlled foreign company in respect of which a direction is given under section 747(1), the creditable tax means the aggregate of—

(a) the amount of any relief from corporation tax in respect of income which (on the assumptions set out in Schedule 24 and assuming the company to be liable for corporation tax on the chargeable profits of that accounting period) would fall to be given to the company by virtue of any provision of Part XVIII in respect of foreign tax attributable to any income which is brought into account in determining those chargeable profits; and

(b) any amount which (on those assumptions) would fall to be set off against corporation tax on those chargeable profits by virtue of section 7(2); and

(c) the amount of any income tax or corporation tax actually charged in respect of the chargeable profits of that accounting period, less any of that tax which has been or falls to be repaid to the company, whether on the making of a claim or otherwise.

Textual Amendments

F1431 1990 s.89*and* Sch.14 para.9 (*correction of errors*)*—deemed always to have had effect. Previously* "the persons".

F1432 1990 s.67(2), (4)*on and after* 20*March* 1990.

F1433 S. 751(2)(bb) repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(4), **Sch. 26 Pt. 8**, Note

Marginal Citations

M1938 Source—1984 s.86

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VALID FROM 19/07/2007

751A Reduction in chargeable profits for certain activities of EEA business establishments

(1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,
- (b) throughout that period the controlled foreign company has a business establishment in an EEA territory,
- (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
- (d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount ("the specified amount") specified in the application (including to nil).

(3) If the Commissioners grant the application—
- (a) those chargeable profits are treated as reduced by the specified amount, and
- (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
- (a) arises to the appropriate body of persons (taken as a whole), and
- (b) is created directly by qualifying work.

(5) For the purposes of subsection (4) "net economic value" does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.

(6) For the purposes of subsection (4) "the appropriate body of persons" means—
- (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and
- (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,

and for the purposes of this subsection "group of companies" means a company and any other companies of which it has control.

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(7) For the purposes of subsection (4) "qualifying work" means work which—
  (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
  (b) is done in that territory by individuals working for the controlled foreign company there.

(8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).

(9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—
  (a) they are employed by the company in the territory, or
  (b) they are otherwise directed by the company to perform duties on its behalf in the territory.

VALID FROM 21/07/2009

[F1434751A Reduction in chargeable profits for certain financing income

(1) This section applies if—
  (a) an apportionment under section 747(3) falls to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,
  (b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company ("the payer"),
  (c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and
  (d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in the relevant accounting period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period ("the chargeable profits") to be reduced by an amount ("the specified amount") specified in the application (including to nil).

(3) If the Commissioners grant the application—
  (a) the chargeable profits are treated as reduced by the specified amount, and
  (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

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(4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.

(5) In subsection (4) "the relevant amount" means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.**]**

Textual Amendments

F1434 S. 751AA inserted (with effect in accordance with Sch. 16 para. 25 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 23**

VALID FROM 19/07/2011

[F1435 751AB Reduction in chargeable profits: failure to qualify for exemptions

(1) This section applies if—

(a) an apportionment under section 747(3) would fall to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,

(b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and

(c) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) "Relevant failure" means—

(a) in the case of section 748(1)(ba), one or both of the following—

(i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in sub-paragraph (3)(a) of that paragraph to 10% were a reference to 50%, and

(ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and

(b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).

(3) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period ("the chargeable profits") to be reduced to an amount specified in the application ("the specified amount").

The specified amount may be nil.

(4) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to the specified amount, and

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(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(5) The Commissioners may grant the application only if—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.

(6) "The relevant amount" means—

(a) if the relevant failure is within subsection (2)(a), the sum of—

(i) the excess finance and IP income (if any) for the relevant accounting period, and

(ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and

(b) if the relevant failure is within subsection (2)(b)—

(i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or

(ii) if that amount is a negligible amount, nil.

(7) "The excess finance and IP income" for the relevant accounting period means—

(a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or

(b) if that amount is a negligible amount, nil.

(8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—

(a) as representing the net economic value which—

(i) arises to the appropriate body of persons (taken as a whole), and

(ii) is created directly by qualifying work, or

(b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.

(9) In subsection (8)(a) "qualifying work" means work which—

(a) is done in the territory in which the controlled foreign company is resident, and

(b) is done in that territory by individuals working for the controlled foreign company there.

(10) A transaction with a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.

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(11) For the purposes of subsections (8) and (9)—

(a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and

(b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.

(12) In this section—

"finance income" has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);

"relevant IP income" has the meaning given by paragraph 12F(4) of that Schedule;

"net chargeable profits" means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;

"UK-connected gross income" has the same meaning as in paragraph 12E of Schedule 25;

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company).**]**

Textual Amendments

F1435 S. 751AB inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 2**

VALID FROM 19/07/2011

[F1436 751AC Reduction in chargeable profits following an exempt period

(1) This section applies if—

(a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),

(b) an accounting period ("the relevant accounting period") of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,

(c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, and

(d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for that accounting period ("the chargeable profits") to be reduced to an amount ("the specified amount") specified in the application (which may be nil).

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(3) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to the specified amount, and

(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(4) The Commissioners may grant the application only if—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.

(5) "The relevant amount" means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—

(a) the relevant transaction which triggered the end of the exempt period, or

(b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.

(6) "Relevant transaction" has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule)).**]**

Textual Amendments

F1436 S. 751AC inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 7**

VALID FROM 19/07/2007

751B Section 751A: supplementary

(1) An application by a company under section 751A—

(a) must be made in such form as the HMRC Commissioners may determine,

(b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and

(c) must contain such information as those Commissioners may reasonably require for that purpose.

(2) An application by a company under section 751A—

(a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and

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(b) may be amended or withdrawn at any time before the application is determined by those Commissioners.

(3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.

(4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).

(5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.

(6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.

(7) On an appeal—

(a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,

(b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and

(c) in any other case, the Special Commissioners must confirm the refusal.

(8) For the purposes of subsection (7) "the relevant amount" means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.

(9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.

(10) In this section "relevant company tax return", in relation to a company, means the return for the accounting period for which—

(a) any sum is chargeable on the company under section 747(4)(a), or

(b) any sum would be so chargeable but for section 751A,

in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).

(11) In this section "the HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

752 Apportionment of chargeable profits and creditable tax

M1939 (1) Where a direction has been given under section 747(1) in respect of an accounting period of a controlled foreign company, then, subject to subsections (2) and (3) below, the apportionment of the company's chargeable profits and creditable tax (if any) for that period shall be made among, and according to the respective interests of, the persons who at any time during that period had interests in the company.

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(2) In determining for the purposes of this Chapter the respective interests of persons who (in accordance with section 749) have interests in a controlled foreign company, the Board may, if it seems to them just and reasonable to do so, attribute to each of those persons an interest corresponding to his interest in the assets of the company available for distribution among those persons in the event of a winding up or in any other circumstances.

(3) Where the controlled foreign company is not a trading company, the Board may, if it seems to them just and reasonable to do so, treat a loan creditor as having for the purposes of this section an interest in the company to the extent to which the income of the company has been, or is available to be, expended in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.

(4) Subject to subsections (5) and (7) below, as between persons each of whom has an unvarying holding of shares of the same class throughout a particular accounting period of a controlled foreign company, the amount of the company's chargeable profits and creditable tax which is apportioned to each of them by virtue of his holding of those shares shall be in direct proportion to the numbers of shares comprised in their holdings; and similar principles shall apply in relation to an apportionment among other persons each of whom holds an interest of the same description in the controlled foreign company.

(5) Where the same interest in a controlled foreign company is held directly by one person and indirectly by another or others (as in a case where one company has a shareholding in the controlled foreign company and the first company is controlled by a third company or by two or more persons together) then, subject to subsection (6) below, the Board, in apportioning the company's chargeable profits and creditable tax—

(a) may treat that interest as held solely by a person who holds that interest indirectly or, as the case may be, by two or more persons (the "holders") who, taken together, hold that interest indirectly, and

(b) in particular, if that person or one or more of those holders is resident in the United Kingdom, may treat the interest as held solely by that one or, as the case may be, those holders.

(6) In any case where the same interest is held directly by one person and indirectly by another and the circumstances are as set out in any of paragraphs (a) to (c) below, the Board shall treat the interest as held solely by the company which is described in the paragraph concerned as "the assessable company"—

(a) where the interest is held directly by a company resident in the United Kingdom, that company is the assessable company; and

(b) where the interest is held directly by a person resident outside the United Kingdom and indirectly by only one company resident in the United Kingdom, that company is the assessable company; and

(c) where the interest is held directly by a person resident outside the United Kingdom and indirectly by two or more companies resident in the United Kingdom, the assessable company is that one of the companies which so holds the interest by virtue of holding directly an interest in a foreign holding company;

and for the purposes of paragraph (c) above a foreign holding company is a company resident outside the United Kingdom which holds directly or indirectly the interest in the controlled foreign company.

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(7) Without prejudice to subsection (5) above, in any case where an interest in a controlled foreign company is held in a fiduciary or representative capacity in such circumstances that there is or are an identifiable beneficiary or beneficiaries, the Board may treat the interest as held by that beneficiary or, as the case may be, as apportioned among those beneficiaries; and any such apportionment shall be made on such basis as seems to the Board to be just and reasonable.

(8) Subject to the preceding provisions of this section, the apportionment of the chargeable profits and creditable tax of a controlled foreign company for any accounting period shall be made on such basis as seems to the Board to be just and reasonable.

Marginal Citations

M1939 Source—1984 s.87

VALID FROM 31/07/1998

[F1437 752A Relevant interests.

(1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.

(2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.

(3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.

(4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.

(5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—
   (a) a UK resident company; or
   (b) another related person.

(6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—
   (a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and
   (b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.

(7) A person who—
   (a) has a direct interest in a controlled foreign company, but

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(b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,

has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.

(8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—

(a) has the whole or any part of the same interest indirectly, and

(b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.

(9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.

(10) In this section—

"related person" means a person who—

(a) is not a UK resident company, but

(b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;

"UK resident company" means a company resident in the United Kingdom.**]**

Textual Amendments

F1437 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

VALID FROM 31/07/1998

[F1437 752B Section 752(3): the percentage of shares which a relevant interest represents.

(1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

(2) In subsection (1) above and this subsection—

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"the appropriate fraction", in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;

"the lowest share-linked company", in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;

"share-linked company" means a company which is share-linked to the controlled foreign company in question.

(3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—

(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and

(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.

(4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

(5) For the purposes of subsection (4) above—

"holding period", in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

"the relevant percentage", in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

A is the number of days in the relevant accounting period.**]**

Textual Amendments

F1437 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

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VALID FROM 31/07/1998

[F1437752C Interpretation of apportionment provisions.

(1) In this section "the relevant provisions" means sections 752 to 752B and this section.

(2) For the purposes of the relevant provisions—

(a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;

(b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;

(c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.

(3) For the purposes of the relevant provisions, a company is "share-linked" to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—

(a) of the controlled foreign company, or

(b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or

(c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,

and so on.

(4) For the purposes of the relevant provisions, a company ("company A") has an intermediate interest in a controlled foreign company if (and only if)—

(a) it has a direct or indirect interest in the controlled foreign company; and

(b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.

(5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.

(6) Where—

(a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and

(b) subsection (5) above does not apply, but

(c) there are one or more identifiable beneficiaries,

the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.

(7) In the relevant provisions—

"bare trustee" means a person acting as trustee—

(a) for a person absolutely entitled as against the trustee; or

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(b) for any person who would be so entitled but for being a minor or otherwise under a disability; or

(c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;

"ordinary shares", in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;

"the relevant accounting period" means the accounting period mentioned in section 752(1);

"share" includes a reference to a fraction of a share.**]**

Textual Amendments

F1437 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

753 Notices and appeals.

M1940 (1) Where the Board have given a direction under section 747(1) with respect to an accounting period of a controlled foreign company, notice of the making of the direction shall be given to every company resident in the United Kingdom which appears to the Board to have had an interest in the controlled foreign company at any time during that period.

(2) A notice under subsection (1) above shall—

(a) specify the date on which the direction was made and the controlled foreign company to which it relates;

(b) specify the accounting period to which the direction relates and the amount of the chargeable profits and creditable tax computed for that period;

(c) specify the reliefs (if any) which it has been assumed that the company has claimed by virtue of paragraph 4(1) of Schedule 24;

(d) specify, in a case where paragraph (d) of subsection (2) of section 749 applies, the territory which, by virtue of that paragraph, was specified in the direction and, in any other case, specify the territory (if any) in which, by virtue of that section, the Board consider that the company is to be regarded as resident for the purposes of this Chapter;

(e) inform the recipient of the notice of the right of appeal conferred on him by subsection (4) below and of the right to give notice under paragraph 4(2) of Schedule 24; and

(f) specify any declaration with respect to the accounting period concerned which was made prior to or at the same time as the notice by virtue of paragraph 11(3) of Schedule 24 or paragraph 3(2) of Schedule 25;

and, in the case of a notice given after the direction concerned has been amended by virtue of section 751(5), the notice shall specify the date of the amendment and (so far as paragraphs (b) and (c) above are concerned) shall relate to the position resulting from the amendment.

(3) Where, by virtue of section 751(5), the Board have amended a direction so as to specify a revised accounting period, notice of the making of the amendment shall be given to

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every company which was previously given notice of the making of the direction; and a notice under this subsection—

(a) shall identify the direction which is amended and state the effect of the amendment, including the extent to which the matters specified in the notice of the making of the direction are superseded; and

(b) shall contain the provisions required, by virtue of paragraphs (b) to (f) of subsection (2) above, to be included in a notice under subsection (1) above.

(4) Any company to which notice is given under subsection (1) or subsection (3) above may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company, appeal to the Special Commissioners against that notice on all or any of the following grounds—

(a) that the direction should not have been given or, where the direction has been amended, that the amendment should not have been made;

(b) that the amount of chargeable profits or creditable tax specified in the notice is incorrect;

(c) that the company did not have an interest in the controlled foreign company concerned at any time during the accounting period in question;

(d) that, if the notice specifies a declaration made by virtue of sub-paragraph (3) of paragraph 11 of Schedule 24, the condition for the making of that declaration in sub-paragraph (5) of that paragraph was not fulfilled; and

(e) that, if the notice specifies a declaration made by virtue of paragraph 3(2) of Schedule 25, the condition for the making of that declaration was not fulfilled;

and the notice of appeal shall specify the grounds of appeal, but on the hearing of the appeal the Special Commissioners may allow the appellant to put forward any ground not specified in the notice and take it into consideration if satisfied that the omission was not wilful or unreasonable.

(5) If, after the time at which notice is given under subsection (1) above with respect to an accounting period of a controlled foreign company, the Board make a declaration by virtue of—

(a) paragraph 11(3) of Schedule 24; or

(b) paragraph 3(2) of Schedule 25,

then, unless the effect of the declaration is such that a notice (which, among other matters, will specify the declaration) will be required to be given under subsection (3) above, the Board shall give notice specifying the declaration to every company which was previously given notice of the making of the direction; and subsection (4) above shall apply in relation to a notice under this subsection as it applies in relation to a notice under subsection (3) above but with the omission of paragraphs (a) to (c).

(6) If it appears to the inspector that the amount of the chargeable profits or creditable tax specified in a notice under subsection (1) or subsection (3) above is incorrect, he shall give notice of the revised amount to every company to which notice was given under subsection (1) or subsection (3) above and, except where the revised amount results from—

(a) an appeal under this section, or

(b) a notice given to the Board under paragraph 4(2) of Schedule 24 or by virtue of paragraph 12 of that Schedule,

any company to which notice is given under this subsection may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company,

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appeal to the Special Commissioners against the revised amount specified in the notice.

(7) The jurisdiction of the Special Commissioners on an appeal under this section shall include jurisdiction to review any decision of the Board or the inspector which is relevant to a ground of the appeal.

(8) The Board may make regulations—
- (a) as respects the conduct of appeals under this section;
- (b) entitling any person who has received, or is connected or associated with a person who has received, a notice under subsection (1) above with respect to a particular accounting period of a controlled foreign company to appear on an appeal brought by another person who has received such a notice; and
- (c) with respect to the joinder of appeals brought by different persons with respect to the same direction or the same amount of chargeable profits or creditable tax.

Marginal Citations

M1940 Source—1984 s.88

754 Assessment, recovery and postponement of tax.

M1941 (1) Subject to the following provisions of this section, the provisions of section 747(4)(a) relating to assessment and recovery of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including those relating to the assessing, collecting and receiving of corporation tax, those conferring or regulating a right of appeal and those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(2) For the purposes of the Taxes Acts, any sum assessable and recoverable under section 747(4)(a) shall be regarded as corporation tax which falls to be assessed for the accounting period in which ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum; and a notice of assessment relating to such a sum shall (in addition to any other matter required to be contained in such a notice) specify separately—
- (a) the total amount of those chargeable profits and of any creditable tax which has been apportioned to persons falling within each of paragraphs (a) to (d) of subsection (5), or within subsection (7), of section 749, and
- (b) where there is more than one class of shares in the controlled foreign company, the total amount apportioned to persons holding shares of each class,

but such a notice shall not identify any particular person (other than the person assessed) as having an interest of any description in the controlled foreign company.

(3) On an appeal against an assessment to tax under section 747(4)(a), the jurisdiction of the Special Commissioners shall include jurisdiction to review any relevant decision taken by the Board under section 752 in connection with the apportionment of chargeable profits or creditable tax.

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(4) No appeal may be brought against an assessment to tax under section 747(4)(a) on a ground on which an appeal has or could have been brought under section 753(4) or (6).

(5) Schedule 26 shall have effect with respect to the reliefs which may be claimed by a company resident in the United Kingdom which has a liability for tax in respect of an amount of chargeable profits; and no reliefs other than those provided for by that Schedule shall be allowed against any such liability.

(6) In any case where—

(a) the whole or any part of the tax assessed on a company ("the assessable company") by virtue of section 752(6) is not paid before the date on which it is due and payable in accordance with this Act or, as the case may be, the Management Act; and

(b) the Board serve a notice of liability to tax under this subsection on another company ("the responsible company") which is resident in the United Kingdom and holds or has held (whether directly or indirectly) the same interest in the controlled foreign company as is or was held by the assessable company,

the tax assessed on the assessable company or, as the case may be, so much of it as remains unpaid shall be payable by the responsible company upon service of the notice.

(7) Where a notice of liability is served under subsection (6) above—

(a) any interest due on the tax assessed on the assessable company and not paid; and

(b) any interest accruing due on that tax after the date of service,

shall be payable by the responsible company.

(8) In any case where—

(a) a notice of liability is served on the responsible company under subsection (6) above, and

(b) the relevant tax and any interest payable by the responsible company under subsection (7) above is not paid by that company before the expiry of the period of three months beginning on the date of service of the notice,

that tax and interest may, without prejudice to the right of recovery from the responsible company, be recovered from the assessable company.

(9) In this section "the Taxes Acts" has the same meaning as in the Management Act.

Modifications etc. (not altering text)

C695 *See* 1970(M) s.55(1)(g)*and* (6A).

Marginal Citations

M194 Source—1984 s.89(1)-(4), (7)-(11)

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VALID FROM 31/07/1998

[F1438 754A Returns where it is not established whether acceptable distribution policy applies.

(1) This section applies where—

(a) a company resident in the United Kingdom ("the UK company") has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;

(b) the UK company delivers a company tax return; and

(c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.

(2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.

(3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.

(4) In any case where—

(a) the UK company acts in pursuance of subsection (2) above, but

(b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,

the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.

(5) In any case where—

(a) the UK company acts in pursuance of subsection (3) above, but

(b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,

the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.

(6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above ("an ADP amendment") shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.

(7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.

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(8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.

(9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).

(10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.

(11) In this section, "the period allowed for establishing an ADP" means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—

(a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or

(b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.

(12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.**]**

Textual Amendments

F1438 S. 754A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 10**; S.I. 1998/3173, **art. 2**

VALID FROM 31/07/1998

[F1439 754B Determinations requiring the sanction of the Board.

(1) This section has effect where a determination requiring the Board's sanction is made for any of the following purposes, that is to say—

(a) the giving of a closure notice; or

(b) the making of a discovery assessment.

(2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—

(a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or

(b) notification of the Board's approval having been served on that person at or before the time of the giving of the notice,

the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A notification under subsection (2)(b) above—

(a) must be in writing;

(b) must state that the Board have given their approval on the basis that—

(i) an amount of chargeable profits, and

(ii) an amount of creditable tax (which may be nil),

for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;

(c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and

(d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.

(4) For the purposes of this section, the Board's approval of a determination requiring their sanction—

(a) must be given specifically in relation to the case in question and must apply to the amount determined; but

(b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.

(5) In this section references to a determination requiring the Board's sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).

(6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board's sanction if—

(a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;

(b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and

(c) the matters to which the agreement relates include the amount determined.

(7) In paragraph (a) of subsection (6) above, "the relevant amounts" means—

(a) the amount of chargeable profits, and

(b) the amount of creditable tax (which may be nil),

for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.

(8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person ("the taxpayer") in relation to any matter shall be taken to be in force at any time if, and only if—

(a) the agreement is one which has been made or confirmed in writing;

(b) that time is after the end of the period of thirty days beginning—

(i) in the case of an agreement made in writing, with the day of the making of the agreement, and

(ii) in any other case, with the day of the agreement's confirmation in writing; and

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(c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.

(9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—

(a) stating that the agreement has been made; and

(b) setting out the terms of the agreement.

(10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board's approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.

(11) In this section—

"closure notice" means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);

"discovery assessment" means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).**]**

Textual Amendments

F1439 S. 754B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 11**; S.I. 1998/3173, **art. 2**

755 Information relating to controlled foreign companies

M1942 (1) Where it appears to the Board that a company resident outside the United Kingdom (in this section referred to as a "foreign subsidiary") may be a controlled foreign company, the Board may, by notice given to any company which appears to them to be a controlling company of the foreign subsidiary, require that company to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of documents) as may be so specified with respect to any matter concerning the foreign subsidiary, being particulars required by the Board for the purposes of this Chapter as being relevant to the affairs of the controlling company, the foreign subsidiary or any connected or associated company.

(2) In this section "controlling company", in relation to a foreign subsidiary or any other company, means a company which is resident in the United Kingdom and has, alone or together with other persons so resident, control of the foreign subsidiary or, as the case may be, that other company.

(3) The Board may by notice given to a company which appears to them to be a controlling company in relation to a foreign subsidiary require that company to make available for inspection any relevant books, accounts, or other documents or records whatsoever of the company itself or, subject to subsection (6) below, of any other company, including the foreign subsidiary, in relation to which it appears to the Board to be a controlling company.

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(4) In subsection (3) above "relevant" means relevant to—

(a) the computation of any profits of the foreign subsidiary; or

(b) the question whether a direction should be given under section 747(1) with respect to the foreign subsidiary or a connected or associated company or whether any such direction should be amended; or

(c) any question as to the amount of the chargeable profits or creditable tax for any accounting period of the foreign subsidiary or a connected or associated company; or

(d) any question as to the sum which, in accordance with section 747(4)(a), should be assessed on and recoverable from any person.

(5) In subsections (1) and (4) above "connected or associated company" means a controlled foreign company with which the foreign subsidiary or the controlling company is connected or associated.

(6) In any case where—

(a) under subsection (3) above a company is by notice required to make available for inspection any books, accounts, documents or records of a company other than itself, and

(b) it appears to the Board, on the application of the company, that the circumstances are such that the requirement ought not to have effect,

the Board shall direct that the company need not comply with the requirement.

(7) If, on an application under subsection (6) above, the Board refuse to give a direction under that subsection, the company concerned may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

Marginal Citations

M1942 Source—1984 s.90(1)-(7)

VALID FROM 31/07/1998

[F1440 755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.

(1) This section applies in any case where—

(a) an amount ("the apportioned profit") of a controlled foreign company's chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");

(b) the UK company carries on life assurance business in that one of its accounting periods ("the relevant accounting period") in which ends the accounting period of the controlled foreign company; and

(c) the property or rights which represent the UK company's relevant interest in the controlled foreign company constitute to any extent assets of the UK company's long term business fund.

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(2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.

(3) Where this subsection applies, the "appropriate rate" for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders' part of any BLAGAB apportioned profit shall be—

(a) if a single rate of tax under section 88A(1) of the [M1943]Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or

(b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.

(4) Where this subsection applies, the "appropriate rate" for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—

(a) pension business,

(b) life reinsurance business, or

(c) overseas life assurance business,

carried on by the UK company.

(5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the "appropriate rate" for the purposes of—

(a) section 747(4)(a), and

(b) paragraph 1 of Schedule 26,

shall be nil in relation to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of its long term business fund.

(6) If, in the case of the relevant accounting period,—

(a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,

(b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and

(c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above,

so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

(7) If, in the case of the relevant accounting period,—

(a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and

(b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,

so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of the UK company's long term business fund shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

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(8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.

(9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3) —

(a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and

(b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.

(10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.

(11) For the purposes of this section, the "policy holders' part" of any BLAGAB apportioned profit is—

(a) in a case where subsection (4) of section 88A of the [M1944]Finance Act 1989 applies, the whole; and

(b) in any other case, the fraction described in subsection (5)(b) of that section.

(12) In this section—

"BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;

"long term business fund" has the meaning given by section 431(2).

(13) For the purposes of this section, the part of the apportioned profit which is referable to—

(a) pension business,

(b) life reinsurance business,

(c) overseas life assurance business, or

(d) basic life assurance and general annuity business,

carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.

(14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.**]**

Textual Amendments

F1440 S. 755A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 13**; S.I. 1998/3173, **art. 2**

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Modifications etc. (not altering text)

C696 S. 755A modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 18

C697 S. 755A modified by the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30B** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 4)

Marginal Citations

M1943 1989 c. 26.

M1944 1989 c. 26.

VALID FROM 31/07/1998

[F1441 755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.

(1) This section applies where—

(a) a controlled foreign company carries on general insurance business in an accounting period;

(b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");

(c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and

(d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.

(2) The methods which fall within this subsection are—

(a) the method described in paragraph 52 of Schedule 9A to the [M1945] Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and

(b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.

(3) Where this section applies—

(a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and

(b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).

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(4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—
  (a) the controlled foreign company, and
  (b) any person with an interest in the controlled foreign company,

shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the [M1946]Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.

(5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.

(6) In this section "general insurance business" means insurance business which is general business, as defined in section 1 of the [M1947]Insurance Companies Act 1982.**]**

Textual Amendments

F1441 S. 755B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 14**; S.I. 1998/3173, **art. 2**

Marginal Citations

M1945 1985 c. 6.
M1946 1985 c. 6.
M1947 1982 c. 50.

VALID FROM 31/07/1998

[[F1442]755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

(1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—
  (a) carries on general insurance business; and
  (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.

(2) Regulations under subsection (1) above may—
  (a) make different provision for different cases;
  (b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and
  (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

(3) In this section—

"general insurance business" has the same meaning as in section 755B;

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"non-resident company" means a company resident outside the United Kingdom;

"prescribed" means prescribed in regulations under this section.**]**

Textual Amendments

F1442 S. 755C inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 15**; S.I. 1998/3173, **art. 2**

VALID FROM 28/07/2000

[F1443 755D Control" and the two "40 per cent" tests.

(1) For the purposes of this Chapter "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.

(3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—

(a) at least 40 per cent, but

(b) not more than 55 per cent,

of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(5) For the purposes of this Chapter any question—

(a) whether a company is controlled by a person, or by two or more persons taken together, or

(b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,

shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

(6) The rights and powers referred to in subsection (5) above are—

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(a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

(b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;

(c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and

(d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a "UK connected person") if the UK connected person were himself the person.

(7) Rights and powers fall within this subsection to the extent that they—

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—

(i) on behalf of the person;

(ii) under the direction of the person; or

(iii) for the benefit of the person; and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(8) In subsections (6)(b) to (d) and (7) above, the references to a person's rights and powers include references to any rights or powers which he either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.

(10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.

(11) References in this section—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.**]**

Textual Amendments

F1443 S. 755D inserted (with effect in accordance with Sch. 31 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 4(1)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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756 Interpretation and construction of Chapter IV.

M1948(1) In this Chapter "trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(2) For the purposes of this Chapter—

(a) section 839 applies; and

(b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(3) The following provisions of Part XI apply for the purposes of this Chapter as they apply for the purposes of that Part—

(a) section 416; and

(b) section 417(7) to (9);

but, in the application of subsection (6) of section 416 for the purposes of this Chapter, for the words "five or fewer participators" there shall be substituted the words " persons resident in the United Kingdom ".

Marginal Citations

M1948 Source—1984 s.91

CHAPTER V

OFFSHORE FUNDS

VALID FROM 22/07/2004

[F1444 *Meaning of offshore fund*

Textual Amendments

F1444 Ss. 756A-756C and preceding cross-headings inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 3** (with Sch. 26 para. 17)

756A General definition of offshore fund

(1) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—

(a) a company that is resident outside the United Kingdom, or

(b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or

(c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).

(2) Subsection (1) has effect subject to—

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section 756B (treatment of umbrella funds), and
section 756C (treatment of funds comprising more than one class of interest).

(3) In this section "collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000.

VALID FROM 22/07/2004

Treatment of umbrella funds

756B Treatment of umbrella funds

(1) In this Chapter, an "umbrella fund" means an offshore fund—
(a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
(b) under which the participants are entitled to exchange rights in one pool for rights in another;

and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Chapter (except subsection (1))—
(a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
(b) the umbrella fund as a whole shall not be regarded as an offshore fund.

(3) In this Chapter, in relation to a part of an umbrella fund—
(a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
(b) a reference to the income of an offshore fund is to the income arising from those assets;
(c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and
(d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

Modifications etc. (not altering text)
C698 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 489** (with Sch. 2 Pts. 1, 2)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 22/07/2004

Treatment of funds comprising more than one class of interest

756C Treatment of funds comprising more than one class of interest

(1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the "main fund")—
- (a) each class of interest shall be regarded as a separate offshore fund, and
- (b) the main fund shall not be regarded as an offshore fund.

(2) In this section, references to a class of interest in an offshore fund do not include—
- (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
- (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.

(3) In this Chapter, in relation to a class of interest in an offshore fund—
- (a) a reference to the assets of an offshore fund is to the assets of the main fund;
- (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
- (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
- (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.**]**

Modifications etc. (not altering text)

C699 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 489** (with Sch. 2 Pts. 1, 2)

Material interests in non-qualifying offshore funds

757 Disposal of material interests in non-qualifying offshore funds

M1949(1) This Chapter applies to a disposal by any person of an asset if—
- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or
- (b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund;

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and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section **[**[F1445]127 of the 1992**]** Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

(2) [M1950]Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the **[**[F1445]1992**]** Act.

(3) Notwithstanding anything in paragraph (b) of subsection (1) of section **[**[F1445]62 of the 1992**]** Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—

(a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but

(b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.

(4) Subject to subsection (3) above, section **[**[F1445]62 of the 1992**]** Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.

(5) Notwithstanding anything in section **[**[F1445]135**]** of the **[**[F1445]1992**]** Act (exchange of securities for those in another company) in any case where—

(a) the company which is company B for the purposes of subsection (1) of that section is or was at a material time a non-qualifying offshore fund and the company which is company A for those purposes is not such a fund, or

(b) under section **[**[F1445]136**]** of that Act (reconstruction or amalgamation involving issue of securities) persons are to be treated, in consequence of an arrangement, as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund;

then, subsection (3) of section 85 of that Act (which applies provisions of that Act treating transactions as not being disposals and equating original shares with a new holding in certain cases) shall not apply for the purposes of this Chapter.

(6) In any case where, apart from subsection (5) above, section **[**[F1445]135(3) of the 1992**]** Act would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying offshore fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

(7) For the purposes of this section—

(a) a material time, in relation to the disposal of an asset, is **[**[F1446]any time on or after**]** the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and

(b) "relevant consideration" means consideration which, assuming the application to the disposal of **[**[F1445]Chapter III of Part II of the 1992**]** Act, would fall to be taken into account in determining the amount of the gain or

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loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

Textual Amendments

F1445 Words in s. 757(1)-(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(43)** (with ss. 60, 101(1), 171, 201(3))

F1446 1990 s.89*and* Sch.14 para.10 (*correction of errors*)*—deemed always to have had effect.*

Marginal Citations

M1949 Source—1984 s.92(1), (7)

M1950 Source—1984 s.92(2)-(6), (8)

758 Offshore funds operating equalisation arrangements

M1951 (1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

(a) a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and

(b) the fund makes a distribution for a period which begins before the date of his acquisition of that interest;

the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements ("the equalisation account") and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.

(2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—

(a) his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or

(b) his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.

(3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—

(a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and

(b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and

(c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.

(4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—

(a) it takes place during such a period as is mentioned in subsection (1)(a) above; and

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(b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.

(5) An event which, apart from section **[**[F1447]127 of the 1992**]** Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.

(6) The reference in subsection (5) above to section **[**[F1447]127 of the 1992**]** Act includes a reference to that section as applied by section **[**[F1447]135**]** of that Act (exchange of securities) **[**[F1448]and a reference to section**][**[F1449]127 as**]** applied by section **[**[F1447]132**]** of that Act (conversion of securities).

Textual Amendments

F1447 Words in s. 758(5)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(44)** (with ss. 60, 101(1), 171, 201(3))

F1448 1989 s.81(1)*and* (2)*in respect of conversion of securities occurring on or after* 14*March* 1989.*Previously*
"but not".

F1449 Words in s. 758(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by virtue of the Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(44)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1951 Source—1984 s.93

759 Material interests in offshore funds

[M1952](1) In this Chapter references to a material interest in an offshore fund are references to such an interest in any of the following, namely—

(a) a company which is resident outside the United Kingdom;

(b) a unit trust scheme the trustees of which are not resident in the United Kingdom; and

(c) any arrangements which do not fall within paragraph (a) or (b) above, which take effect by virtue of the law of a territory outside the United Kingdom and which, under that law, create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom);

and any reference in this Chapter to an offshore fund is a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

(2) Subject to the following provisions of this section, a person's interest in a company, unit trust scheme or arrangements is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).

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(3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.

(4) For the purposes of subsections (2) and (3) above—

(a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and

(b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.

(5) An interest in a company, scheme or arrangements is not a material interest if—

(a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or

(b) it is a right arising under a policy of insurance.

(6) Shares in a company falling within subsection (1)(a) above (an "overseas company") do not constitute a material interest if—

(a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and

(b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and

(c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and

(d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—

(i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or

(ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or

(iii) both such an arrangement and such provisions;

and in this paragraph "participators" means the persons holding shares falling within paragraph (c) above.

(7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416

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or both of them are under the control, within the meaning of that section, of the same person or persons.

(8) An interest in a company falling within subsection (1)(a) above is not a material interest at any time when the following conditions are satisfied, namely—

(a) that the holder of the interest has the right to have the company wound up; and

(b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.

(9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the **[**[F1450]1992**]** Act except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section **[**[F1450]272(5)**]** of that Act (meaning of "market value" in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

Textual Amendments

F1450 Words in s. 759(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(45)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1952 Source—1984 s.94

760 Non-qualifying offshore funds

[M1953](1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.

(2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.

(3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—

(a) more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; or

(b) subject to subsections (4) and (5) below, more than 10 per cent. by value of the assets of the fund consists of interests in a single company; or

(c) the assets of the fund include more than 10 per cent. of the issued share capital of any company or of any class of that share capital; or

(d) subject to subsection (6) below, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits, within the meaning of subsection (7) below.

(4) For the purposes of subsection (3)(b) above, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the

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assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or money's worth; but for this purpose there shall be disregarded any occasion—

(a) on which the interest acquired constituted the "new holding" for the purposes of section **[**[F1451]127 of the 1992**]** Act (equation of original shares and new holding), including that section as applied by any later provision of Chapter II of Part IV of that Act (reorganisation of share capital etc.); and

(b) on which no consideration fell to be given for the interest acquired, other than the interest which constituted the "original shares" for the purposes of that section.

(5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of subsection (3)(b) above if—

(a) the company carries on (in the United Kingdom or elsewhere) a banking business providing current or deposit account facilities in any currency for members of the public and bodies corporate; and

(b) the interest consists of a current or deposit account provided in the normal course of the company's banking business.

(6) There shall be disregarded for the purposes of subsection (3)(d) above any interests in an offshore fund—

(a) which are held solely by persons employed or engaged in or about the management of the assets of the fund; and

(b) which carry no right or expectation to participate, directly or indirectly, in any of the profits of the fund; and

(c) which, on a winding up or on redemption, carry no right to receive anything other than the return of the price paid for the interests.

(7) If in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interest do not, for the purposes of subsection (3)(d) above, all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would, with respect to that period, pursue a full distribution policy, within the meaning of Part I of Schedule 27.

(8) For the purposes of this Chapter, an account period of an offshore fund shall begin—

(a) whenever the fund begins to carry on its activities; and

(b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.

(9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—

(a) the expiration of 12 months from the beginning of the period;

(b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and

(c) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter—

(a) an account period of an offshore fund which is a company falling within section 759(1)(a) shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and

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(b) an account period of an offshore fund which is a unit trust scheme falling within section 759(1)(b) shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.

(11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.

Textual Amendments

F1451 Words in s. 760(4)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(46)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1953 Source—1984 s.95

Charge to tax of offshore income gains

761 Charge to income tax or corporation tax of offshore income gain.

M1954 (1) If a disposal to which this Chapter applies gives rise in accordance with section 758 **[**F1452 or Schedule**]** 28 to an offshore income gain, then, subject to the provisions of this section, the amount of that gain shall be treated for all the purposes of the Tax Acts as—

(a) income arising at the time of the disposal to the person making the disposal, and

(b) constituting profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the disposal is made.

(2) Subject to subsection (3) below, sections **[**F1453 2(1) and 10 of the 1992 Act**]** (persons chargeable to tax in respect of chargeable gains) and section 11(2)(b) shall have effect in relation to income tax or corporation tax in respect of offshore income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains.

(3) In the application of section **[**F1453 10 of the 1992 Act**]** in accordance with subsection (2) above, paragraphs (a) and (b) of subsection (1) of that section (which define the assets on the disposal of which chargeable gains are taxable) shall have effect with the omission of the words "situated in the United Kingdom and"**[**F1454 and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words "situated in the United Kingdom"**]**.

F1455 (4) . . . . . .

(5) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, section **[**F1453 12 of the 1992 Act**]** (which provides for taxation on a remittance basis) shall have effect in relation to income tax chargeable by virtue of subsection (1) above on an offshore income gain as it has effect in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the United Kingdom.

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(6) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but if property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with Schedule 28) accruing being treated as an offshore income gain not accruing to a charity.

In this subsection "charity" has the same meaning as in section 506 and "market value" has the same meaning as in the **[**[F1453]1992**]** Act.

(7) In any case where—

(a) a disposal to which this Chapter applies is a disposal of settled property, within the meaning of the **[**[F1453]1992**]** Act, and

(b) for the purposes of the **[**[F1453]1992**]** Act, the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom,

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

Textual Amendments

F1452 1990 s.89*and* Sch.14 para.11 (*correction of errors)—deemed always to have had effect. Previously* "and Schedule."

F1453 Words in s. 761(2)(3)(5)(6)(7)(a)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(47)** (with ss. 60, 101(1), 171, 201(3))

F1454 Words in s. 761(3) inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(47)(b)** (with ss. 60, 101(1), 171, 201(3))

F1455 S. 761(4) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

Marginal Citations

M1954 Source—1984 s.96; 1987 Sch.15 16(1)

762 Offshore income gains accruing to persons resident or domiciled abroad.

[M1955](1) Section **[**[F1456]13 of the 1992 Act**]** (chargeable gains accruing to certain non-resident companies) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to a chargeable gain there shall be substituted a reference to an offshore income gain;

(b) for the reference in subsection (7) to capital gains tax there shall be substituted a reference to income tax or corporation tax; and

(c) paragraphs (b) and (c) of subsection (5) and subsection (8) shall be omitted.

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(2) Subject to subsections (3) and (4) below, sections **[**[F1456]87 to 90 and 96 to 98 of the 1992 Act**]** (gains of non-resident settlements) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to chargeable gains, other than the reference in section **[**[F1456]87(6)**]**, there shall be substituted a reference to offshore income gains;

(b) **[**[F1456]in section 87(2) of the 1992 Act for the words "tax under section 2(2)"**]** there shall be substituted the words " income tax by virtue of section 761 of the Taxes Act ";

(c) in section **[**[F1456]87(7)**]** the reference to tax shall be construed as a reference to income tax or corporation tax; and

(d) sections **[**[F1456]87(10) and 97(6)**]** shall be omitted.

(3) In section **[**[F1456]87(6) of the 1992 Act**]**, both as it applies apart from subsection (2) above and as applied by subsection (2) above, the reference to chargeable gains shall be construed as including a reference to offshore income gains.

(4) If, in any year of assessment—

(a) under subsection (3) of section **[**[F1456]87 of the 1992 Act**]**, as it applies apart from subsection (2) above, a chargeable gain falls to be attributed to a beneficiary, and

(b) under that subsection, as applied by subsection (2) above, an offshore income gain also falls to be attributed to him,

subsection (4) of that section (gains attributed in proportion to capital payments received) shall have effect as if it required offshore income gains to be attributed before chargeable gains.

(5) Subject to subsection (6) below, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of an offshore income gain which arises on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled outside the United Kingdom—

(a) sections 739 and 740 shall apply as if the offshore income gain arising to the person resident or domiciled outside the United Kingdom constituted income becoming payable to him, and

(b) any reference in those sections to income of (or payable or arising to) such a person accordingly includes a reference to the offshore income gain arising to him by reason of the disposal to which this Chapter applies.

(6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or subsection (2) above, as having accrued to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of section 739 or 740 or any provision of Part XV.

Textual Amendments

F1456 Words in s. 762(1)-(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(48)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1955 Source—1984 s.97

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VALID FROM 21/07/2008

[F1457 762ZA Offshore income gains: application of transfer of assets abroad provisions

(1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) applies in relation to an offshore income gain arising to a person resident or domiciled outside the United Kingdom as if the offshore income gain were income becoming payable to the person.

(2) Income treated as arising under that Chapter by virtue of subsection (1) is regarded as "foreign" for the purposes of section 726, 730 or 735 of that Act.

(3) Subsection (1) does not apply in relation to an offshore income gain if (and to the extent that) it is treated, by virtue of section 762(1), as arising to a person resident or ordinarily resident in the United Kingdom.

(4) The following provisions apply if section 762(2) applies in relation to an offshore income gain ("the relevant offshore income gain").

(5) If—

(a) by virtue of section 762(3) an offshore income gain is treated as arising in a tax year to a person resident or ordinarily resident in the United Kingdom, and

(b) it is so treated by reason of the relevant offshore income gain (or part of it),

for that and subsequent tax years subsection (1) does not apply in relation to the relevant offshore income gain (or that part).

(6) If, by virtue of subsection (1) as it applies in relation to the relevant offshore income gain, income is treated under Chapter 2 of Part 13 of ITA 2007 as arising in a tax year, reduce (with effect from the following tax year) the OIG amount in question by the amount of the income.**]**

Textual Amendments

F1457 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 94**

VALID FROM 21/07/2008

[F1457 762ZB Income treated as arising under section 761(1): remittance basis

(1) This section applies to income treated as arising under section 761(1) to an individual in a tax year if—

(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and

(b) the individual is not domiciled in the United Kingdom in that year.

(2) Treat the income as relevant foreign income of the individual.

(3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(a) treat any consideration obtained on the disposal of the asset as deriving from the income, and

(b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the income.

(4) In subsection (3)—

(a) "the asset" means the asset the disposal of which causes the income to be treated as arising, and

(b) "the disposal" means the disposal mentioned in paragraph (a).**]**

Textual Amendments

F1457 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 94**

VALID FROM 22/07/2004

[F1458 762A Exchange of interests of different classes

(1) This section applies where—

(a) classes of interest in an offshore fund (the "main fund") are treated as separate offshore funds under section 756C; and

(b) as the result of—

(i) a reorganisation within the meaning of section 126 of the 1992 Act, or

(ii) a conversion of securities within the meaning of section 132 of that Act,

a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

(2) Where—

(a) the interest of class A—

(i) is at the time of the exchange an interest in a non-qualifying offshore fund, or

(ii) has been an interest in such a fund at any material time, and

(b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,

section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.

(3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

(4) In this section—

"class of interest" has the same meaning as in section 756C(1);

"material time" has the same meaning as in section 757.**]**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F1458 S. 762A inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 15(1)** (with Sch. 26 para. 17)

763 Deduction of offshore income gain in determining capital gain.

M1956 (1) The provisions of this section apply where a disposal to which this Chapter applies gives rise to an offshore income gain; and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the **[**F1459 1992**]** Act, then that disposal is in the following provisions of this section referred to as **[**F1459 the 1992 Act disposal**]**.

(2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of Part I of Schedule 28), subsections (3) and (4) below shall have effect in relation to **[**F1459 the 1992 Act disposal**]** in substitution for section **[**F1459 37(1)**]** of that Act (deduction of consideration chargeable to tax on income).

(3) Subject to the following provisions of this section, in the **[**F1459 computation of the gain**]** accruing on **[**F1459 the 1992 Act disposal**]**, a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.

(4) Where **[**F1459 the 1992 Act disposal**]** is of such a nature that, by virtue of section **[**F1459 42**]** of that Act (part disposals) an apportionment falls to be made of certain expenditure, no deduction shall be made by virtue of subsection (3) above in determining, for the purposes of the fraction in subsection (2) of that section, the amount or value of the consideration for the disposal.

(5) If **[**F1459 the 1992 Act disposal**]** forms part of a transfer to which section **[**F1459 162**]** of that Act applies (roll-over relief on transfer of business in exchange wholly or partly for shares) then, for the purposes of subsection (4) of that section (determination of the amount of the deduction from the gain on the old assets) "B" in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) shall be taken to be what it would be if the value of the consideration other than shares so received by the transferor were reduced by a sum equal to the offshore income gain.

(6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 757(6) or 758(5), the **[**F1459 1992**]** Act shall have effect as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding, within the meaning of section **[**F1459 128**]** of that Act (consideration given or received for new holding on a reorganisation).

(7) In any case where—

(a) a disposal to which this Chapter applies by virtue of subsection (3) of section 758 is made otherwise than to the offshore fund concerned or the persons referred to in subsection (2)(b) of that section; and

(b) subsequently, a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with him; and

(c) the disposal gives rise (in accordance with Part II of Schedule 28) to an offshore income gain;

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then, for the purposes of the Tax Acts, the amount of the first distribution falling within paragraph (b) above shall be taken to be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the offshore income gain referred to in paragraph (c) above and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any later distribution falling within paragraph (b) above, until the balance is exhausted.

(8) Section 839 shall apply for the purposes of subsection (7)(b) above.

Textual Amendments

F1459 Words in s. 763(1)-(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(49)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1956 Source—1984 s.98

764 Offshore income gains of trustees.

[M1957]Income arising in a year of assessment by virtue of section 761(1) to trustees shall be chargeable to income tax **[**[F1460]at the rate applicable to trusts**]** for that year.

Textual Amendments

F1460 Words in s. 764 substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.13, **25(1)**

Marginal Citations

M1957 Source—1984 s.100(1)

CHAPTER VI

MISCELLANEOUS

Migration etc. of company

765 Migration etc. of companies.

[M1958](1) Subject to the provisions of this section **[**[F1461]and section 765A**]**, all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—

(a) *for a body corporate resident in the United Kingdom to cease to be so resident; or*

(b) *for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or*

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[F1462](c) for a body corporate **[**[F1463]resident in the United Kingdom**]** to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or

(d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.

(2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.

(3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.

(4) Any consent granted by the Treasury under this section—

(a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and

(b) may, if given generally, be revoked by the Treasury; and

(c) may in any case be absolute or conditional; and

(d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

Textual Amendments

F1461 1990 s.68(1), (4)*in relation to transactions carried out on or after* 1*July* 1990.

F1462 *Repealed by* 1988(F) ss.105(6), 148*and* Sch.14 Part IV*from* 15*March* 1988.*And see* 1988(F) ss.61, 130-132*and* Sch.7*for new requirements for companies from* 15*March* 1988.

F1463 1988(F) s.105(6)*from* 15*March* 1988.*Previously* "so resident".

Modifications etc. (not altering text)

C700 *Provisions of this section employed in* 1988(F) ss.105, 130*and* Sch.7.

Marginal Citations

M1958 Source—1970 s.482(1)-(4)

[F1464]765A Movements of capital between residents of member States.

(1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the [M1959] Directive of the Council of the European Communities dated 24th June 1988 No. 88/361/EEC applies.

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(2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—

(a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and

(b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.**]**

Textual Amendments

F1464 S. 765A inserted (with effect in accordance with s. 68(4) of the amending Act) by Finance Act 1990 (c. 29), **s. 68(2)**

Marginal Citations

M1959 O.J. No. L178/5

766 Offences under section 765.

(1) [M1960] Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.

(2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—

(a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and

(b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.

(3) [M1961] Any person who is guilty of an offence under this section shall be liable on conviction on indictment—

(a) to imprisonment for not more than two years or to a fine, or to both; or

(b) where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;

and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

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(4) [M1962]No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

Marginal Citations

M1960 Source—1970 s.482(5)
M1961 Source—1970 s.482(6)
M1962 Source—1970 s.482(11)

767 Interpretation and commencement of sections 765 and 766.

(1) [M1963]*A body corporate shall be deemed for the purposes of sections* 765*and* 766*to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.*

(2) *If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections* 765*and* 766*at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.*

(3) [M1964]*Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section and sections* 765*and* 766*to be a business carried on by the body corporate.*

(4) *Notwithstanding anything in the preceding provisions of this section or in sections* 765*and* 766,*in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections* 765*and* 766*as a transfer of part of its trade or business*[F1465].

(5) In this section and in sections 765 and 766—

"share", "debenture" and "director" have, in relation to any body corporate, the meanings respectively assigned to them by Part XXVI of the [M1965]Companies Act 1985 in relation to a company;

"control" (except in the expression "central management and control") has, in relation to a body corporate, the meaning given by section 840;

"transfer", in relation to shares or debentures, includes a transfer of any beneficial interest therein;

"insurance company" means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and

"funds" in relation to an insurance company means the funds held by it in connection with that business;

and a body corporate shall not be deemed for the purposes of this section and sections 765*and* 766*to cease to be resident in the United Kingdom by reason only that it ceases to exist*[F1466].

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(6) [M1966]This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

Textual Amendments

F1465 *Repealed by* 1988(F) s.148 *and* Sch.14 Part IV *from* 15 *March* 1988 *subject to* 1988(F) s.105(6).

F1466 *Repealed by* 1988(F) s.148 *and* Sch.14 Part IV *from* 15 *March* 1988 *subject to* 1988(F) s.105(6).

Marginal Citations

M1963 Source—1970 s.482(7)

M1964 Source—1970 s.482(8)-(10)

M1965 1985 c. 6.

M1966 Source—1970 s.482(12)

Change in ownership of company

VALID FROM 03/05/1994

767A Change in company ownership: corporation tax.

(1) Where it appears to the Board that—

(a) there has been a change in the ownership of a company ("the tax-payer company"),

(b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and

(c) any of the three conditions mentioned below is fulfilled,

any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.

(2) The persons are—

(a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;

(b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.

(3) In subsection (2) above, "the relevant period" means—

(a) the period of three years before the change in the ownership of the tax-payer company; or

(b) if during the period of three years before that change ("the later change") there was a change in the ownership of the tax-payer company ("the earlier change"), the period elapsing between the earlier change and the later change.

(4) The first condition is that—

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(a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and

(b) there is no significant revival of those activities before that change occurs.

(5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.

(6) The third condition is that—

(a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;

(b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;

(c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and

(d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.

(7) The persons are—

(a) any person mentioned in subsection (2)(a) above; and

(b) any person connected with him.

(8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.

(9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.

(10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

Modifications etc. (not altering text)

C701 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 31/07/1998

[F1467767A Change in company ownership: postponed corporation tax.

(1) Where it appears to the Board that—

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(a) there has been a change in the ownership of a company ("the transferred company"),
(b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
(c) that tax remains unpaid at any time more than six months after it was assessed, and
(d) the condition set out in subsection (2) below is fulfilled,

any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.

(2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
(a) the terms of any transactions entered into in connection with the change, and
(b) the other circumstances of the change and of any such transactions,

that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.

(3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
(a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
(b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,

would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).

(4) The persons mentioned in subsection (1) above are—
(a) any person who at any time during the relevant period had control of the transferred company;
(b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.

(5) In subsection (4) above, "the relevant period" means—
(a) the period of three years before the change in the ownership of the transferred company; or
(b) if during the period of three years before that change ("the later change") there was a change in the ownership of the transferred company ("the earlier change"), the period elapsing between the earlier change and the later change.

(6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
(a) it is the transaction, or one of the transactions, by which that change is effected; or
(b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.

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(7) For the purposes of this section—

(a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

(b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and

(c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—

(i) would not have been entered into independently of the other or others; or

(ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any compnay (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—

(a) has control of the transferred company;

(b) is a company of which the transferred company has control; or

(c) is a company under the control of the same person or persons as the transferred company.

(9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.

(10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.**]**

Textual Amendments

F1467 S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 114(1)**

Modifications etc. (not altering text)

C702 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 03/05/1994

767B Change of company ownership: supplementary.

(1) In relation to corporation tax assessed under section 767A—

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(a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and

(b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

(2) A payment in pursuance of an assessment under section 767A shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company.

(3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).

(4) For the purposes of section 767A, "control", in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.

(5) In subsection (2)(a) for "the greater part of" there shall be substituted "50 per cent. of".

(6) For subsection (3) there shall be substituted—

(") Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company."

(7) In section 767A(6) "a major change in the nature or conduct of a trade or business" includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.

(8) In section 767A(6) "transfer", in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.

(9) Section 839 shall apply for the purposes of section 767A(7).

(10) Subsection (9) of section 768 shall apply for the purposes of section 767A as it applies for the purposes of section 768.

VALID FROM 31/07/1998

[F1468 767C Change in company ownership: information.

(1) This section applies where it appears to the Board that—

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(a) there has been a change in the ownership of a company ("the subject company"); and

(b) in connection with that change a person ("the seller") may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.

(2) The Board may by notice require any person to supply to them—

(a) any document in the person's possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or

(b) any particulars which appear to them to be so relevant.

(3) Those matters are—

(a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and

(b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.

(4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.

(5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.

(6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.

(7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.

(8) In relation to any notice under subsection (2) above—

(a) subsection (4) of section 20B of the [M1967]Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and

(b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;

and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

(9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—

(a) has control of the subject company;

(b) is a company of which the subject company has control; or

(c) is a company under the control of the same person or persons as the subject company.

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(10) In this section "document" means anything in which information of any description is recorded.**]**

Textual Amendments

F1468 S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 115(1)**

Modifications etc. (not altering text)

C703 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

Marginal Citations

M1967 1970 c. 9.

768 Change in ownership of company: disallowance of trading losses.

M1968 (1) If—

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a trade" includes—

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or

(b) a major change in customers, outlets or markets of the trade;

and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

(5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.

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(6) Where relief in respect of a company's losses has been restricted under this section then, notwithstanding **[**[F1469]section 161(6)**][**[F1470]of the 1990 Act**]**, in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company's trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

(7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.

(9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

Textual Amendments

F1469 Words in s. 768(6) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 7**

F1470 1990(C) s.164*and* Sch.1 para.8(31).*Previously*
"87(3) of the 1968 Act".

Modifications etc. (not altering text)

C704 *See* s.245—*calculation etc. of* ACT*on change of ownership.*

Marginal Citations

M1968 Source—1970 s.483(1)-(7)

[768A [F1471]Change in ownership: disallowance of carry back of trading losses.

(1) In any case where—

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.

(2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

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(3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.**]**

Textual Amendments

F1471 S. 768A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(1)**

Modifications etc. (not altering text)

C705 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

VALID FROM 01/05/1995

[F1472 768E Change in ownership of investment company: deductions generally.

(1) This section applies where there is a change in the ownership of an investment company and—

(a) after the change there is a significant increase in the amount of the company's capital; or

(b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or

(c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.

(2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company's capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.

(3) In paragraph (b) of subsection (1) above "major change in the nature or conduct of a business" includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.

(4) For the purposes of this section—

(a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;

(b) those parts shall be treated as two separate accounting periods; and

(c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.

(5) In Schedule 28A—

(a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and

(b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.

(6) Any sums which—

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(a) are disbursed or treated as disbursed as expenses of management in the accounting period being divided, and

(b) under Part III of Schedule 28A are apportioned to either part of that period,

shall be treated for the purposes of section 75 as disbursed in that part.

(7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.

(8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of section 28 of the 1990 Act and section 75(4) as falling to be made in that part.

(9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—

(a) sums disbursed or allowances falling to be made for an accounting period beginning before the change; or

(b) charges paid in such an accounting period.

(10) To the extent that a payment of interest made by the company represents excess overdue interest, the payment shall not be deductible under section 338(1) from the total profits for the accounting period in which it is made.

(11) Whether a payment of interest made by the company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.

(12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(13) The modification is that in subsection (6) of section 768 for the words "relief in respect of a company's losses has been restricted" there shall be substituted "deductions from a company's total profits have been restricted".

(14) In this section "investment company" has the same meaning as in Part IV.**]**

Textual Amendments

F1472 Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**

VALID FROM 01/05/1995

[F1472 768C Deductions: asset transferred within group.

(1) This section applies where—

(a) there is a change in the ownership of an investment company ("the relevant company");

(b) none of paragraphs (a) to (c) of section 768B(1) applies;

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(c) after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and

(d) a chargeable gain ("a relevant gain") accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.

(2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.

(3) For the purposes of this section—

(a) the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;

(b) those parts shall be treated as two separate accounting periods; and

(c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.

(4) In Schedule 28A—

(a) Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and

(b) Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.

(5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.

(6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.

(7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—

(a) sums disbursed or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or

(b) charges paid in such an accounting period,

from an amount of the total profits equal to the amount which represents the relevant gain.

(8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—

(a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;

(b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.

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(9) To the extent that a payment of interest made by the relevant company in the accounting period in which the relevant gain accrues represents excess overdue interest, the payment shall not be deductible under section 338(1) from such part of the total profits for that accounting period as represents the relevant gain.

(10) Whether a payment of interest made by the relevant company represents excess overdue interest, and if so to what extent, shall be determined in accordance with the provisions of Part IV of Schedule 28A.

(11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(12) In this section—

"the relevant provisions of the 1992 Act" means section 8(1) of and Schedule 7A to that Act; and

"investment company" has the same meaning as in Part IV.**]**

Textual Amendments

F1472 Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**

VALID FROM 31/07/1998

[F1473 768D Change in ownership of company carrying on property business.

(1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—

(a) in the case of an investment company, either—

(i) paragraph (a), (b) or (c) of section 768B(1) applies, or

(ii) section 768C applies;

(b) in the case of a company which is not an investment company, paragraph (a) or (b) of section 768(1) applies.

(2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.

(3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.

(4) The profits or losses of the period in which the change occurs are apportioned to those two periods—

(a) in the case of an investment company—

(i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or

(ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and

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(b) in the case of a company which is not an investment company, according to the length of the periods,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

(5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.

(6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—

(a) in the case of—

(i) an investment company where paragraph (a), (b) or (c) of section 768B(1) applies, or

(ii) a company which is not an investment company,

profits of an accounting period ending after the change of ownership;

(b) in the case of an investment company where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.

(7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

(8) In this section—

(a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;

(b) "investment company" has the same meaning as in Part IV.

(9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.**]**

Textual Amendments

F1473 S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 31** (with Sch. 5 para. 73)

VALID FROM 24/07/2002

[F1474 768E Change in ownership of company with unused non-trading loss on intangible fixed assets

(1) Where there is a change in the ownership of an investment company and either—

(a) paragraph (a), (b) or (c) of section 768B(1) applies, or

(b) section 768C applies,

the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible

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fixed assets incurred by the company before the change of ownership against profits arising after the change.

(2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.

(3) The profits or losses of the period in which the change occurs are apportioned to those two periods—

(a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or

(b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

(4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.

(5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—

(a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;

(b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.

(6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

(7) In this section "investment company" has the same meaning as in Part 4.**]**

Textual Amendments

F1474 S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(3)**

769 Rules for ascertaining change in ownership of company.

M1969 (1) For the purposes of **[**F1475 sections 768 and 768A**]** there is a change in the ownership of a company—

(a) if a single person acquires more than half the ordinary share capital of the company; or

(b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or

(c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent.

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unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

(a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;

(b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;

(c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;

(d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of **[**[F1475]sections 768 and 768A**]**, any gift of shares, shall be left out of account.

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 **[**[F1476]or 768A**]**, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

(4) Where section 768 **[**[F1476]or 768A**]** has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of **[**[F1475]sections 768 and 768A**]** if—

(a) immediately before the change the company is the 75 per cent. subsidiary of another company, and

(b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

[[F1477](6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

(a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;

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(b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and

(c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

(a) any ordinary share capital of another company, and

(b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(6B) Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

(a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).**]**

(7) For the purposes of this section—

(a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;

(b) *a company shall be deemed to be a* 75*per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*[F1478];

(c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections* (5)*to* (10)*of section* 838;*and*

[F1479](d) "shares" includes stock.

(8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition

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was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

Textual Amendments

F1475 Words in s. 769(1)(2)(d)(5) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(2)(a)**

F1476 Words in s. 769(3)(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(2)(b)**

F1477 S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after* 14*March* 1989) by Finance Act 1989 (c. 26, SIF 63:1), **s. 100(2)**.

F1478 *Repealed by* 1989 ss.100(3), 187*and* Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after* 14*March* 1989.

F1479 *Repealed by* 1989 ss.100(3), 187*and* Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after* 14*March* 1989.

Modifications etc. (not altering text)

C706 *See* s.245—*calculation etc. of* ACT*on change of ownership.*

Marginal Citations

M1969 Source—1970 s.484

Transactions between associated persons

Modifications etc. (not altering text)

C707 Ss. 770-772 modified (with effect in accordance with Sch. 9 para. 16(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 9 para. 16**

VALID FROM 01/07/1999

[F1480 770A Provision not at arm's length.

Schedule 28AA (which deals with provision made or imposed otherwise than at arm's length) shall have effect.**]**

Textual Amendments

F1480 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

770 Sales etc. at an undervalue or overvalue.

(1) M1970 Subject to the provisions of this section and section 771, where any property is sold and—

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(a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control; and

(b) the property is sold at a price ("the actual price") which is either—

(i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length ("the arm's length price"), or

(ii) greater than the arm's length price,

then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm's length price, and of the buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.

(2) [M1971]Subsection (1) above shall not apply—

(a) in any case where—

(i) the actual price is less than the arm's length price, and

(ii) the buyer is resident in the United Kingdom and is carrying on a trade there, and

(iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that trade for tax purposes; or

(b) in any case where—

(i) the actual price is greater than the arm's length price, and

(ii) the seller is resident in the United Kingdom and is carrying on a trade there, and

(iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that trade for tax purposes; or

(c) in relation to any transaction in relation to which section 493(1) or (3) applies; or

(d) in relation to any other sale, unless the Board so direct.

(3) [M1972]Where a direction is given under subsection (2)(d) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

Modifications etc. (not altering text)

C708 Ss. 770-772 modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 16**

Marginal Citations

M1970 Source—1970 s.485(1), (2); 1975 s.17(2)

M1971 Source—1970 s.485(1), (2), (3); OTA s.14(6)

M1972 Source—1970 s.485(3)

771 Transactions by petroleum companies.

(1) [M1973]For the purposes of this section a company is a petroleum company if—

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(a) its activities include any relevant activities; or

(b) it is associated with a company whose activities include any relevant activities and its own activities include the ownership, operation or management of ships or pipelines (as defined in section 65 of the Pipelines Act 1962) used for transporting or conveying petroleum or petroleum products.

(2) "Relevant activities"means any of the following —

(a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum;

(b) the importation into or exportation from the United Kingdom of petroleum products or the acquisition or disposal of rights to such importation or exportation;

(c) the acquisition otherwise than for importation into the United Kingdom of petroleum products outside the United Kingdom or the disposal outside the United Kingdom of petroleum products not exported from the United Kingdom by the company making the disposal;

(d) the refining or processing of crude petroleum; and

(e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable.

(3) Section 770(2) shall have effect with the omission of paragraphs (a) and (b) in any case where —

(a) either party to the transaction is a petroleum company or both are petroleum companies; and

(b) the activities of either or both are or include activities—

(i) the profits from which are or would be chargeable to overseas tax for which credit could be given under section 790 or in pursuance of arrangements having effect by virtue of section 788; or

(ii) which are exploration or exploitation activities within the meaning of section 830; and

(c) the transaction is part of such activities or is connected with them.

(4) Where both the buyer and the seller are resident in the United Kingdom and the Board, in pursuance of this section, direct that section 770(1) is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under section 770(3) accordingly.

(5) Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if —

(a) the sale is part of a transaction or series of transactions (whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions; or

(b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent. of that company"s ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say, the buyer and any companies associated with the buyer;

section 770 shall apply in relation to the sale as if in subsection (1) of that section paragraph (a) were omitted.

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(6) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 770 what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm"s length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed —

(a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period; and

(b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed; and

(c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions; and

(d) in a case where the whole of the property sold is not delivered by the seller within 12 months after the date of the sale —

(i) that such part of the property as is delivered within that time would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the date of the sale; and

(ii) that such part of the property not so delivered as is delivered in any calendar month would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the material time in that month;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

In this subsection "calendar month"means a month of the calendar year and "material time", in relation to a calendar month, means noon on the middle day of the month which, in the case of a month containing an even number of days, shall be taken to be the last day of the first half of the month.

(7) In this section —"petroleum" includes any mineral oil or relative hydrocarbon and, except in the expression "crude petroleum", includes natural gas;"petroleum products" means products derived from petroleum and wholly or substantially of a hydrocarbon nature.

(8) For the purposes of this section —

(a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons, and "control" has the meaning given by section 840;

(b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 838;

(c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies.

Modifications etc. (not altering text)

C709 Ss. 770-772 modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 16**

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Marginal Citations

M1973 [1975 (O) s. 20(1), Sch. 9 1-6, 7(1), (2)(a)-(c); 1987 Sch. 11 7] 1962 c. 58.

772 Information for purposes of section 770, and appeals.

M1974 (1) The Board may, by notice given to any body corporate, require it to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Board—

(a) to be, or to be connected with, a transaction with respect to which the Board might give a direction under section 770; or

(b) to be relevant for determining whether such a direction could or should be given in any case; or

(c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm's length.

(2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

(3) Where, in the case of a transaction with respect to which it appears to the Board that a direction under section 770 might be given—

(a) one of the parties is a body corporate resident outside the United Kingdom and a 51 per cent. subsidiary of a body corporate ("the parent body") resident in the United Kingdom; and

(b) the other party is, or is a 51 per cent. subsidiary of, the parent body,

the Board may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.

(4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the United Kingdom over which the parent body has control, it appears to the Board, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Board shall direct that the parent body need not comply with the requirement.

(5) If, on an application under subsection (4) above, the Board refuse to give a direction under that subsection, the parent body may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.

(6) Where it appears to the Board that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 770 might be given, then, for the purpose of assisting the Board to determine whether such a direction should

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be given, an inspector specifically authorised in that behalf by the Board may, at any reasonable time, on production if so required of his authority—

(a) enter any premises used in connection with the relevant trade carried on by that body of persons (that is to say, the trade in the course of which the transaction or transactions were effected),

(b) inspect there any books, accounts or other documents or records whatsoever relating to that trade which he considers it necessary for him to inspect for that purpose, and

(c) require any such books, accounts or other documents or records to be produced to him there for inspection.

(7) An inspector's authority for entering any premises under subsection (6) above shall state the name of the inspector and the name of the body of persons carrying on the trade in connection with which the premises are used.

(8) If and so far as the question in dispute on an appeal to the General Commissioners*or, in Northern Ireland, to a county court*[F1481] against an assessment to tax arises from a direction of the Board under section 770 the question shall be referred to and determined by the Special Commissioners.

Textual Amendments

F1481 *Repealed by* 1990 s.132*and* Sch.19 Part IV*but not to affect proceedings instituted before* 3*April* 1989.

Modifications etc. (not altering text)

C710 Ss. 770-772 modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 16**

Marginal Citations

M1974 Source—1975 s.17(3)-(8); OTA s.20(2)

773 Interpretation of sections 770 and 771.

[M1975](1) Nothing in sections 770 and 771 shall be construed as affecting the operation of any of the provisions of the **[**[F1482]1990 Act**]**.

(2) In sections 770 and 772—

"body of persons" includes a partnership, and

"control" has the meaning given by section 840;

and, for the purposes of **[**[F1483]section 770**]**, a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

(3) In determining for the purposes of sections 770 and 771 whether any person (alone or with others) has control over a body of persons—

(a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;

(b) there may also be attributed to him any rights or powers of a person with whom he is connected (within the meaning of section 839 but omitting subsections (5) to (7) and the exception in subsection (4)), including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.

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(4) Sections 770, 771, except subsection (5)(b), and 772 and this section shall, with the necessary adaptations, have effect in relation to lettings and hirings of property, grants and transfers of rights, interests or licences and the giving of business facilities of whatever kind as they have effect in relation to sales, and the references in those sections to sales, sellers, buyers and prices shall be deemed to be extended accordingly.

Textual Amendments

F1482 1990(C) s.164*and* Sch.1 para.8(32).*Previously*
"1968 Act or of Chapter I of Part III of the Finance Act 1971.".

F1483 1990 s.89*and* Sch.14 para.12 (*correction of errors)—deemed always to have had effect. Previously*
"this section".

Marginal Citations

M1975 Source—1970 s.485(4)-(6); 1975 s.17(1), (10); OTA Sch.9 7(2)(d)

774 Transactions between dealing company and associated company.

M1976 (1) Subject to the provisions of this section, where—

(a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or

(b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;

and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.

(2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.

(3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—

(a) either—

(i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or

(ii) the payment to the company was made for meeting such expenditure, and

(b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,

subsection (1) above shall not apply in so far as the expenditure proved abortive.

(4) For the purposes of this section—

(a) "company" includes any body corporate;

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(b) "dealing company" means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;

(c) "non-dealing company" means any company which is not a dealing company;

(d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;

(e) references to a company ("the first company") having control of another company ("the second company") shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and "control" has the meaning given by section 840;

(f) "securities" includes shares and stock.

(5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

Marginal Citations

M1976 Source—1970 s.486

VALID FROM 19/07/2006

[F1484 Factoring of income receipts etc

Textual Amendments

F1484 Ss. 774A-774G and preceding cross-heading inserted (with effect in accordance with Sch. 6 para. 6(2)-(7) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 6(1)**

774A Meaning of "structured finance arrangement" for purposes of s.774B

(1) For the purposes of section 774B an arrangement is a structured finance arrangement in relation to a person ("the borrower") if the following condition is met in relation to the borrower.

(2) The condition is that—

(a) under the arrangement the borrower receives from another person ("the lender") any money or other asset ("the advance") in any period,

(b) in accordance with generally accepted accounting practice the accounts of the borrower for that period record a financial liability in respect of the advance,

(c) the borrower, or a person connected with the borrower, makes a disposal of an asset ("the security") under the arrangement to or for the benefit of the lender or a person connected with the lender,

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(d) the lender, or a person connected with the lender, is entitled under the arrangement to payments in respect of the security, and

(e) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower.

(3) For the purposes of this section, in any case where the borrower is a partnership, references to the accounts of the borrower include the accounts of any member of the partnership.

(4) For the purposes of this section and section 774B—

(a) references to a person connected with the borrower do not include the lender, and

(b) references to a person connected with the lender do not include the borrower.

774B Disregard of intended effects of arrangement involving disposals of assets

(1) If—

(a) an arrangement is a structured finance arrangement in relation to a person ("the borrower"), and

(b) the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)),

the arrangement is not to have that effect.

(2) If the borrower is a person other than a partnership, the relevant effect is that—

(a) an amount of income on which the borrower, or a person connected with the borrower, would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower, or of a person connected with the borrower, is not so brought into account, or

(c) the borrower, or a person connected with the borrower, becomes entitled to an income deduction.

(3) If the borrower is a partnership, the relevant effect is that—

(a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or

(c) a member of the partnership becomes entitled to an income deduction.

(4) If—

(a) a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a person within the charge to income tax, and

(b) in accordance with generally accepted accounting practice the accounts of the person record an amount as a finance charge in respect of the advance,

that person may treat the amount for income tax purposes as interest payable on a loan.

(5) If a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a company within the charge to corporation tax—

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(a) the advance is to be treated, in relation to the company, for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as a money debt owed by the company,

(b) the arrangement is to be treated, in relation to the company, for the purposes of that Chapter as a loan relationship of the company (as a debtor relationship), and

(c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the company as a finance charge in respect of the advance is to be treated as interest payable under that relationship.

(6) For the purposes of this section, in any case where the borrower is a partnership,—

(a) references to accounts include the accounts of the partnership, and

(b) any deemed interest is treated as payable by the partnership (whether or not the finance charge is recorded in the accounts of the partnership).

(7) For the purpose of determining when any deemed interest in respect of the advance is paid—

(a) the payments mentioned in section 774A(2)(d) are treated as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance, and

(b) the interest elements of those payments are treated as paid when those payments are paid,

and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

(8) In this section "deemed interest" means any amount which is treated as interest as a result of subsection (4) or (5).

(9) This section is subject to the exceptions contained in section 774E.

774C Meaning of "structured finance arrangement" for purposes of s.774D

(1) For the purposes of section 774D an arrangement is a structured finance arrangement in relation to a partnership ("the borrower partnership") if condition A or B is met in relation to the borrower partnership.

(2) Condition A is that—

(a) a person ("the transferor partner") disposes of an asset ("the security") under the arrangement to the borrower partnership,

(b) the transferor partner is a member of the borrower partnership immediately after the disposal (whether or not a member immediately before the disposal),

(c) under the arrangement the borrower partnership receives from another person ("the lender") any money or other asset ("the advance") in any period,

(d) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,

(e) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender (see subsection (6)),

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(f) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and

(g) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(3) For the purposes of condition A, references to the accounts of the borrower partnership include the accounts of the transferor partner.

(4) Condition B is that—

(a) the borrower partnership holds an asset ("the security") as a partnership asset at any time before the arrangement is made,

(b) under the arrangement the borrower partnership receives from another person ("the lender") any money or other asset ("the advance") in any period,

(c) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,

(d) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender,

(e) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and

(f) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(5) For the purposes of condition B, references to the accounts of the borrower partnership include the accounts of any person who is a member of the partnership immediately before the arrangement is made.

(6) For the purposes of this section and section 774D there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender if directly or indirectly in consequence of, or otherwise in connection with, the arrangement—

(a) the lender, or a person connected with the lender, becomes a member of the borrower partnership at any time, or

(b) there is at any time a change in the share of a member of the borrower partnership in the profits of the borrower partnership in a case where that member is the lender or a person connected with the lender.

(7) For the purposes of subsection (6)(b) the reference to a person connected with the lender includes a person who at any time becomes connected with the lender directly or indirectly in consequence of, or otherwise in connection with, the arrangement.

774D Disregard of intended effects of arrangement involving change in relation to a partnership

(1) This section applies if—

(a) an arrangement is a structured finance arrangement in relation to a partnership ("the borrower partnership"), and

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(b) any relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender would (disregarding this section) have had the following effect.

(2) The effect is that—

(a) an amount of income on which a relevant member of the borrower partnership would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member of the borrower partnership is not so brought into account, or

(c) a relevant member of the borrower partnership becomes entitled to an income deduction.

(3) In this section "relevant member of the borrower partnership" means—

(a) in any case where condition A in section 774C is met in relation to the arrangement, the transferor partner, and

(b) in any case where condition B in that section is met in relation to the arrangement, any person other than the lender who is a member of the borrower partnership immediately before the time at which the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender occurs.

(4) Part 9 of ITTOIA 2005 and section 114 above are to have effect in relation to any relevant member of the borrower partnership as if the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender had not occurred.

Accordingly, the structured finance arrangement is not to have the effect mentioned in subsection (2).

(5) The following provisions of this section confer relief from tax the availability of which depends on which of the conditions in section 774C is met in relation to the arrangement.

(6) In any case where condition A in section 774C is met, if—

(a) the transferor partner is a person within the charge to income tax, and

(b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

the transferor partner may treat the amount for income tax purposes as interest payable by the transferor partner on a loan.

(7) In any case where condition A in that section is met, if the transferor partner is a company within the charge to corporation tax—

(a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by the borrower partnership,

(b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and

(c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance

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charge in respect of the advance is to be treated as interest payable by the company under that transaction.

(8) For the purposes of subsections (6) and (7), references to the accounts of the borrower partnership include the accounts of the transferor partner.

(9) In any case where condition B in section 774C is met, if—
- (a) a relevant member of the borrower partnership is a person within the charge to income tax, and
- (b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

the relevant partner may treat the amount for income tax purposes as interest payable by the borrower partnership on a loan.

(10) In any case where condition B in that section is met, if a relevant member of the borrower partnership is a company within the charge to corporation tax—
- (a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by that partnership,
- (b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and
- (c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the borrower partnership under that transaction.

(11) For the purposes of subsections (9) and (10), references to the accounts of the borrower partnership include the accounts of any relevant member of the borrower partnership.

(12) For the purpose of determining when any deemed interest in respect of the advance is paid—
- (a) the payments mentioned in section 774C(2)(f) or (4)(e) are treated as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance, and
- (b) the interest elements of those payments are treated as paid when those payments are paid,

and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

(13) In this section "deemed interest" means any amount which is treated as interest as a result of any of subsections (6) to (10).

(14) This section is subject to the exceptions contained in section 774E.

774E Sections 774B and 774D: exceptions

(1) Section 774B or 774D does not apply if the whole of the advance under the structured finance arrangement—
- (a) is charged to tax on a relevant person (see subsection (7)) as an amount of income,

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(b) is brought into account in calculating for tax purposes any income of a relevant person, or

(c) is brought into account for the purposes of any provision of the Capital Allowances Act as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

For the purposes of this subsection the effect of section 785A (rent factoring of leases of plant or machinery) is to be disregarded.

(2) Subsection (1)(c) is not to be taken as met in any case where—

(a) the receipt or proceeds gives rise to a balancing charge, and

(b) the amount of the balancing charge is limited by any provision of the Capital Allowances Act.

(3) Section 774B or 774D does not apply if, at all times, the whole of the advance under the structured finance arrangement—

(a) is a debtor relationship of a relevant person for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships), or

(b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

For the purposes of this subsection references to a debtor relationship do not include a relationship to which section 100 of the Finance Act 1996 (money debts etc not arising from the lending of money) applies.

(4) Section 774B or 774D does not apply in so far as the structured finance arrangement is an arrangement in relation to which—

(a) section 263A of the 1992 Act (agreements for sale and repurchase of securities) applies,

(b) paragraph 15 of Schedule 9 to the Finance Act 1996 (repo transactions and stock-lending) applies, or

(c) Chapter 5 of Part 2 of the Finance Act 2005 (alternative finance arrangements) has effect.

(5) Section 774B or 774D does not apply in so far as—

(a) the security under the structured finance arrangement is plant or machinery which is the subject of a sale and finance leaseback, or

(b) the structured finance arrangement is an arrangement in relation to which sections 228B to 228D of the Capital Allowances Act apply with the modifications contained in section 228F of that Act (lease and finance leaseback).

(6) For the purposes of subsection (5)(a), whether plant or machinery is the subject of a sale and finance leaseback is determined in accordance with section 221 of the Capital Allowances Act.

But, in applying that section, it is to be assumed that the words “and which are not a long funding lease in the case of the lessor” were omitted from section 219(1)(b) of that Act (meaning of “finance lease”).

(7) For the purposes of this section a “relevant person” means—

(a) if section 774B applies, a person in relation to whom the structured finance arrangement would (but for that section) otherwise have had the relevant effect (within the meaning of that section), and

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(b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

774F Sections 774B and 774D: power to provide further exceptions

(1) The Treasury may make regulations prescribing other circumstances in which section 774B or 774D is not to apply in relation to a structured finance arrangement.

(2) Any regulations under subsection (1) may make provision amending section 774E.

(3) The power to make regulations under subsection (1) includes—
- (a) power to make provision having effect in relation to times before the making of the regulations (but not times earlier than 6th June 2006),
- (b) power to make different provision for different cases or different purposes, and
- (c) power to make incidental, supplemental, consequential or transitional provision and savings.

774G Sections 774A to 774D: minor definitions etc

(1) For the purposes of sections 774A to 774D "arrangement" includes any agreement or understanding (whether or not legally enforceable).

(2) For the purposes of sections 774A to 774D "income deduction" means—
- (a) a deduction in calculating any income for tax purposes, or
- (b) a deduction against total income or total profits.

(3) For the purposes of sections 774A to 774D—
- (a) references to a person's receiving any asset include the person's obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it,
- (b) references to a disposal of an asset include anything which constitutes a disposal of the asset for the purposes of the 1992 Act,
- (c) references to payments in respect of any asset include obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.

(4) For the purposes of sections 774A to 774D, section 839 (connected persons) applies.

(5) For the purposes of sections 774A to 774D references to the accounts of any person who is a company include the consolidated group accounts of a group of companies of which it is a member.

(6) If any person does not draw up accounts in accordance with generally accepted accounting practice, sections 774A to 774D apply as if the accounts had been drawn up by the person in accordance with that practice.

(7) Sections 277 to 281 of ITTOIA 2005 and section 34 above (lease premiums) are not to apply in relation to a premium paid in respect of a grant of a lease where the grant constitutes a disposal of an asset for the purposes of section 774A(2)(c) or 774C(2)(a).]

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Other provisions

775 Sale by individual of income derived from his personal activities.

M1977(1) Subject to subsection (7) below, this section has effect where—

(a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts; and

(b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person; and

(c) the main object or one of the main objects of the transactions was the avoidance or reduction of liability to income tax.

(2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.

(3) In this section—

(a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person; and

(b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.

(4) This section shall not apply to a capital amount obtained from the disposal—

(a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or

(b) of shares in a company,

in so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern.

(5) If the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, subsection (4) above shall not exempt the part of the capital amount so derived.

(6) In subsections (4) and (5) above references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.

(7) Where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and

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subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right, then—

(a) tax under this section shall not be charged on any such occasion, but

(b) without prejudice to the generality of the provisions of this section or section 777, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.

(8) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.

(9) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.

Marginal Citations

M197 Source—1970 s.487(1)-(7)

VALID FROM 20/07/2005

[F1485 775A Transfers of rights to receive annual payments

(1) This section applies in any case where—

(a) a person sells or transfers the right to receive an annual payment to which this section applies (see subsection (4)), and

(b) the consideration (if any) for the sale or transfer would not, apart from this section, be chargeable to tax.

(2) In any such case, tax is charged—

(a) in the case of income tax, under this section; or

(b) in the case of corporation tax, under Case III of Schedule D.

(3) Where this section applies—

(a) the tax is charged on an amount equal to the market value of the right to receive the annual payment;

(b) the tax is charged for the chargeable period in which the sale or transfer takes place;

(c) the person liable for the tax is the person who sells or transfers the right to the annual payment.

(4) This section applies to any annual payment other than—

(a) an annual payment under a life annuity;

(b) an annual payment under a pension annuity;

(c) an annual payment to which section 347A applies (annual payments that are not charges on income);

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(d) an annual payment in respect of which, by virtue of section 727 of ITTOIA 2005 (payments by individuals arising in UK), no liability to income tax arises under Part 5 of that Act.

(5) This section applies in relation to part of an annual payment as it applies in relation to the whole of an annual payment.

(6) For the purposes of this section, a sale or transfer of all rights under an agreement for annual payments, or under an annuity, is a sale or transfer of the rights to each individual payment under the agreement or annuity.

(7) In this section—

"life annuity" means—

(a) a life annuity, as defined in section 657(1); or

(b) a life annuity, as defined in section 473(2) of ITTOIA 2005;

"pension annuity" means an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).**]**

Textual Amendments

F1485 S. 775A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 4(1)**

776 Transactions in land: taxation of capital gains.

M1978 (1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.

(2) This section applies wherever—

(a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or

(b) land is held as trading stock; or

(c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;

and any gain of a capital nature is obtained from the disposal of the land—

(i) by the person acquiring, holding or developing the land, or by any connected person, or

(ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;

and this subsection applies whether any such person obtains the gain for himself or for any other person.

(3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—

(a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised; and

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(b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.

(4) For the purposes of this section—

(a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and

(b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.

(5) For those purposes—

(a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person; and

(b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.

(6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—

(a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case; or

(b) account may be taken of the adjustments to be made in computing such profits or gains under subsections (2) and (3) of section 99.

In the application of this subsection to Scotland, "freehold" means the estate or interest of the proprietor of the*dominium utile* or, in the case of property other than feudal property, of the owner, and "reversion" means the interest of the landlord in property subject to a lease.

(7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.

(8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.

(9) This section shall not apply to a gain accruing to an individual which by virtue of sections **[**[F1486]222 to 226 of the 1992**]** Act (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of section **[**[F1486]224(3)**]** of that Act (residences acquired partly with a view to making a gain).

(10) Where—

(a) there is a disposal of shares in—

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(i) a company which holds land as trading stock; or

(ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and

(b) all the land so held is disposed of—

(i) in the normal course of its trade by the company which held it, and

(ii) so as to procure that all opportunity of profit in respect of the land arises to that company,

then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).

(11) Where a person who considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—

(a) the inspector shall, within 30 days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section; and

(b) if the inspector notifies that person that he is so satisfied, the gain shall not be chargeable on that person under this section.

(12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.

(13) In this section—

(a) references to the land include references to all or any part of the land, and "land" includes buildings, and any estate or interest in land or buildings;

(b) references to property deriving its value from land include—

(i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and

(ii) any option, consent or embargo affecting the disposition of land;

and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.

(14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

Textual Amendments

F1486 Words in s. 776(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(50)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1978 Source—1970 s.488; 1979(C) Sch.7

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777 Provisions supplementary to sections 775 and 776.

M1979(1) This section has effect to supplement sections 775 and 776, and those sections and this section are together referred to as the relevant provisions.

(2) In applying the relevant provisions account shall be taken of any method, however indirect, by which—

(a) any property or right is transferred or transmitted; or

(b) the value of any property or right is enhanced or diminished;

and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under sections 775 and 776, tax becomes chargeable.

(3) Subsection (2) above applies in particular—

(a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and

(b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and

(c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and

(d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.

(4) In ascertaining for the purposes of the relevant provisions the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.

(5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

(6) In applying the relevant provisions—

(a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;

(b) all such valuations shall be made as are appropriate to give effect to sections 775 and 776.

(7) For the purposes of the relevant provisions (and in particular for the purpose of the reference in section 775 to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.

(8) Where a person is assessed to tax under the relevant provisions in respect of consideration receivable by another person—

(a) he shall be entitled to recover from that other person any part of that tax which he has paid; and

(b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other

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person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed;

and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.

For the purposes of this subsection any income which a person is treated as having by virtue of sections 775 and 776 shall, subject to section 833(3), be treated as the highest part of his income.

(9) If it appears to the Board that any person entitled to any consideration or other amount taxable under sections 775 and 776 is not resident in the United Kingdom, the Board may direct that section 349(1) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.

(10) Sections 775 and 776 have effect subject to Part XV and to any other provision of the Tax Acts deeming income to belong to a particular person.

(11) Where under section 776(2)(c) any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of section **[**[F1487]161 of the 1992**]** Act (property becoming or ceasing to be stock in trade).

(12) Where under section 775(1)(b) or 776(8) the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of sections **[**[F1487]37 and 39 of the 1992**]** Act (profits taxable as income excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.

(13) For the purposes of the relevant provisions—

"capital amount" means any amount, in money or money's worth, which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts, and other expressions including the word "capital" shall be construed accordingly;

"company" includes any body corporate; and

"share" includes stock;

and any amount in money or money's worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

Textual Amendments

F1487 Words in s. 777(11)(12) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(51)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1979 Source—1970 s.489; 1979(C) Sch.7

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778 Power to obtain information.

M1980 (1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of sections 775 and 776.

(2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—

(a) as to transactions or arrangements with respect to which he is or was acting on behalf of others;

(b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of sections 775 and 776 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor—

(a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and

(b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

Modifications etc. (not altering text)

C711 *See* S.I.1989 No.1343 (N.I.14) Sch.1 para.38(3)*for construction in the case of a solicitor who is an officer or employee of a recognised body.*

Marginal Citations

M1980 Source—1970 s.490

779 Sale and leaseback: limitation on tax reliefs.

M1981 (1) If land or any estate or interest in land is transferred from one person to another and—

(a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or

(b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,

the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.

(2) If—

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(a) land or any estate or interest in land is transferred from one person to another, and

(b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land,

then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

(a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and

(c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

(a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and

(b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction,

that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) above—

(a) if more than one payment is made for the same period the payments shall be taken together;

(b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;

(c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment

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so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;

(d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.

(7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

(8) For the purposes of making a comparison under subsection (4) above between a payment consisting of rent under a lease ("the actual lease"), or such payments taken together, and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—

(a) at a uniform rate, or

(b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.

(9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a tenant's repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—

(a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and

(b) where that period is less than 200 years, a lease which is of the same duration as that period.

(10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 or under section 87 treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due.

(11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—

(a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;

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(b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;

(c) any persons who are associates as defined in section 783(10).

(12) In this section—

"asset" means any description of property or rights other than land or an interest in land;

"lease" includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;

"rent" includes any payment made under a lease; and

"tenant's repairing lease" means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.

(13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—

(a) a deduction in computing profits or gains chargeable under Schedule A allowable by virtue of sections 25, 26 and 28 to 31 and Schedule 1;

(b) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;

(c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;

(d) allowance of a payment under section 75 or 76;

(e) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;

(f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

Modifications etc. (not altering text)

C712 S. 779 restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 23**

C713 S. 779(1)(2) excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 24(8)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

Marginal Citations

M1981 Source—1970 s.491

780 Sale and leaseback: taxation of consideration received.

M1982 (1) If, in any case where a person ("the lessee") who is a lessee of land under a lease having not more than 50 years to run ("the original lease") is entitled in respect of the

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rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—

(a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and

(b) there is granted or assigned to the lessee another lease ("the new lease") of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

(2) For the purposes of this section—

(a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;

(b) if under the terms of the new lease—

(i) the lessor of the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or

(ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

(3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

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(a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and

(b) in any other case, as a profit or gain chargeable under Case VI of Schedule D.

(4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.

(5) *Schedule* 2*shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection* (3)*above, as an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of "chargeable sum" and "relevant period" there shall be substituted the following definitions—*

" "chargeable sum" means the amount in respect of which, by virtue of subsection (3)*above, the claimant is chargeable to income tax for the year of assessment;"*

" "relevant period", in relation to any chargeable sum, means the term of the new lease."

(6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1)(a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—

(a) as having surrendered the original lease for that consideration, and

(b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.

(7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a partner of the lessee; and for the purposes of this section the expression "associate" shall be construed in accordance with 783(10).

(8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above "rental period" means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.

(9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part of the rent paid under the new lease shall be treated as a payment of capital, and the

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provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

Modifications etc. (not altering text)

C714 S. 780 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 23** (with s. 43)

Marginal Citations

M1982 Source—1972 s.80

781 Assets leased to traders and others.

M1983 (1) Subject to section 782, where—

(a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and

(b) before, at or after the time when the payment is made, either—

(i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or

(ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,

the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed.

(2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.

(3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.

(4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—

(a) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;

(b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;

(c) allowance of a payment under section 75 or 76;

(d) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;

(e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(5) Where—

(a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and

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(b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the profits or gains of which income tax falls to be computed in respect of the trade, profession or vocation,

for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.

(6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.

(7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.

(8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time not more than six years from the end of the chargeable period in which the payment was made.

(9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which is required to be brought into account as the whole or part of the disposal value of the machinery or plant under section **[**[F1488]60(2) of the 1990 Act**]**.

Textual Amendments

F1488 1990(C) s.164*and* Sch.1 para.8(33).*Previously* "45(2) of the Finance Act 1971".

Modifications etc. (not altering text)

C715 S. 781 modified (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)-(4)**

C716 S. 781 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(6)**

C717 S. 781 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(1)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C718 S. 781 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(1)**

C719 *See* 1979(C) s.106*and* Sch.3 para.9—*amounts charged under* s.781*to be excluded in computing capital gains.*

Marginal Citations

M1983 Source—1970 s.492 (1)-(5), (7)-(9); 1971 Sch.8 16(7)

782 Leased assets: special cases.

[M1984](1) This section shall apply, and section 781 shall not apply, to payments—

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(a) which are allowable by way of deductions in computing the profits or gains or losses of a trade, and

(b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—

(i) of that trade; or

(ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;

and when so used was owned by the person carrying on the trade in which it was being used.

(2) Subject to the following provisions of this section, the deduction allowable in computing the profits or gains or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.

(3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the profits or gains or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(4) For the purposes of subsection (2) above—

(a) if more than one payment is made for the same period the payments shall be taken together;

(b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;

(c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;

and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.

(5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

(6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, "commercial rent" shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—

"anticipated normal working life" means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being

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assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and

"the relevant time" means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.

(7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.

(8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.

(9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 113 or 337(1) the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.

(10) In this section references to a trade include references to a profession or vocation.

Modifications etc. (not altering text)

C720 S. 782 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(5)**

C721 S. 782 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(2)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C722 S. 782 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(2)**

C723 S. 782 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(2)** (with s. 43)

Marginal Citations

M1984 Source—1970 s.493; 1971 Sch.8 16(8)

783 Leased assets: supplemental.

M1985 (1) References in section 781 to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—

(a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and

(b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.

(2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.

(3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including

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a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.

(4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—
   (a) the value of the interest in the open market; or
   (b) the value of the interest to the person to whom it is, in effect, transferred;

   whichever is the greater.

(5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.

(6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.

(7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.

(8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.

(9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—
   (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;
   (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and
   (c) in any other case, by the Special Commissioners;

   and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(10) For the purposes of this section and in construing the expressions “associate” and “associated” in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—
   (a) any individual and that individual’s husband or wife, and any relative, or husband or wife of a relative, of that individual or that individual’s husband or wife (“relative” meaning, for this purpose, brother, sister, ancestor or lineal descendant);

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(b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual ("settlement" and "settlor" having, for this purpose, the meanings given by section 670(2));

(c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;

(d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;

(e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

(11) In subsection (10) above "body of persons" includes a partnership and "control" has the meaning given by section 840.

Modifications etc. (not altering text)

C724 S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(2)**

C725 S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)(a)(3)**

C726 *See*—s.756—s.783(11)*applied for purposes of* Part XVII Ch.IV (*controlled foreign companies*),s.798(10)—s.783(11)*applied for purposes of* s.798 (*interest on certain overseas loans*).

Marginal Citations

M1985 Source—1970 s.494

784 Leased assets subject to hire-purchase agreements.

(1) [M1986]In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest.

(2) In subsection (1) above "capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest" means—

(a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus

(b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.

(3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.

(4) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which

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is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.

(5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.

(6) [M1987]In this section—

"hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—

(a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise of an option to purchase by that person;

(ii) the doing of any other specified act by any party to the agreement;

(iii) the happening of any other specified event; and

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

Marginal Citations

M1986 Source—1970 s.495

M1987 Source—Consumer Credit Act 1974 Sch.4 29

785 Meaning of "asset", "capital sum" and "lease" for purposes of sections 781 to 784.

In sections 781 to 784—

"asset" means any description of property or rights other than land or an interest in land;

"capital sum" means any sum of money, or any money's worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the profits or gains or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable under Case VI of Schedule D; and

"lease", in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

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VALID FROM 19/07/2006

[F1489 785ZA Restrictions on use of losses: leasing partnerships

(1) This section applies for corporation tax purposes if—

(a) a company carries on a business in respect of which the company is within the charge to corporation tax,

(b) the company carries on the business in partnership with other persons in an accounting period of the partnership,

(c) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,

(d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and

(e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).

(2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.

(3) The condition is met if, for the purposes of section 114(2),—

(a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and

(b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.

(4) For the purposes of this condition "profits" does not include chargeable gains.

(5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances ("the restricted part of the loss").

(6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.

(7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.

(8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.

(9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.**]**

Textual Amendments

F1489 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(2)**

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VALID FROM 19/07/2006

[F1489 785ZB Section 785ZA: definitions

(1) This section applies for the purposes of section 785ZA.

(2) "Business of leasing plant or machinery" has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).

(3) "Lease" has the same meaning as in section 785A.

(4) "Notional business", in relation to a company, means the business—
- (a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and
- (b) which is treated under that provision as carried on alone by the company for those purposes.

(5) "Plant or machinery" has the same meaning as in Part 2 of the Capital Allowances Act.

(6) "Relevant capital allowance" means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

(7) "Relevant leasing income" means any income of the company's notional business deriving from any lease—
- (a) which is a lease of plant or machinery, and
- (b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.

(8) "Relevant loss relief provision" means any of the following provisions—
- (a) section 392A (Schedule A losses),
- (b) section 392B (losses from overseas property businesses),
- (c) section 393 (trade losses),
- (d) section 396 (Case VI losses).**]**

Textual Amendments

F1489 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(2)**

VALID FROM 22/07/2004

[F1490 785A Rent factoring of leases of plant or machinery

(1) This section applies in any case where the following conditions are satisfied—
- (a) a person (call him "P") is entitled to receive rentals under a lease of plant or machinery,

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(b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,

(c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,

(d) apart from this section, some or all of the amount or value of the consideration for the transfer ("the relevant portion of the consideration") would fall to be brought into account neither—

(i) as income, nor

(ii) as a capital allowances disposal receipt,

for the purpose of calculating P's tax liability.

(2) In any such case, the relevant portion of the consideration—

(a) shall be treated for tax purposes as income of P,

(b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and

(c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.

(3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P's tax liability.

(4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.

(5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

(6) In this section—

"capital allowances disposal receipt" means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things;

"tax liability" means liability to income tax or corporation tax.**]**

Textual Amendments

F1490 S. 785A inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 135(1)**

VALID FROM 21/07/2008

[F1491 785B Plant and machinery leases: capital receipts to be treated as income

(1) This section applies if—

(a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or

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(b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

(2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

(3) The income is treated—

(a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and

(b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.**]**

Textual Amendments

F1491 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

[F1491 785C Section 785B: interpretation

(1) The expressions used in section 785B and this section are to be interpreted as follows.

(2) "Capital payment" means any payment except one which, if made to the lessor—

(a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or

(b) would fall to be included in such a calculation but for section 502B (rental earnings under long funding finance lease).

(3) "Lease" includes—

(a) a licence, and

(b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,

and "lessor" and "lessee" are to be read accordingly.

(4) "Lease of plant or machinery" includes a lease of plant or machinery and other property but does not include—

(a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Schedule A, or

(b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of the Capital Allowances Act) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.

(5) "Relevant arrangement" means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, "lessor" and lessee" include prospective and former lessors and lessees).

(6) A capital payment, in relation to a lease or relevant arrangement, is "relevant" if condition A or B is met (but this is subject to subsection (9)).

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(7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—
  (a) the grant, assignment, novation or termination of the lease, or
  (b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).

(8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).

(9) A capital payment is not "relevant" if or to the extent that—
  (a) the capital payment reduces (or would but for section 536 of the Capital Allowances Act reduce) the amount of expenditure incurred by the lessor for the purposes of the Capital Allowances Act in respect of the plant or machinery in question,
  (b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or
  (c) the capital payment would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of the Capital Allowances Act (see section 60(1) of that Act).

(10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—
  (a) references to the making of a payment include the passing of value (by any other means), and
  (b) references to the amount of the payment include the value passed.**]**

Textual Amendments

F1491 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

[F1491 785D Section 785B: lease of plant and machinery and other property

(1) This section applies if section 785B applies in relation to a lease of plant or machinery and other property (see section 785C(4)).

(2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—
  (a) the plant and machinery, and
  (b) the other property.

(3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Schedule A, treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).

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(4) Section 785B(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).**]**

Textual Amendments

F1491 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

[F1491 785E Section 785B: expectation that relevant capital payment will not be paid

(1) This section applies for corporation tax purposes if—

(a) section 785B applies by virtue of subsection (1)(a) of that section, and

(b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).

(2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

(3) The amount of the deduction is equal to the amount reasonably expected not to be paid.

(4) No other deduction is allowed in respect of the matters mentioned in subsection (1).**]**

Textual Amendments

F1491 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

786 Transactions associated with loans or credit.

M1988 (1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

(2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

(3) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.

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(4) If the transaction is one by which the owner of any securities or other property carrying a right to income ("the owner") agrees to sell or transfer the property ("the relevant property"), and by the same or any collateral agreement—

(a) the purchaser or transferee ("the buyer"), or a person connected with him, agrees that at a later date he will sell or transfer the same or any other property to the owner or a person connected with him; or

(b) the owner or a person connected with him acquires an option which he subsequently exercises, to buy or acquire the same or any other property from the buyer or a person connected with the buyer;

then, without prejudice to the liability of any other person, the owner shall be chargeable to tax under Case VI of Schedule D on an amount equal to any income which arises from the relevant property at any time before the repayment of the loan or the termination of the credit.

(5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.

(6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.

(7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.

(8) References in this section to connected persons shall be construed in accordance with section 839.

Marginal Citations

M1988 Source—1970 s.496

787 Restriction of relief for payments of interest.

M1989 (1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.

(2) In this section "relief" means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

(3) Where the relief is claimed by virtue of section 403(7) any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.

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Marginal Citations

M1989 Source—1976 s.38

PART XVIII

DOUBLE TAXATION RELIEF

Modifications etc. (not altering text)

C727 Pt. 18 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 20 para. 10** (as amended by Finance Act 1995 (c. 4), **s. 122(4)(5)**) (with Sch. 20 para. 12(2)(a))

C728 Pt. 18 applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 87**

C729 Pt. 18 modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 107(5)**

C730 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 16**)

C731 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 19**)

C732 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 8**)

C733 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 10**)

C734 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 29 para. 87A(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 12**)

C735 Pt. 18 applied by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 140H(3)**, 140I(3), 140J(3) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 1**)

C736 Pt. 18 applied by Finance Act 1996 (c. 8), Sch. 9 paras. 12H(3), **12I(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 2**)

C737 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 26 paras. 30G(3), **30H(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 4**)

C738 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 29 paras. 85B(3), **85C(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 5**)

C739 Pt. 18: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)** (with Sch. 2 Pts. 1, 2)

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C740 Pt. 18 modified (with effect in accordance with s. 56(3) of the modifying Act) by Finance Act 2009 (c. 10), **s. 56(1)**

[F1492]CHAPTER I

THE PRINCIPAL RELIEFS

Textual Amendments

F1492 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

788 Relief by agreement with other countries.

[M1990](1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to—

(a) income tax,

(b) corporation tax in respect of income or chargeable gains, and

(c) any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements should have effect, then those arrangements shall have effect in accordance with subsection (3) below.

(2) Without prejudice to the generality of subsection (1) above, if it appears to Her Majesty to be appropriate, the arrangements specified in an Order in Council under this section may include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of the territory to which the arrangements relate concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and where arrangements do include any such provisions, the declaration in the Order in Council shall state that fact.

(3) Subject to the provisions of this Part, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax and corporation tax in so far as they provide—

(a) for relief from income tax, or from corporation tax in respect of income or chargeable gains; or

(b) for charging the income arising from sources, or chargeable gains accruing on the disposal of assets, in the United Kingdom to persons not resident in the United Kingdom; or

(c) for determining the income or chargeable gains to be attributed—

(i) to persons not resident in the United Kingdom and their agencies, branches or establishments in the United Kingdom; or

(ii) to persons resident in the United Kingdom who have special relationships with persons not so resident; or

(d) for conferring on persons not resident in the United Kingdom the right to a tax credit under section 231 in respect of qualifying distributions made to them by companies which are so resident.

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(4) The provisions of Chapter II of this Part shall apply where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.

(5) For the purposes of this section and, subject to section 795(3), Chapter II of this Part in its application to relief under this section, any amount of tax which would have been payable under the law of a territory outside the United Kingdom but for a relief to which this subsection applies given under the law of that territory shall be treated as having been payable; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

This subsection applies—

(a) to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, being a relief with respect to which provision is made in the arrangements in question for double taxation relief; and

(b) to any relief provided under and in accordance with the arrangements, where the latter expressly contemplate that the relief is to fall within this subsection.

(6) Except in the case of a claim for an allowance by way of credit in accordance with Chapter II of this Part, a claim for relief under subsection (3)(a) above shall be made to the Board.

(7) Where—

(a) under any arrangements which have effect by virtue of this section, relief may be given, either in the United Kingdom or in the territory with the government of which the arrangements are made, in respect of any income or chargeable gains, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gains is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given under the arrangements,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gains is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gains are, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gains, and, in the case of an assessment in respect of income, may be assessed under Case VI of Schedule D.

(8) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act, or before the making of the arrangements, and provisions as to income or chargeable gains which is or are not subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(9) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(10) Before any Order in Council proposed to be made under this section is submitted to Her Majesty in Council, a draft of the Order shall be laid before the House of Commons, and the Order shall not be so submitted unless an Address is presented to Her Majesty by that House praying that the Order be made.

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Modifications etc. (not altering text)

C741 *See*—1970 ss.267, 273, 273A*and* 276(groups)—*disapplication of those provisions in the case of companies treated as resident outside the U.K. by virtue of* s.788.1989 s.115—*calculation of tax credit for non-resident on gross amount of distribution.*1990 s.32(8)—*application of* s.788*to assets held by employee share ownership trusts.*
S. 788 modified (27.7.1993) by 1993 c. 34, **s. 194(1)**

C742 *For List of Orders in Council see* Part III Vol.5.

Marginal Citations

M1990 Source—1970 s.497(1)-(8); 1972 ss.98(2), 100(1); 1976 s.50(2); 1987 s.70(1)

789 Arrangements made under old law.

M1991 (1) Notwithstanding section 793(2), any arrangements made in relation to the profits tax under section 347 of the M1992 Income Tax Act 1952 or any earlier enactment corresponding to that section shall, except in so far as arrangements made after the passing of the M1993 Finance Act 1965 provide otherwise, have effect in relation to corporation tax and income and gains chargeable to corporation tax as they are expressed to have effect in relation to the profits tax and profits chargeable to the profits tax, with the substitution of accounting periods for chargeable accounting periods (and not as they had effect in relation to income tax).

(2) In so far as any arrangements made before 30th March 1971 provide for the exemption of any income from surtax they shall have effect, unless otherwise modified by subsequent arrangements, as if they provided for that income to bear income tax at the basic rate and to be disregarded for the purpose of computing total income, except in so far as the computation affects the matters mentioned in section 835(5).

(3) Any reference in the Tax Acts (including this Part) to arrangements under or by virtue of section 788 includes a reference to arrangements having effect by virtue of this section.

Marginal Citations

M1991 Source—1970 s.497(9), (10); 1971 sch.6 74; 1972 s.100(1)

M1992 1952 c.10.

M1993 1965 c. 25.

790 Unilateral relief.

(1) M1994 To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income and chargeable gains shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing that tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 788 providing for such relief.

(2) Relief under subsection (1) above is referred to in this Part as "unilateral relief".

(3) M1995 Unilateral relief shall be such relief as would fall to be given under Chapter II of this Part if arrangements with the government of the territory in question containing

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the provisions specified in subsections (4) to (10) below were in force by virtue of section 788, but subject to any particular provision made with respect to unilateral relief in that Chapter; and any expression in that Chapter which imports a reference to relief under arrangements for the time being having effect by virtue of that section shall be deemed to import also a reference to unilateral relief.

(4) [M1996]Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising or any chargeable gain accruing in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income or gain (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory).

(5) Subsection (4) above shall have effect subject to the following modifications, that is to say—

(a) where the territory is the Isle of Man or any of the Channel Islands, the limitation to income or gains arising in the territory shall not apply;

(b) where arrangements with the government of the territory are for the time being in force by virtue of section 788, credit for tax paid under the law of the territory shall not be allowed by virtue of subsection (4) above in the case of any income or gains if any credit for that tax is allowable under those arrangements in respect of that income or those gains; and

(c) credit shall not be allowed by virtue of subsection (4) above for overseas tax on a dividend paid by a company resident in the territory unless—

(i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid; or

(ii) the dividend is paid to a company within subsection (6) below; or

(iii) the dividend is paid to a company to which section 802(1) applies and is a dividend of the kind described in that subsection.

(6) [M1997]Where a dividend paid by a company resident in the territory is paid to a company resident in the United Kingdom which either directly or indirectly controls, or is a subsidiary of a company which directly or indirectly controls—

(a) not less than 10 per cent. of the voting power in the company paying the dividend; or

(b) less than 10 per cent. of the voting power in the company paying the dividend if—

(i) it has been reduced below that percentage on or after 1st April 1972; or

(ii) it has been acquired on or after that date in exchange for voting power in another company in respect of which relief under this subsection by virtue of paragraph (a) above was due prior to the exchange;

and the company receiving the dividend shows that the conditions specified in subsection (7) below are satisfied;

any tax in respect of its profits paid under the law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.

In this subsection references to one company being a subsidiary of another are to be construed in accordance with section 792(2).

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(7) The conditions referred to in subsection (6)(b) above are as follows—

(a) that the reduction below the 10 per cent. limit (and any further reduction) or, as the case may be, the exchange (and any reduction thereafter) could not have been prevented by any reasonable endeavours on the part of the company receiving the dividend and was due to a cause or causes not reasonably foreseeable by it when control of the relevant voting power was acquired; and

(b) no reasonable endeavours on the part of that company could have restored or, as the case may be, increased the voting power to not less than 10 per cent.

(8) In subsection (7) above references to the company receiving the dividend include references—

(a) to any company of which it is a subsidiary within the meaning of section 792(2); and

(b) where prior to the reduction or exchange the voting power in question was controlled otherwise than directly by the company receiving the dividend, to each other company relevant for determining whether that voting power was controlled as required by subsection (6)(a) above.

(9) In subsection (7) above "the relevant voting power" means the voting power by virtue of which relief was due under subsection (6)(a) above prior to the reduction or exchange or, where control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) In any case in which relief in respect of a dividend is due by virtue of subsection (6)(b) above, there shall be taken into account, as if it were tax payable under the law of the territory in which the company paying the dividend is resident, any tax that would be so taken into account under section 801 if the company paying the dividend and the company receiving it were related to each other within the meaning of section 801(5).

(11) [M1998]Where—

(a) unilateral relief may by given in respect of any income or chargeable gain, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gain is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gain is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gain is, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gain, and, in the case of an assessment in respect of income, may be assessed under Case VI of Schedule D.

(12) In this section and in Chapter II of this Part in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references—

(a) to taxes which are charged on income and which correspond to United Kingdom income tax, and

(b) to taxes which are charged on income or chargeable gains and which correspond to United Kingdom corporation tax;

but for this purpose tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under

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the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Marginal Citations

M1994 Source—1970 s.498(1); 1972 s.100(1)
M1995 Source—1970 s.498(2)
M1996 Source—1970 s.498(3); 1972 s.100(1)
M1997 Source—1970 s.498(4); 1971 s.26(3); 1972 s.83(1)-(5)
M1998 Source—1970 s.498(5), (6); 1972 s.100(1)

791 Power to make regulations for carrying out section 788.

[M1999]The Board may from time to time make regulations generally for carrying out the provisions of section 788 or any arrangements having effect thereunder, and may in particular by those regulations provide—

(a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure for the benefit of persons not entitled to such relief; and

(b) for authorising, in cases where tax deductible from any payment has, in order to comply with any such arrangements, not been deducted, and it is discovered that the arrangements did not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Modifications etc. (not altering text)

C743 *For regulations see* Part III Vol.5

Marginal Citations

M1999 Source—1970 s.517

CHAPTER II

RULES GOVERNING RELIEF BY WAY OF CREDIT

Modifications etc. (not altering text)

C744 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

C745 *See* 1989 s.115—*calculation of tax credit for non-residents on gross amount of distribution.*

General

792 Interpretation of credit code.

[M2000](1) In this Chapter, except where the context otherwise requires—

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"arrangements" means any arrangements having effect by virtue of section 788;

"foreign tax" means, in relation to any territory, arrangements with the government of which have effect by virtue of section 788, any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements;

"the United Kingdom taxes" means income tax and corporation tax;

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction; and

"unilateral relief" means relief under section 790.

(2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.

(3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory with the government of which the arrangements were made.

Marginal Citations

M2000 Source—1970 s.500

793 Reduction of United Kingdom taxes by amount of credit due.

M2001 (1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income or chargeable gain, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.

(2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.

Modifications etc. (not altering text)

C746 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Marginal Citations

M2001 Source—1970 s.501; 1972 s.100 (1).

VALID FROM 28/07/2000

[F1493 793A No double relief etc.

(1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—

(a) under arrangements made with the government of that territory, or

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(b) under the law of that territory in consequence of any such arrangements,

credit may not be allowed in respect of that tax, whether the relief has been used or not.

(2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.

(3) Where arrangements made with the government of a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances.**]**

Textual Amendments

F1493 S. 793A inserted (with effect in accordance with Sch. 30 para. 5(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 5(1)**

794 Requirement as to residence.

M2002 (1) Subject to subsection (2) below, credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable is resident in the United Kingdom for that period.

(2) Credit may be allowed by way of unilateral relief—

(a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or any of the Channel Islands, as the case may be;

(b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against income tax chargeable under Schedule E and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or that territory; and

(c) for tax paid under the law of any territory in respect of interest on a loan where the following conditions are fulfilled, namely—

(i) that the person in question is a company which, for the chargeable period in question, carries on a banking business in the United Kingdom through a branch or agency;

(ii) that the loan was made by the company through the branch or agency in the United Kingdom;

(iii) that the territory under whose law the tax was paid is not one in which the company is liable to tax by reason of domicile, residence or place of management; and

(iv) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a company resident in the United Kingdom and the loan had been made by it in the course of its banking business.

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Marginal Citations

M2002 Source—1970 s.502; 1982 s.67; 1972 s.100(1).

795 Computation of income subject to foreign tax.

M2003 (1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income and income tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax as increased by the amount of the foreign tax in respect of the income, including in the case of a dividend any underlying tax which under the arrangements is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend.

(2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income or gain and subsection (1) above does not apply, then, in computing the amount of the income or gain for the purposes of income tax or corporation tax—

(a) no deduction shall be made for foreign tax, whether in respect of the same or any other income or gain; and

(b) the amount of the income shall, in the case of a dividend, be treated as increased by any underlying tax which, under the arrangements, is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend.

(3) The amount of any income or gain shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of section 788(5).

Marginal Citations

M2003 Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

VALID FROM 28/07/2000

[F1494 795A Limits on credit: minimisation of the foreign tax.

(1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the territory concerned, and

(b) under any arrangements made with the government of that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) above include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and

(b) making elections for tax purposes.

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(3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom.**]**

Textual Amendments

F1494 S. 795A inserted (with effect in accordance with Sch. 30 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 6(1)**

796 Limits on credit: income tax.

M2004 (1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax)—

(a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and

(b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.

(2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.

(3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

Marginal Citations

M2004 Source—1970 s.504

797 Limits on credit: corporation tax.

M2005 (1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income or chargeable gain ("the relevant income or gain") shall not exceed the corporation tax attributable to the relevant income or gain, determined in accordance with subsections (2) and (3) below.

(2) M2006 Subject to subsection (3) below, the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues ("the relevant accounting period").

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(3) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description—

(a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and

(b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

(4) Where in accordance with section 239 any advance corporation tax falls to be set against the company's liability to corporation tax on its profits (within the meaning of that section) for the relevant accounting period—

(a) so far as that liability relates to the relevant income or gain, it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income or gain, as determined in accordance with subsections (2) and (3) above; and

(b) the amount of advance corporation tax which may be set against that liability, so far as it relates to the relevant income or gain, shall not exceed whichever is the lower of the limits specified in subsection (5) below;

and section 239(2) shall have effect in relation only to so much of the profits of the company chargeable to corporation tax for that period as does not include the relevant income or gain.

(5) In relation to an amount of income or gain in respect of which the company's liability to corporation tax is taken to be reduced as mentioned in paragraph (a) of subsection (4) above, the limits referred to in paragraph (b) of that subsection are—

(a) the limit which would apply under section 239(2) if that amount of income or gain were the company's only income or gain for the relevant accounting period; and

(b) the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income or gain.

Marginal Citations

M2005 Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)

M2006 Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77

VALID FROM 29/04/1996

[F1495 797A Foreign tax on interest brought into account as a non-trading credit.

(1) This section applies for the purposes of any arrangements where, in the case of any company—

(a) any non-trading credit relating to an amount of interest is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) for any accounting period ("the applicable accounting period"); and

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(b) there is in respect of that amount an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that interest.

(2) It shall be assumed that tax chargeable under paragraph (a) of Case III of Schedule D on the profits and gains arising for the applicable accounting period from the company's loan relationships falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect (subject to subsection (7) below) as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description; and

(b) different parts of that amount might be set against different profits.

(4) For the purposes of this section, the adjusted amount of a company's non-trading debits for any accounting period is the amount equal, in the case of that company, to the aggregate of the non-trading debits given for that period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) less the aggregate of the amounts specified in subsection (5) below.

(5) Those amounts are—

(a) so much of any non-trading deficit for the applicable accounting period as is an amount to which a claim under subsection (2)(b), (c) or (d) of section 83 of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act (group relief and transfer to previous or subsequent period of deficits) relates; **[**[F1496]and**]**

(b) so much of any non-trading deficit for that period as falls to be carried forward to a subsequent period in accordance with subsection (3) of that section or paragraph 4(4) of that Schedule; [F1497]. . .

(c) [F1497]. . . . . .

[[F1498]An amount carried forward to the applicable accounting period under section 83(3) of that Act shall not be treated as a non-trading deficit for that period for the purposes of paragraphs (a) and (b).**]**

(6) Section 797(3) shall have effect as if any amount **[**[F1499]carried forward to the applicable accounting period in pursuance of a claim under section 83(2)(d) of that Act**]** were an amount capable of being allocated only to any non-trading profits of the company.

(7) Where—

(a) the company has a non-trading deficit for the applicable accounting period,

(b) the amount of that deficit exceeds the aggregate of the amounts specified in subsection (5) above, and

(c) in pursuance of a claim under—

(i) subsection (2)(a) of section 83 of the Finance Act 1996 (deficit set against current year profits), or

(ii) paragraph 4(2) of Schedule 11 to that Act (set-off of deficits in the case of insurance companies),

the excess falls to be set off against profits of any description,

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section 797(3) shall have effect as if non-trading debits of the company which in aggregate are equal to the amount of the excess were required to be allocated to the profits against which they are set off in pursuance of the claim.

[[F1500]An amount carried forward to the applicable accounting period under section 83(3) of the [M2007]Finance Act 1996 shall be disregarded for the purposes of paragraphs (a) and (b).**]**

(8) In this section "non-trading profits" has the same meaning as in paragraph 4 of Schedule 8 to the Finance Act 1996.**]**

Textual Amendments

F1495 S. 797A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 43** (with Sch. 15)

F1496 Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**

F1497 S. 797A(5)(c) and preceding word repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(b)(4), **Sch. 27 Pt. 3(17)**, Note

F1498 Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**

F1499 Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**

F1500 Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**

Marginal Citations

M2007 1996 c. 8.

VALID FROM 24/07/2002

[[F1501]**797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets**

(1) This section applies for the purposes of any arrangements where, in the case of a company—

(a) a non-trading credit relating to an item is brought into account for the purposes of Schedule 29 to the Finance Act 2002 (intangible fixed assets) for an accounting period ("the applicable accounting period"), and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.

(2) It shall be assumed that tax chargeable under Case VI of Schedule D on the profits and gains arising for the applicable accounting period from the company's intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and

(b) different parts of that amount might be set against different profits.

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(4) For this purpose the adjusted amount of a company's non-trading debits for an accounting period is given by:

$$\text{TotalDebits} - \text{AmountCarriedForward}$$

where—

Total Debits is the aggregate amount of the company's non-trading debits for that accounting period under Schedule 29 to the Finance Act 2002 (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under paragraph 35(3) of that Schedule (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period).**]**

Textual Amendments

F1501 S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(4)**

Modifications etc. (not altering text)

C747 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

798 Interest on certain overseas loans.

M2008 (1) This section applies in a case where—

(a) in any chargeable period the profits of any person ("the lender") which are brought into charge to income tax or corporation tax include an amount computed in accordance with section 795 in respect of interest ("foreign loan interest") on a loan made to a person resident outside the United Kingdom; and

(b) in determining the liability of the lender to income tax or corporation tax, expenditure related to the earning of the foreign loan interest is deductible in computing the profits referred to in paragraph (a) above; and

(c) the lender is entitled in accordance with this Chapter to credit for foreign tax chargeable on or by reference to the foreign loan interest;

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.

(2) 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.

(3) If in a case where this section applies the foreign tax referred to in subsection (1)(c) above is or includes an amount of spared tax, then for the purposes of income tax or corporation tax the amount which apart from this subsection would be the amount of

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the foreign loan interest shall be treated as increased by so much of the spared tax as does not exceed the permitted amount, as defined in subsection (4) below; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

(4) In this section "spared tax" means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5); and the permitted amount, in relation to spared tax which is referable to the whole or any part of the foreign loan interest, is an amount which does not exceed—

(a) 15 per cent. of the interest to which the spared tax is referable, computed without regard to any increase under subsection (3) above; or

(b) if it is less, the amount of that spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in subsection (1)(c) above.

(5) If in a case where this section applies—

(a) the foreign tax referred to in subsection (1)(c) above is or includes an amount of tax which is not spared tax; and

(b) the amount of tax exceeds—

(i) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (6) 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,

then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign loan interest shall be treated as reduced by a sum equal to the excess.

(6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, 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 (3) or (5) above) as reduced (or further reduced) for the purposes of this 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 (3) above or any reduction under subsection (5) above.

(7) For the purposes of this section the lender's financial expenditure in relation to a loan is the aggregate of—

(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

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(c) so much as it is just and reasonable to attribute to the loan of any interest or other return foregone 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).

(8) 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 (9) 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.

(9) The Board may by regulations supplement subsection (8) 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.

(10) For the purposes of this section—

(a) section 839 applies; and

(b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(11) 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 shall have effect subject to the following modifications in relation to interest payable before 1st April 1989—

(a) in subsection (1) in paragraph (a) the words " in a territory " shall be inserted after "resident" and the words following paragraph (c) shall be omitted;

(b) subsection (2) shall be omitted;

(c) in subsection (5) for paragraph (b) there shall be substituted—

"(b) that amount of tax exceeds the amount of the credit which, by virtue of this Chapter and in particular subsection (6) below, is allowed for that foreign tax against income tax or corporation tax;" and

(d) for subsections (6) to (10) there shall be substituted—

"(6) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax shall not exceed 15 per cent. of the foreign loan interest,

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computed without regard to any increase under subsection (3) or any reduction under subsection (5) above.";

but subject to that, this section applies whether the loan was made before or after the passing of this Act.

Modifications etc. (not altering text)

C748 *For regulations see* Part III Vol.5

Marginal Citations

M2008 Source—1982 s.65; 1987 (No.2) s.67

VALID FROM 31/07/1998

[F1502 798A Adjustments of interest and dividends for spared tax etc.

(1) In a case where section 798 applies—

(a) subsection (2) below applies if the foreign tax referred to in subsection (1)(b) of that section is or includes an amount of spared tax; and

(b) subsection (3) below applies if the foreign tax so referred to is or includes an amount of tax which is not spared tax.

(2) For the purposes of income tax or corporation tax, the amount which apart from this subsection would be the amount of the foreign interest or foreign dividends shall be treated as increased by so much of the spared tax as does not exceed—

(a) the amount of the spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in section 798(1)(b); or

(b) if it is less, 15 per cent. of the interest or dividends, computed without regard to any increase under this subsection.

(3) If the amount of tax which is not spared tax exceeds—

(a) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (2) of section 798), is allowed for that tax against income tax or corporation tax; or

(b) if it is less in the case of tax on foreign interest, 15 per cent. of the interest, computed without regard to any increase or reduction under this section or that subsection,

then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign interest or foreign dividends shall be treated as reduced by a sum equal to the excess.

(4) Subsection (2) above has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the [M2009] Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).

(5) Nothing in subsection (2) above prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

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(6) In this section "spared tax" means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5).**]**

Textual Amendments

F1502 S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 104**

Marginal Citations

M2009 1996 c. 8.

VALID FROM 31/07/1998

[F1503 798B Meaning of "financial expenditure".

(1) For the purposes of section 798 "financial expenditure", in relation to a qualifying taxpayer and any interest or dividends is, subject to the provisions of this section, the aggregate of—

(a) so much of the financial expenses (consisting of interest, discounts or similar sums or qualifying losses) incurred by the taxpayer or a person connected or associated with him as—

(i) is properly attributable to the earning of the interest or dividends; and

(ii) falls to be taken into account in computing the taxpayer's or person's liability to income tax or corporation tax; and

(b) so much of any other sum paid by the taxpayer or a person connected or associated with him which—

(i) falls to be taken into account as mentioned in paragraph (a) above; and

(ii) would not, apart from this paragraph, be taken into account in determining the amount of the interest or dividends,

as it is reasonable to regard as attributable to the earning of the interest or dividends (whether or not it would fall, in accordance with normal accountancy practice, to be so treated).

(2) There shall be deducted from the aggregate given by subsection (1) above so much of the qualifying gains and profits accruing to the qualifying taxpayer or a person connected or associated with him as—

(a) is properly attributable to the earning of the interest or dividends; and

(b) falls to be taken into account in computing the taxpayer's or person's liability to income tax or corporation tax.

(3) In a case where the amount of a qualifying taxpayer's financial expenditure in relation to the earning of the interest or dividends is not readily ascertainable—

(a) that amount shall be taken, subject to subsection (4) below, to be such sum as it is just and reasonable to attribute to the earning of the interest or dividends; and

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(b) in the case of interest, regard shall be had in particular to any market rates of interest by reference to which the rate of the interest is determined.

(4) The Board may by regulations supplement subsection (3) above—

(a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in paragraph (a); and

(b) by making provision with respect to the determination of market rates of interest for the purposes of paragraph (b);

and any such regulations may make different provision for different cases.

(5) In this section "qualifying losses" means—

(a) losses falling to be brought into account for the purposes of Chapter II of Part II of the [M2010]Finance Act 1993 (exchange gains and losses) in accordance with sections 125 to 127 of that Act; and

(b) losses falling to be brought into account for the purposes of Chapter II of Part IV of the [M2011]Finance Act 1994 (interest rate and currency contracts) in accordance with sections 155 to 158 of that Act;

and "qualifying gains" and "qualifying profits" shall be construed accordingly.**]**

Textual Amendments

F1503 S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 105**

Marginal Citations

M2010 1993 c. 34.

M2011 1994 c. 9.

VALID FROM 07/04/2005

[[F1504]798C Disallowed credit: use as deduction

(1) This section applies where the application of section 796(1) or 797(1) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The amount of disallowed credit may be taken into account as a deduction in computing the taxpayer's liability for income tax or corporation tax, but only in so far as it does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid (for which purpose payment of the foreign tax is to be taken into account, despite section 795(2)).**]**

Textual Amendments

F1504 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

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Modifications etc. (not altering text)

C749 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Tax underlying dividends

799 Computation of underlying tax.

M2012(1) Where in the case of any dividend arrangements provide for underlying tax to be taken into account in considering whether any and if so what credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as is properly attributable to the proportion of the relevant profits represented by the dividend.

(2) Where under the foreign tax law the dividend has been increased for tax purposes by an amount to be set off against the recipient's own tax under that law or, to the extent that it exceeds his own tax thereunder, paid to him, then, from the amount of the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

(3) For the purposes of subsection (1) above the relevant profits, subject to subsection (4) below, are—

(a) if the dividend is paid for a specified period, the profits of that period;

(b) if the dividend is not paid for a specified period, but is paid out of specified profits, those profits; and

(c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable.

(4) If, in a case falling under paragraph (a) or (c) of subsection (3) above, the total dividend exceeds the profits available for distribution of the period mentioned in that paragraph the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant profits for the purposes of this section or section 506 of the 1970 Act) as is equal to the excess; and for the purposes of this subsection the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

Marginal Citations

M2012 Source—1970 s.506; 1976 s.50(3)

800 Dividends paid between related companies but not covered by arrangements.

M2013Where—

(a) arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that underlying tax is to be taken into

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account in considering whether any, and if so what, credit is to be allowed against the United Kingdom taxes in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide;

then, if the dividend is paid to a company which controls directly or indirectly, or is a subsidiary of a company which controls directly or indirectly, not less than 10 per cent. of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Marginal Citations

M2013 Source—1970 s.507; 1971 s.26(4)

801 Dividends paid between related companies: relief for U.K. and third country taxes.

M2014 (1) Where a company resident outside the United Kingdom ("the overseas company") pays a dividend to a company resident in the United Kingdom ("the United Kingdom company") and the overseas company is related to the United Kingdom company, then for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, there shall be taken into account, as if it were tax payable under the law of the territory in which the overseas company is resident—

(a) any United Kingdom income tax or corporation tax payable by the overseas company in respect of its profits; and

(b) any tax which, under the law of any other territory, is payable by the overseas company in respect of its profits.

(2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, subject to subsection (4) below, there shall be treated for the purposes of subsection (1) above as tax paid by the overseas company in respect of its profits any underlying tax payable by the third company, to the extent that it would be taken into account under this Part if the dividend had been paid by a company resident outside the United Kingdom to a company resident in the United Kingdom and arrangements had provided for underlying tax to be taken into account.

(3) Where the third company has received a dividend from a fourth company and the fourth company is related to the third company, then, subject to subsection (4) below, tax payable by the fourth company shall similarly be treated for the purposes of subsection (2) above as tax paid by the third company; and so on for successive companies each of which is related to the one before.

(4) Subsections (2) and (3) above are subject to the following limitations—

(a) no tax shall be taken into account in respect of a dividend paid by a company resident in the United Kingdom except United Kingdom corporation tax and any tax for which that company is entitled to credit under this Part; and

(b) no tax shall be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account under the other provisions of this Part had the other company been resident in the United Kingdom.

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(5) For the purposes of this section a company is related to another company if that other company—
  (a) controls directly or indirectly, or
  (b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company.

Marginal Citations

M2014 Source—1970 s.508; 1971 s.26(2)

VALID FROM 19/03/1997

[F1505 801A Restriction of relief for underlying tax.

(1) This section applies where—
  (a) a company resident in the United Kingdom ("the United Kingdom company") makes a claim for an allowance by way of credit in accordance with this Part;
  (b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom ("the overseas company");
  (c) that underlying tax is or includes an amount in respect of tax ("the high rate tax") payable by—
    (i) the overseas company, or
    (ii) such a third, fourth or successive company as is mentioned in section 801,

  at a rate in excess of the relievable rate; and
  (d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.

(2) Where this section applies, the amount of the credit to which the United Kingdom company is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.

(3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.

(4) In subsection (3) above "the relevant profits", in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.

(5) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.

(6) In this section "an avoidance scheme" means any scheme or arrangement which—
  (a) falls within subsection (7) below; and

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(b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

(7) A scheme or arrangement falls within this subsection if the parties to it include both—

(a) the United Kingdom company, a company related to that company or a person connected with the United Kingdom company; and

(b) a person who was not under the control of the United Kingdom company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(8) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

(9) Section 839 (meaning of "connected persons") applies for the purposes of this section.

(10) Subsection (5) of section 801 (meaning of "related company") shall apply for the purposes of this section as it applies for the purposes of that section.

(11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of the United Kingdom company at all the following times, namely—

(a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;

(b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and

(c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.**]**

Textual Amendments

F1505 S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 90(1)**

VALID FROM 28/07/2000

[F1506 801B Dividends paid out of transferred profits.

(1) This section applies where—

(a) a company ("company A") resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than by virtue of the payment of a dividend to company B; and

(c) company B pays a dividend out of those profits to another company ("company C"), wherever resident.

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(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—
  (a) by any company resident outside the United Kingdom (whether or not company B),
  (b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b) above.

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B.**]**

Textual Amendments

F1506 S. 801B inserted (with effect in accordance with Sch. 30 para. 12(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 12(1)**

VALID FROM 28/07/2000

[F1507 801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.

(1) This section applies in any case where—
  (a) by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company; and
  (b) one or more of the dividends paid by the controlled foreign company by virtue of which the condition in paragraph (a) above is satisfied are dividends falling within subsection (2) below.

(2) A dividend falls within this subsection if, for the purposes of Part I of Schedule 25, the whole or any part of it falls to be treated by virtue of paragraph 4 of that Schedule as paid by the controlled foreign company to a United Kingdom resident.

(3) If, in a case where this section applies,—
  (a) an initial dividend is paid to a company resident outside the United Kingdom, and
  (b) that company, or any other company which is related to it, pays an intermediate dividend which for the purposes of paragraph 4 of Schedule 25 to any extent represents that initial dividend,

subsection (4) below shall have effect in relation to the UK recipient concerned.

(4) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to that UK recipient—
  (a) that, instead of the intermediate dividend, the dividends described in subsection (5) below had been paid and the circumstances had been as described in subsection (6) or (7) below, as the case may be; and

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(b) that any tax paid under the law of any territory in respect of the intermediate dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(5) The dividends mentioned in subsection (4)(a) above are—

(a) as respects each of the initial dividends which are, for the purposes of paragraph 4 of Schedule 25, to any extent represented by the intermediate dividend, a separate dividend (an "ADP dividend") representing, and of an amount equal to, so much of that initial dividend as is for those purposes represented by the intermediate dividend; and

(b) a further separate dividend (a "residual dividend") representing, and of an amount equal to, the remainder (if any) of the intermediate dividend.

(6) As respects each of the ADP dividends, the intermediate company is to be treated as if it were a separate company whose distributable profits are of a constitution corresponding to, and an amount equal to, that of the ADP dividend.

(7) As respects the residual dividend (if any), the relevant profits out of which it is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding accordingly so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid.

(8) If, in a case where this section applies, an intermediate company also pays a dividend which is not an intermediate dividend (an "independent dividend") and either—

(a) that dividend is paid to a United Kingdom resident, or

(b) if it is not so paid, a dividend which to any extent represents it is paid by a company which is related to that company and resident outside the United Kingdom to a United Kingdom resident,

subsection (9) below shall have effect in relation to the United Kingdom resident.

(9) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to the United Kingdom resident—

(a) that the relevant profits out of which the independent dividend is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid; and

(b) that any tax paid under the law of any territory in respect of the independent dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(10) For the purposes of this section—

(a) a controlled foreign company is an "ADP controlled foreign company" as respects any of its accounting periods if the condition in paragraph (a) of subsection (1) above is satisfied as respects that accounting period;

(b) an "initial dividend" (subject to subsection (14) below) is any of the dividends mentioned in paragraph (b) of subsection (1) above paid by an ADP controlled foreign company; and

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(c) a "subsequent dividend" is any dividend which, in relation to one or more initial dividends, is the subsequent dividend for the purposes of paragraph 4 of Schedule 25.

(11) In this section—

"distributable profits" means a company's profits available for distribution, determined in accordance with section 799(6);

"intermediate company" means any company resident outside the United Kingdom which pays an intermediate dividend;

"intermediate dividend" means any dividend which is paid by a company resident outside the United Kingdom and which—

(a) for the purposes of paragraph 4 of Schedule 25, to any extent represents one or more initial dividends paid by other companies; and

(b) either is the subsequent dividend in the case of those initial dividends or is itself to any extent represented for those purposes by a subsequent dividend;

"the UK recipient" means the United Kingdom resident to whom a subsequent dividend is paid.

(12) Where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

then, for the purposes of this section, dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(13) Sub-paragraph (2) of paragraph 4 of Schedule 25 (related companies) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

(14) Where an intermediate company which is an ADP controlled foreign company pays a dividend—

(a) by virtue of which (whether taken alone or with other dividends) the condition in subsection (1)(a) above is satisfied as regards an accounting period of the company, but

(b) which also for the purposes of paragraph 4 of Schedule 25 to any extent represents one or more initial dividends paid by other ADP controlled foreign companies,

the dividend shall not be regarded for the purposes of this section as an initial dividend paid by the company, to the extent that it so represents initial dividends paid by other ADP controlled foreign companies.**]**

Textual Amendments

F1507 S. 801C inserted (with effect in accordance with Sch. 30 para. 13(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 13(1)**

802 U.K. insurance companies trading overseas.

M2015 (1) Subject to subsection (2) below, where—

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(a) a company resident in the United Kingdom is charged to tax under Case I of Schedule D in respect of any insurance business carried on by it, and

(b) that business or any part of it is carried on through a branch or agency in a territory outside the United Kingdom,

then, in respect of dividends referable to that business which are paid to the company by companies resident in that territory, any tax payable by those companies in respect of their profits under the law of that or any other territory outside the United Kingdom, and any United Kingdom income tax or corporation tax so payable, shall, in considering whether any and if so what credit is to be allowed under any arrangements, be taken into account as tax so payable under the law of the first-mentioned territory is taken into account in a case falling within section 799.

(2) Credit shall not be allowed to a company by virtue of subsection (1) above for any financial year in respect of a greater amount of dividends paid by companies resident in any overseas territory than is equal to any excess of—

(a) the relevant fraction of the company's total income in that year from investments (including franked investment income and group income) so far as referable to the business referred to in subsection (1) above; over

(b) the amount of the dividends so referable which are paid to it in the year by companies resident in that territory and in respect of which credit may, apart from subsection (1) above, be allowed to it for underlying tax.

(3) For the purposes of subsection (2) above the relevant fraction, in relation to any overseas territory, is—

$$\frac{A}{B}$$

where—

A is the company's local premium income in the financial year so far as referable to the business referred to in subsection (1) above;

B is the company's total premium income in the financial year so far as referable to that business;

and premium income shall be deemed to be local premium income in so far as it consists of premiums under contracts entered into at or through a branch or agency in that territory by persons not resident in the United Kingdom.

Modifications etc. (not altering text)

C750 S. 802 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations

M2015 Source—1970 s.509

803 Underlying tax reflecting interest on loans.

M2016 (1) This section applies in a case where—

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(a) a bank or a company connected with a bank makes a claim for an allowance by way of credit in accordance with this Chapter; and

(b) the claim relates to underlying tax on a dividend paid by the overseas company, within the meaning of section 801; and

(c) that underlying tax is or includes tax payable under the law of a territory outside the United Kingdom on or by reference to interest on a loan made in the course of its business by that overseas company or by such third, fourth or successive company as is referred to in subsection (2) or (3) of that section; and

(d) if the company which made the loan had been resident in the United Kingdom, then, in determining its liability to corporation tax, expenditure related to the earning of the interest on the loan would be deductible in computing the profits of the company brought into charge to tax.

(2) 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 (3) below.

(3) The amount referred to in subsection (2) 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.

(4) In subsection (3) above—

(a) "interest", subject to subsection (5) below, has the meaning assigned to it by section 798(2); 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 section 798(6) to (10).

(5) If, in accordance with subsection (6) or subsection (8) 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 (3) above shall be taken to be increased or reduced by the same amount as the dividend is so treated as increased or reduced.

(6) If, in a case where this section applies, the underlying tax is or includes an amount of spared tax, then, for the purposes of corporation tax, the amount which apart from this subsection would be the amount of the dividend shall be treated as increased by an amount equal to so much of that spared tax as does not exceed the permitted amount; but nothing in this subsection prejudices the operation of section 795 in relation to foreign tax which is not spared tax.

(7) In this section—

(a) "spared tax" has the same meaning as in section 798; and

(b) the permitted amount, in relation to spared tax which is referable to the whole or any part of the interest referred to in subsection (1)(c) above, is an amount which does not exceed—

(i) 15 per cent. of the interest to which that spared tax is referable; or

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(ii) if it is less, the amount of that spared tax which under any arrangements is to be taken into account for the purpose of allowing credit against corporation tax in respect of the dividend concerned.

(8) If, in a case where this section applies—

(a) the underlying tax is or includes an amount of tax which is not spared tax, and

(b) that amount of tax exceeds 15 per cent. of the interest to which it is referable,

then, for the purposes of corporation tax, the amount which would apart from this subsection be the amount of the dividend shall be treated as reduced by a sum equal to the excess.

(9) Where this section applies, the amount of the credit referred to in paragraph (a) of subsection (1) above which is referable to the underlying tax payable as mentioned in paragraph (c) of that subsection shall not exceed 15 per cent. of so much of the interest referred to in that paragraph as is included in the relevant profits of the company paying the dividend; and for the purposes of this subsection—

(a) "relevant profits" has the same meaning as, by virtue of section 799, it has for the purposes of the computation of underlying tax; and

(b) the amount of the interest shall be determined without making any deduction in respect of any foreign tax.

(10) In subsection (1) above "bank" means a company carrying on, in the United Kingdom or elsewhere—

(a) a banking business; or

(b) another business which includes the making of loans where the circumstances of the business are such that, in determining the liability of the company to corporation tax, expenditure related to the earning of the interest on those loans is deductible in computing the profits brought into charge to tax;

and section 839 applies for the purposes of subsection (1) above.

(11) Where the loan referred to in subsection (1)(c) was made pursuant to an agreement entered into before 1st April 1987, subsections (2) to (5) above shall not apply in relation to tax payable as mentioned in subsection (1)(c) above by reference to interest payable before 1st April 1989, but subject to that, this section applies whenever the loan referred to in subsection (1)(c) was made.

Marginal Citations

M2016 Source—1982 s.66; 1987 (No.2) s.68

VALID FROM 28/07/2000

[F1508 803A Foreign taxation of group as a single entity.

(1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

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(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the "non-resident companies") to another company ("the recipient company"), as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

(3) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company.**]**

Textual Amendments

F1508 S. 803A inserted (with effect in accordance with Sch. 30 para. 15(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 15(1)**

Miscellaneous rules

804 Relief against income tax in respect of income arising in years of commencement.

M2017 (1) Subject to the provisions of this section, credit for overseas tax paid in respect of any income arising in the years of commencement shall be allowed under this Part against United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.

(2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—

(a) the total credit allowable against income tax in respect of that income under this Part (including this section) for all years of assessment for which credit is so allowable; and

(b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.

(3) The total credit so allowable in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of foreign periods of assessment, in the proportion which the former number bears to

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the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.

(4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.

(5) Where credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income ("the original income") and subsequently by reason of the enactments relating to cessations, income arising in a non-basis period from the same source as the original income is not assessed to income tax, then if the amount of credit allowed against income tax in respect of the original income under this Part (including this section) for all years of assessment for which credit is so allowable exceeds the aggregate of the following amounts—

(a) the amount of the credit against income tax which would have been allowed apart from subsection (1) above for all those years in respect of the original income; and

(b) the amount of the overseas tax for which, under this Part, credit would have been allowable against income tax in respect of income arising in the non-basis period from the same source as the original income,

the person chargeable in respect of income (if any) from the same source in the year of assessment following the non-basis period shall be treated as having received in that year a payment chargeable under Case VI of Schedule D of an amount such that income tax thereon at the basic rate is equal to the excess.

(6) Any payment which a person is treated by virtue of subsection (5) above as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than that subsection and in particular no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 348.

(7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made within six years of the end of that year or, where there is more than one year of assessment in respect of which such relief may be given, within six years of the end of the later of them.

(8) In this section—

"overseas tax" means tax under the law of a territory outside the United Kingdom;

"non-basis period" means a period the income arising in which is, by reason only of the operation of the enactments relating to cessations, not chargeable to United Kingdom income tax for any year of assessment;

"United Kingdom period of assessment" and "foreign period of assessment", in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax;

"years of commencement", in relation to income from any source, means the first three years of assessment for which income from that source falls to be assessed to income tax, and also, in the case of profits or gains chargeable to tax under Case I or II of Schedule D, the whole of any period falling partly

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within those years such that the profits or gains arising in the period fall to be assessed to income tax for a year of assessment later than those years;

references to the enactments relating to cessations are references to sections 63, 67 and 113; and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

Marginal Citations

M2017 Source—1970 s.510; 1971 Sch.6 75

VALID FROM 07/04/2005

[F1509 804Z4 Schemes and arrangements designed to increase relief

(1) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to any income or chargeable gain taken or to be taken into account for the purposes of determining a person's liability to tax in a chargeable period, they may give the person a notice under this section.

(2) Condition A is that, in the case of the person, there is in respect of the income or gain an amount of foreign tax for which, under any arrangements, credit is allowable against United Kingdom tax for that chargeable period.

(3) Condition B is that there is a scheme or arrangement the main purpose, or one of the main purposes, of which is to cause an amount of foreign tax to be taken into account in the case of the person for that chargeable period.

(4) Condition C is that the scheme or arrangement is a prescribed scheme or arrangement.

(5) Condition D is that the amount referred to in subsection (6) is more than a minimal amount.

(6) The amount is the aggregate of—

(a) the aggregate amount of the claims for credit that the person has made, or is in a position to make, for the chargeable period; and

(b) for all the persons connected to that person, the aggregate amount of the claims for credit that the connected person has made, or is in a position to make, for a corresponding chargeable period.

(7) A chargeable period of a person ("A") corresponds to a chargeable period of another person ("B") if at least one day of A's chargeable period falls within B's chargeable period.

(8) A notice under this section is a notice—

(a) informing the person of the Board's view under subsection (1),

(b) specifying the chargeable period in relation to which the Board formed that view,

(c) if the amount of foreign tax considered by the Board to satisfy condition B is an amount of underlying tax, specifying the body corporate resident

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in a territory outside the United Kingdom whose payment of foreign tax is relevant to that underlying tax, and

(d) informing the person that as a consequence section 804ZB has effect in relation to him.

(9) A notice under this section may specify the adjustments of a person's tax return that, in the view of the Board, fall to be made by him under section 804ZB(2).

(10) The adjustments specified may, in a case where the notice given to a person specifies a body corporate resident outside the United Kingdom, include treating the body corporate as having paid or being liable to pay only so much foreign tax as would have been allowed to it as a credit if it were resident in the United Kingdom and a notice under this section had been given to it as regards an amount of foreign tax.

(11) Schedule 28AB makes provision about what constitutes a prescribed scheme or arrangement.

(12) In this section and sections 804ZB and 804ZC "tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return;

and "company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule.**]**

Textual Amendments

F1509 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

VALID FROM 07/04/2005

[F1509 804ZB Effect of notice under section 804ZA

(1) This section applies in relation to a person if—

(a) a notice under section 804ZA has been given to the person in respect of a chargeable period specified in the notice, and

(b) the chargeable period specified is a chargeable period in relation to which conditions A to D of section 804ZA are satisfied.

(2) The person must in his tax return for the period make (or must amend his return for the period so as to make) such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.**]**

Textual Amendments

F1509 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

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VALID FROM 07/04/2005

[F1509 804ZB Notices under section 804ZA: further provision

(1) Subsection (2) applies if the Board give a notice to a person under section 804ZA before the person has made his tax return for the chargeable period specified in the notice.

(2) If the person makes a tax return for that period before the end of the period of 90 days beginning with the day on which the notice is given, he may—
  (a) make a tax return that disregards the notice, and
  (b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the notice.

(3) If a person has made a tax return for a chargeable period, the Board may only give him a notice under section 804ZA in relation to that period if a notice of enquiry has been given to him in respect of his tax return for that period.

(4) After any enquiries into the person's tax return for that period have been completed, the Board may only give him a notice under section 804ZA in relation to that period if the requirements in subsections (5) and (7) are satisfied.

(5) The first requirement is that at the time the enquiries were completed, the Board could not have been reasonably expected, on the basis of the information made available to them or to an officer of theirs before that time, to have been aware that the circumstances were such that a notice under section 804ZA could have been given to the person in relation to that period.

(6) For the purposes of subsection (5)—
  (a) section 29(6) and (7) of the Management Act (information made available) applies as it applies for the purposes of section 29(5), and
  (b) paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 applies as it applies for the purposes of paragraph 44(1).

(7) The second requirement is that—
  (a) the person was requested to produce, provide or furnish information during an enquiry into the return for that period, and
  (b) if the person had duly complied with the request, the Board could have been reasonably expected to give the person a notice under section 804ZA in relation to that period.

(8) If a person is given a notice under section 804ZA in relation to a chargeable period after having made a tax return for that period, the person may amend the return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.

(9) If the notice under section 804ZA is given to the person after he has been given a notice of enquiry in respect of his tax return for the period, no closure notice may be given in relation to his tax return until—
  (a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or
  (b) the earlier amendment of the return for the purpose of complying with the notice.

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(10) If the notice under section 804ZA is given to the person after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or

(b) the earlier amendment of the return for the purpose of complying with the notice.

(11) Subsections (2)(b) and (8) do not prevent a person's tax return for a chargeable period becoming incorrect if—

(a) a notice under section 804ZA is given to the person in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(12) In this section—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

"discovery assessment" means an assessment under—

(a) section 29 of the Management Act, or

(b) paragraph 41 of Schedule 18 to the Finance Act 1998;

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998.**]**

Textual Amendments

F1509 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

[F1510 804A Overseas life assurance business: restriction of credit.

(1) Subsection (2) below applies where credit for tax which is payable under the laws of a territory outside the United Kingdom and computed otherwise than wholly by reference to profits arising in that territory is to be allowed (in accordance with this Part) against corporation tax charged by virtue of section 441 in respect of the profits of a company's overseas life assurance business for an accounting period.

(2) Where this subsection applies, the amount of the credit shall not exceed the greater of—

(a) any such part of the tax payable under the laws of the territory outside the United Kingdom as is charged by reference to profits arising in that territory, and

(b) the shareholders' share of the tax so payable.

(3) For the purposes of subsection (2) above the shareholders' share of tax payable under the laws of a territory outside the United Kingdom is so much of that tax as is represented by the fraction

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$$\frac{A}{B}$$

where—

A is an amount equal to the profits of the company for the period which are chargeable to tax under section 441; and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amounts taken into account as expenses and interest in computing those profits.

(4) Where there is no such excess as is mentioned in subsection (3) above, or where the profits are greater than any excess, the whole of the tax payable under the laws of the territory outside the United Kingdom shall be the shareholders' share; and (subject to that) where there are no profits, none of it shall be the shareholders' share.

(5) Where, by virtue of this section, the credit for any tax payable under the laws of a territory outside the United Kingdom is less than it otherwise would be, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the overseas life assurance business.**]**

Textual Amendments

F1510 S. 804A inserted (with effect in accordance with Sch. 7 para. 10 of the amending Act) by Finance Act 1990 (c. 29), **Sch. 7 para. 5**

VALID FROM 28/07/2000

[F1511 804B Insurance companies carrying on more than one category of business: restriction of credit.

(1) Where—

(a) an insurance company carries on more than one category of business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.

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(3) Where the relevant income arises from an asset—

(a) which is linked solely to a category of business (other than overseas life assurance business), or

(b) which is an asset of the company's overseas life assurance fund,

the whole of the foreign tax is attributable to the category mentioned in paragraph (a) above or, as the case may be, to the company's overseas life assurance business, unless the case is one where subsection (7) below applies in relation to the category of business in question.

(4) Where subsection (3) above does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) long term business which is not life assurance business,

the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A and whose denominator is the whole of the relevant income.

(5) Subsections (6) and (7) below apply where the category of business in question is neither—

(a) basic life assurance and general annuity business; nor

(b) long term business which is not life assurance business.

(6) Where—

(a) subsection (3) above does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of the [M2018]Finance Act 1989 in an account in relation to which the provisions of section 432C or 432D apply,

the fraction of the foreign tax that is attributable to the category of business in question is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432C or 432D and whose denominator is the whole of the relevant income.

(7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to the category of business in question is the fraction—

(a) whose numerator is the part of that net amount which is referable by virtue of section 432E to that category; and

(b) whose denominator is the whole of that net amount.

(8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.

(9) Where for the purposes of this section an amount of foreign tax is attributable to a category of life assurance business other than basic life assurance and general annuity business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under Case VI of Schedule D arising from carrying on that category of business.**]**

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Textual Amendments

F1511 S. 804B inserted (with effect in accordance with Sch. 30 para. 17(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 17(1)**

Modifications etc. (not altering text)

C751 S. 804B modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30C** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 25)

Marginal Citations

M2018 1989 c. 26.

VALID FROM 28/07/2000

[F1512 804C Insurance companies: allocation of expenses etc in computations under Case I of Schedule D.

(1) Where—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a computation in accordance with the provisions applicable to Case I of Schedule D falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

(3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(4) If—

(a) the amount of the relevant income after any reduction under subsection (3) above,

exceeds

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant amount as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

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In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the relevant amount shall not be reduced except in accordance with that subsection.

(6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(7) In subsection (6) above, the "appropriate fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and

(b) whose denominator is the total income of the category of business concerned for the period of account in question,

unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.

(8) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax falls to be allowed under any arrangements,

as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).

(9) In subsection (4) above, the "relevant fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and

(b) whose denominator is the amount described in subsection (8) above.

(10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

(a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

(11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.

(12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.

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(13) Any reference in this section to any income or gain being to any extent referable to a category of insurance business shall, in the case of—

(a) life assurance business or any category of life assurance business, or

(b) long term business which is not life assurance business,

be taken as a reference to the income or gain being to that extent referable to that category of business for the purposes of Chapter I of Part XII.

(14) This section shall be construed—

(a) in accordance with section 804D, where the category of business concerned is life assurance business or a category of life assurance business; and

(b) in accordance with section 804E, where the category of business concerned is not life assurance business or any category of life assurance business.**]**

Textual Amendments

F1512 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

VALID FROM 28/07/2000

[F1512 804D Interpretation of section 804C in relation to life assurance business etc.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or a category of life assurance business.

(2) The "total income" of the category of business concerned for the period of account in question is the amount (if any) by which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.

(3) Where any amounts fall to be brought into account in accordance with section 83 of the M2019 Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to 432F.

(4) The "total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.**]**

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Textual Amendments

F1512 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

Modifications etc. (not altering text)

C752 S. 804D modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30D** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 26)

C753 S. 804D modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 24

Marginal Citations

M2019 1989 c. 26.

VALID FROM 28/07/2000

[F1512 804E Interpretation of section 804C in relation to other insurance business.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or any category of life assurance business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3) below,

exceeds

(b) the sum of the amounts specified in subsection (4) below.

(3) The amounts mentioned in subsection (2)(a) above are—

(a) earned premiums, net of reinsurance;

(b) investment income and gains;

(c) other technical income, net of reinsurance;

(d) any amount treated under section 107(2) of the Finance Act 2000 as a receipt of the company's trade.

(4) The amounts mentioned in subsection (2)(b) above are—

(a) acquisition costs;

(b) the change in deferred acquisition costs;

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

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unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5) above, and

(b) in the provisions of section B of Schedule 9A to the [M2020]Companies Act 1985 (form and content of accounts of insurance companies and groups) which relate to the profit and loss account format (within the meaning of paragraph 7(1) of that section),

have the same meaning in those paragraphs as they have in those provisions.**]**

Textual Amendments

F1512 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

Marginal Citations

M2020 1985 c. 6.

VALID FROM 28/07/2000

[[F1513]804F Interpretation of sections 804A to 804E.

Expressions used in sections 804A to 804E and in Chapter I of Part XII have the same meaning in those sections as in that Chapter.**]**

Textual Amendments

F1513 S. 804F inserted (with effect in accordance with Sch. 30 para. 19(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 19(1)**

VALID FROM 21/07/2009

[[F1514]804G Reduction in credit: payment by reference to foreign tax

(1) This section applies if—

(a) credit for foreign tax falls to be allowed to a person ("P") under any arrangements, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.

(2) The amount of that credit is to be reduced by an amount equal to that payment.

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(3) Section 839 applies for the purposes of determining whether or not a person is connected with P.**]**

Textual Amendments

F1514 S. 804G inserted (with effect in accordance with s. 59(13) of the amending Act) by Finance Act 2009 (c. 10), **s. 59(2)**

805 Elections against credit.

M2021 Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income or chargeable gains of any person if he elects that credit shall not be allowed in respect of that income or those gains

Modifications etc. (not altering text)

C754 *See* s.732(4)*—dealers in securities.*

C755 Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **regs. 1(1)**, 4

Marginal Citations

M2021 Source—1970 s.511; 1972 s.100(1)

806 Time limit for claims etc.

M2022 (1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain shall be made not later than six years from the end of the chargeable period for which the income or the gain falls to be charged to income tax or corporation tax, or would fall to be so charged if any income tax or corporation tax were chargeable in respect of the income or gain.

(2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.

Modifications etc. (not altering text)

C756 *See* s.448*—overseas life assurance companies.*

Marginal Citations

M2022 Source—1970 s.512

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 28/07/2000

[F1515 Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax

Textual Amendments

F1515 Ss. 806A-806H, 806J and cross-heading inserted (with effect in accordance with Sch. 30 para. 21(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 21(1)**

806A Eligible unrelieved foreign tax on dividends: introductory.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) below paid to the company.

(2) The dividends that fall within this subsection are any dividends chargeable under Case V of Schedule D, other than—

(a) any dividend which is trading income for the purposes of section 393;

(b) any dividend which, in the circumstances described in paragraphs (a) and (b) of subsection (8) of section 393, would by virtue of that subsection fall to be treated as trading income for the purposes of subsection (1) of that section;

(c) in a case where section 801A applies, the dividend mentioned in subsection (1)(b) of that section;

(d) in a case where section 803 applies, the dividend mentioned in subsection (1)(b) of that section;

(e) any dividend the amount of which is, under section 811, treated as reduced.

(3) For the purposes of this section—

(a) the cases where an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) above are the cases set out in subsections (4) and (5) below; and

(b) the amounts of eligible unrelieved foreign tax which arise in any such case are those determined in accordance with section 806B.

(4) Case A is where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of the dividend,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the dividend.

(5) Case B is where the amount of tax which, by virtue of any provision of any arrangements, falls to be taken into account as mentioned in section 799(1) in the case of the dividend (whether or not by virtue of section 801(2) or (3)) is less than it would be apart from the mixer cap.

(6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

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806B The amounts that are eligible unrelieved foreign tax.

(1) This section has effect for determining the amounts of eligible unrelieved foreign tax which arise in the cases set out in section 806A(4) and (5).

(2) In Case A, the difference between—
- (a) the amount of the credit allowed as mentioned in section 806A(4)(b), and
- (b) the greater amount of the credit that would have been so allowed if, for the purposes of subsection (2) of section 797, the rate of corporation tax payable as mentioned in that subsection were the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(3) In Case B, where the mixer cap restricts the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, the difference, in the case of that dividend, between—
- (a) the amount of tax to be taken into account as there mentioned, and
- (b) the greater amount of tax that would have been taken into account as there mentioned, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(4) In Case B, where the mixer cap—
- (a) restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of any dividend received as mentioned in that subsection, but
- (b) does not restrict the relevant tax in the case of any higher level dividend,

subsection (5) below shall apply.

(5) Where this subsection applies, an amount equal to the appropriate portion of the difference, in the case of the dividend mentioned in subsection (4)(a) above, between—
- (a) the amount of underlying tax treated as mentioned in section 801(2) or (3), as the case may be, and
- (b) the greater amount of underlying tax that would have been so treated, had M in the formula in section 799(1A) in its application in the case of that dividend (but not any higher or lower level dividend) been the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

(6) For the purposes of subsection (5) above, the "appropriate portion" of the difference there mentioned in the case of any dividend is found by multiplying the amount of that difference by the product of the reducing fractions for each of the higher level dividends.

(7) For the purposes of subsection (6) above, the "reducing fraction" for any dividend is the fraction—
- (a) whose numerator is the amount of the dividend; and
- (b) whose denominator is the amount of the relevant profits (within the meaning of section 799(1)) out of which the dividend is paid.

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(8) Any reference in this section to any tax being restricted by the mixer cap in the case of any dividend is a reference to that tax being so restricted otherwise than by virtue only of the application of the mixer cap in the case of one or more lower level dividends.

(9) For the purpose of determining the amount described in subsection (2)(b), (3)(b) or (5)(b) above, sections 806C and 806D shall be disregarded.

(10) In this section—

"the Case V dividend" means the dividend mentioned in section 806A(1);

"higher level dividend", in relation to another dividend, means any dividend—

(a) by which that other dividend is to any extent represented; and

(b) which either is the Case V dividend or is to any extent represented by the Case V dividend;

"lower level dividend", in relation to another dividend, means any dividend which—

(a) is received as mentioned in section 801(2) or (3); and

(b) is to any extent represented by that other dividend;

"the relevant tax" means—

(a) in the case of the Case V dividend, the foreign tax to be taken into account as mentioned in section 799(1); and

(b) in the case of any other dividend, the amount of underlying tax to be treated as mentioned in section 801(2) or (3) in the case of the dividend.

806C Onshore pooling.

(1) In this section "qualifying foreign dividend" means any dividend which falls within section 806A(2), other than—

(a) an ADP dividend paid by a controlled foreign company;

(b) so much of any dividend paid by any company as represents an ADP dividend paid by another company which is a controlled foreign company;

(c) a dividend in respect of which an amount of eligible unrelieved foreign tax arises.

(2) For the purposes of this section—

(a) a "related qualifying foreign dividend" is any qualifying foreign dividend paid to a company resident in the United Kingdom by a company which, at the time of payment of the dividend, is related to that company;

(b) an "unrelated qualifying foreign dividend" is any qualifying foreign dividend which is not a related qualifying foreign dividend.

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(b) the unrelated qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(c) the underlying tax in relation to the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

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(d) so much of the foreign tax paid in respect of the qualifying foreign dividends that arise to the company in an accounting period as is not underlying tax shall be aggregated.

(4) Credit relief under this Part shall be given as if—

(a) the related qualifying foreign dividends aggregated under paragraph (a) of subsection (3) above in the case of any accounting period instead together constituted a single related qualifying foreign dividend arising in that accounting period ("the single related dividend" arising in that accounting period);

(b) the unrelated qualifying foreign dividends aggregated under paragraph (b) of that subsection in the case of any accounting period instead together constituted a single unrelated qualifying foreign dividend arising in that accounting period ("the single unrelated dividend" arising in that accounting period);

(c) the underlying tax aggregated under paragraph (c) of that subsection for any accounting period were instead underlying tax in relation to the single related dividend arising in that accounting period (the "aggregated underlying tax" in respect of the single related dividend);

(d) the tax aggregated under paragraph (d) of that subsection for any accounting period were instead foreign tax (other than underlying tax) paid in respect of, and computed by reference to,—

(i) the single related dividend arising in that accounting period,

(ii) the single unrelated dividend so arising, or

(iii) partly the one dividend and partly the other,

(that aggregated tax being referred to as the "aggregated withholding tax").

(5) For the purposes of this section, a dividend paid by a controlled foreign company is an "ADP dividend" if it is a dividend by virtue of which (whether in whole or in part and whether taken alone or with one or more other dividends) no apportionment under section 747(3) falls to be made as regards an accounting period of the controlled foreign company in a case where such an apportionment would fall to be made apart from section 748(1)(a).

806D Utilisation of eligible unrelieved foreign tax.

(1) For the purposes of this section, where—

(a) any eligible unrelieved foreign tax arises in an accounting period of a company, and

(b) the dividend in relation to which it arises is paid by a company which, at the time of payment of the dividend, is related to that company,

that tax is "eligible underlying tax" to the extent that it consists of or represents underlying tax.

(2) To the extent that any eligible unrelieved foreign tax is not eligible underlying tax it is for the purposes of this section "eligible withholding tax".

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the amounts of eligible underlying tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable underlying tax" arising in that accounting period); and

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(b) the amounts of eligible withholding tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable withholding tax" arising in that accounting period).

(4) The relievable underlying tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) underlying tax in relation to the single related dividend that arises in the same accounting period,

(b) relievable underlying tax arising in the next accounting period (whether or not any related qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) underlying tax in relation to the single related dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in each or either of the others.

(5) The relievable withholding tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in the same accounting period,

(b) relievable withholding tax arising in the next accounting period (whether or not any qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in any one or more of the others.

(6) The amount of relievable underlying tax or relievable withholding tax arising in an accounting period that is treated—

(a) under subsection (4)(a) or (c) above as underlying tax in relation to the single related dividend arising in the same or any earlier accounting period, or

(b) under subsection (5)(a) or (c) above as foreign tax paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend arising in the same or any earlier accounting period,

must not be such as would cause an amount of eligible unrelieved foreign tax to arise in respect of that dividend.

806E Rules for carry back of relievable tax under section 806D.

(1) Where any relievable tax is to be treated as mentioned in section 806D(4)(c) or (5)(c), the rules for determining the accounting periods in question (and the amount of the relievable tax to be so treated in relation to each of them) are those set out in the following provisions of this section.

(2) Rule 1 is that the accounting periods in question must be accounting periods beginning not more than three years before the accounting period in which the relievable tax arises.

(3) Rule 2 is that the relievable tax must be so treated that—

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(a) credit for, or for any remaining balance of, the relievable tax is allowed against corporation tax in respect of the single dividend arising in a later one of the accounting periods beginning as mentioned in rule 1 above,

before

(b) credit for any of the relievable tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.

(4) Rule 3 is that the relievable tax must be so treated that, before allowing credit for any of the relievable tax against corporation tax in respect of the single dividend arising in any accounting period, credit for foreign tax is allowed—

(a) first for the aggregated foreign tax in respect of the single dividend arising in that accounting period, so far as not consisting of relievable tax arising in another accounting period; and

(b) then for relievable tax arising in any accounting period before that in which the relievable tax in question arises.

(5) The above rules are subject to sections 806D(6) and 806F.

(6) In this section—

"aggregated foreign tax" means aggregated underlying tax or aggregated withholding tax;

"relievable tax" means relievable underlying tax or relievable withholding tax;

"the single dividend" means—

(a) in relation to relievable underlying tax, the single related dividend; and

(b) in relation to relievable withholding tax, the single related dividend or the single unrelated dividend.

806F Credit to be given for underlying tax before other foreign tax etc.

(1) For the purposes of this Part, credit in accordance with any arrangements shall, in the case of any dividend, be given so far as possible—

(a) for underlying tax (where allowable) before foreign tax other than underlying tax;

(b) for foreign tax other than underlying tax before amounts treated as underlying tax; and

(c) for amounts treated as underlying tax (where allowable) before amounts treated as foreign tax other than underlying tax.

(2) Accordingly, where the amount of foreign tax to be brought into account for the purposes of allowing credit relief under this Part is subject to any limitation or restriction, the limitation or restriction shall be taken to have the effect of excluding foreign tax other than underlying tax before excluding underlying tax.

806G Claims for the purposes of section 806D(4) or (5).

(1) The relievable underlying tax or relievable withholding tax arising in any accounting period shall only be treated as mentioned in subsection (4) or (5) of section 806D on a claim.

(2) Any such claim must specify the amount (if any) of that tax—

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(a) which is to be treated as mentioned in paragraph (a) of the subsection in question;
(b) which is to be treated as mentioned in paragraph (b) of that subsection; and
(c) which is to be treated as mentioned in paragraph (c) of that subsection.

(3) A claim under subsection (1) above may only be made before the expiration of the period of—
(a) six years after the end of the accounting period mentioned in that subsection; or
(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.

806H Surrender of relievable tax by one company in a group to another.

(1) The Board may by regulations make provision for, or in connection with, allowing a company which is a member of a group to surrender all or any part of the amount of the relievable tax arising to it in an accounting period to another company which is a member of that group at the time, or throughout the period, prescribed by the regulations.

(2) The provision that may be made under subsection (1) above includes provision—
(a) prescribing the conditions which must be satisfied if a surrender is to be made;
(b) determining the amount of relievable tax which may be surrendered in any accounting period;
(c) prescribing the conditions which must be satisfied if a claim to surrender is to be made;
(d) prescribing the consequences for tax purposes of a surrender having been made;
(e) allowing a claim to be withdrawn and prescribing the effect of such a withdrawal.

(3) Regulations under subsection (1) above—
(a) may make different provision for different cases; and
(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) For the purposes of subsection (1) above a company is a member of a group if the conditions prescribed for that purpose in the regulations are satisfied.

806J Interpretation of foreign dividend provisions of this Chapter.

(1) This section has effect for the interpretation of the foreign dividend provisions of this Chapter.

(2) In this section, "the foreign dividend provisions of this Chapter" means sections 806A to 806H and this section.

(3) For the purposes of the foreign dividend provisions of this Chapter, where—
(a) one company pays a dividend ("dividend A") to another company, and
(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

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dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(4) Where—

(a) one company is related to another, and

(b) that other is related to a third company,

the first company shall be taken for the purposes of paragraph (b) of subsection (3) above to be related to the third, and so on where there is a chain of companies, each of which is related to the next.

(5) In any case where—

(a) a company resident outside the United Kingdom pays a dividend to a company resident in the United Kingdom, and

(b) the circumstances are such that subsection (6)(b) of section 790 has effect in relation to that dividend,

the foreign dividend provisions of this Chapter shall have effect as if the company resident outside the United Kingdom were related to the company resident in the United Kingdom (and subsection (10) of that section shall have effect accordingly).

(6) Subsection (5) of section 801 (related companies) shall apply for the purposes of the foreign dividend provisions of this Chapter as it applies for the purposes of that section.

(7) In the foreign dividend provisions of this Chapter—

"aggregated underlying tax" shall be construed in accordance with section 806C(4)(c);

"aggregated withholding tax" shall be construed in accordance with section 806C(4)(d);

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII;

"eligible unrelieved foreign tax" shall be construed in accordance with sections 806A and 806B;

"the mixer cap" means section 799(1)(b);

"qualifying foreign dividend" has the meaning given by section 806C(1);

"related qualifying foreign dividend" has the meaning given by section 806C(2)(a);

"relievable tax" has the meaning given by section 806E(6);

"relievable underlying tax" shall be construed in accordance with 806D(3)(a);

"relievable withholding tax" shall be construed in accordance with 806D(3)(b);

"single related dividend" shall be construed in accordance with section 806C(4)(a);

"single unrelated dividend" shall be construed in accordance with section 806C(4)(b);

"the upper percentage" is 45 per cent.]

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VALID FROM 28/07/2000

[F1516 Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

Textual Amendments

F1516 S. 806K and cross-heading inserted (with effect in accordance with Sch. 30 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 22(1)**

806K Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere.

(1) Sections 806A to 806J shall apply in relation to an amount of eligible unrelieved foreign tax arising in a chargeable period in respect of any of the income of a branch or agency in the United Kingdom of a person resident outside the United Kingdom as they apply in relation to eligible unrelieved foreign tax arising in an accounting period of a company resident in the United Kingdom in respect of any of the company's income, but with the modifications specified in subsection (2) below.

(2) Those modifications are—

(a) take any reference to an accounting period as a reference to a chargeable period;

(b) take any reference to corporation tax as including a reference to income tax;

(c) take the reference in section 806A(4)(a) to section 797 as a reference to sections 796 and 797;

(d) in relation to income tax, for subsection (2) of section 806B substitute the subsection (2) set out in subsection (3) below.

(3) That subsection is—

("') In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of credit that would have been so allowed if, for the purposes of section 796, the amount of income tax borne on the dividend as computed under that section were charged at a rate equal to the upper percentage,

shall be an amount of eligible unrelieved foreign tax. ".**]**

Modifications etc. (not altering text)

C757 S. 806K(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

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VALID FROM 28/07/2000

[F1517 Unrelieved foreign tax: profits of overseas branch or agency

Textual Amendments

F1517 Ss. 806L, 806M and cross-heading inserted (with effect in accordance with Sch. 30 para. 23(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 23(1)**

806L Carry forward or carry back of unrelieved foreign tax.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas branch or agency of the company.

(2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas branch or agency—

(a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or

(b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,

or partly in the one way and partly in the other.

(3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—

(1) that—

(a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph,

before

(b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;

(2) that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and

(b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.

(4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas branch or agency in an accounting period are those cases where—

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(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;

and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.

(5) For the purposes of this section, a company's qualifying income from an overseas branch or agency is the profits of the overseas branch or agency which are—

(a) chargeable under Case I of Schedule D; or

(b) included in the profits of life reinsurance business or overseas life assurance business chargeable under Case VI of Schedule D by virtue of section 439B or 441.

(6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.

(7) In this section "overseas branch or agency", in relation to a company, means a branch or agency through which the company carries on a trade in a territory outside the United Kingdom.

806M Provisions supplemental to section 806L.

(1) This section has effect for the purposes of section 806L and shall be construed as one with that section.

(2) If, in any accounting period, a company ceases to have a particular overseas branch or agency, the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas branch or agency shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).

(3) If a company—

(a) at any time ceases to have a particular overseas branch or agency in a particular territory ("the old branch or agency"), but

(b) subsequently again has an overseas branch or agency in that territory ("the new branch or agency"),

the old branch or agency and the new branch or agency shall be regarded as different overseas branches or agencies.

(4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas branches or agencies in that territory, taken together, then, for the purposes of—

(a) section 806L, and

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(b) subsection (3) above,

those overseas branches or agencies shall be treated as if they together constituted a single overseas branch or agency of the company.

(5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas branch or agency in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.

(6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—

(a) which is to be treated as mentioned in paragraph (a) of that subsection; and

(b) which is to be treated as mentioned in paragraph (b) of that subsection.

(7) A claim under subsection (5) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection, or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.**]**

CHAPTER III

MISCELLANEOUS PROVISIONS

807 Sale of securities with or without accrued interest.

M2023 (1) In any case where—

(a) a person is treated under section 714(2) as receiving annual profits or gains on the day an interest period ends; and

(b) assuming that, in the chargeable period in which the day falls, he were to become entitled to any interest on the securities concerned, he would be liable in respect of the interest to tax chargeable under Case IV or V of Schedule D; and

(c) he is liable under the law of a territory outside the United Kingdom to tax in respect of interest payable on the securities at the end of the interest period or he would be so liable if he were entitled to that interest,

credit of an amount equal to the relevant proportion of the profits or gains shall be allowed against any United Kingdom income tax or corporation tax computed by reference to the profits or gains, and shall be treated as if it were allowed under section 790(4).

In this subsection the relevant proportion is the rate of tax to which the person is or would be liable as mentioned in paragraph (c) above.

(2) In any case where—

(a) a person is entitled to credit against United Kingdom tax under section 790(4) or any corresponding provision of arrangements under section 788; and

(b) the tax is computed by reference to income consisting of interest which falls due on securities at the end of an interest period and which is treated as reduced by virtue of section 714(5);

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then the amount of that credit shall be a proportion of the amount it would be apart from this subsection, and the proportion is to be found by applying the formula—

$$\frac{I-R}{I}$$

where—

is the amount of the interest; and

R is the amount by which it is treated as reduced.

(3) [M2024]Where the person entitled to the credit is an individual, subsection (2) above does not apply unless the interest arises from securities to which the person either became or ceased to be entitled during the interest period.

(4) Where section 811(1) applies to any income and, if credit were allowable in respect of it the credit would be reduced by virtue of subsection (2) above, section 811(1) shall have effect in relation to the income as if the reference to any sum paid in respect of tax on it were a reference to the amount which would be the amount of the credit if it were allowable and subsection (2) above applied.

(5) Sections 710 and 711 shall apply for the interpretation of this section.

Marginal Citations

M2023 Source—1985 Sch.23 37

M2024 Source—1988 Sch.23 38(1)-(3)

VALID FROM 29/04/1996

[F1518 807A Disposals and acquisitions of company loan relationships with or without interest.

(1) This Part shall have effect for the purposes of corporation tax in relation to any company as if tax falling within subsection (2) below were to be disregarded.

(2) Tax falls within this subsection in relation to a company to the extent that it is—

(a) tax under the law of a territory outside the United Kingdom; and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Subject to subsections (1), (4) and (5) of this section, where—

(a) any non-trading credit relating to an amount of interest under a loan relationship is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in the case of any company,

(b) that amount falls, as a result of any related transaction, to be paid to a person other than the company, and

(c) had the company been entitled, at the time of that transaction, to receive a payment of an amount of interest equal to the amount of interest to which

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the non-trading credit relates, the company would have been liable in respect of the amount of interest received to an amount of tax under the law of a territory outside the United Kingdom,

credit for that amount of tax shall be allowable under section 790(4) as if that amount of tax were an amount of tax paid under the law of that territory in respect of the amount of interest to which the non-trading credit relates.

(4) Subsection (3) above does not apply in the case of a credit brought into account in accordance with paragraph 1(2) of Schedule 11 to the Finance Act 1996 (the I minus E basis).

(5) The Treasury may by regulations provide for subsection (3) above to apply—

(a) in the case of trading credits, as well as in the case of non-trading credits;

(b) in the case of any credit ("an insurance credit") in the case of which, by virtue of subsection (4) above, it would not otherwise apply.

(6) Regulations under subsection (5) above may—

(a) provide for subsection (3) above to apply in the case of a trading credit or an insurance credit only if the circumstances are such as may be described in the regulations;

(b) provide for subsection (3) above to apply, in cases where it applies by virtue of any such regulations, subject to such exceptions, adaptations or other modifications as may be specified in the regulations;

(c) make different provision for different cases; and

(d) contain such incidental, supplemental, consequential and transitional provision as the Treasury think fit.

(7) In this section—

"related transaction" has the same meaning as in section 84 of the Finance Act 1996; and

"trading credit" means any credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in accordance with section 82(2) of that Act.**]**

Textual Amendments

F1518 S. 807A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 46** (with Sch. 15)

808 Restriction on deduction of interest or dividends from trading income.

[M2025]In the case of a person not resident in the United Kingdom who carries on in the United Kingdom a banking business, an insurance business or a business consisting wholly or partly in dealing in securities, receipts of interest or dividend which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 **[**[F1519]393A(1)**]**or 436) against income or profits.

In this section "securities" includes stocks and shares.

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Textual Amendments

F1519 Words in s. 808 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.21**

Marginal Citations

M2025 Source—1976 s.50(1)

[F1520 808A Interest: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the relationship,

(b) the amount which the loan would have been in the absence of the relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the relationship.

(3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.

(4) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.

(5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).]

Textual Amendments

F1520 S. 808A inserted (16.7.1992 with application in relation to interest paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s.52**

Modifications etc. (not altering text)

C758 S. 808A(2)-(4) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

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C759 S. 808A(2)-(4) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

VALID FROM 28/07/2000

[F1521 808B Royalties: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,

(b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and

(c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or

(d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

(4) The factors mentioned in subsection (2)(c) above are—

(a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been so paid in the absence of a special relationship, and

(c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.

(5) The special relationship provision shall be construed as requiring the taxpayer to show—

(a) the absence of any special relationship, or

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(b) the rate or amount of royalties that would have been payable in the absence of the relationship,

as the case may be.

(6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—

(a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or

(b) to show the matters specified in subsection (7) below,

as the case may be.

(7) Those matters are—

(a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and

(b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.

(8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(9) For the purposes of this section one person ("person A") is an associate of another person ("person B") at a given time if—

(a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or

(b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time.**]**

Textual Amendments

F1521 S. 808B inserted (with effect in accordance with Sch. 30 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 25(1)**

Modifications etc. (not altering text)

C760 S. 808B(2)-(7)(9) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

C761 S. 808B(2)-(7)(9) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

809 Relief in respect of discretionary trusts.

M2026 (1) In any case where—

(a) a payment made by trustees falls to be treated as a net amount in accordance with section 687(2) and the income arising under the trust includes any taxed overseas income, and

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(b) the trustees certify that—

(i) the income out of which the payment was made was or included taxed overseas income of an amount and from a source stated in the certificate, and

(ii) that amount arose to them not earlier than six years before the end of the year of assessment in which the payment was made;

then the person to whom the payment was made may claim that the payment, up to the amount so certified, shall be treated for the purposes of this Part as income received by him from that source and so received in the year in which the payment was made.

(2) In subsection (1) above "taxed overseas income", in relation to any trust, means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

Marginal Citations

M2026 Source—1973 s.18

810 Postponement of capital allowances to secure double taxation relief.

M2027 (1) Where—

(a) a person chargeable to tax under Schedule D in respect of a trade is liable to overseas tax in respect of any income arising from the trade, being overseas tax for which relief may be given by way of credit, repayment or set off under the preceding provisions of this Part, and

(b) the conditions specified in subsection (2) below are satisfied,

he may, in claiming the relief in respect of that income, claim a postponement under this section of the relevant capital allowances operating to reduce that income for the purposes of tax for any chargeable period.

(2) The conditions are—

(a) that the law under which the overseas tax is chargeable provides for deductions or allowances to be given corresponding to capital allowances, but on a different basis such that they operate to reduce the income in question (if at all) to a less extent than the capital allowances to which the claim relates, but are calculated to operate to a greater extent than the corresponding capital allowances to reduce income arising subsequently; and

(b) that the relief falling to be so given in respect of the income in question is less than it would be if the capital allowances to which the claim relates operated to reduce the income to the same extent only as the deductions or allowances so provided for.

(3) Where a person claims a postponement under this section of capital allowances for any chargeable period, then—

(a) for the purposes of making the assessment for that period, the amount of those allowances shall be reduced by such amount as may be necessary to secure that they operate to reduce the income only to the extent mentioned in subsection (2)(b) above (or such less amount as the claimant may require); and

(b) for the purpose of making the assessment for the following period that amount shall be added to the amount of the allowances for that period, and shall be

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deemed to be part of those allowances or, if there are no such allowances for that period, shall be deemed to be the allowances for that period.

(4) For the purposes of any claim under this section—

(a) there shall be taken into account such only of the relevant capital allowances, and the deductions or allowances operating to reduce the income in question for purposes of the overseas tax, as are calculated to give relief in respect of the same expenditure or the same assets; and

(b) no account shall be taken of expenditure . . . [F1522] incurred on or after 27th October 1970.

(5) In this section "overseas tax" means tax chargeable under the laws of any territory outside the United Kingdom, and "relevant capital allowances", in relation to any trade, means capital allowances falling to be made in taxing the trade.

(6) This section applies (with any necessary adaptations) in relation to a profession, employment, vocation or office,*and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D*[F1523], as it applies in relation to a trade.

Textual Amendments

F1522 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F1523 *Words repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1993.

Marginal Citations

M2027 Source—1970 s.515; 1971 s.54(1); 1982 s.78

811 Deduction for foreign tax where no credit allowable.

[M2028](1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a territory outside the United Kingdom).

(2) Subsection (1) above—

(a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom; and

(b) shall not affect section 278(3); [F1524]. . .

[F1525](c) . . . . . .

and this section has effect subject to section 795(2).

Textual Amendments

F1524 S. 811(2): the word "and" immediately preceding s. 811(2)(c) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(3)(4), 213, **Sch. 23 Pt. III(9)**

F1525 S. 811(2)(c) repealed (with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(g)(3)(4), 213, **Sch. 23 Pt. III(9)**

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Marginal Citations

M2028 Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.

[M2029](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under **[**[F1526]section 2(1) of TIOPA 2010**]** to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**[F1527]section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**[F1528]nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**[F1529]in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F1530]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

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(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[[F1531](c) whether a person is connected with another is determined in accordance with **[**[F1532]section 1122 of CTA 2010**]**;**]**

[[F1533](d) sections 449 to 451 of CTA 2010 apply but with the substitution in section 449 of "6 years" for "12 months".**]**

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F1534]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

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(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1526 Words in s. 812(1)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 30** (with Sch. 9)

F1527 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F1528 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F1529 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F1530 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F1531 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F1532 Words in s. 812(5)(c) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(a)** (with Sch. 2)

F1533 S. 812(5)(d) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(b)** (with Sch. 2)

F1534 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M2029 Source—1985 s.54(1),(3)

M2030 Source—1985 s.54(6) Sch.13 5

M2031 Source—1985 s.54(4),(5)

M2032 Source—1985 s.54(6) Sch.13 5.

M2033 Source—1985 s.54(7)(b), Sch.13 5(1)

M2034 Source—1985 s.54(7)(a)

M2035 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M2029](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

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(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom with the government of which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) 7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

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(a) if the associated company was incorporated under the law of the territory; or
(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted either the following provisions—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is subject to tax in such a state for any period ending after the relevant date for which that state charges tax.

(4) For the purposes of subsection (3) above a company shall be regarded as subject to tax in a unitary state if it is liable there to a tax charged on its income or profits by whatever name called and shall be treated as so charged unless it proves otherwise to the satisfaction of the Board.";

or the following provisions—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above—
(a) a company shall be treated as having its principal place of business in a unitary state unless it proves otherwise to the satisfaction of the Board; and
(b) the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised.".

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Marginal Citations

M2029 Source—1985 s.54(1),(3)
M2030 Source—1985 s.54(6) Sch.13 5
M2031 Source—1985 s.54(4),(5)
M2032 Source—1985 s.54(6) Sch.13 5.
M2033 Source—1985 s.54(7)(b), Sch.13 5(1)
M2034 Source—1985 s.54(7)(a)
M2035 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M2029](1) In any case where—

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(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom with the government of which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F1530]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

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(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F1534]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1530 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F1534 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

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M2029 Source—1985 s.54(1),(3)

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M2030 Source—1985 s.54(6) Sch.13 5
M2031 Source—1985 s.54(4),(5)
M2032 Source—1985 s.54(6) Sch.13 5.
M2033 Source—1985 s.54(7)(b), Sch.13 5(1)
M2034 Source—1985 s.54(7)(a)
M2035 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M2029](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under section 231(3) to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made or, where the credit exceeds that income tax, to have the excess paid to it.

(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**[F1529]in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F1530]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

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(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F1534]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

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(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1529 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F1530 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F1534 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

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M2029 Source—1985 s.54(1),(3)
M2030 Source—1985 s.54(6) Sch.13 5
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M2032 Source—1985 s.54(6) Sch.13 5.
M2033 Source—1985 s.54(7)(b), Sch.13 5(1)
M2034 Source—1985 s.54(7)(a)
M2035 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M2029](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**[F1527]section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**[F1528]nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**[F1529]in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

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(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F1530]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F1534]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever

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"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1527 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F1528 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F1529 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F1530 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F1534 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

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812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

[M2029](1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under

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section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**[F1527]section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**[F1528]nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) [M2030]In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**[F1529]in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) [M2031]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F1530]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M2032]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[[F1531](c) whether a person is connected with another is determined in accordance with section 839;**]**

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

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(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M2033]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F1534]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M2034]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M2035]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1527 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F1528 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F1529 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F1530 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

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F1531 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F1534 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M2029 Source—1985 s.54(1),(3)
M2030 Source—1985 s.54(6) Sch.13 5
M2031 Source—1985 s.54(4),(5)
M2032 Source—1985 s.54(6) Sch.13 5.
M2033 Source—1985 s.54(7)(b), Sch.13 5(1)
M2034 Source—1985 s.54(7)(a)
M2035 Source—1985 s.54(8)

813 Recovery of tax credits incorrectly paid.

M2036 (1) Where—

(a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and

(b) the company ("the recipient company") has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the M2037 Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

(a) shall be payable to the Board;

(b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and

(c) may be recovered in accordance with subsections (3) to (7) below;

and any such fine is referred to below as "the recoverable amount".

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

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(a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—

(i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or

(ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

(b) . . . . . .

F1535(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words " the interest due in accordance with subsection (4) above is paid " were substituted for the words "the recoverable amount is paid in accordance with the provisions of this section".

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Textual Amendments

F1535 S. 813(6)(b) repealed (with effect in accordance with Sch. 3 para. 37(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 37(2), **Sch. 27 Pt. 3(2)**, Note

Modifications etc. (not altering text)

C762 *Reproduced in* Part III Vol.5.

Marginal Citations

M2036 Source—1985 Sch.13 1

M2037 S.I. 1973/317.

813 Recovery of tax credits incorrectly paid. U.K.

M2036(1) Where—

(a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and

(b) the company ("the recipient company") has either had that excess paid to it, or has received an additional amount in accordance with arrangements made

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under Regulation 2(1) of the [M2037]Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—
- (a) shall be payable to the Board;
- (b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and
- (c) may be recovered in accordance with subsections (3) to (7) below;

and any such fine is referred to below as "the recoverable amount".

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—
- (a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—
  - (i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or
  - (ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

  and section 30 of the Management Act shall apply accordingly; and
- (b) as respects its accounting periods beginning with that in which the excess or additional amount referred to in subsection (1) above was paid and ending with that following that in which the recoverable amount is paid in accordance with the provisions of this section, the company which made the qualifying distribution in respect of which the recipient company received the excess or additional amount shall not be entitled—
  - (i) to set any advance corporation tax paid by it against its liability to corporation tax for such periods in accordance with section 239; nor
  - (ii) to surrender the benefit of the whole or any part of any amount of advance corporation tax to a subsidiary in accordance with section 240 in such periods.

(7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall

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be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words " the interest due in accordance with subsection (4) above is paid " were substituted for the words "the recoverable amount is paid in accordance with the provisions of this section".

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Modifications etc. (not altering text)
C762 *Reproduced in* Part III Vol.5.

Marginal Citations
M2036 Source—1985 Sch.13 1
M2037 S.I. 1973/317.

814 Arrangements to avoid section 812.

M2038 (1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under **[**F1536 section 2(1) of TIOPA 2010**]**; and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

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(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

Textual Amendments

F1536 Words in s. 814(1)(a) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 31** (with Sch. 9)

Modifications etc. (not altering text)

C763 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M2038 Source-1985 Sch. 13 3

814 Arrangements to avoid section 812. U.K.

M2038 (1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under section 788(1); and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

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Modifications etc. (not altering text)

C763 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M2038 Source-1985 Sch. 13 3

815 Power to inspect documents.

[M2039]Where it appears to the Board that the provisions of sections 812 to 814 may apply to a company resident outside the United Kingdom ("the foreign parent"), the Board may, by notice given to the foreign parent or any associated company of the foreign parent, require that company within such time (not being less than 30 days) as may be specified in the notice to make available for inspection any books, accounts or other documents or records whatsoever of that company where in the opinion of the Board it is proper that they should inspect such documents for the purposes of ascertaining whether those provisions apply to the foreign parent or such associated company notwithstanding that in the opinion of the person to whom the notice is given those provisions do not apply to that company or any associated company of that company.

Marginal Citations

M2039 Source—1985 Sch.13 4(1)

[[F1537]815A Transfer of a non-UK trade.

(1) This section applies where section 269C of the 1970 Act or section 140C of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.

(2) Where company A produces to the inspector an appropriate certificate given by the tax authorities of the relevant member State, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount stated in the certificate in accordance with subsection (4)(b) below were tax payable under the law of the relevant member State.

(3) In any case where—

(a) company A is unable to obtain an appropriate certificate from the tax authorities of the relevant member State,

(b) the Board is satisfied that this is the case, and

(c) company A makes a claim to the Board under this subsection and provides the Board with such information and documents in connection with the claim as the Board may require,

the Board shall determine the amount which in their opinion is the amount of tax computed on the required basis which would have been payable under the law of the relevant member State in respect of the gains accruing to company A on the transfer but for the Mergers Directive; and this Part, including any arrangements having effect

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by virtue of section 788, shall apply as if the amount so determined were tax payable under the law of the relevant member State.

(4) For the purposes of this section, an appropriate certificate is one containing—

(a) a statement to the effect that gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive;

(b) a statement of the amount of tax which would have been payable under that law in respect of the gains so accruing but for that Directive; and

(c) a statement to the effect that that amount has been computed on the required basis.

(5) For the purposes of this section, the required basis is that—

(a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and

(b) any relief available to company A under that law has been duly claimed.

(6) In this section—

"the Mergers Directive" means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

"relevant member State" means the member State in which, immediately before the time of the transfer, company A carried on the trade through a branch or agency.**]**

Textual Amendments

F1537 S. 815A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 50**

Modifications etc. (not altering text)

C764 S. 815A applied (*retrospectively*) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 140C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 45**)
S. 815A applied (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), **s. 269C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 48**)

VALID FROM 21/07/2008

[F1538 815AZA Residents and foreign enterprises

(1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

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(3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.

(4) This section does not apply in relation to—

(a) income of a company resident in the United Kingdom to which section 115(5A) applies, or

(b) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies.]

Textual Amendments

F1538 S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by Finance Act 2008 (c. 9), **s. 59(1)**

VALID FROM 28/07/2000

[F1539 815A Mutual agreement procedure and presentation of cases under arrangements.

(1) Where, under and for the purposes of arrangements made with the government of a territory outside the United Kingdom and having effect under section 788—

(a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

(b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,

subsections (2) and (3) below have effect.

(2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).

(3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.

(4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.

(5) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts; and

(b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.

(6) Any such case must be presented before the expiration of—

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(a) the period of 6 years following the end of the chargeable period to which the case relates; or

(b) such longer period as may be specified in the arrangements.**]**

Textual Amendments

F1539 S. 815AA inserted (with effect in accordance with Sch. 30 para. 28(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 28(1)**

[F1540 815B The Arbitration Convention.

(1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—

(a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.

(2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

(3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.

(4) In this section "the Arbitration Convention" means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).**]**

Textual Amendments

F1540 S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(1)**

VALID FROM 28/07/2000

[F1541 815C Exchange of information with other countries.

(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to the exchange of information necessary for carrying out—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax in respect of income and chargeable gains; and

(b) the laws of the territory to which the arrangements relate concerning any taxes of a similar character to those taxes imposed by the laws of that territory,

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and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.

(2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments

F1541 S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 146(1)**

816 Disclosure of information.

M2040 (1) Where under the law in force in any territory outside the United Kingdom provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the government of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

Section 790(12) shall apply for the interpretation of this subsection as it applies for the interpretation of that section.

(2) Where any arrangements have effect by virtue of section 788, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.

[F1542 (2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and "the Arbitration Convention" here has the meaning given by section 815B(4).**]**

(3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Management Act (information as to income from securities) is resident in a territory to which arrangements having effect under section 788 with respect to income tax or corporation tax relate, section 24(3) of that Act shall not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

(4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration made under section 514 of the 1970 Act (agreements about shipping etc.) relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

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Textual Amendments

F1542 S. 816(2A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(2)**

Modifications etc. (not altering text)

C765 *See* 1979(C) s.10(4)—*application to capital gains tax.*
S. 816 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(4)**, 289 (with ss. 60, 101(1), 171, 201(3))
S. 816 applied (27.7.1993) by 1993 c. 34, **s. 194(5)**

Marginal Citations

M2040 Source—1970 s.518; 1972 s.100(1)

PART XIX

SUPPLEMENTAL

Miscellaneous

817 Deductions not to be allowed in computing profits or gains.

M2041 (1) In arriving at the amount of profits or gains for tax purposes—

(a) no other deductions shall be made than such as are expressly enumerated in the Tax Acts; and

(b) no deduction shall be made on account of any annuity or other annual payment (not being interest) to be paid out of such profits or gains in regard that a proportionate part of income tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains from any property described in the Tax Acts, or from any office or employment, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

Modifications etc. (not altering text)

C766 *See* s.125—*annual payments for non-taxable consideration.*

C767 S. 817(1)(b) restricted (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 8(3)** (with Sch. 29 para. 8(4))

Marginal Citations

M2041 Source—1970 s.519.

818 Arrangements for payments of interest less tax or of fixed net amount.

M2042 (1) It is hereby declared that any provision made before or after the passing of this Act, whether orally or in writing, for the payment of interest "less tax", or using words to that effect, is to be construed, in relation to interest payable without deduction of tax, as if the words "less tax", or the equivalent words, were not included.

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(2) In relation to interest on which the recipient is chargeable to tax under Case III of Schedule D, and which is payable without deduction of tax, any provision, made before or after the passing of this Act, whether orally or in writing, and however worded, for the payment of interest at such a rate ("the gross rate") as shall, after the deduction of income tax, be equal to a stated rate, shall be construed as if it were a provision requiring the payment of interest at the gross rate.

Marginal Citations

M2042 Source—1970 s.425; 1971 Sch.6 51

819 Old references to standard rate tax.

M2043 (1) Where any provision, however worded, contained in an instrument (of whatever nature) made on or after 3rd September 1939 or in a will or codicil taking effect on or after that date provides for the payment, whether periodically or otherwise—

(a) of a stated amount free of income tax other than surtax; or

(b) of an amount which, after deduction of income tax at the standard rate, is equal to a stated amount;

it shall have effect as follows.

(2) If it is such a provision as is mentioned in subsection (1)(a) above it shall have effect as if it provided for the payment of the stated amount free of income tax other than such as exceeds the amount to which the person to whom the payment is made would be liable if all income tax **[**F1543 not chargeable at the lower rate**][**F1544 by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]** to the exclusion of any higher rate.

(3) If it is such a provision as is mentioned in subsection (1)(b) above it shall have effect as if it provided for the payment of an amount which after deduction of income tax at the basic rate is equal to the stated amount.

(4) Any instrument however worded conferring on any person a right to receive a dividend or interest the amount of which depends on the standard rate of income tax shall have effect as if instead of referring to the standard rate it referred to the basic rate.

(5) Any reference in a statutory instrument made under the Tax Acts to the standard rate of income tax shall have effect as if it were a reference to the basic rate.

Textual Amendments

F1543 Words in s. 819(2) inserted (16.7.1992 for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1544 Words in s. 819(2) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

Marginal Citations

M2043 Source—1971 Sch.7 2-4; 1978 Sch.2 14

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820 Application of Income Tax Acts from year to year.

M2044 In order to ensure the collection in due time of income tax which may be granted for any year commencing on 6th April, all such provisions contained in the Income Tax Acts as were in force on the preceding day shall have full force and effect with respect to tax which may be so granted, in the same manner as if that tax had been actually granted by Act of Parliament and those provisions had been applied thereto by the Act.

Modifications etc. (not altering text)

C768 S. 820 applied (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1)(2), **Sch. 2 para. 160**

Marginal Citations

M2044 Source—1970 s.520

821 Under-deductions from payments made before passing of annual Act.

M2045 (1) Where, in any year of assessment, any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing income tax for that year, and tax has not been charged thereon or deducted therefrom or has not been charged thereon or deducted therefrom at the rate ultimately imposed for that year—

(a) the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI of Schedule D; and

(b) the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Board a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by the Board in that behalf.

(2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment—

(a) shall be authorised—

(i) to make any deduction on account of income tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or

(ii) to make up any deficiency in any such deduction which has been so made,

on the occasion of the next payment of the rent, interest or annuity or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make; and

(b) shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing the tax for the year had been in force.

(3) Subsection (2) above shall apply with respect to—

(a) any payment for or in respect of copyright to which section 536 applies or of public lending right to which that section applies by virtue of section 537; and

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[[F1545](aa) any payment for or in respect of a right in a design to which section 537B applies; and;**]**

(b) any royalty or other sum paid in respect of the user of a patent; and

(c) any rent, royalty or other payment which by section 119 or 120 is declared to be subject to deduction of tax under section 348 or 349 as if it were a royalty or other sum paid in respect of the user of a patent;

as it applies with respect to any rent, interest, annuity or other annual payment.

(4) In this section "interest" and "dividends" do not include any interest or dividend which is a distribution.

Textual Amendments

F1545 S. 821(3)(aa) inserted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 7 para. 36(7)**; S.I. 1989/816 art. 2

Marginal Citations

M2045 Source—1970 s.521; 1972 Sch.24 29; 1983 s.27.

822 Over-deductions from interest on loan capital etc. made before passing of annual Act.

[M2046](1) If in any year of assessment ("the year") a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 provides for the charging of income tax at a basic rate lower than that charged for the previous year, the following provisions of this section shall have effect with respect to deductions in respect of income tax by any body corporate, from payments of interest (not being a distribution) on any of its securities.

(2) Any deduction which was made before the expiration of one month from the passing of the resolution and which would, if the tax had been renewed at the rate imposed for the previous year, have been a legal deduction, shall be deemed to be a deduction rendered legal by section 2 of the Provisional Collection of Taxes Act 1968 and that section shall, subject to this section, apply accordingly.

(3) Any over-deduction to be made good under that section may be made good by a reduction of the amount of tax deducted from the next payment of like nature made on the security in question after the passing of the Act imposing the tax for the year.

(4) Any amount made good under section 2 of the Provisional Collection of Taxes Act 1968 shall—

(a) in the case of an over-deduction which is made good under subsection (3) above, enure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and

(b) in any other case, enure to the benefit of the person entitled to the security in question at the date when the amount is made good,

irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security at the date when the original deduction was made.

(5) Subsection (3) above shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act imposing the tax for the year.

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Modifications etc. (not altering text)
C769 *See* Part II Vol.5.

Marginal Citations
M2046 Source—1970 s.522; 1971 Sch.6 76; 1972 Sch.24 30

823 Adjustments of reliefs where given at different times.

[M2047] Where under the provisions of the Income Tax Acts an individual—

(a) is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of—
  (i) any amount which is paid or borne by him out of his income or which is allowable or may be deducted from his income; or
  (ii) any reduction of an assessment relating to his income or any part of his income; or
  (iii) any adjustment or set-off with regard to a loss; and
(b) claims that relief for any year of assessment,

any relief granted shall not extend so as to make the total income tax paid or payable by him for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

Marginal Citations
M2047 Source—1970 s.523

824 Repayment supplements: individuals and others.

(1) Subject to the provisions of this section, where—

[[F1546](a) in the case of income tax or surtax paid by or on behalf of an individual for a year of assessment for which he was resident in the United Kingdom, a repayment of the tax of not less than £25 is made by the Board or an inspector after the end of the 12 months following that year of assessment; or

(b) in the case of the special charge under Part IV of the Finance Act 1968, a repayment of the charge of not less than £25 is made by the Board or an inspector,**]**

the repayment shall be increased under this section by an amount (a "repayment supplement") equal to interest on the amount repaid at the **[**[F1547]rate applicable under section 178 of the Finance Act 1989**]** for the period (if any) between the relevant time and the end of the tax month in which the order for the repayment is issued.

[[F1548](1A) *In relation to so much (if any) of the last-mentioned period as preceded* 6th*April* 1974,*subsection* (1)*above shall have effect as if the rate of interest specified in it were* 6*per cent. per annum (instead of the rate so specified or any other rate in force by virtue of subsection* (6)*below or section 47(7)* of the*Finance* (No.2)*Act* 1975). [F1549]**]**

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(2) **[**[F1548][M2048]Subsections (1)*and*[F1549] 1A**]** above shall with the necessary modifications apply to a payment of the whole or part of a tax credit as **[**[F1548]they apply to a repayment falling within subsection (1)**]** of income tax paid in the year of assessment to which the tax credit relates.

[[F1548](2A) Subsection (1) above shall apply to a repayment made in consequence of a claim under section 228 of the Income Tax Act 1952 (relief in respect of income accumulated under trusts) as if the repayment were of income tax paid by the claimant for the year of assessment in which the contingency mentioned in that section happened.**]**

[[F1550](2B) Subsection (1) above shall apply to a payment made by the Board under section 375(8) (payment of amount which borrower would have been able to deduct from interest payment under section 369(1)) as if the payment were a repayment falling within that subsection.**]**

(3) [M2049]For the purposes of subsection (1) above—

[[F1551](aa) if the repayment is a payment made by the Board under section 375(8), the relevant time is—

(i) if the interest payment was made in the year 1996-97 or a subsequent year of assessment, the 31st January next following that year;

(ii) if the interest payment was made in an earlier year of assessment, the 5th April next following that year;**]**

(a) if the repayment is of tax that was paid after the end of the 12 months following the year of assessment for which it was payable, the relevant time is the end of the year of assessment in which that tax was paid;

[[F1548](aa) if the repayment is of the special charge, the relevant time, as regards so much of the charge as was paid before the end of the year 1969-70, is the end of that year, and, as regards so much of the charge as was paid in any later year of assessment, is the end of the year of assessment in which it was paid;**]**

(b) in any other case, the relevant time is the end of the 12 months mentioned in that subsection;

and, subject to subsection (5) below, where a repayment to which subsection (1) above applies is of tax paid in two or more years of assessment, the repayment shall as far as possible be treated for the purposes of this subsection as a repayment of tax paid in a later rather than an earlier year among those years.

(4) [M2050]For the purposes of subsections (1) and (3) above, income tax deducted by virtue of regulations made under section 203 from a person's emoluments during any year of assessment shall (without prejudice to subsection (5) below) be treated as paid by him for that and no other year of assessment.

(5) Where in consequence of an assessment under Schedule E for any year of assessment there is made by the Board or an inspector a repayment of income tax of not less than £25, being an amount which takes account of tax overpaid or remaining unpaid for one or more earlier years of assessment, then—

(a) the repayment shall for the purposes of this subsection be attributable to such of the years in question, and in such proportions, as may be determined in accordance with regulations made under and for the purposes of this subsection by the Board; and

(b) subsections (1) and (3) above shall have effect in relation to so much of the repayment as is by virtue of paragraph (a) above attributed to any particular

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year of assessment as if in subsection (1) the words "of not less than £25" were omitted.

(6) **[**[F1552]*Without prejudice to subsection* (1A)*above***]**[F1553] the Treasury may by order from time to time increase or decrease the rate of interestby reference to which—

(a) repayment supplements are calculated under subsection (1) above; and

(b) repayment supplements are calculated under section 47 of the Finance (No. 2) Act 1975.

(7) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment, or in respect of a repayment of a post-war credit within the meaning of the Income Tax (Repayment of Post-War Credits) Act 1959.

(8) A repayment supplement paid to any person under this section or under section **[**[F1554]283 of the 1992 Act**]** shall not be income of that person for any tax purposes.

(9) [M2051]Subsections (1) to (8) above shall apply in relation to a partnership, **[**[F1555]the trustees of a settlement**][**[F1556]or personal representatives (within the meaning of section 111 of the Finance Act 1989)**]** as they apply in relation to an individual.

(10) In this section—

"tax month" means the period beginning with the 6th day of any calendar month and ending with the 5th day of the following calendar month;

"*United Kingdom estate*" *has the meaning given by section* 701 [F1557].

Textual Amendments

F1546 1988(F) s.146*and* Sch.13 para.7 (*deemed always to have had effect*).*Previously*
"(a) income tax has been paid by or on behalf of an individual for a year of assessment for which he was resident in the United Kingdom; and (b) a repayment of that tax of not less than £25 is made by the Board or an inspector after the end of the 12 months following that year of assessment;".

F1547 1989 s.179(1)(a)(vii)*and* S.I. 1989 No.1298*on and after* 18*August* 1989.*Previously*
"rate of 8.25 per cent. per annum".*Add see* S.I. 1989 No.1297*for regulations made, and rate of interest set, under* 1989 s.178.*See* Table I Vol.1.

F1548 S. 824(1A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(b)**

F1549 S. 824(1A) repealed (from 18.8.1989) by Finance Act 1989 (c. 26), ss. 178(7), 187, **Sch. 17 Pt. 10**, Note; S.I. 1989/1298

F1550 S. 824(2B) inserted (retrospectively, with effect in accordance with s. 41(4)-(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 41(2)**

F1551 S. 824(3)(aa) inserted (retrospectively, with effect in accordance with s. 41(4)-(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 41(3)**

F1552 Words in s. 824(6) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(f)**

F1553 Words in s. 824(6) repealed (from 18.8.1989) by Finance Act 1989 (c. 26), ss. 178(7), 187, **Sch. 17 Pt. 10**, Note; S.I. 1989/1298

F1554 Words in s. 824(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(52)** (with ss. 60, 101(1), 171, 201(3))

F1555 Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 110(5)(6)-(9)**

F1556 Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 111(4)(5)-(8)**

F1557 *Words repealed by* 1989 s.187*and* Sch.17 Part IV*but in accordance with* 1989 ss.110*and* 111.

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Modifications etc. (not altering text)

C770 *See* s.281 (*repayment to wives*), S.I. 1978 No.1117 (in Part III Vol.5) (*repayments to wives*)*and* s.289(15) (*business expansion scheme*).

C771 S. 824 excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), ss. 173, 184(3), **Sch. 19 Pt. III para. 13(4)**

C772 *See* 1989 s.158(2)(b)*for repeal to be made from a day to be appointed.*

C773 *See* 1989 ss.158(2)*and* 187*and* Sch.17 Part VIII*for repeals to be made from a day to be appointed.*

C774 *See* Table I*in* Vol.1.

C775 *See* 1989 s.178*for further regulation making powers and for regulations see* Part III Vol.5. (*under* "Interest on unpaid tax and repayment supplement").

Marginal Citations

M2048 Source—1975 (No.2) s.47(3)(a)

M2049 Source—1975 (No.2) s.47(4)(a)(c)

M2050 Source—1975 (No.2) s.47(5)-(9)

M2051 Source—1975 (No.2) s.47(11), (12).

825 Repayment supplements: companies.

(1) [M2052]This section applies to the following payments made to a company in connection with any accounting period for which the company was resident in the United Kingdom ("the relevant accounting period"), that is to say—

(a) a repayment of corporation tax paid by the company for that accounting period (including advance corporation tax paid in respect of distributions made by the company in that accounting period*and any sum paid in respect of that period on an assessment under section* 430(7)(a)) [F1558]; or

(b) a repayment of income tax in respect of a payment received by the company in that accounting period on which the company bore income tax by deduction; or

(c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in that accounting period.

(2) Subject to the following provisions of this section, where a payment [F1559]. . . to which this section applies is made by the Board or an inspector after the end of the 12 months beginning with the material date, the payment shall be increased under this section by an amount (a "repayment supplement") equal to interest on the amount paid at the **[**[F1560]rate applicable under section 178 of the Finance Act 1989**]** for each complete tax month contained in the period (if any) beginning with the relevant date and ending at the end of the tax month in which the order for the payment is issued.

[[F1561](2A) *In relation to any complete tax month beginning before* 6th*April* 1974*which is contained in the last-mentioned period, subsection* (2)*above shall have effect as if the rate of interest specified in it were* 6*per cent. per annum (instead of the rate so specified or any other rate in force by virtue of subsection* (5)*below or section* 48(6)*of the Finance* (No.2) Act 1975). [F1562]**]**

(3) [M2053]For the purposes of subsection (2) above—

(a) if the payment is a repayment of corporation tax that was paid on or after the first anniversary of the material date, the relevant date is the anniversary of the material date that occurs next after the date on which that tax was paid;

(b) in any other case, the relevant date is the first anniversary of the material date;

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and where a payment to which this section applies is a repayment of corporation tax paid by a company on different dates, the payment shall as far as possible be treated for the purposes of this subsection as a repayment of tax paid on a later rather than an earlier date among those dates.

(4) For the purposes of this section—

(a) a repayment of corporation tax made in consequence of a claim by a company under section 239(3) to have the whole or any part of an amount of surplus advance corporation tax arising in the case of any accounting period treated as if it were advance corporation tax paid in respect of distributions made by the company in any earlier accounting period shall be treated as a repayment of corporation tax paid for the accounting period in the case of which that amount of surplus advance corporation tax arose; and

(b) a repayment of income tax or corporation tax made on a claim under subsection (4) of section 419 shall be treated as if it were a repayment of corporation tax paid 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. **[**[F1563]and

(c) a repayment of corporation tax or income tax falling to be made as a result of a claim under section 393A(1) to have the whole or any part of a loss incurred in an accounting period set off against profits of an earlier accounting period ("the earlier period")—

(i) shall, in a case where the earlier period falls wholly within the period of twelve months immediately preceding the accounting period in which the loss was incurred, be treated as a repayment of tax paid for the earlier period; and

(ii) in any other case, shall be treated as a repayment of tax paid for the accounting period in which the loss is incurred; and

(d) a payment of the whole or part of a tax credit falling to be made as a result of a claim under section 242, to the extent that a surplus of franked investment income for an accounting period (the "earlier period") is treated as there mentioned for the purpose of setting a loss incurred in a later accounting period against total profits under section 393A(1)—

(i) shall, in a case where the earlier period falls wholly within the period of twelve months immediately preceding the accounting period in which the loss is incurred, be treated as a payment in respect of franked investment income received in the earlier period; and

(ii) in any other case, shall be treated as a payment in respect of franked investment income received in the accounting period in which the loss is incurred.**]**

(5) ***[***[F1564]*Without prejudice to subsection* (2A)*above****]*** the Treasury may by order from time to time increase or decrease the rate of interest by reference to which repayment supplements are calculated under subsection (2) above.

(6) A repayment supplement shall not be payable under this section in respect of a payment made in consequence of an order or judgment of a court having power to allow interest on the payment.

(7) A repayment supplement paid under this section shall be disregarded for all purposes of income tax and corporation tax.

(8) In this section—

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"tax month" means the period beginning with the 6th day of any calendar month and ending with the 5th day of the following calendar month;

"the material date" in relation to a payment to which this section applies, means the last date on which corporation tax on any of the profits of the company in question arising in the relevant accounting period could have been paid—

(a) in a case where section 10(1) applies, within the nine months there mentioned;

(b) in a case where section 478 applies, within the time limit imposed by subsection (2)(a) of that section, but subject to subsection (6) of that section.

(9) This section has effect subject to section 826(8).

Textual Amendments

F1558 Words in s. 825(1)(a) repealed (for accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Pt. V**, Note 6

F1559 Words in s. 825(2) repealed (with effect in relation to payments made on and after 6.4.1993) by Finance Act 1989 (c. 26), ss. 158(2), 187, **Sch. 17 Pt. 8**, Note 5; S.I. 1993/753

F1560 Words in s. 825(2) substituted (from 18.8.1989) by Finance Act 1989 (c. 26), **s. 179(1)(a)(vii)**; S.I. 1989/1298

F1561 S. 825(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **8(a)**

F1562 *Repealed by* 1989 s.178(7)*and* 187*and* Sch.17 Part X*from* 18*August* 1989 (*see* S.I. 1989 No.1298).

F1563 Words in s. 825(4) added by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.22**

F1564 Words in s. 825(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **8(b)**

Modifications etc. (not altering text)

C776 S. 825(4)(a) modified (27.7.1993) by Finance Act 1993 (c. 34), s. 120, **Sch. 14 para. 10(6)**
S. 825(4)(a) modified (1.5.1995) by Finance Act 1995 (c. 4), s. 120, **Sch. 24 para. 12(5)**

C777 *See* Table I*in* Vol.1*and see* 1989 s.178*for further regulation making powers and* Part III Vol.5*for regulations.*

C778 *And see* Sch.30 para.1(9).

Marginal Citations

M2052 Source—1975 (No.2) s.48(1), (2)

M2053 Source—1975 (No.2) s.48(4)-(9)

826 Interest on tax overpaid.

M2054 (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 **[**F1565 the order for repayment or payment is issued**]**, the repayment or payment shall carry interest at the rate which, under section 89 of

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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 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 10.

(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 section 419(4) 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 section 419(4) 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.

(6) Where a repayment of corporation tax is a repayment of tax paid by a company on different dates, the repayment shall so 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) **[**[F1566]Subject to subsection (7AA) below,**]**in any case where—

(a) there is in any accounting period of a company ("the later period") an amount of surplus advance corporation tax, as defined in section 239(3); and

(b) pursuant to a claim under section 239(3), the whole or any part of that amount is treated for the purposes of section 239 as discharging liability for an amount of corporation tax for an earlier accounting period ("the earlier period"); and

(c) a repayment falls to be made of corporation tax **[**[F1567]paid for the earlier period or of income tax in respect of a payment received by the company in that accounting period**]**,

then, in determining the amount of interest (if any) payable under this section on the repayment **[**[F1568]referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of the claim under**]** section 239(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).

[[F1569F1570](7A) In any case where—

(a) a company carrying on a trade incurs a loss in the trade in an accounting period ("the later period"),

(b) as a result of a claim under section 393A(1), the whole or any part of that loss is set off for the purposes of corporation tax against profits (of whatever description) of an earlier accounting period ("the earlier period") which does

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not fall wholly within the period of twelve months immediately preceding the later period, and

(c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that accounting period,

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of **[**[F1571]so much of the amount of that repayment as falls to be made**]]** as a result of the claim under section 393A(1), except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (2) above.

[[F1569](7AA) Where, in a case falling within subsection (7A)(a) and (b) above—

(a) there is in the earlier period, as a result of the claim under section 393A(1), an amount of surplus advance corporation tax, as defined in section 239(3); and

(b) pursuant to a claim under section 239(3) the whole or any part of that amount is to be treated for the purposes of section 239 as discharging liability for an amount of corporation tax for an accounting period before the earlier period,

then subsection (7) above shall have effect in relation to the claim under the said subsection (3) as if the reference in the words after paragraph (c) to the later period within the meaning of subsection (7) above were a reference to the period which, in relation to the claim under section 393A(1), would be the later period for the purposes of subsection (7A) above.**]**

(7B) In any case where—

(a) a company carrying on a trade incurs a loss in the trade in an accounting period ("the later period"),

(b) as a result of a claim under section 242, the whole or any part of a surplus of franked investment income for an earlier accounting period (the "earlier period") which does not fall wholly within the period of twelve months immediately preceding the later period is treated as there mentioned for the purpose of setting the loss against total profits under section 393A(1), and

(c) a payment falls to be made of the whole or part of a tax credit comprised in franked investment income received by the company in the earlier period,

then, in determining the amount of interest (if any) payable under this section on the payment referred to in paragraph (c) above, no account shall be taken of **[**[F1572]so much of the amount of that payment as falls to be made**]** as a result of the claim under section 242 (to the extent that that section relates to section 393A(1)), except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (2) above.

[[F1573](7C) In a case where—

(a) there is for an accounting period of a company ("the later period") a relievable amount within the meaning of section 131 of the Finance Act 1993 (non-trading exchange gains and losses),

(b) as a result of a claim under subsection (5) or (6) of that section the whole or part of the relievable amount for the later period is set off against the exchange profits (as defined in subsection (10) of that section) of an earlier accounting period ("the earlier period"), and

(c) a repayment falls to be made of corporation tax for the earlier period,

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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 claim under subsection (5) or (6) (as the case may be) of that section except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) 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 825) 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.

(9) In this section "the appointed day" means such day or days, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section.

Subordinate Legislation Made

P9 S. 826(1)(8)(9) power exercised: 30.9.1993 appointed by S.I. 1992/3066, **art. 2(2)(b)**

Textual Amendments

F1565 Words in s. 826(1) substituted (retrospectively) by Finance Act 1989 (c. 26), **s. 180(6)(7)**
F1566 Words in s. 826(7) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(1)(a)**
F1567 Words in s. 826(7)(c) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(1)(b)**
F1568 Words in s. 826(7) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(1)(c)**
F1569 S. 826(7AA) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(3)(5)**
F1570 S. 826(7A)(7B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 23**
F1571 Words in s. 826(7A) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(2)**
F1572 Words in s. 826(7B) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(4)**
F1573 S. 826(7C) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.5**

Modifications etc. (not altering text)

C779 *See* 1989 s.178*for further regulation making powers.*
C780 *See* 1989 s.179(1)(c)(ii)*for change in the event of regulations affecting* s.826*being made under* 1989 s.178.
C781 S. 826(7AA) excluded (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(6)**

Marginal Citations

M2054 Source—1987 (No.2) s.87

VALID FROM 31/07/1998

[F1574 826A Interest on payments in respect of corporation tax and meaning of "the material date".

(1) The Treasury may by regulations make provision applying section 826, with such modifications as may be prescribed, for the purpose of conferring on companies of such descriptions as may be prescribed a right to interest—

(a) on such payments made by them in respect of corporation tax as may be prescribed,

(b) at the rate applicable under section 178 of the M2055 Finance Act 1989, and

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(c) for such period as may be prescribed,

and for treating any such interest for the purposes, or prescribed purposes, of the Tax Acts as interest under section 826(1)(a) on a repayment of corporation tax.

(2) The Treasury may by regulations make provision modifying section 826(2) in relation to companies of such description as may be prescribed.

(3) Subsections (1) and (2) above do not apply in relation to companies in relation to which section 826(2) is modified or otherwise affected by regulations under section 59E of the Management Act (alteration of date on which corporation tax becomes due and payable) in relation to the accounting period to which the corporation tax in question relates.

(4) Where the Treasury make regulations under subsection (2) above in relation to companies of any description, they may also make regulations modifying section 59DA(2) of the Management Act in relation to those companies, or any description of such companies, by varying the date before which the claim there mentioned may not be made.

(5) Regulations under this section—

(a) may make different provision in relation to different cases or circumstances or in relation to companies or accounting periods of different descriptions;

(b) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(6) Regulations under this section may not make provision in relation to accounting periods ending before the day appointed under section 199 of the [M2056]Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

(7) In this section "prescribed" means prescribed by regulations made under this section.**]**

Textual Amendments

F1574 S. 826A inserted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 4 para. 1(2)**

Marginal Citations

M2055 1989 c. 26.

M2056 1994 c. 9.

827 VAT penalties etc.

[M2057](1) Where, under Chapter II of Part I of the [M2058]Finance Act 1985 (value added tax), a person is liable to make a payment by way of—

(a) penalty under any of sections 13 to **[**[F1575]17A**]**; or

(b) interest under section 18; or

(c) surcharge under section 19;

the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

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(2) A sum paid to any person by way of supplement under section 20 of the Finance Act 1985 (VAT repayment supplements) shall be disregarded for all purposes of corporation tax and income tax.

Textual Amendments

F1575 Word in s. 827(1)(a) substituted (1.12.1992 insofar as it affects any provision of any act which confers a power to make any order or regulations or to publish any notice, 1.1.1993 insofar as not already in force) by Finance (No. 2) Act 1992 (c. 48), s. 14(2), **Sch. 3 Pt. III para. 95**; S.I. 1992/2979, art. 4, **Sch. Pt. II**; S.I. 1992/3261, **art. 3**,Sch.

Marginal Citations

M2057 Source—1986 s.53.

M2058 1985 c. 54.

VALID FROM 06/04/2005

[F1576 827A Territorial scope of charges under certain provisions to which section 836B applies

(1) This section applies in relation to any amount chargeable to income tax under or by virtue of any provision to which section 836B applies (other than a provision listed in Part 2 of the table in that section).

(2) An amount arising to a person who is resident in the United Kingdom is chargeable to tax whether or not it is from a source in the United Kingdom.

(3) An amount arising to a person who is not resident in the United Kingdom is chargeable to tax only if it is from a source in the United Kingdom.

(4) References in this section to amounts which are from a source in the United Kingdom include, in the case of any amount which does not have a source, references to amounts which have a comparable connection to the United Kingdom.

(5) This section is subject to any express or implied provision to the contrary in any provision of the Income Tax Acts.

(6) This section does not apply for the purposes of corporation tax.**]**

Textual Amendments

F1576 S. 827A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 333** (with Sch. 2)

828 Orders and regulations made by the Treasury or the Board.

(1) **M2059** Subject to subsection (2) below, any power of the Treasury or the Board to make any order or regulations under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be exercisable by statutory instrument.

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(2) Subsection (1) above shall not apply in relation to any power conferred by section 124(6) or 841(1)(b) or paragraph 15(4) of Schedule 3 **[**[F1577]or section 178(5) of the Finance Act 1989.**]**

(3) [M2060]Subject to subsection (4) below and to any other provision to the contrary, any statutory instrument containing any order or regulations made by the Treasury or the Board under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be subject to annulment in pursuance of a resolution of the House of Commons.

(4) Subsection (3) above shall not apply in relation to an order or regulations made under section 1(6), **[**[F1578]257C**]**, 324, 376(5), 377(8), **[**[F1579]582A(1),**][**[F1580]590C(6)**]** 658(3) or 791 or paragraph 7 of Schedule 14 **[**[F1581]or section 22(6)(d) or 36(4)(d) of the 1990 Act**]** or—

(a) if any other Parliamentary procedure is expressly provided;

(b) if the order in question is an order appointing a day for the purposes of any provision of the Tax Acts, being a day as from which the provision will have effect, with or without amendments, or will cease to have effect.

Textual Amendments

F1577 1989 s.178(6).

F1578 Words in s. 828(4) substituted (1990-91 and subsequent years of assessment) by Finance Act 1990 (c. 29), **s. 17(3)**

F1579 Words in s. 828(4) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 118(2)**

F1580 Words in s. 828(4) inserted by Finance Act 1989 (c. 26), **Sch. 6 para. 16**

F1581 Words in s. 828(4) inserted by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(34)**

Modifications etc. (not altering text)

C782 *See* Part III Vol.5.

Marginal Citations

M2059 Source—1970 ss.65(5), 204, 231(3), 343 (1A); 1970(F) s.29(6), Sch.5 2(3), 10; 1972 ss.91(3), 108(4); 1973 Sch.16 17(2); 1975 (No.2) ss.47(10), 48(6), 69(9), 70(8), 70A(3); 1976 ss.64(4), 64A, (4) Sch.4 16(2); 1980 s.24(9); Sch.10 13(3); 1982 ss.28(5), 29(1), (3), Sch.7 14(2); 1984 ss.26(1), 88(8), 126(1), Sch.8 2(1)(f), 3A; 1983 Sch.5 5A(9), 6(8); 1986 s.28, 61, Sch.11 11, Sch.12 3, Sch.17 6(7).

M2060 Source—1970 ss.65(5), 204, 343(1B); 1970(F) s.29(8), Sch.5 2(3), 10; 1973 Sch.16 17(2); 1975 (No.2) ss.47(10), 48(6), 69(9), 70(8), 70A(3); 1976 ss.64(4), 64A(4); 1982 s.29(5); 1983 Sch.5 5A(9), 6(9); 1984 ss.26(6), 88(8), Sch.8 2(1), 3A; 1986 ss.26, 27(7), 55, Sch.11 11, Sch.12 3, Sch.17 6(7)

829 Application of Income Tax Acts to public departments and avoidance of exempting provisions.

[M2061](1) Subject to subsections (2) and (3) below, all the provisions of the Income Tax Acts relating to the assessment, charge, deduction and payment of income tax shall apply in relation to public offices and departments of the Crown.

(2) Nothing in those provisions of the Income Tax Acts shall require the payment by any such office or department of any tax which would be ultimately borne by the Crown **[**[F1582]unless it is tax which would not have been so borne but for a failure by a public office or department of the Crown to make a deduction required by virtue of subsection (1) above.**]**

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(3) Subsection (1) above shall not apply to public offices and departments of any country, state, province or colony within section 320(3)(b) or (c) and nothing in subsection (1) above shall exempt any government from taxation to which it is liable in connection with any office or department by virtue of section 25 of the Finance Act 1925 (liability in respect of trading operations of Dominion governments and others).

(4) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of any city, borough or town corporate, from income tax, and all non-obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

Textual Amendments

F1582 Words in s. 829(2) inserted (27.7.1993 with effect in relation to the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 122(1)(3)**

Marginal Citations

M2061 Source—1970 ss.524, 525(1)

830 Territorial sea and designated areas.

M2062 (1) The territorial sea of the United Kingdom shall for all purposes of income tax and corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom.

(2) In this section—

(a) "exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area;

(b) "exploration or exploitation rights" means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and

(c) "designated area" means an area designated by Order in Council under section 1(7) of the M2063 Continental Shelf Act 1964.

(3) Any profits or gains from exploration or exploitation activities carried on in a designated area or from exploration or exploitation rights shall be treated for the purposes of income tax or corporation tax as profits or gains from activities or property in the United Kingdom.

(4) Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities or rights shall for the purposes of corporation tax be treated as profits or gains of a trade carried on by that person in the United Kingdom through a branch or agency.

(5) Any emoluments from an office or employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be

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treated for the purposes of income tax as emoluments in respect of duties performed in the United Kingdom.

Modifications etc. (not altering text)

C783 *See* 1970(M) s.31(3)—*appeals against assessments made by this section, otherwise than under* Sch.E,*to go to Special Commissioners.*

C784 *See* 1990(C) s.42(1)—*assets leased outside the UK.*

Marginal Citations

M2062 Source—1973 s.38(1), (2)-(4), (6)

M2063 1964 c. 29.

Interpretation

831 Interpretation of this Act.

(1) [M2064]In this Act, except so far as the context otherwise requires—

(a) "the Corporation Tax Acts" means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating also to income tax); and

(b) "the Income Tax Acts" means the enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.

(2) In this Act "the Tax Acts", except so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts.

(3) In this Act—

"the Management Act" means the Taxes Management Act 1970;
"the 1968 Act" means the Capital Allowances Act 1968;
"the 1970 Act" means the Income and Corporation Taxes Act 1970; and
"the 1979 Act" means the Capital Gains Tax Act 1979.
[[F1583]"the 1990 Act" means the Capital Allowances Act 1990.**]**
[[F1584]"the 1992 Act" means the Taxation of Chargeable Gains Act 1992.**]**

(4) Section 1 of the [M2065]Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the [M2066]Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and section 1(3) of the [M2067]Law Reform (Parent and Child) (Scotland) Act 1986 (legal equality of illegitimate children) shall be disregarded in construing references in this Act to a child or to children (however expressed).

(5) [M2068]This Act, so far as it relates to capital gains tax, shall be construed as one with the **[**[F1585]1992**]** Act.

(6) Any reference in this Act to a section, Part or Schedule is a reference to that section, Part or Schedule of or to this Act, unless the context otherwise requires.

Textual Amendments

F1583 S. 831(3): definition of "the 1990 Act" inserted by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(35)**; and that amendment continued by Capital Allowances Act 2001 (c. 2), s. 579, **Sch. 2 para. 59**

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F1584 S. 831(3): definition of "the 1992 Act" inserted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(53)(a)** (with ss. 60, 101(1), 171, 201(3))

F1585 Words in s. 831(5) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(53)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C785 S. 831(4) applied (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 144(2)**

Marginal Citations

M2064 Source—1970 s.526(1), (2); 1987 Sch.15 12

M2065 1987 c. 42.

M2066 1978 c. 30.

M2067 1986 c. 9.

M2068 Source—1970 s.540(2)

832 Interpretation of the Tax Acts.

(1) [M2069]In the Tax Acts, except in so far as the context otherwise requires—

"Act" includes an Act of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

"additional rate", in relation to **[**[F1586]any year of assessment for which income tax is charged, means 10 per cent. or such rate as Parliament may determine**]**;

"authorised unit trust" has the meaning given by section 468(6);

"basic rate", in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(a), and any reference to the basic rate limit shall be construed in accordance with section 1(3);

"the Board" means the Commissioners of Inland Revenue;

"body of persons" means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons whether corporate or not corporate;

"building society" means a building society within the meaning of the [M2070]Building Societies Act 1986;

"capital allowance" means any allowance under the Capital Allowances Acts;

[[F1587]"the Capital Allowances Acts" means the Capital Allowances Act 1990, including enactments which under this Act are to be treated as contained in any Part of that Act,*but excluding* Part III*of that Act*;**]**

"chargeable gain" has the same meaning as in the **[**[F1588]1992**]** Act;

"chargeable period" means an accounting period of a company or a year of assessment;

"close company" has the meaning given by sections 414 and 415;

"collector" means any collector of taxes;

"company" means, subject to subsection (2) below, any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association;

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"distribution" has the meaning given by Part VI with section 418;

"farm land" means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, but excluding any dwelling or domestic offices, and excluding market garden land, and "farming" shall be construed accordingly;

"franked investment income" shall be construed in accordance with section 238, but subject to section 247(1);

"franked payment" shall be construed in accordance with section 238, but subject to section 247(1);

"group income" has the meaning given by section 247(2);

"higher rate", in relation to the charging of income tax for any year of assessment, means any rate of income tax determined in pursuance of section 1(2)(b),*and any reference to any higher rate band shall be construed in accordance with section* 1(3) [F1589];

"industrial assurance business" has the meaning given by section 1(2) of the [M2071]Industrial Assurance Act 1923 or Article 3(1) of the [M2072]Industrial Assurance (Northern Ireland) Order 1979;

"inspector" means any inspector of taxes;

"interest" means both annual or yearly interest and interest other than annual or yearly interest;

[[F1590]"local authority association" has the meaning given by section 519;**]**

[[F1591]"lower rate", in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(aa), and any reference to the lower rate limit shall be construed in accordance with section 1(2A);**]**

"market garden land" means land in the United Kingdom occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops) and "market gardening" shall be construed accordingly;

"notice" means notice in writing;

"ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

"preference dividend" means a dividend payable on a preferred share or preferred stock at a fixed rate per cent. or, where a dividend is payable on a preferred share or preferred stock partly at a fixed rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent.;

"qualifying distribution" has the meaning given by section 14(2);

"qualifying policy" means a policy of insurance which is a qualifying policy for the purposes of Chapter I of Part VII;

[[F1592]"the rate applicable to trusts" shall be construed in accordance with section 686(1A);**]**

"the rate of advance corporation tax" means the rate referred to in section 14(3);

"recognised clearing system" has the meaning given by section 124(6);

"surplus of franked investment income" has the meaning given by section 238;

"tax credit" means a tax credit under section 231;

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"trade" includes every trade, manufacture, adventure or concern in the nature of trade;

"Ulster Savings Certificates" means savings certificates issued or treated as issued under section 15 of the [M2073]Exchequer and Financial Provisions Act (Northern Ireland) 1950;

"unit holder" has the meaning given by section 468(6);

"unit trust scheme" has the meaning given by section 469;

"year of assessment" means, with reference to any income tax, the year for which such tax was granted by any Act granting income tax;

"the year 1988-89" means the year of assessment beginning on 6th April 1988, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on 6th April in the first-mentioned of those two years;

and a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.

(2) [M2074] The definition of "company" is subject to section 468, and does not apply in the following provisions of this Act, that is to say—

Chapter I of Part XVII;

sections 774 to 777;

section 839;

paragraph 15 of Schedule 3;

(and also does not apply where the context otherwise requires because some other definition of "company" applies).

(3) [M2075]Except so far as the context otherwise requires, in the Tax Acts, and in any enactment passed after 12th March 1970 which by any express provision is to be construed as one with the Tax Acts, the Corporation Tax Acts or the Income Tax Acts, "tax", where neither income tax nor corporation tax is specified, means either of those taxes.

(4) Subsection (3) above is without prejudice to the provisions of section 9 which apply income tax law for certain purposes of corporation tax, and accordingly the employment of "income tax" rather than "tax" in any provision of the Tax Acts is not a conclusive indication that that provision is not applied to corporation tax by that section.

(5) [M2076]In the Tax Acts any reference to a child, however expressed, shall be construed as including a reference to an adopted child.

This subsection does not apply for the purposes of paragraph 10 of Schedule 30.

Textual Amendments

F1586 1988(F) s.24(4).*Previously*

"income tax for any year of assessment, means the rate of income tax determined by subtracting the basic rate for that year from the rate of tax which for that year is applicable to the second higher rate band;".*And see* Table D(2) Vol.1.

F1587 1990(C) s.164*and* Sch.1 para.8(36).*Previously*

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" "the Capital Allowances Acts" means the 1968 Act, Chapter I of Part III of the Finance Act 1971 and Part III of Schedule 13 and Schedule 15 to the Finance Act 1986 (including enactments which under this Act or the 1970 Act are to be treated as contained in Part I of the 1968 Act);".*Words in italics repealed by* 1990 s.88*and* Sch.13 para.7*and* s.132*and* Sch.19 Part IV*for chargeable periods beginning on or after* 6*April* 1990.

F1588 Word in s. 832(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(54)** (with ss. 60, 101(1), 171, 201(3)).

F1589 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F1590 1990 s.127*and* Sch.18 para.5(3)*on and after* 1*April* 1990.*Previously*
" "local authority" and "local authority association" have the meanings given by section 519;".

F1591 S. 832(1): definition of "lower rate" inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(9)(10)(11)**

F1592 S. 832(1): definition of "the rate applicable to trusts" inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.15, **25(1)**

Marginal Citations

M2069 1970 s.526(5), 527(1); 1971 s.32(1), (1D), Sch.8 16(3); 1976 Sch.4 11; 1972 s.93(6); 1979(C), Sch.7; 1981 s.34(5); 1987 Sch.15 2(20)

M2070 1986 c. 53.

M2071 1923 c. 8.

M2072 S.I. 1979/1574 (N.I. 13).

M2073 1950 c. 3 (N.I.).

M2074 Source—1970 s.526(6)

M2075 Source—1970 s.526(3), (4)

M2076 Source—1970 s.526(5A); 1987 Sch.15 2(21)

833 Interpretation of Income Tax Acts.

(1) [M2077]In the Income Tax Acts references to profits or gains shall not include references to chargeable gains.

(2) [M2078]References in the Income Tax Acts to the retail prices index are references to the general index of retail prices (for all items) published by the **[**[F1593]Central Statistical Office of the Chancellor of the Exchequer**]**; and if that index is not published for a month which is relevant for the purposes of any provision of those Acts that provision shall be construed as referring to any substituted index or index figures published by that Department.

(3) [M2079]For the purposes of any provision of the Income Tax Acts (other than section 550*or Schedule* 2 [F1594]) requiring income of any description to be treated as the highest part of a person's income, his income shall be calculated without regard to—

(a) any payment chargeable to tax by virtue of section 148; or

(b) any amount included in his total income by virtue of section 547(1)(a);*or*

(c) *any chargeable sum as defined in paragraph* 2*of Schedule* 2 [F1594].

(4) [M2080]Subject to subsections (5) and (6) below, in the Income Tax Acts "earned income" means, in relation to any individual—

(a) any income arising in respect of —

(i) any remuneration from any office or employment held by the individual, or

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(ii) any pension, superannuation or other allowance, deferred pay or compensation for loss of office, given in respect of the past services of the individual or of the **[**[F1595]spouse**]** or parent of the individual in any office or employment, or given to the individual in respect of past services of any deceased person, whether the individual or **[**[F1595]spouse**]** or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and

(c) any income which is charged under Schedule*A*[F1596],*B*[F1597] or D and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife[F1598].

(5) [M2081]Without prejudice to the generality of the provisions of subsection (4) above, in the Income Tax Acts, except so far as is otherwise expressly provided, "earned income" also includes, in relation to any individual—

(a) any income arising in respect of Civil List pensions granted under the [M2082]Civil List Act 1837 as amended by any subsequent enactment; and

(b) any annuity, pension or annual payment to which section 58(2) or 133 applies; and

(c) any payments chargeable to income tax under Schedule E by virtue of section 150, 151 or 617;

(d) any sum payable by way of annuity to an individual by virtue of a scheme under section 27 of the [M2083]Agriculture Act 1967 (grants for relinquishing occupation of uncommercial agricultural units), unless the annuity was granted to the individual by reason of his having relinquished occupation before attaining the age of 55; and

(e) income which is earned income by virtue of section 529.

(6) [M2084]The provisions of this section are without prejudice to any other provision of the Income Tax Acts directing income to be treated as earned income.

Textual Amendments

F1593 S.I.1989 No.992 Art.6(4)*and* Sch.2 para.5(2)(c)*on and after* 31*July* 1989 (*not reproduced*).*Previously* "Department of Employment".

F1594 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F1595 1988(F) s.35*and* Sch.3 para.21*for* 1990-91*and subsequent years. Previously* "husband".

F1596 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F1597 *Repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

F1598 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C786 *See also*—s.107—*post cessation receipts*.s.127—*enterprise allowance*.s.138—*share incentive schemes*.s.491—*mutual business*.ss.529 to 531—*patent rights and know-how*.s.628—*partnership retirement annuities*.s.775—*sale of income from personal activities.*

C787 *See* s.619—*certain retirement annuities.*

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Marginal Citations

M2077 Source—1979(C) s.155(5).
M2078 Source—1980 s.24(8)
M2079 Source—1970 s.529
M2080 Source—1970 s.530(1)
M2081 Source—1970 s.530(2), 383; 1981 s.27(10); 1982 s.31(2); 1987 Sch.3 5
M2082 1837 c. 2 (1 & 2 Vict.).
M2083 1967 c. 22.
M2084 Source—1970 s.530(3).

834 Interpretation of the Corporation Tax Acts.

M2085 (1) For the purposes of the Corporation Tax Acts, except in so far as the context otherwise requires—

"accounting date" means the date to which a company makes up its accounts and "period of account" means the period for which it does so;

"accounting period" shall be construed in accordance with section 12;

"allowable loss" does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it;

"branch or agency" means any factorship, agency, receivership, branch or management;

"charges on income" has the meaning given by section 338;

"the financial year 1988" means the financial year beginning with April 1988, and similarly with references embodying other dates;

"group relief" has the meaning given by section 402.

(2) Section 6(4) shall also apply for the purposes of the following provisions of this Act, that is to say—

Chapter II of Part X, except section 395;
sections 75 and 76;
section 490;
sections 768 and 769;

and also for sections **[**F1599 144 and 145 of the 1990 Act**]**.

(3) For all the purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, except in so far as section 468(1) makes other provision as to amounts treated under that section as dividends.

(4) Except as otherwise provided by the Corporation Tax Acts, any apportionment to different periods which falls to be made under those Acts shall be made on a time basis according to the respective lengths of those periods.

Textual Amendments

F1599 1990(C) s.164*and* Sch.1 para.8(37).*Previously*
"73 and 74 of the 1968 Act".

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Modifications etc. (not altering text)

C788 *See* S.I. 1973 No.317 (*double taxation relief*) (*in* Part III Vol.5) regn.1(4)—*application of subs.* (3).

Marginal Citations

M2085 Source—1970 s.527.

VALID FROM 01/04/2009

[F1600 834A Miscellaneous charges (list for the purposes of certain provisions that formerly referred to Case VI of Schedule D)

(1) In the Corporation Tax Acts references to any provision to which this section applies are references to any provision listed in the following table, so far as the provision relates to corporation tax (but subject to any applicable limitation in subsection (3)).

(2) This is the table—

PART 1

Provisions of this Act	*Description*
Section 56(2)	Transactions in deposits
Section 214(1)(ab)	Chargeable payments connected with exempt distributions
Section 436A(1)	Gross roll-up business: separate charge on profits
Section 442A(1)	Taxation of investment return where risk reinsured
Section 571(1)	Cancellation of tax certificates
Section 730(6)	Transfers of income arising from securities
Section 761(1)(b)(ii)	Offshore income gains
Section 774(1)	Transactions between dealing company and associated company
Section 776(3A)	Transactions in land
Section 780(3A)(b)	Sale and leaseback: taxation of consideration received
Section 781(1)	Assets leased to traders and others
Section 786(5)(b)	Transactions associated with loans or credit

PART 2

Provisions of CTA 2009	*Description*

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Chapter 15 of Part 3	Post-cessation receipts: trades
Chapter 7 of Part 4	Rent receivable in connection with a UK section 39(4) concern
Chapter 8 of Part 4	Rent receivable for UK electric-line wayleaves
Chapter 9 of Part 4	Post-cessation receipts: UK property businesses
Section 752	Non-trading gains on intangible fixed assets
Section 908	Profits from disposals of know-how
Section 912	Profits from sales of patent rights
Section 965(4)	Adjustments after the administration period
Chapter 8 of Part 10	Income not otherwise charged
Section 986(4), so far as it relates to an amount treated as received under section 998(3)	Withdrawal of deductions if approval for share incentive plan withdrawn: non-trading cases
Section 1083(5)	Refunds of expenditure on research and development
Section 1229	Management expenses: claw back of relief
Section 1252	Industrial development grants: companies with investment business
Section 1253	Contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits
Section 1254	Repayments under the Financial Services and Markets Act 2000
Section 1277(4)	Withdrawal of relief for unremittable foreign income after source ceases

PART 3

Other provisions	***Description***
Section 85(1) of the Finance Act 1989	Certain receipts of basic life assurance and general annuity business
Section 85A(1) of the Finance Act 1989	Excess adjusted life assurance trade profits
Paragraph 3(1) of Schedule 12 to the Finance (No 2) Act 1992	Banks etc in compulsory liquidation
Section 256(2) of the Capital Allowances Act	Life assurance business: capital allowances

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Section 131(4) of the Finance Act 2004	Companies in partnership
Section 27(2) of the Finance (No 2) Act 2005	Avoidance involving tax arbitrage: qualifying payments
Section 112(1) of the Finance Act 2006	Real estate investment trusts: entry charge

(3) The reference in Part 2 of the above table to Chapter 8 of Part 10 of CTA 2009 does not include that Chapter so far as relating to income which arises from a source outside the United Kingdom.**]**

Textual Amendments

F1600 S. 834A inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 274** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F1601 834B Meaning of "UK property business" and "overseas property business"

In the enactments relating to corporation tax "UK property business" and "overseas property business" have the meaning given by Chapter 2 of Part 4 of CTA 2009.**]**

Textual Amendments

F1601 S. 834B inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 275** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F1602 834C Total profits

(1) In the Corporation Tax Acts references to total profits, in relation to an accounting period of a company, are to the amount arrived at by adding together—

(a) the amounts chargeable for the period under the charge to corporation tax on income, and

(b) any amount to be included for the period in respect of chargeable gains (see section 8 of the 1992 Act).

(2) Subsection (1) is subject to the provisions of the Corporation Tax Acts.**]**

Textual Amendments

F1602 S. 834C inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 276** (with Sch. 2 Pts. 1, 2)

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835 "Total income" in the Income Tax Acts.

[M2086](1) In the Income Tax Acts "total income", in relation to any person, means the total income of that person from all sources estimated in accordance with the provisions of the Income Tax Acts.

(2) Any person who, on his own behalf or on behalf of another person, delivers a statement of the amount of his or that other person's total income shall observe the rules and directions contained in section 836.

(3) [M2087]Where deductions reduce a person's total income and the order in which they are made or in which income of different descriptions is reduced thereby may affect his liability to income tax the deductions shall be made and treated as reducing income in accordance with subsections (4) and (5) below.

(4) Subject to any express provisions of the Income Tax Acts, any deductions allowable in computing a person's total income or to be made from a person's total income shall be treated as reducing income of different descriptions in the order which will result in the greatest reduction of his liability to income tax.

(5) Deductions from total income under Chapter I of Part VII shall be made after any other deductions and shall not affect the amount to be taken as a person's total income for the purposes of section 257(5) **[**[F1603], 257A(5)**]** or 274*nor the amount determining whether a person is entitled to relief under section* 263*or by how much relief under that section is reduced*[F1604].

(6) [M2088]In estimating the total income of any person—

(a) any income which is chargeable with income tax by way of deduction at the basic rate in force for any year or which for the purposes of Schedule F comprises an amount **[**[F1605]which is or (apart from section 78(3) of the Finance Act 1993) would be**]**equal to a tax credit calculated by reference to the rate of advance corporation tax in force for any year shall be deemed to be income of that year; and

(b) any deductions which are allowable on account of sums payable under deduction of income tax at the basic rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year;

notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

(7) Where an assessment has become final and conclusive for the purposes of income tax for any year of assessment—

(a) that assessment shall also be final and conclusive in estimating total income; and

(b) no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating total income unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating thereto.

(8) Subsection (7) above shall apply in relation to—

(a) any relief under section 353;

(b) any relief by reason of the operation of an election for the herd basis under Schedule 5; and

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(c) any allowance under **[**[F1606]Parts I to VI of the 1990 Act**]** to be given by way of discharge or repayment of tax and to be available or available primarily against a specified class of income (that is to say, any capital allowance to which section **[**[F1607]141 of the 1990 Act**]** applies, or as provided by section 532 of this Act, any capital allowance to which section 528(2) of this Act applies);

as it applies in relation to allowances or adjustments on the ground of diminution of income or loss.

Textual Amendments

F1603 1988(F) s.35 Sch.3 para.22*for* 1990-91*and subsequent years.*

F1604 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F1605 Words in s. 835(6)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.16, **25(1)**

F1606 1990(C) s.164*and* Sch.1 para.8(38)(a).*Previously*
"Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971".

F1607 1990(C) s.164*and* Sch.1 para.8(38)(b).*Previously*
"71 of the 1968 Act".

Marginal Citations

M2086 Source—1970 s.528(1), (2); 1971 Sch.6 78; 1972 Sch.24 32.

M2087 Source—1971 s.34; 1975 (No.2) s.31(4)

M2088 Source—1970 s.528(3)(5); 1972 Sch.11 8, Sch.24 32; 1971 Sch.6 78

836 Returns of total income.

[M2089]The following rules and directions shall be observed in delivering returns of total income under section 835(2)—

First - Declaration of the amount of profits or gains returned, or for which the person in question has been or is liable to be assessed.

Second - Declaration of the amount of rents, interest, annuities or other annual payments, in respect of which the person in question is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third - Declaration of the amount of annuities or other annual payments (not being interest) to be made out of the property or profits or gains assessed on the person in question, distinguishing each source.

Fourth - Statement of the amount of income derived according to the three preceding declarations.

Fifth - Statement of any tax which the person in question may be entitled to deduct, retain or charge against any other person.

Marginal Citations

M2089 Source—1970 Sch.13

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VALID FROM 24/07/2002

[F1608 836A Generally accepted accounting practice

(1) In the Tax Acts, unless the context otherwise requires, "generally accepted accounting practice"—

(a) means generally accepted accounting practice with respect to accounts of UK companies that are intended to give a true and fair view, and

(b) has the same meaning in relation to—

(i) individuals,

(ii) entities other than companies, and

(iii) companies that are not UK companies,

as it has in relation to UK companies.

(2) In subsection (1) "UK companies" means companies incorporated or formed under the law of a part of the United Kingdom.**]**

Textual Amendments

F1608 S. 836A inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(2)**

VALID FROM 06/04/2005

[F1609 836B Table of provisions to which this section applies

(1) In the Tax Acts references to any provision to which this section applies are references to any provision listed in the following table so far as it relates to income tax (but subject to any applicable limitation in subsections (3) to (5)).

(2) This is the table—

PART 1

Provisions of this Act	*Description*
Section 214(1)(ab)	Chargeable payments connected with exempt distributions
Section 571(1)	Cancellation of certificates: schemes for rationalising industry
Section 591C(1)	Cessation of approval (retirement benefits scheme)
Section 598(1)	Repayment of employee's contribution
Section 599(1) or (1B)	Commutation of entire pension in special circumstances
Section 599A(2)	Payment out of surplus funds

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Section 601(2) (as read with section 602(1)(a)) or 601(5)	Payments to employers (retirement benefits scheme)
Section 648B(1)	Return of contributions after pension date (approved personal pension scheme)
Section 650A(1)	Withdrawal of approval from arrangements (approved personal pension scheme)
Section 714(2)	Transfer of securities within accrued income scheme with or without accrued interest
Section 716(3)	Transfer of securities with unrealised interest where settlement day follows last interest period
Section 723(4)	Proceeds of transfer of foreign securities within the accrued income scheme ceasing to be unremittable
Section 730(4)	Transfers of income arising from securities
Section 740(2)(a) or (b)	Transfer of assets abroad (liability of non-transferors)
Section 743(1)	Transfer of assets abroad (liability of transferors)
Section 761(1)(b)(i)	Offshore income gains
Section 774(1)	Transactions between dealing company and associated company
Section 775(2A)	Sale by individual of income derived from his personal activities
Section 776(3A)(a)	Transactions in land
Section 780(3A)(a)	Sale and lease-back (taxation of consideration received)
Section 781(1)	Assets leased to traders and others
Section 786(5)(a)	Transactions associated with loans or credit
Section 804(5B)(a)	Double taxation relief

PART 2

Provisions of ITTOIA 2005	***Description***
Chapter 18 of Part 2	Post-cessation receipts: trades, professions and vocations
Chapter 8 of Part 3	Rent receivable in connection with a UK section 12(4) concern

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Chapter 9 of Part 3	Rent receivable for UK electric-line wayleaves
Chapter 10 of Part 3	Post-cessation receipts: UK property businesses
Chapter 2 of Part 4	Interest
Chapter 9 of Part 4	Gains from contracts for life insurance etc.
Chapter 11 of Part 4	Transactions in deposits
Chapter 12 of Part 4	Disposals of futures and options involving guaranteed returns
Section 579	Royalties and other income from intellectual property
Section 583	Income from disposals of know-how
Section 587	Income from sales of patent rights
Chapter 3 of Part 5	Films and sound recordings: non-trade businesses
Chapter 4 of Part 5	Certain telecommunication rights: non-trading income
Chapter 5 of Part 5	Settlements: amounts treated as income of settlor
Section 682(3)	Adjustments after the administration period
Chapter 8 of Part 5	Income not otherwise charged
Section 844(4)	Withdrawal of relief for unremittable foreign income after source ceases

PART 3

Other provisions	***Description***
Paragraph 8(2)(b)(i) of Schedule 3 to the Finance Act 1971	Occupational pension schemes (refunds of contributions and commutation payments)
Section 68(2) of the Finance Act 1989	Employee share ownership trust (chargeable event)
Section 71(4) of the Finance Act 1989	Employee share ownership trust (borrowing)
Paragraph 11(3) of Schedule 20 to the Finance Act 1994	Self-assessment transitional
Section 258(4) of the Capital Allowances Act	Special leasing
Section 479(4) of the Capital Allowances Act	Persons having qualifying non-trade expenditure

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Section 394(2) of ITEPA 2003	Charge on administrator of non-approved pension scheme
Section 476(5) of ITEPA 2003	Charge on occurrence of chargeable event
Section 583 of ITEPA 2003	certain pension income (approved retirement benefits schemes: unauthorised payments)
Section 623 of ITEPA 2003	certain pension income (return of surplus employee AVCs)
Section 119(4) of the Finance Act 2004	Individuals benefited by film relief
Section 127(2) of the Finance Act 2004	Losses derived from exploiting licence: individuals in partnership

(3) For the purposes of this section the reference to section 743 of this Act does not include that section so far as relating to income falling within subsection (1A) of that section.

(4) For the purposes of this section—

(a) any reference to any provision of ITTOIA 2005 does not include that provision so far as relating to relevant foreign income,

(b) the reference to Chapter 2 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to interest falling within section 582(2)(b)(ii) of this Act (funding bonds issued in respect of interest on certain debts),

(c) the reference to Chapter 9 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to gains—

(i) which are from a policy or contract specified in section 531(3) of that Act, and

(ii) which do not fall within section 532 or 534 of that Act,

(d) the reference to section 579 of ITTOIA 2005 does not include that section so far as relating to any annual payment,

(e) the reference to Chapter 4 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to any annual payment, and

(f) the reference to Chapter 5 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to income which falls within section 619(3) of that Act.

(5) For the purposes of this section the reference to section 583 of ITEPA 2003 is a reference to that section only where the paying scheme (see subsection (3) of that section) is a pilots' benefit fund (see section 587 of that Act).**]**

Textual Amendments

F1609 S. 836B inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 340** (with Sch. 2)

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837 "Annual value" of land.

[M2090](1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, the annual value of land shall be taken to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant's rates and taxes, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the subject of the valuation in a state to command that rent.

(2) Section 23 of the [M2091]General Rate Act 1967 (adjustment of gross value by reference to provision of or payment for services etc.) shall apply for the purposes of subsection (1) above, and in relation to land in Scotland or Northern Ireland shall apply as if it extended to the whole of the United Kingdom.

(3) Where any question arises as to the annual value of land it shall be determined by the General Commissioners and those Commissioners shall hear and determine the question in like manner as an appeal.

Modifications etc. (not altering text)

C789 *See*—s.26—*and managed as one estate.*s.145—*living accommodation provided for employee.*s.156—*valuation of benefits in kind.*

C790 *Reproduced in* Part II Vol.5.

Marginal Citations

M2090 Source—1970 s.531

M2091 1967 c. 9.

VALID FROM 28/07/2000

[F1610]837A Meaning of "research and development".

(1) The following provisions have effect for the purposes of, and subject to, the provisions of the Tax Acts which apply this section.

(2) "Research and development" means activities that fall to be treated as research and development in accordance with normal accounting practice.

This is subject to regulations under subsection (3) below.

(3) The Treasury may by regulations provide—

(a) that such activities as may be prescribed are not "research and development" for the purposes of this section, and

(b) that such other activities as may be prescribed are "research and development" for those purposes.

(4) Regulations under subsection (3) above may—

(a) make provision by reference to guidelines issued (whether before or after the coming into force of this section) by the Secretary of State, and

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

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(5) In subsection (2) above "normal accounting practice" means normal accounting practice in relation to the accounts of companies incorporated in a part of the United Kingdom.

(6) Unless otherwise expressly provided, "research and development" does not include oil and gas exploration and appraisal.**]**

Textual Amendments

F1610 S. 837A inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 19 para. 1**

VALID FROM 28/07/2000

[F1611 837B Meaning of "oil and gas exploration and appraisal".

(1) References in the Tax Acts to "oil and gas exploration and appraisal" are to activities carried out for the purpose of—

(a) searching for petroleum anywhere in an area, or

(b) ascertaining—

(i) the extent or characteristics of any petroleum-bearing area, or

(ii) what the reserves of petroleum of any such area are,

so that it may be determined whether the petroleum is suitable for commercial exploitation.

(2) For this purpose "petroleum" has the meaning given in section 1 of the M2092 Petroleum Act 1998.**]**

Textual Amendments

F1611 S. 837B inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 19 para. 2**

Marginal Citations

M2092 1998 c. 17.

VALID FROM 22/07/2004

[F1612 837C Meaning of "offshore installation"

(1) For the purposes of the Tax Acts, unless the context otherwise requires, "offshore installation" means a structure which is, is to be, or has been, put to a use specified in subsection (2) while—

(a) standing in any waters,

(b) stationed (by whatever means) in any waters, or

(c) standing on the foreshore or other land intermittently covered with water.

(2) The uses are—

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(a) use for the purposes of exploiting mineral resources by means of a well;
(b) use for the purposes of exploration with a view to exploiting mineral resources by means of a well;
(c) use for the storage of gas in or under the shore or the bed of any waters;
(d) use for the recovery of gas so stored;
(e) use for the conveyance of things by means of a pipe;
(f) use mainly for the provision of accommodation for persons who work on or from a structure which is, is to be, or has been, put to a use specified in any of paragraphs (a) to (e) while—
(i) standing in any waters,
(ii) stationed (by whatever means) in any waters, or
(iii) standing on the foreshore or other land intermittently covered with water.

(3) But a structure is not an offshore installation if—
(a) it has ceased permanently to be put to a use specified in subsection (2),
(b) it is not, and is not to be, put to any other use specified in subsection (2), and
(c) since ceasing permanently to be put to a use specified in subsection (2) it has been put to a use which is not so specified.

(4) In this section "structure" includes a ship or other vessel.

(5) The Treasury may make provision by regulations as to the meaning of "offshore installation" for the purposes of the Tax Acts.

(6) The regulations may—
(a) add to, amend or repeal subsections (1) to (4) or any provision of those subsections;
(b) make different provision for different purposes;
(c) include incidental, consequential, supplemental, saving or transitional provisions.**]**

Textual Amendments

F1612 S. 837C inserted (with effect in accordance with Sch. 27 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 1**

838 Subsidiaries.

M2093 (1) For the purposes of the Tax Acts a body corporate shall be deemed to be—
(a) a "51 per cent. subsidiary" of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
(b) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;
(c) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.

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(2) In subsection (1)(a) and (b) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section—

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series—

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where—

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(a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or

(b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

(a) directly, or

(b) through an intermediary or intermediaries which is not a member or are not members of that series, or

(c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or

(d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

Modifications etc. (not altering text)

C791 S. 838 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 184(1)(a)**, 289 (with ss. 60(1), 101(1), 171, 201(3))
S. 838 applied (27.7.1993) by 1993 c. 34, **s. 189(6)**

C792 S. 838 modified (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 50(7)**

C793 Definition in s. 838 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 170(2)(c)**, 289 (with ss. 60(1), 101(1), 171, 201(3))

C794 S. 838(2)-(10) applied (30.3.1995) by The Electricity (Class Exemptions from the Requirement for a Licence) (No. 2) Order 1995 (S.I. 1995/909), **art. 2(2)(c)**
S. 838(2)-(10) applied (1.10.2001) by The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270), **art. 2(2)(c)**
S. 838(2)-(10) applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 50(7)**

C795 S. 838(4)-(10) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2**, Pt. I para. 31(11)

Marginal Citations

M2093 Source—1970 s.532.

839 Connected persons.

M2094 (1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined

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in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, with any person who is connected with such an individual and with a body corporate which, under section 681 is deemed to be connected with that settlement ("settlement" and "settlor" having for the purposes of this subsection the meanings given by subsection (4) of that section).

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section—

"company" includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;

"control" shall be construed in accordance with section 416; and

"relative" means brother, sister, ancestor or lineal descendant.

In relation to any period during which section 470(2) has effect the reference above to a unit trust scheme shall be construed as a reference to a unit trust scheme within the meaning of the [M2095]Prevention of Fraud (Investments) Act 1958 or the [M2096]Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

Modifications etc. (not altering text)

C796 *See*—1970 s.281(5)—*dividend stripping.*1973 Sch.15 para.6—*collection of tax assessed on non-residents.*1975(O) Sch.3 para. 1—Oil Taxation Acts—*definition of arms length sale.*1976(D) Sch.1 paras.14(3), 17(5)—Development Land Tax—*interests in leases.* 1976(D)*repealed by* 1985

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ss.93, 98(6)*and* Sch.27 Part X*with effect from* 19*March* 1985.1983 Sch.8 Part III para.11(2)—Oil Taxation Acts—*receipts to be set against allowable expenditure.*1983(O) s.15(4)—Oil Taxation Acts—*application for the purposes of* 1983(O).1987 s.64(3)*and* Sch.13 para.11(2)—Oil Taxation Acts—*relief for certain research expenditure.*1987 Sch.10 para.8(4)—Oil Taxation Acts—*nomination scheme for disposals and appropriations.*1988 s.13A—*close investment-holding companies.*1988 s.24(1)—*interpretation of* Sch.A.1988 s.34(7)—*premiums etc., treated as rent.*1988 s.36—Sch.D*charge on sale of land with right of reconveyance.*1988 s.79A—*contributions to training and enterprise councils and local enterprise companies.*1988 s.116(7)—*partnerships involving companies: effect of arrangements for transferring relief.*1988 s.140—*company directors and employees granted rights to acquire shares.*1988 s.142(3B)—*credit tokens.*1988 s.146—*living accommodation provided for employee: additional charge.*1988 s.155(7)—*benefits in kind for directors etc.*1988 s.162—*employee's shareholdings.*1988 s.165(6)—*scholarships.*1988 s.187—*approved share option schemes.*1988 s.312—*business expansion scheme.*1988 s.339(7)—*charges on income: donations to charity.*1988 s.355(5)—*loans for purchase or improvement of land.*1988 s.395—*leasing contracts: effect on loss relief where company reconstructed.*1988 s.410*and* Sch.18 para.1(8)*restrictions on entitlement to group relief.*1988 s.451(3)—*life policies: computation of gain.*1988 s.494—Oil Taxation Acts—*oil extraction activities; charges on income.*1988 s.497—Oil Taxation Acts—*ACT on redeemable preference shares.*1988 s.520-521—*patent rights.*1988 s.736—*company dealing in securities: distribution materially reducing value of holding.*1988 s.756—*controlled foreign companies.*1988 s.763—*offshore funds.*1988 s.769—*change in ownership of company: disallowance of trading losses.*1988 s.776(13)—*artificial transactions in land.*1988 s.786—*transactions associated with loans or credit.*1988 s.798—*double taxation relief: interest on certain overseas loans.*1988 s.812—*withdrawal of right of certain non-resident companies to payment of tax credits.*1988(F) Ch.II Part III—*unapproved employee share schemes.*1988(F) Sch.8 para.12(2C)—Oil Taxation Acts—*disposals of certain shares deriving value from exploration or exploitation assets or rights.*1989 s.94—*and* Sch.11 para.8—*deep gain securities.*1990(C) s.5(1)—*restriction of balancing allowances for industrial buildings etc.*1990(C) s.11(6)—*capital allowances for buildings on long leases.*1990(C) s.25—*donations to charity by individuals.*1990(C) s.26(1)(3)—*disposal value of machinery or plant.*1990(C) s.50(6)—*new expenditure on assets leased outside the UK.*1990(C) ss.53(2), 55(3) and 56—*capital allowances for fixtures.*1990(C) s.75(4)—*arrangements to secure benefit of* 1990(C) Part I Ch.II.1990(C) s.76—*restriction of capital allowances for machinery and plant.*1990(C) s.77—*successions to trades between connected persons.*1990(C) s.86(3)—*qualifying dwelling houses.*1990(C) s.130(1)(c)—*restriction of balancing allowances on sale of agricultural buildings.*1990(C) s.142—*restriction of first-year allowances.*1990(C) s.154(3)—*contributions to capital expenditure.*1990(C) s.157(1)(a)—*sales between connected persons.*1990 s.56 and Sch.10 para.17—*convertible securities.*S.I. 1987 No.530—*entertainers and sportsmen* (*in* Part III Vol.5).S.I. 1987 No.1338 and S.I. 1990 No.2469—*excluded oil.*S.I. 1990 No.1671—*movements of capital* (*in* Part III Vol.5).*See also* 1979(C) s.63—*with definition of*
"*control*"
in 1979(C) s.155(1)—*corresponding provision for capital gains tax.*Gas Act 1986 (c.44) s.63(9)—*restrictions on use of certain information.*

C797 S. 839 applied by Finance Act 1991 (c. 31, SIF 63:1), **ss. 104(3)**, 112(7)(b)
S. 839 applied by 1983 c. 55, **Sch. 4A para. 1(5)** (as inserted (1.12.1992 for specified purposes and 1.1.1993 otherwise) by Finance No. 2 Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. I para. 62; S.I. 1992/2979, art. 4, **Sch. Pt. II**; S.I. 1992/3261, **art. 3**,Sch.)
S. 839 applied (27.7.1993) by 1993 c. 34, **s. 193(6)**

C798 S. 839(2)-(8) applied (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 8(9)(b), **Sch. 1 para. 3**

Marginal Citations

M2094 Source—1970 s.533.
M2095 1958 c. 45.
M2096 1940 c. 9 (N.I.)

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840 Meaning of "control" in certain contexts.

[M2097]For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, "control", in relation to a body corporate, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

Modifications etc. (not altering text)

C799 S. 840 applied by Finance Act 1988 (c. 39), **s. 87(3)**
S. 840 applied by Finance Act 1989 (c. 26), **s. 67(3)**
S. 840 applied by Capital Allowances Act 1990 (c. 1), **s.77(6)**
S. 840 applied (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 22 para. 17(6)(a)(ii)**
S. 840 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 8(9)**
S. 840 applied (1.2.2001) by Trustee Act 2000 (c. 29), **ss. 19(3)**, 42(2); S.I. 2001/49, **art. 2**
S. 840 applied (29.7.2002) by Trustee Act (Northern Ireland) 2001 (c. 14), **ss. 19(3)**, 45(1); S.R. 2002/253, **art. 2**
S. 840 applied by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5AA para. 4(3)** (as inserted (with effect in accordance with Sch. 9 para. 7 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 3**)

C800 S. 840 applied (23.1.2003 with effect in accordance with s. 57(4)(a) of the affecting Act) by Finance Act 2002 (c. 23), s. 57(3), **Sch. 16 para. 14(3)**; S.I. 2003/88, **art. 2**

C801 S. 840 applied and extended (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 69**, 719 (with Sch. 7)

C802 S. 840 applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **s. 65(3)**

C803 S. 840 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(6)**, 883(3)(b)

Marginal Citations

M2097 Source—1970 s.534

VALID FROM 06/04/2007

[F1613]840ZA Meaning of "tax advantage"

(1) In any provision of the Corporation Tax Acts in relation to which it is provided that "tax advantage" has the meaning given by this section, "tax advantage" means—

(a) a relief from tax or increased relief from tax,

(b) a repayment of tax or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, or

(d) the avoidance of a possible assessment to tax.

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(2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—
  (a) by receipts accruing in such a way that the recipient does not pay or bear tax on them, or
  (b) by a deduction in calculating profits or gains.

(3) In this section "relief from tax" includes—
  (a) a tax credit under section 231 for the purposes of corporation tax, and
  (b) a tax credit under section 397(1) of ITTOIA 2005 for the purposes of income tax.**]**

Textual Amendments

F1613 S. 840ZA inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 225** (with Sch. 2)

VALID FROM 29/04/1996

[F1614 840A Banks.

(1) In any provision in relation to which it is provided that "bank" has the meaning given by this section "bank" means—
  (a) the Bank of England;
  (b) an institution authorised under the M2098 Banking Act 1987;
  (c) a relevant European institution; or
  (d) a relevant international organisation which is designated as a bank for the purposes of that provision by an order made by the Treasury.

(2) For the purposes of subsection (1) above, an institution is a relevant European institution if—
  (a) it is a European authorised institution within the meaning of the M2099 Banking Co-ordination (Second Council Directive) Regulations 1992; and
  (b) the requirements of paragraph 1 of Schedule 2 to those regulations have been complied with in relation to its establishment of a branch.

(3) For the purposes of subsection (1) above, a relevant international organisation is an international organisation of which the United Kingdom is a member.**]**

Textual Amendments

F1614 S. 840A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 1(1)**

Marginal Citations

M2098 1987 c. 22.
M2099 S.I. 1992/3218.

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841 Recognised stock exchange and recognised investment exchanges.

[M2100](1) In the Tax Acts "recognised stock exchange" means—

(a) the Stock Exchange; and

(b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Board.

(2) An order made by the Board under this section—

(a) may designate a stock exchange by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;

(b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient;

(c) may be varied or revoked by a subsequent order so made.

(3) The Board may by regulations make provision securing that enactments in the Tax Acts containing references 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 [M2101]Financial Services Act 1986), or in relation to such of those exchanges as may be prescribed.

Modifications etc. (not altering text)

C804 *Definition applied for purposes of:*—1979(C) s.155(1)—*capital gains tax.*The Occupational Pensions Schemes (Transitional Provisions) Regulations 1988 (S.I.1988 No.1436—*in* Part III Vol.5).The Personal Equity Plan Regulations 1989 (S.I. 1989 No.469—*in* Part III Vol.5).The Retirement Benefits Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regns. 1990 (S.I.1990 No.586—*in* Part III Vol.5).

Marginal Citations

M2100 Source—1970 s.535; 1973 Sch.21 9; 1987 (No.2) s.73

M2101 1986 c. 60.

VALID FROM 29/04/1996

[F1615 841A Recognised clearing systems.

(1) In the Tax Acts, "recognised clearing system" means any system for clearing—

(a) quoted Eurobonds (as defined by section 124), or

(b) relevant foreign holdings (as defined by section 18(3C)),

which is for the time being designated for the purposes of this section as a recognised clearing system by an order made by the Board.

(2) An order under this section—

(a) may contain such transitional and other supplemental provision as appears to the Board to be necessary or expedient; and

(b) may be varied or revoked by a subsequent order.]

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Textual Amendments

F1615 S. 841A inserted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 26** (with Sch. 7 paras. 33-35)

842 Investment trusts.

M2102 (1) In the Tax Acts "investment trust" means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—

[F1616 (aa) that the company is resident in the United Kingdom; and**]**

(a) that the company's income is derived wholly or mainly from shares or securities; and

(b) subject to subsection (2) below, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) below, represents more than 15 per cent. by value of the investing company's investments; and

[F1617 (c) that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) are quoted on the Stock Exchange; and**]**

(d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company's memorandum or articles of association; and

(e) that the company does not retain in respect of any accounting period more than 15 per cent. of the income it derives from shares and securities.

[F1618 (1A) For the purposes of paragraph (b) of subsection (1) above and the other provisions of this section having effect in relation to that paragraph—

(a) holdings in companies which are members of a group (whether or not including the investing company) and are not excluded from that paragraph shall be treated as holdings in a single company; and

(b) where the investing company is a member of a group, money owed to it by another member of the group shall be treated as a security of the latter held by the investing company and accordingly as, or as part of, the holding of the investing company in the company owing the money;

and for the purposes of this subsection "group" means a company and all companies which are its 51 per cent. subsidiaries**]**

(2) Subsection (1)(b) above shall not apply—

(a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company's investments; or

(b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company's investments;

so long as no addition is made to the holding.

[F1619 (2A) Subsection (1)(e) above shall not apply as regards an accounting period if—

(a) the company is required to retain income in respect of the period by virtue of a restriction imposed by law, and

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(b) the amount of income the company is so required to retain in respect of the period exceeds an amount equal to 15 per cent. of the income the company derives from shares and securities.

(2B) Subsection (2A) above shall not apply where—

(a) the amount of income the company retains in respect of the accounting period exceeds the amount of income it is required by virtue of a restriction imposed by law to retain in respect of the period, and

(b) the amount of the excess or, where the company distributes income in respect of the period, that amount together with the amount of income which the company so distributes is at least £10,000 or, where the period is less than 12 months, a proportionately reduced amount.

(2C) Paragraph (e) of subsection (1) above shall not apply as regards an accounting period if the amount which the company would be required to distribute in order to fall within that paragraph is less than £10,000 or, where the period is less than 12 months, a proportionately reduced amount.**]**

(3) For the purposes of subsection (2) above—

(a) "holding" means the shares or securities (whether of one class or more than one class) held in any one company; and

(b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and

(c) where in connection with a scheme of reconstruction or amalgamation, a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.

(4) In this section "company" and "shares" shall be construed in accordance with sections **[**[F1620]99 and 288 of **[**[F1621]the 1992 Act**]]**.

Textual Amendments

F1616 1988(F) s.117(1)(a)*for accounting periods ending after* 5*th April* 1988.

F1617 1988(F) s.117(1)(b)*for accounting periods ending after* 5*th April* 1988.*Previously*
"that the shares or securities of the company are quoted on the Stock Exchange and".

F1618 1988(F) s.117(1)(c)*for accounting periods ending after* 5*th April* 1988.

F1619 1990 s.55*in relation to accounting periods ending on or after* 26*July* 1990.

F1620 Words in s. 842(4) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(55)** (with ss. 60, 101(1), 171, 201(3))

F1621 Words in s. 842(4) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**

Modifications etc. (not altering text)

C805 *Definition applied for purposes of*—The Personal Equity Plan Regulations 1989 (S.I. 1989 No.469—*in* Part III Vol.5).1970 s.273A—*transfer of UK branch or agency.*

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Marginal Citations

M210 Source—1970 s.359; 1973 s.54; 1979(C) Sch.7.

VALID FROM 01/05/1995

[F1622] 842A Venture capital trusts.

(1) In the Tax Acts "venture capital trust" means a company which is not a close company and which is for the time being approved for the purposes of this section by the Board; and an approval for the purposes of this section shall have effect as from such time as may be specified in the approval, being a time which, if it falls before the time when the approval is given, is no earlier than—

(a) in the case of an approval given in the year 1995-96, 6th April 1995; or

(b) in any other case, the time when the application for approval was made.

(2) Subject to the following provisions of this section, the Board shall not approve a company for the purposes of this section unless it is shown to their satisfaction in relation to the most recent complete accounting period of the company—

(a) that the company's income in that period has been derived wholly or mainly from shares or securities;

(b) that at least 70 per cent. by value of the company's investments has been represented throughout that period by shares or securities comprised in qualifying holdings of the company;

(c) that at least 30 per cent. by value of the company's qualifying holdings has been represented throughout that period by holdings of eligible shares;

(d) that no holding in any company, other than a venture capital trust or a company which would qualify as a venture capital trust but for paragraph (e) below, has at any time during that period represented more than 15 per cent. by value of the company's investments;

(e) that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) have throughout that period been quoted on the Stock Exchange; and

(f) that the company has not retained more than 15 per cent. of the income it derived in that period from shares and securities.

(3) Where, in the case of any company, the Board are satisfied that the conditions specified in subsection (2) above are fulfilled in relation to the company's most recent complete accounting period, they shall not approve the company for the purposes of this section unless they are satisfied that the conditions will also be fulfilled in relation to the accounting period of the company which is current when the application for approval is made.

(4) The Board may approve a company for the purposes of this section notwithstanding that conditions specified in subsection (2) above are not fulfilled with respect to that company in relation to its most recent complete accounting period if they are satisfied—

(a) in the case of any of the conditions specified in paragraphs (a), (d), (e) and (f) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to the accounting period of the company which is current when the application for approval is made or in relation to its next accounting period;

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(b) in the case of any of the conditions specified in paragraphs (b) and (c) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to an accounting period of the company beginning no more than three years after the time when they give their approval or, if earlier, when the approval takes effect; and

(c) in the case of every condition which is not fulfilled but with respect to which the Board are satisfied as mentioned in paragraph (a) or (b) above, that the condition will continue to be fulfilled in relation to accounting periods following the period in relation to which they are satisfied as so mentioned.

(5) For the purposes of subsection (2)(b) to (d) above the value of any holding of investments of any description shall be taken—

(a) unless—

(i) it is added to by a further holding of investments of the same description, or

(ii) any such payment is made in discharge, in whole or in part, of any obligation attached to the holding as (by discharging the whole or any part of that obligation) increases the value of the holding,

to be its value when acquired, and

(b) where it is so added to or such a payment is made, to be its value immediately after the most recent addition or payment.

F1623 **[** Subsection (5B) below applies where—

(5A) (a) there has been an issue of ordinary share capital of a company ("the first issue"),

(b) an approval of that company for the purposes of this section has taken effect on or before the day of the making of the first issue, and

(c) a further issue of ordinary share capital of that company has been made since the making of the first issue.

(5B) Where this subsection applies, the use to which the money raised by the further issue is put, and the use of any money deriving from that use, shall be disregarded in determining whether any of the conditions specified in subsection (2)(b) and (c) above are, have been or will be fulfilled in relation to—

(a) the accounting period in which the further issue is made; or

(b) any later accounting period ending no more than three years after the making of the further issue.**]**

(6) The Board may withdraw their approval of a company for the purposes of this section wherever it at any time appears to them that there are reasonable grounds for believing—

(a) that the conditions for the approval of the company were not fulfilled at the time of the approval;

(b) in a case where the Board were satisfied for the purposes of subsection (3) or (4) above that a condition would be fulfilled in relation to any period, that that condition is one which will not be or, as the case may be, has not been fulfilled in relation to that period;

(c) in the case of a company approved in pursuance of subsection (4) above, that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, the period of three years mentioned in subsection (4)(b) above;

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[F1624 (ca) in a case where the use of any money falls to be disregarded for any accounting period in accordance with subsection (5B) above—

(i) that the first accounting period of the company for which the use of that money will not be disregarded will be a period in relation to which a condition specified in subsection (2) above will fail to be fulfilled; or

(ii) that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, an accounting period for which the use of that money falls to be disregarded;**]** or

(d) that the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of a condition specified in subsection (2) above to be fulfilled, not being a failure which, at the time of the approval, was allowed for in relation to that period by virtue of subsection (4) above.

(7) Subject to subsections (8) and (9) below, the withdrawal of the approval of any company for the purposes of this section shall have effect as from the time when the notice of the withdrawal is given to the company.

(8) If, in the case of a company approved for the purposes of this section in exercise of the power conferred by subsection (4) above, the approval is withdrawn at a time before all the conditions specified in subsection (2) above have been fulfilled with respect to that company in relation either—

(a) to a complete accounting period of twelve months, or

(b) to successive complete accounting periods constituting a continuous period of twelve months or more,

the withdrawal of the approval shall have the effect that the approval shall, for all purposes, be deemed never to have been given.

(9) A notice withdrawing the approval of a company for the purposes of this section may specify a time falling before the time mentioned in subsection (7) above as the time as from which the withdrawal is to be treated as having taken effect for the purposes of section 100 of the 1992 Act; but the time so specified shall be no earlier than the beginning of the accounting period in relation to which it appears to the Board that the condition by reference to which the approval is withdrawn has not been, or will not be, fulfilled.

(10) Notwithstanding any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any approval given for the purposes of this section may be made at any time before the end of the period of three years beginning with the time when the notice of withdrawal is given.

(11) The following provisions of section 842 shall apply as follows for the purposes of this section as they apply for the purposes of that section, that is to say—

(a) subsections (1A) and (2) of that section shall apply in relation to subsection (2)(d) above (but with the omission of subsection (2)(a) of that section) as they apply in relation to subsection (1)(b) of that section;

(b) subsections (2A) to (2C) of that section shall apply in relation to subsection (2)(f) above as they apply in relation to subsection (1)(e) of that section; and

(c) without prejudice to their application in relation to provisions applied by paragraph (a) or (b) above, subsections (3) and (4) of that section shall apply

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in relation to any reference in this section to a holding or an addition to a holding as they apply in relation to any such reference in that section.

(12) In this section, and in the provisions of section 842 as applied for the purposes of this section, "securities", in relation to any company—

(a) includes any liability of the company in respect of a loan (whether secured or not) which has been made to the company on terms that do not allow any person to require the loan to be repaid, or any stock or security relating to that loan to be re-purchased or redeemed, within the period of five years from the making of the loan or, as the case may be, the issue of the stock or security; but

(b) does not include any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period.

(13) Schedule 28B shall have effect for construing the references in this section to a qualifying holding.

(14) In this section "eligible shares" means shares in a company which are comprised in the ordinary share capital of the company and carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed.**]**

Textual Amendments

F1622 S. 842AA inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 70(1)**
F1623 S. 842AA(5A)(5B) inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 75(1)**
F1624 S. 842AA(6)(ca) inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 75(2)**

[F1625 842A Local authorities.

(1) Except so far as the context otherwise requires, in the Tax Acts "local authority" means—

(a) in relation to England and Wales, an authority of a description specified for the purposes of this paragraph.

(b) in relation to Scotland, an authority of a description specified for the purposes of this paragraph, and

(c) in relation to Northern Ireland, an authority of a description specified for the purposes of this paragraph.

(2) The following are the descriptions of authority specified for the purposes of paragraph (a) of subsection (1) above—

[F1626 (a) a billing authority as defined in section 69 of the Local Government Finance Act 1992;

(b) a precepting authority as defined in that section;

(c) a body having power by virtue of regulations under section 74 of the M2103 Local Government Finance Act 1988 to issue a levy;**]**

(d) a body having power by virtue of regulations under section 75 of that Act to issue a special levy;

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(e) a combined police authority established by an amalgamation scheme under the [M2104]Police Act 1964;

(f) a fire authority constituted by a combination scheme under the [M2105]Fire Services Act 1947;

(g) an authority having power to make or determine a rate.

(3) The following are the descriptions of authority specified for the purposes of paragraph (b) of subsection (1) above—

(a) a regional council;

(b) an islands council;

(c) a district council;

(d) a joint board or committee within the meaning of the [M2106]Local Government (Scotland) Act 1973;

(e) an authority having power to requisition any sum from an authority falling within any of paragraphs (a) to (c) above.

(4) The following are the descriptions of authority specified for the purposes of paragraph (c) of subsection (1) above—

(a) an authority having power to make or determine a rate;

(b) an authority having power to issue a precept, requisition or other demand for the payment of money to be raised out of a rate.

(5) In this section "rate" means a rate the proceeds of which are applicable for public local purposes and which is leviable by reference to the value of land or other property.**]**

Textual Amendments

F1625 S. 842A inserted (1.4.1990) by Finance Act 1990 (c. 29), **s.127(1)(4)**

F1626 S. 842A(2)(a)-(c) substituted (1.4.1993) by Local Government Finance Act 1992 (c. 14), s. 117(1), **Sch. 13 para. 57** (with s. 118(1)(2)(4)); S.I. 1992/2454, **art. 3(1)(a)**

Marginal Citations

M2103 1988 c. 41.

M2104 1964 c. 48.

M2105 1947 c. 41.

M2106 1973 c. 65.

VALID FROM 06/04/2001

[[F1627]842B Meaning of "investment LLP" and "property investment LLP"

(1) In this Act—

(a) an "investment LLP" means a limited liability partnership whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom; and

(b) a "property investment LLP" means a limited liability partnership whose business consists wholly or mainly in the making of investments in land and the principal part of whose income is derived therefrom.

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(2) Whether a limited liability partnership is an investment LLP or a property investment LLP is determined for each period of account of the partnership.

A "period of account" means any period for which accounts of the partnership are drawn up.**]**

Textual Amendments

F1627 S. 842B inserted (6.4.2001 with effect in accordance with s. 76(1) of the amending Act) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 1(1)**

Commencement, savings, repeals etc.

843 Commencement.

(1) Except as otherwise provided by the following provisions of this section, this Act shall come into force in relation to tax for the year 1988-89 and subsequent years of assessment, and for companies' accounting periods ending after 5th April 1988.

(2) Except as otherwise provided by the following provisions of this section, such of the provisions of this Act as relate to capital gains tax (including the provisions of Part XVIII as applied to capital gains tax by section **[**[F1628]277 of **[**[F1629]the 1992 Act**]]**) shall come into force in relation to that tax for the year 1988-89 and subsequent years of assessment.

(3) The following provisions of this Act, that is to say—

(a) so much of any provision as authorises the making of any Order in Council or regulations or other instrument;

(b) so much of any provision as relates to the making of a return, the furnishing of a certificate or the giving of any other information, including any such provision which imposes a duty on the Board or an officer of the Board as well as any such provision which imposes a duty on any other person;

(c) so much of any provision as imposes any penalty;

(d) except where the tax concerned is all tax for years of assessment before the year 1988-89 or accounting periods ending before 6th April 1988, so much of any other provision as confers any power or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,

shall come into force for all purposes on 6th April 1988 to the exclusion of the corresponding enactments repealed by this Act.

(4) This section has effect except as otherwise provided by any other provision of this Act, and in particular except as provided by sections 96, 380 to 384, 393, [F1630] . . ., 400, 703 and 812.

Textual Amendments

F1628 Words in s. 843(2) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(56)** (with ss. 60, 101(1), 171, 201(3))

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

F1629 Words in s. 843(2) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**
F1630 Words in s. 843(4) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 24, **Sch. 19 Pt. V**, Note 4

844 Savings, transitional provisions, consequential amendments and repeals.

(1) Schedule 29, which makes amendments to other enactments consequential on the passing of this Act, shall have effect.

(2) Schedule 29, section 843 and this section are without prejudice to the provisions of the [M2107]Interpretation Act 1978 as respects the effect of repeals.

(3) Schedule 30 which contains savings and transitional provisions shall have effect.

(4) The enactments mentioned in Schedule 31 are hereby repealed to the extent specified in the third column of that Schedule.

(5) Subject to subsection (6) below, section 843(3), Schedule 30 and to any other provision of this Act by which any provision is brought into force to the exclusion of the corresponding enactments repealed by this Act, those repeals shall come into force in accordance with subsections (1) and (2) of section 843.

(6) No provision mentioned in subsection (5) above shall be taken as bringing a repeal into force except to the extent that the repealed enactment is being superseded.

Marginal Citations
M2107 1978 c. 30.

845 Short title.

This Act may be cited as the Income and Corporation Taxes Act 1988.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULES

VALID FROM 10/07/2003

SCHEDULE A1

DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

. . . . . .

VALID FROM 22/07/2004

SCHEDULE A2

CORPORATION TAX: THE NON-CORPORATE DISTRIBUTION RATE: SUPPLEMENTARY PROVISIONS

. . . . . .

SCHEDULE 1

Section 31.

RESTRICTIONS ON SCHEDULE A DEDUCTIONS

Expenditure before 1964-65: deductions from rents

1 (1) [M2108]Except as provided by sub-paragraphs (2) and (3) below, no payment shall be deductible under sections 25 and 26 if made before the beginning of the year 1964-65.

(2) Where, by virtue of paragraph 1(2) of Schedule 2 to the 1970 Act, any amount fell to be treated as a payment in relation to premises made by a person in the year 1964-65 in respect of dilapidation attributable to that year, the amount shall be similarly treated for the purposes of sections 25 and 26.

(3) If the amount of any loss was treated, by virtue of paragraph 1(3) of that Schedule, as if it were a payment such as is mentioned in section 72(1) of the 1970 Act made by any person in respect of any premises in and in respect of any year, it shall be treated for the purposes of sections 25 and 26 as if it were a payment such as is mentioned in section 25(1) made by that person in respect of those premises in and in respect of that year.

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(4) A deduction falling to be made by virtue of sub-paragraph (3) above shall be made notwithstanding anything in sections 392(3) and 396(1); and relief shall not be given under either of those sections in respect of the loss in so far as a deduction in respect of it is given under this paragraph.

Marginal Citations
M2108 Source—1970 Sch.2

Expenditure before 1964-65: deductions from other receipts

2 (1) Subject to sub-paragraph (2) below, no payment shall be deductible under section 28 if made before the beginning of the year 1964-65.

(2) Sub-paragraph (1) above shall not prevent the deduction of a payment in so far as a loss in respect thereof was carried forward to the year 1964-65 by virtue of section 346 of the [M2109]Income Tax Act 1952 (Case VI losses).

(3) Paragraph 1(4) above shall apply in the case of a deduction falling to made by virtue of sub-paragraph (2) above as it applies in the case of one falling to be made by virtue of paragraph 1(3) above.

Marginal Citations
M2109 1952 c.10.

Expenditure on sea walls before 1964-65

3 (1) Section 30 shall not apply in relation to expenditure incurred before the beginning of the year 1964-65 except in accordance with sub-paragraphs (2) and (3) below.

(2) Subject to sub-paragraph (3) below, section 30 shall apply in relation to expenditure which, by virtue of paragraph 3(1) of Schedule 2 to the 1970 Act, was treated as if—

(a) it had been incurred in the year of assessment following that in which it was actually incurred, and

(b) in so far as it was incurred in repairing an embankment, it had been incurred in making it,

as if it had been incurred in that year and in making that embankment.

(3) If, by virtue of the proviso to paragraph 3(1) of Schedule 2 to the 1970 Act, any expenditure fell to be treated for the purposes of sections 71 to 77 of that Act as if it were an amount paid by any person in and in respect of the year 1964-65 in respect of the maintenance of premises preserved or protected by an embankment, it shall be similarly treated for the purposes of sections 25 to 31.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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F1631F1631SCHEDULE 2

Textual Amendments

F1631 Sch. 2 repealed (with effect in accordance with Sch. 14 Pt. IV Note 9 of the repealing Act) by Finance Act 1988 (c. 39) ss. 75, 148, Sch.14 Part IV

F1631 . . . . . .

SCHEDULE 3

Section 44(2).

MACHINERY FOR ASSESSMENT, CHARGE AND PAYMENT OF INCOME TAX UNDER SCHEDULE C AND, IN CERTAIN CASES, SCHEDULE D

PART I

PUBLIC REVENUE DIVIDENDS ETC. PAYABLE TO THE BANK OF ENGLAND OR THE BANK OF IRELAND OR ENTRUSTED FOR PAYMENT TO THE BANK OF ENGLAND, THE BANK OF IRELAND OR THE NATIONAL DEBT COMMISSIONERS

1 M2110The Bank of England and the Bank of Ireland as respects the dividends and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and entrusted to them for payment and distribution, and the National Debt Commissioners, as respects the dividends payable by them or of which they have the distribution, shall, when any payment becomes due, deliver to the Board true accounts, in books provided for the purpose, of—

(a) the amounts of the dividends and profits attached thereto payable to the Bank, and

(b) all dividends entrusted to the Bank or the National Debt Commissioners for payment to the persons entitled thereto, and

(c) the amount of income tax chargeable thereon at the basic rate in force at the time of payment, without any other deduction than is allowed by the Income Tax Acts.

Modifications etc. (not altering text)

C806 *See* s.656 *ante—purchased life annuities.*

Marginal Citations

M2110 Source—1970 Sch.5 1; 1971 Sch.6 80

2 (1) In the case of dividends and profits attached thereto payable to the Bank of England out of the public revenue of the United Kingdom, the Bank of England shall set apart the income tax in respect of the amount payable to them.

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(2) [M2111]In the case of dividends and profits attached thereto entrusted to the Bank of England for payment and distribution, dividends payable by the Bank of Ireland at its principal office in Belfast, and dividends payable by the National Debt Commissioners or of which the National Debt Commissioners have the distribution—

(a) the Bank of England, the Bank of Ireland and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the income tax for the purposes of the Income Tax Acts, and

(b) the retaining of the amount shall be deemed to be a payment of the income tax by the persons entitled to the dividends, and shall be allowed by them on the receipt of the residue thereof, and

(c) the Bank of England, the Bank of Ireland and the National Debt Commissioners respectively shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

(3) In relation to dividends payable to the Bank of Ireland out of the public revenue of the United Kingdom, and public revenue dividends which are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast, the following provisions shall have effect—

(a) the money which, apart from this sub-paragraph, would be issuable to the Bank of Ireland under section 14 of the [M2112]National Debt Act 1870, or otherwise payable to the Bank of Ireland for the purpose of dividends on securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin, shall be issued and paid to the Bank of England; and

(b) the Bank of England shall set apart and retain out of moneys so issued and paid to them the amount of the income tax on the dividends payable to the Bank of Ireland, and on the dividends on the securities of the United Kingdom government entered in the register of the Bank of Ireland in Dublin; and

(c) the Bank of England shall pay to the Bank of Ireland the residue of moneys so issued and paid to them, to be applied by the Bank of Ireland to the payment of the dividends; and

(d) the retaining of the amount shall be deemed to be a payment of the income tax by the persons entitled to the dividends, and shall be allowed by them on the receipt of the residue thereof, and the Bank of England and the Bank of Ireland shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

Modifications etc. (not altering text)

C807 *See* s.821*ante—under-deductions of tax from payments made before passing of annual Act.*

Marginal Citations

M2111 Source—1970 Sch.5 2-5

M21121870 c. 71.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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3 Money set apart or retained under paragraph 2 above, and the amount of any tax charged on the trading profits of the Bank of England or the Bank of Ireland, shall be paid into the general account of the Board at the Bank of England or the Bank of Ireland.

4 No deduction of income tax under this Part of this Schedule shall be made from any dividends payable in respect of stock, securities or annuities standing in the name of the official custodian for charities, nor from any dividends in respect of which there is given to the Bank of England a certificate from the Charity Commissioners that the dividends are subject only to charitable trusts and are exempt from tax.

PART II

PUBLIC REVENUE DIVIDENDS PAYABLE BY PUBLIC OFFICES AND DEPARTMENTS

5 Where any payment is made of public revenue dividends payable by any public office or department of the Crown, the appropriate officer shall retain the income tax charged and pay the same into the general account of the Board at the Bank of England or the Bank of Ireland.

Modifications etc. (not altering text)
C808 *See* s.821*ante—under-deductions of tax from payments made before passing of annual Act.*

PART III

OTHER PUBLIC REVENUE DIVIDENDS, FOREIGN DIVIDENDS AND PROCEEDS OF COUPONS

Modifications etc. (not altering text)
C809 Sch. 3 Pt. III applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 12(2)(b)**
Sch. 3 Pt. III applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 13(2)(b)**

6 (1) [M2113]The following persons are chargeable persons for the purposes of this Part of this Schedule—

(a) every person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) who is entrusted with the payment of any dividends which are payable out of the public revenue of Northern Ireland, or which are payable to any persons in the United Kingdom out of any public revenue other than that of the United Kingdom or Northern Ireland;

(b) every person in the United Kingdom who is entrusted with the payment of any foreign dividends;

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(c) every banker or other person in the United Kingdom who obtains payment of any dividends in such circumstances that the dividends are chargeable to tax under Schedule C, or in the case of foreign dividends, under Schedule D; and

(d) every banker in the United Kingdom who sells or otherwise realises coupons, and every dealer in coupons in the United Kingdom who purchases coupons, in such manner that the proceeds of the sale or realisation are chargeable to tax under Schedule C, or in the case of foreign dividends, under Schedule D.

F1632(2) . . . . . .

Textual Amendments

F1632 Sch. 3 para. 6(2) repealed and superseded (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(2)(3), 6, **Sch. 18 Pt. VII**

Marginal Citations

M2113 Source—1970 Sch.5 6(a)(b)

[F1633 6A (1) On the fourteenth day following the month in which a transaction such as is mentioned in paragraph 6 above is effected, income tax (at the [F1634 applicable rate] in force at the time of payment) shall become due in respect of the relevant dividends or proceeds.

(2) The tax shall be payable by the chargeable person on behalf of the persons entitled to the dividends or proceeds.

F1635 [(2A) Payments of tax made on any person's behalf under this paragraph shall be treated as made for the purpose only of being applied in the discharge of that person's liability to tax charged (otherwise than by virtue of this paragraph) on the dividends or proceeds to which the payments relate.]

(3) The tax shall be payable without the making of any assessment.

F1636 [(4) For the purposes of sub-paragraph (1) above the applicable rate shall be—

(a) the lower rate, in the case of a foreign dividend which is neither interest nor any other annual payment which is made otherwise than by way of dividend; and

(b) the basic rate in any other case.]]

Textual Amendments

F1633 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

F1634 Words in Sch. 3 para. 6A(1) substituted (27.7.1993 with effect in relation to transactions effected on or after 6 April 1993) by 1993 c. 34, s. 79, Sch. 6 paras. 17(1), **25(5)**

F1635 Sch. 3 para. 6A(2A) inserted (27.7.1993 with effect in relation to transactions effected on or after 6 April 1993) by 1993 c. 34, s. 79, Sch. 6 paras. 17(2), **25(5)**

F1636 Sch. 3 para. 6A(4) inserted (27.7.1993 with effect in relation to transactions effected on or after 6 April 1993) by 1993 c. 34, s. 79, Sch. 6 paras. 17(3), **25(5)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F1637]6B Any tax due under paragraph 6A above shall carry interest, at the rate applicable under section 178 of the Finance Act 1989, from the date on which it becomes due until it is paid.

Textual Amendments

F1637 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

[F1638]6C (1) For each quarter in which a person effects a transaction in respect of which he is a chargeable person, he shall make a return to the Board.

(2) The return shall specify the chargeable person's name and address and give, in respect of each such transaction effected by him in the quarter, correct and complete particulars of—

(a) the relevant dividends or proceeds, and

(b) the income tax on those dividends or proceeds for which he has accounted, or is accountable, under paragraph 6A above.

(3) The return shall be made within 30 days from the end of the quarter.

(4) In this paragraph and paragraphs 6D to 6F below, "quarter" means any period of three months ending with 31st March, 30th June, 30th September or 31st December.

Textual Amendments

F1638 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

[F1639]6D (1) Any income tax which has become due under paragraph 6A above and particulars of which are included in a return may be assessed on the chargeable person (whether or not it has been paid when the assessment is made) if it, or any part of it, was not paid on or before the date on which it became due.

(2) If it appears to the Board that there are any dividends or proceeds particulars of which ought to have been and have not been included in a return, or if the Board are not satisfied with any return, the Board may make an assessment on the chargeable person of the amount, or further amount, of income tax for which he is in their opinion accountable.

(3) Where the Board make an assessment under sub-paragraph (2) above they shall specify—

(a) which of the months in the quarter was the one in which they consider the transactions in question were effected, or

(b) where they consider that the transactions were effected in more than one of the months in the quarter, the proportion of the total amount of the assessment that is to be attributed to each of those months.

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(4) Any income tax assessed under sub-paragraph (2) above shall be due within 14 days after the issue of the notice of assessment; but for the purposes of paragraph 6B above—

(a) it shall be treated as having become due on the fourteenth day following the month specified under sub-paragraph (3)(a) above, or

(b) each of the portions of it specified under sub-paragraph (3)(b) above shall be treated as having become due on the fourteenth day following the month to which it is to be attributed.

Textual Amendments

F1639 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

F1640 6E(1) None of the provisions of section 29 of the Management Act (assessing procedure) except subsections (5) and (6) shall apply in relation to assessments under paragraph 6D above.

(2) For the purposes of sections 34 and 36(1) of the Management Act (time limits for making assessments), an assessment under paragraph 6D above shall be taken to relate to the year of assessment in which the quarter to which the assessment relates ends.

(3) In the application of section 36(2) of the Management Act in relation to an assessment under paragraph 6D above, for the word "year" there shall be substituted the word "quarter".

Textual Amendments

F1640 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

F1641 6F If a person has made a payment purporting to be a payment of tax due under paragraph 6A above but it appears to the Board that—

(a) he was not liable to make any payment under that paragraph, or

(b) the sum paid exceeded his liability under that paragraph,

the Board shall make or allow to be made such repayments, adjustments or set-offs against unpaid tax as they think appropriate.

Textual Amendments

F1641 Sch. 3 paras. 6A-6F inserted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(2), **6**

. . . . . .

F1642 7

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F1642 Sch. 3 para. 7 repealed and superseded (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(2)(3), 6, **Sch. 18 Pt. VII**

. . . . . .

[F1643]8

Textual Amendments

F1643 Sch. 3 para. 8 repealed and superseded (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(2)(3), 6, **Sch. 18 Pt. VII**

. . . . . .

[F1644]9

Textual Amendments

F1644 Sch. 3 para. 9 repealed and superseded (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(2)(3), 6, **Sch. 18 Pt. VII**

. . . . . .

[F1645]10

Textual Amendments

F1645 Sch. 3 para. 10 repealed (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(3), 6, **Sch. 18 Pt. VII**

11 [M2114]Nothing in **[**[F1646]paragraphs 6 to 6F**]** above shall impose on any banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.

Textual Amendments

F1646 Words in Sch. 3 para. 11 substituted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(4), **6**

Marginal Citations

M2114 Source—1970 Sch.5 11-13.

12 Where income tax in respect of the proceeds of the sale or realisation of any coupon has been accounted for under this Part of this Schedule by any banker or dealer, and

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the coupon has been subsequently paid in such manner that income tax has been deducted from the payment under any of the provisions of this Schedule, the tax so deducted shall be repaid.

A claim under this paragraph shall be made to the Board.

13 (1) [F1647]. . . ,the Board may, by notice served on any chargeable person, require that person within such time as may be specified in the notice to make available at his premises for inspection by an officer authorised by the Board all such books and other documents in the possession or control of that person as the officer may reasonably require for the purpose of determining whether any **[**[F1648]return made by that person under paragraph 6C above is**]** correct and complete.

(2) The Board may grant a certificate exempting any chargeable person from the provisions of sub-paragraph (1) above, and while the certificate is in force the powers conferred by that sub-paragraph shall not be exercisable in relation to that person; and any such certificate may be revoked at any time by the Board, and may contain such terms and conditions as they think proper.

Textual Amendments

F1647 Words in Sch. 3 para. 13(1) repealed (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(5)(a), 6, **Sch. 18 Pt. VII**

F1648 Words in Sch. 3 para. 13(1) substituted (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), s. 63, Sch. 11 paras. 2(5)(b), **6**

14 [M2115]In this Part of this Schedule—

"dividends" includes foreign dividends, and

"foreign dividends" has the meaning given by section 123.

Marginal Citations

M2115 Source—1970 Sch.5 6(c), 14

PART IV

INTEREST PAYABLE OUT OF THE PUBLIC REVENUE OF THE REPUBLIC OF IRELAND ETC.

Modifications etc. (not altering text)

C810 Sch. 3 Pt. IV applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 12(2)(b)**
Sch. 3 Pt. IV applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 13(2)(b)**

15 (1) [M2116]Any person who is entrusted with the payment of any interest, dividends or other annual payments which are payable to any persons in the United Kingdom out of

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the public revenue of the Republic of Ireland, or out of or in respect of the stocks, funds, shares or securities of any Republic of Ireland company, society, adventure or concern, shall be relieved from the obligation imposed on him under the preceding provisions of this Schedule to pay income tax thereon on behalf of the persons entitled thereto as regards any such interest, dividends or other annual payments in respect of which he furnishes to the Board, in such form and subject to such conditions as they may prescribe, a list containing—

(a) a full description of the interest, dividends or other annual payments, and

(b) the name and address of each person who is entitled thereto, and

(c) the amount thereof to which each such person is entitled.

F1649(2) . . . . . .

(3) Any interest, dividends or other annual payments in respect of which the person entrusted with payment is relieved from the obligation to pay income tax by virtue of sub-paragraph (1) above, shall be assessable and chargeable under Case IV or V of Schedule D, as the case may be.

(4) The Board may make such regulations as may be necessary for the purposes of this paragraph.

(5) This paragraph shall apply to—

(a) any banker or other person in the United Kingdom who obtains payment of any such interest, dividends or other annual payments as is or are mentioned in sub-paragraph (1) above; and

(b) to any person who would, apart from this paragraph, be obliged to pay income tax in respect of the proceeds of the sale or other realisation of any coupon for any such interest, dividends or other annual payments,

as it applies to any person entrusted with the payment of any such interest, dividends or other annual payments, with the substitution in a case falling within paragraph (b) above, of references to the proceeds of the sale or other realisation for references to such interest, dividends or other annual payments.

In this sub-paragraph "coupon" has the same meaning as in section 123.

Textual Amendments

F1649 Sch. 3 para. 15(2) repealed (16.7.1992 in relation to transactions effected on or after 1.10.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 63, 82, Sch. 11 paras. 2(3), 6, **Sch. 18 Pt. VII**

Marginal Citations

M2116 Source—1970 Sch.12 Pt.III 6; 1987 Sch.15 2(23)

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 4

Section 57.

DEEP DISCOUNT SECURITIES

Modifications etc. (not altering text)
C811 Sch. 4 modified (27.7.1993) by 1993 c. 34, **s. 64(2)**

Interpretation

1 (1) For the purposes of this Schedule—

(a) [M2117] "adjusted issue price", in relation to any security in a particular income period, is the aggregate of the issue price of the security and the income elements for all previous income periods;

(b) [M2118] "the amount payable on redemption" does not include any amount payable by way of interest;

(c) "a deep discount", in relation to any redeemable security, means a discount which—

(i) represents more than 15 per cent. of the amount payable on redemption of that security; or

(ii) is 15 per cent. or less, but exceeds half Y per cent. of the amount so payable (where Y is the number of complete years between the date of issue of the security and the redemption date);

(d) subject to sub-paragraph (2) below, "a deep discount security" means any redeemable security which has been issued by a company, after 13th March 1984, at a deep discount, other than—

(i) a share in the company;

(ii) a security in respect of which the amount payable on redemption is determined by reference to the movement of the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom; or

(iii) a security the whole or part of which, by virtue of section 209(2)(c), is a "distribution";

[[F1650](dd) "a deep discount security" also means any redeemable security which has been issued by a public body (at whatever time) at a deep discount, other than—

(i) a security such as is mentioned in paragraph (d)(ii) above;

(ii) a security falling within sub-paragraph (5), (6) or (7) below;]

(e) "a discount" means any amount by which the issue price of a redeemable security is less than the amount payable on redemption of that security;

(f) [M2119] "income period" means—

(i) in the case of a security carrying a right to interest, any period to which a payment of interest which falls to be made in respect of the security is attributable; and

(ii) in any other case, any year ending immediately before the anniversary of the issue of the security or any period of less than a

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year which begins on the issue or on such an anniversary and ends on the redemption date;

(g) [M2120] "the redemption date" in relation to any redeemable security, means the earliest date on which, under the terms on which the security is issued, the holder of the security will be entitled to require it to be redeemed by the company **[**[F1651]or the public body**]** which issued it;

(h) [M2121] "yield to maturity", in relation to any security, means a rate (expressed as a percentage) such that if a sum equal to the issue price of the security were to be invested at that rate on the assumption that—

(i) the rate would be applied on a compounding basis at the end of each income period; and

(ii) the amount of any interest attributable to an income period would be deducted after applying the rate,

the value of that sum at the redemption date would be equal to the amount payable on redemption of the security; and

(j) [M2122] "chargeable security" has the meaning given by paragraph 2(5) below.

[[F1652](1A) Notwithstanding anything in sub-paragraph (1) above, for the purposes of this Schedule a security is not a deep discount security if—

(a) it was issued by a company on or after 1st August 1990, and

(b) under the terms of issue it can be converted into share capital in a company (whether or not the company is the one which issued the security).**]**

[(1B) Notwithstanding anything in sub-paragraph (1) above, for the purposes of this Schedule a security is not a deep discount security if—

(a) it was issued on or after 1st August 1990, and

(b) under the terms of issue, there is more than one date on which the holder will be entitled to require it to be redeemed by the company or the public body which issued it.**]**

(2) [M2123]Where securities which were issued on or before 13th March 1984 have been exchanged at any time after that date for new securities which would be deep discount securities but for this sub-paragraph, the new securities shall not be treated as deep discount securities if—

(a) the old securities would not have been deep discount securities if they had been issued after 13th March 1984;

(b) the date which is the redemption date in relation to the new securities is not later than the date which was the redemption date in relation to the old securities; and

(c) the amount payable on redemption of the new securities does not exceed the amount which would have been payable on redemption of the old securities.

[[F1653]This sub-paragraph applies only in the case of securities issued by a company.**]**

(3) For the purposes of this Schedule, a security comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the security conferred by the letter or instrument remains provisional until accepted, and there has been no acceptance.

[[F1654](4) For the purposes of this Schedule a public body is any of the following which is not a company—

(a) a government, whether of the United Kingdom or elsewhere;

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(b) a public or local authority, whether in the United Kingdom or elsewhere.

(5) A security falls within this sub-paragraph if it is a gilt-edged security and—
(a) it was issued before 14th March 1989, or
(b) it was issued on or after that date but was issued under the same prospectus as any gilt-edged security issued before that date.

(6) A security falls within this sub-paragraph if it is a gilt-edged security and—
(a) it was issued under a prospectus under which no securities were issued before 14th March 1989,
(b) it was issued otherwise than on the occasion of the original issue under the prospectus, and
(c) all the securities issued on the occasion of the original issue under the prospectus are gilt-edged securities which are not deep discount securities.

(7) A security falls within this sub-paragraph if it is not a gilt-edged security and was issued (at whatever time) under the same prospectus as any other security which was issued before the security in question and which is not a deep discount security.

(8) For the purposes of this Schedule "gilt-edged security" has the same meaning as it has for the purposes of the **[**[F1655]1992**]** Act.**]**

Textual Amendments

F1650 1989 s.93*and* Sch.10 para.2(2).*And see* s.126(3)—*Treasury securities issued at a discount.*
F1651 1989 s.93*and* Sch.10 para.2(3).
F1652 1990 s.56*and* Sch.10 paras.26(2), 29(4)*on and after* 9*June* 1989.
F1653 1989 s.93*and* Sch.10 para.2(4).
F1654 1989 s.93*and* Sch.10 para.2(5).
F1655 Word in Sch. 4 para. 1(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(a)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C812 *See*—1989 Sch.11 para.1(8)—*application of definition to deep gain securities.*1990 Sch.10 para.11(3)—*application of definition to convertible securities.*
C813 1990 s.59*on and after* 1*August* 1990.

Marginal Citations

M2117 Source—1984 Sch.9 1(7); 1985 Sch.11 1(6), 4
M2118 Source—1984 s.36(2), (5); 1985 Sch.11 1(6)
M2119 Source—1984 Sch.9 1(7); 1985 Sch.11 1(6), 4
M2120 Source—1984 s.36(2), (5); 1985 Sch.11 1(6)
M2121 Source—1984 Sch.9 1(7); 1985 Sch.11 1(6), 4
M2122 Source—1985 Sch.11 1(5)
M2123 Source—1984 s.36(3), (4); 1985 Sch.11 1(6)

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Charge to tax after acquisition of certain securities

2 (1) [M2124]This sub-paragraph applies to deep discount securities issued by a company on or after 19th March 1985 where one or both of the following applies—

(a) immediately before the issue the assets held by the company included relevant securities with a value equal to at least 75 per cent. of the value of all the assets held by it;

(b) the terms of issue of the deep discount securities are determined by the company by reference to (though not necessarily in such a way that they reflect) the terms of issue of relevant securities which are held by the company when the deep discount securities are issued or which it intends to acquire later.

(2) This sub-paragraph applies to deep discount securities issued by a company where—

(a) sub-paragraph (1) above would apply if the references to relevant securities included references to United Kingdom corporate bonds; and

(b) the company acquired those bonds on or after their issue (by another company) in circumstances where sub-paragraph (1) above would have applied if they had been deep discount securities.

(3) This sub-paragraph applied to deep discount securities of a particular kind issued by a company and in the case of which—

(a) neither of the preceding sub-paragraphs applies; and

(b) at any time in the first income period of the securities of that kind the assets held by the company include relevant securities with a value equal to at least 75 per cent. of the value of all the assets held by it.

(4) This sub-paragraph applies to deep discount securities issued by a company where either—

(a) they are issued on a conversion to which section **[**[F1656]132 of the 1992**]** Act applies of old securities; or

(b) they are issued by a company in exchange for old securities in circumstances in which section **[**[F1656]135(3) of the 1992**]** Act applies or are treated as so issued by virtue of section **[**[F1656]136(1)**]** of that Act;

and in this sub-paragraph "old securities" means deep discount securities to which sub-paragraph (1), (2) or (3) above or this sub-paragraph applies, except that securities to which sub-paragraph (3) above applies are not old securities unless sub-paragraph (3)(b) has been fulfilled in their case by the time the conversion or exchange concerned takes place.

(5) In the following provisions of this Schedule "chargeable security" means a deep discount security to which any of the preceding sub-paragraphs applies.

(6) In this paragraph—

"relevant securities" means securities within the meaning of section 710, but excluding United Kingdom corporate bonds;

"terms of issue" includes terms relating to amounts payable on redemption or by way of interest, or to times of payment of such amounts; and

"value" in relation to assets means the price they might reasonably be expected to fetch on a sale in the open market.

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(7) For the purposes of this paragraph—

(a) a company holds assets if it has a beneficial interest in them and acquires them if it acquires such an interest in them; and

(b) securities are of the same kind if they are treated as being of the same kind by the practice of a stock exchange, or would be so treated if dealt with on a stock exchange.

(8) In this paragraph "United Kingdom corporate bonds" means securities—

(a) issued by a company resident in the United Kingdom at the time of issue;

(b) the debt on which represents and has at all times represented a normal commercial loan, as defined in paragraph 1(5) of Schedule 18; and

(c) which are expressed in sterling and in respect of which no provision is made for conversion into, or redemption in, a currency other than sterling.

(9) For the purposes of sub-paragraph (8)(c) above—

(a) a security shall not be regarded as expressed in sterling if the amount of sterling falls to be determined by reference to the value at any time of any other currency or asset; and

(b) a provision for redemption in a currency other than sterling but at the rate of exchange prevailing at redemption shall be disregarded.

Textual Amendments

F1656 Words in Sch. 4 para. 2(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(b)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M2124 Source—1985 s.46 Sch.11 1

3 (1) [M2125]Where a person acquires a chargeable security, the chargeable amount shall be treated as income chargeable to tax under Case III or IV (as the case may be) of Schedule D on each of the following occasions—

(a) the end of each income period to fall within the period of ownership;

(b) the end of any income period which ends but does not begin in the period of ownership.

(2) In sub-paragraph (1) above "the chargeable amount" means—

(a) where paragraph (a) applies, an amount equal to the income element for the income period;

(b) where paragraph (b) applies, an amount equal to the income element for the part of the income period falling within the period of ownership.

(3) The income chargeable shall (notwithstanding anything in sections 64 to 67) be taken into account in computing tax charged for the year of assessment in which the occasion concerned occurs.

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Marginal Citations

M2125 Source—1985 Sch.11 2(1)-(3)

Charge to tax on disposal of securities

4 (1) [M2126]On the disposal by any person of any deep discount security—

(a) an amount which represents the accrued income attributable to the period between his acquisition and disposal of the security (the "period of ownership"), less any amount or amounts treated as income by virtue of paragraph 3 above, shall be treated as income chargeable to tax under Case III or, as may be, Case IV of Schedule D; and

(b) the tax shall (notwithstanding anything in sections 64 to 67 but subject to sub-paragraph (5) below) be computed on the income so arising from any disposal made in the year of assessment.

(2) [M2127]The amount which represents the accrued income attributable to any period of ownership is the aggregate of the income elements for each income period or part of an income period in the period of ownership.

(3) In relation to any security, the income element for any income period shall be determined by applying the formula—

$$\frac{A \times B}{100} - C$$

where—

A is the adjusted issue price;

B is the yield to maturity; and

C is the amount of interest (if any) attributable to the income period.

(4) The income element for any period (the "short period") falling within an income period shall be determined by applying the formula—

$$\frac{P}{Y} \times I$$

where—

I is the income element for the income period in which the short period falls;

P is the number of days in the short period; and

Y is the number of days in that income period.

(5) Where—

(a) by virtue of sub-paragraph (1) above income tax is chargeable under Case IV of Schedule D, and

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(b) the person making the disposal satisfies the Board, on a claim in that behalf, that he is not domiciled in the United Kingdom, or that, being a British subject or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom,

the tax shall be computed on the amounts, if any, received in the United Kingdom in the year of assessment in question in respect of the sum mentioned in sub-paragraph (1)(a) above (any such amounts being treated as income arising when they are received in the United Kingdom).

(6) For the purposes of sub-paragraph (5) above—

(a) there shall be treated as received in the United Kingdom all amounts paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom; and

(b) subsections (6) to (9) of section 65 shall apply as they apply for the purposes of subsection (5) of that section.

(7) Sections 348 to 350 and 123 shall not apply to so much of the proceeds of redemption of a deep discount security as represents income chargeable to tax under Case III or, as may be, Case IV of Schedule D.

[[F1657F1658](8) In the case of a deep discount security issued by a public body, this paragraph applies where a disposal is made on or after 14th March 1989 (whatever the date of acquisition).**]**

Textual Amendments

F1657 1989 s.93*and* Sch.10 para.3

F1658 *See*—1988 s.452(8)—*special reserve funds.* 1988 s.687(3)(h)—*payments under discretionary trusts.*

Marginal Citations

M2126 Source—1984 Sch.9 1(1)(a), (b); 1985 Sch.11 2(4)

M2127 Source—1984 Sch.9 1(2)-(6), (9)

Deduction of income element from total profits of company and allowance as charge on income

5 (1) [M2128]In computing the corporation tax chargeable for any accounting period of a company which has issued any deep discount security, the income element in respect of that security for any income period ending in or with that accounting period shall be allowed as a deduction against the total profits of the company for the accounting period as reduced by any relief other than group relief.

(2) The income element for any income period ending in or with an accounting period of a company which has issued a deep discount security shall be treated for the purposes of the Corporation Tax Acts, other than those of section 338(1), as a charge on income paid by the company in the accounting period.

(3) No income element in respect of any deep discount security shall be so allowed or treated unless—

(a) the cost of paying so much of the amount payable on redemption as represents the discount is ultimately borne by the company;

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(b) the income element would not otherwise be deductible in computing the issuing company's profits or any description of those profits for purposes of corporation tax; and

(c) at least one of the conditions mentioned in sub-paragraph (4) below is satisfied.

(4) The conditions are—

(a) that the company exists wholly or mainly for the purpose of carrying on a trade;

(b) that the deep discount security was issued wholly and exclusively to raise money for purposes of a trade carried on by the company;

(c) that the company is an investment company.

(5) Where, on redemption of any deep discount security, any part of the amount payable on redemption is, by virtue of section 209(2)(d) and (e), a distribution of the company, sub-paragraphs (1) and (2) above shall not apply to any income element in respect of that security.

(6) Relief shall not be given under any provision of the Tax Acts in respect of any income element if (at any time) a scheme has been effected or arrangements have been made such that the sole or main benefit that might be expected to accrue to the company from the issue of the security in question is the obtaining of a reduction in tax liability by means of that relief.

(7) In sub-paragraph (6) above "relief" means relief by way of deduction in computing profits or gains or deduction or set-off against income or total profits; and where the relief is claimed by virtue of section 403(7) any question under this paragraph as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.

Marginal Citations

M2128 Source—1984 Sch.9 3(1)-(5), (9), (10)

6 (1) [M2129] Section 494 shall apply in relation to income elements in respect of deep discount securities and paragraph 5 above as it applies in relation to interest and section 338.

(2) In the application of section 494 to any deep discount security, subsection (2)(b) shall have effect as if the references to the rate at which interest was payable were references to the aggregate of the rate of interest payable and the amount of any income element in respect of the security for the period in question.

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M2129 Source—1984 Sch.9 4

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Disposals

7 (1) [M2130]Subject to sub-paragraphs (2) and (3) below, there is a disposal of a deep discount security for the purposes of this Schedule if there would be such a disposal for the purposes of the **[**[F1659]1992**]** Act.

(2) Notwithstanding anything in section **[**[F1659]62(1)(b)**]** of that Act (no deemed disposal on death), where the assets of which a deceased person was competent to dispose include any deep discount security that security shall, for the purposes of this Schedule, be deemed to have been disposed of by the deceased immediately before his death.

(3) [M2131]In any case where—

(a) there is a conversion of securities to which section **[**[F1659]132**]** of the **[**[F1659]1992**]** Act applies and those securities include deep discount securities; or

(b) securities including deep discount securities are exchanged (or by virtue of section **[**[F1659]136(1)**]** of that Act are treated as exchanged) for other securities in circumstances in which section **[**[F1659]135(3)**]** of that Act applies,

then the securities converted or exchanged shall (subject to sub-paragraph (4) below and notwithstanding section **[**[F1659]127**]** of that Act) be treated for the purposes of the charge to tax under paragraph 4 above as having been disposed of immediately before the time of the conversion, or, as the case may be, the exchange, by the person who was the beneficial owner of the securities at that time.

(4) [M2132]Where a person would (but for this sub-paragraph) be treated by sub-paragraph (3) above as having, for the purposes of paragraph 4 above, disposed of deep discount securities, other than chargeable securities, which are converted into, or exchanged for, other deep discount securities—

(a) he shall not be so treated—

(i) if the date which is the redemption date in relation to the new securities is not later than the date which was the redemption date in relation to the converted or exchanged securities; and

(ii) no consideration is given for the conversion or exchange other than the new securities; but

(b) the amount of the accrued income attributable to his period of ownership of the converted or exchanged securities (including any amount added by virtue of the previous operation of this paragraph) shall be added to the amount of the accrued income attributable to his period of ownership of the new securities.

Textual Amendments

F1659 Words in Sch. 4 para. 7 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(c)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C814 Sch. 4 para. 7(2) excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(3)(b)**, 184(3)

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Marginal Citations
M2130 Source—1984 Sch.9 2
M2131 Source—1984 Sch.9 8(1), (2)(a)
M2132 Source—1984 Sch.9 8(3); 1985 Sch.11 2(5)

8 (1) [M2133] Where any deep discount security is disposed of and acquired under a contract, the time at which the disposal and acquisition is made is the time at which the contract is made (and not, if different, the time at which the security is transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

Marginal Citations
M2133 Source—1984 Sch.9 10

Securities issued and owned by associated companies or group companies

9 (1) [M2134] Where a deep discount security issued by a company is at any time beneficially owned by another company which is—

(a) an associated company (within the meaning of section 416) of the issuing company; or

(b) a member of a group of companies of which the issuing company is also a member;

paragraph 5(1) and (2) above shall apply to any linked income element with the addition, after the words "the accounting period" of the words "in which the security is redeemed".

(2) In this paragraph "linked income element" means the income element in respect of the security in question for any income period in which the security is at any time beneficially owned by the other company.

(3) For the purposes of this paragraph, two companies shall be deemed to be members of a group of companies if one is a 51 per cent. subsidiary of the other or both are 51 per cent. subsidiaries of a third company.

Marginal Citations
M2134 Source—1984 Sch.9 5-7; 1985 Sch.11 2(7)

Close companies

10 (1) Where a deep discount security issued by a close company is at any time beneficially owned by—

(a) a participator in the company;

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(b) an associate of such a participator; or

(c) a company of which such a participator has control,

paragraph 5(1) and (2) above shall apply to any linked income element with the addition, after the words "the accounting period", of the words "in which the security is redeemed".

(2) In sub-paragraph (1) above "linked income element" means the income element in respect of the security in question for any income period in which the security is at any time beneficially owned by a person mentioned in that sub-paragraph.

(3) *Any amount which a close company is allowed, by virtue of paragraph* 5(1)*above, to deduct from its total profits for any accounting period shall be treated for the purposes of section* 423*as if it were interest paid by the company in that period*[F1660].

(4) In this paragraph—

"associate" has the meaning given in section 417(3) and (4);

"control" shall be construed in accordance with section 416(2) to (6); and

"participator" means a person who is, in relation to a company, a participator for the purposes of Part XI (by virtue of section 417) other than a person who is a participator for those purposes by virtue only of his holding a deep discount security issued by the company.

(5) In determining whether a person who carries on a business of banking is a participator in a company for the purposes of this paragraph, there shall be disregarded any securities of the company acquired by him in the ordinary course of his business.

Textual Amendments

F1660 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Early redemption

11 (1) Where any deep discount security **[**[F1661]issued by a company**]** is redeemed before the redemption date by the company which issued it, paragraphs 4, 5, 7(1) and (2) and 8 to 10 above shall have effect subject to the provisions of this paragraph.

(2) The accrued income attributable to the period between the acquisition of the security by the person who, immediately before its redemption, was the beneficial owner of the security and its redemption shall be the amount paid to him on redemption of the security less the issue price of the security or, in a case where he did not acquire it on its issue, less the aggregate of—

(a) the issue price; and

(b) the accrued income attributable to the period beginning with the issue, and ending with his acquisition, of the security;

and, if in either case paragraph 3 above applies, less also an amount equal to the chargeable amount (within the meaning of that paragraph).

(3) The deduction allowed under paragraph 5(1) above in relation to the accounting period in which the deep discount security is redeemed shall be the amount paid by the company on redemption less the aggregate of—

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(a) the issue price of the security; and

(b) the accrued income attributable to the period beginning with the issue of the security and ending with the last income period to end in or with the accounting period of the company which precedes that in which the security is redeemed.

(4) Where paragraph 9 or 10 above has applied to the deep discount security at any time, the amount mentioned in sub-paragraph (3)(b) above shall not include any linked income element (within the meaning of that paragraph).

(5) Where the aggregate mentioned in sub-paragraph (3) above exceeds the amount paid by the company on redemption of the security, the amount of the excess or, if it is less, the amount mentioned in paragraph (b) of that sub-paragraph shall be treated as income of the company—

(a) arising in the accounting period in which the security is redeemed; and

(b) chargeable to tax under Case VI of Schedule D.

(6) Where a resolution is passed, an order made or any other act takes place for the winding up of a company which has issued a deep discount security before the security is redeemed, this paragraph shall have effect in relation to any payment made in respect of the security in the course of the winding up as if the payment were made on redemption. **[.]**

Textual Amendments

F1661 1989 s.93*and* Sch.10 para.4.

11A Where any deep discount security issued by a public body is redeemed before the redemption date by the body which issued it, paragraph 4 above shall have effect subject to paragraph 11(2) above (ignoring the words following paragraph (b))

Modifications etc. (not altering text)

C815 1989 s. 93*and* Sch. 10 para. 5.

[F1662 Issue price]

Textual Amendments

F1662 Sch. 4 para. 11B and heading preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 4 paras.3, **5**

F1663 11B (1) This paragraph applies where—

(a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,

(b) on a later occasion securities (new securities) of the same kind are issued,

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(c) a sum (the extra return) is payable in respect of each new security, by the person issuing it, to reflect the fact that interest is accruing on the old securities,

(d) the issue price of each new security includes an element (whether or not separately identified) representing payment for the extra return, and

(e) the extra return is equal to the amount of interest payable for the relevant period on each old security.

(2) In such a case, the issue price of each new security shall be deemed for the purposes of paragraphs 1(1)(a), (e) and (h) and 11(2) and (3) above to be its actual issue price less an amount equal to the extra return payable in respect of the security.

(3) For the purposes of this paragraph securities are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

(4) For the purposes of this paragraph the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are issued.

(5) For the purposes of this paragraph the relevant day is—

(a) the last day of the last (or only) income period to end in respect of the old securities before the day on which the new securities are issued, or

(b) the day on which the old securities were issued, in a case where no income period ended in respect of them before the day on which the new securities are issued.

Textual Amendments

F1663 Sch. 4 para. 11B and heading preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 paras. 3, **5**

Identification of securities disposed of

12 [M2135]The rules contained in section **[**[F1664]108 of the 1992 Act**]** (identification, for the purposes of capital gains tax, of securities disposed of) shall apply for the purposes of this Schedule as they apply for the purposes of capital gains tax.

Textual Amendments

F1664 Words in Sch. 4 para. 12 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(d)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M2135 Source—1984 Sch.9 11(1)

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Information

13 (1) [M2136]Every company which issues deep discount securities shall cause to be shown on the certificate of each such security the income element for each income period between the date of issue of the security and the redemption date.

(2) Every company which issues a chargeable security to which paragraph 2(1), (2) or (4) above applies shall cause to be shown on the certificate of each such security the fact that tax is chargeable under paragraph 3 above.

[[F1665](3) Every public body which issues deep discount securities on or after 1st August 1989 shall cause to be shown on the certificate of each such security the income element for each income period between the date of issue of the security and the redemption date.**]**

Textual Amendments
F1665 1989 s.93*and* Sch.10 para.6.

Marginal Citations
M2136 Source—1984 Sch.9 1(8); 1985 Sch.11 3

Charities

14 [M2137]A charity shall be exempt from income tax in respect of an amount which (apart from this paragraph) is chargeable to income tax by virtue of this Schedule if the amount is applicable and applied for charitable purposes.

In this paragraph "charity" has the same meaning as in section 506.

Marginal Citations
M2137 Source—1984 Sch.9 12; 1987 Sch.15 16(3)

[**[F1666] *Retirement benefit schemes]***

Textual Amendments
F1666 1989 s.93*and* Sch.10 para.7.

15 (1) In a case where—

(a) paragraph 4 above would apply (apart from this paragraph) to a disposal of a security, and

(b) immediately before the disposal was made the security was held for the purposes of an exempt approved scheme (within the meaning of Chapter I of Part XIV),

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that paragraph shall not apply to the disposal.

(2) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

Stock lending

16 (1) In a case where—

(a) a security is the subject of a transfer which falls within section 129(3), and

(b) the transfer constitutes a disposal to which (apart from this paragraph) paragraph 4 above would apply,

that paragraph shall not apply to the disposal.

(2) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

Trustees

17 (1) Where on the disposal by trustees of a deep discount security an amount is treated as income chargeable to tax by virtue of paragraph 4(1) above, the rate at which it is chargeable shall be **[**[F1667]the rate applicable to trusts**]** for the year of assessment in which the disposal is made.

(2) Where the trustees are trustees of a scheme to which section 469 applies, sub-paragraph (1) above shall not apply if or to the extent that the amount is treated as income in the accounts of the scheme.

(3) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

Textual Amendments

F1667 Words in Sch. 4 para. 17(1) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.18, **25(1)**

Underwriters

. . . . . .

[F1668]18

Textual Amendments

F1668 Sch. 4 para. 18 repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

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Gilts: special rules

19 (1) In a case where—

(a) securities have been issued by a public body under a prospectus under which no securities were issued before 14th March 1989,

(b) some of the securities issued under the prospectus are gilt-edged securities which are would-be deep discount securities,

(c) some of the securities issued under the prospectus are gilt-edged securities which are not would-be deep discount securities, and

(d) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities falling within paragraph (c) above (at that time),

sub-paragraph (2) below shall apply in relation to any gilt-edged security which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (d) above).

(2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(d) above, paragraphs 4, 7, 8, 11A, 12 and 14 to 18 above shall have effect as if—

(a) the security were a deep discount security,

(b) it had been issued as such (whatever the time it was issued), and

(c) it had been acquired as such (whatever the time it was acquired).

(3) For the purposes of sub-paragraph (1) above a would-be deep discount security is a security which would be a deep discount security apart from paragraph 1(6) above.

(4) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a disposal for the purposes of the **[**[F1669]1992**]** Act, the death of a person competent to dispose of the security, a disposal mentioned in paragraph 18(3) above, and an acquisition mentioned in paragraph 18(4) above.

Textual Amendments

F1669 Word in Sch. 4 para. 19(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(a)** (with ss. 60, 101(1), 171, 201(3))

Non-gilts: special rules

20 (1) In a case where—

(a) all the securities issued by a public body on the occasion of the original issue under a particular prospectus (whatever the time of the issue) are neither gilt-edged securities nor deep discount securities,

(b) some of the securities issued under the prospectus are not gilt-edged securities but are new would-be deep discount securities, and

(c) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities which (looking at the state of affairs at that time) have

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been issued under the prospectus and are neither gilt-edged securities nor new would-be deep discount securities,

sub-paragraph (2) below shall apply in relation to any security which is not a gilt-edged security but which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (c) above).

(2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(c) above, paragraphs 4, 7, 8, 11A, 12 and 14 to 18 above shall have effect as if—

(a) the security were a deep discount security,

(b) it had been issued as such (whatever the time it was issued), and

(c) it had been acquired as such (whatever the time it was acquired).

(3) For the purposes of sub-paragraph (1) above a new would-be deep discount security is a security which—

(a) would be a deep discount security apart from paragraph 1(7) above, and

(b) was issued on or after 14th March 1989.

(4) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a disposal for the purposes of the **[**[F1670]1992**]** Act, the death of a person competent to dispose of the security, a disposal mentioned in paragraph 18(3) above, and an acquisition mentioned in paragraph 18(4) above.

Textual Amendments

F1670 Word in Sch. 4 para. 20(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(57)(a)** (with ss. 60, 101(1), 171, 201(3))

[[F1671] *Convertible securities: special rules]*

Textual Amendments

F1671 1990 s.56*and* Sch.10 paras.26(3), 29(4)*on and after* 9*June* 1989.

21 In a case where—

(a) a security is a qualifying convertible security, for the purposes of Schedule 10 to the Finance Act 1990, at the time of its issue, and

(b) apart from this paragraph it would be a deep discount security at that time,

the security shall be treated, at the time of its issue and at all subsequent times, as not being a deep discount security.

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VALID FROM 06/04/2003

SCHEDULE 4AA

Section 85B

SHARE INCENTIVE PLANS: CORPORATION TAX DEDUCTIONS

. . . . . .

VALID FROM 11/05/2001

SCHEDULE 4A

CREATIVE ARTISTS: RELIEF FOR FLUCTUATING PROFITS

. . . . . .

SCHEDULE 5

Section 97.

TREATMENT OF FARM ANIMALS ETC. FOR PURPOSES OF CASE I OF SCHEDULE D

Farming: the general rule

1 (1) [M2138]Subject to the provisions of this Schedule, in computing profits or gains under Case I of Schedule D, animals kept by a farmer for the purposes of his farming shall be treated as trading stock.

(2) Animals forming part of production herds with respect to which an election under paragraph 2 below has effect shall not be so treated, but shall be treated instead in accordance with the rules set out in paragraph 3 below.

(3) An election under paragraph 2 below is referred to in this Schedule as "an election for the herd basis".

Marginal Citations

M2138 Source—1970 Sch.6; 1973 s.35; 1984 s.48(6)-(9)

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Farming: election for the herd basis

2 (1) An election for the herd basis shall apply to all production herds of a particular class kept by the farmer making the election, including herds which he has ceased to keep before, or first begins to keep after, the making of the election.

(2) An election for the herd basis must be made in writing to the inspector, and must specify the class of herds to which it relates.

(3) Subject to paragraphs 6 and 12 below, an election for the herd basis made by any farmer shall be valid only if it is made not later than two years after the end of—

(a) the first chargeable period for which he is chargeable under Case I of Schedule D to tax in respect of the profits or gains of his farming, or is given relief under section 380 [F1672] . . . 393(2) **[**[F1673]or 393A(1)**]**in respect of his farming, being profits or gains or relief the amount of which is computed by reference to the facts of a period during the whole or some part of which he kept a production herd of the class in question; or

(b) the first period for which an account is made up for his farming.

(4) An election for the herd basis made by any farmer shall be irrevocable and, subject to paragraph 6 below, shall have effect—

(a) in a case within sub-paragraph (3)(a) above, for the first chargeable period referred to in that sub-paragraph and all subsequent chargeable periods; and

(b) in a case within sub-paragraph (3)(b) above, for the first chargeable period for which the profits or gains or losses of his farming are computed by reference to the facts of the first period for which an account is made up for his farming.

Textual Amendments

F1672 Word in Sch. 5 para. 2(3)(a) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 4

F1673 Words in Sch. 5 para. 2(3)(a) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para.25**

3 (1) Where an election for the herd basis has effect, the consequences for the purposes of computing profits or gains under Case I of Schedule D shall be as provided by this paragraph.

(2) The initial cost of the herd and, subject to the provisions of this paragraph as to replacements, the cost of any animal added to the herd shall not be deducted as an expense and the value of the herd shall not be brought into account.

(3) Where an animal which has theretofore been treated as part of the farmer's trading stock is added to the herd otherwise than by way of replacement, there shall be included as a trading receipt—

(a) in the case of an animal bred by the farmer, a sum equal to the cost of breeding it and rearing it to maturity; and

(b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal, together with any cost incurred by him in rearing it to maturity.

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(4) Where an animal (the "first animal") forming part of the herd dies, or ceases to form part of the herd, and is replaced in the herd by another animal (the "second animal") —

(a) any proceeds of sale of the first animal shall be included as a trading receipt; and

(b) the cost of the second animal, except in so far as that cost consists of such costs as are allowable apart from the provisions of this Schedule as deductions in computing profits or gains of farming under Case I of Schedule D, shall, subject to sub-paragraphs (5) and (6) below, be deducted as an expense.

(5) Where the second animal is of better quality than the first animal, the amount deducted shall not exceed the amount which it would have been necessary to expend in order to acquire an animal of the same quality as the first animal.

(6) Where the first animal was slaughtered by the order of any Ministry, government department or local or public authority under the law relating to diseases of animals, and the second animal is of worse quality, the amount included as a trading receipt shall not exceed the amount allowable as a deduction.

(7) Where the herd is sold as a whole, and another production herd of the same class is acquired, sub-paragraphs (1) to (6) above shall apply as though there had been sold from, and replaced in, the original herd a number of animals equal to the number in the original herd or in the newly acquired herd, whichever is the less.

(8) Subject to sub-paragraph (9) below, if (either all at once or over a period not exceeding 12 months) either—

(a) the whole of a herd is sold in circumstances in which sub-paragraph (7) above does not apply, or

(b) a part of a herd is sold on a substantial reduction being made in the number of animals in the herd,

any profit or loss arising from the transaction shall not be taken into account.

(9) Where within five years of the sale the seller acquires or begins to acquire another production herd of the class in question or, as the case may be, acquires or begins to acquire animals to replace the part of the herd in question—

(a) sub-paragraphs (4) to (7) above shall apply to the acquisition or replacement, except that, if the sale was one which the seller was compelled to effect by causes wholly beyond his control, the amount included as a trading receipt in respect of any animal sold which is replaced by an animal of worse quality shall not exceed the amount allowable as a deduction in respect of that animal of worse quality; and

(b) for the purpose of the application of those sub-paragraphs, the proceeds of sale of the animals comprised in the original herd or part of a herd shall be brought into account as if they had been respectively received at the times of the corresponding acquisitions.

(10) If an animal forming part of the herd is sold, and none of sub-paragraphs (4) to (9) above applies, any profit or loss arising from the transaction shall be included or deducted, as the case may be; and for the purposes of this sub-paragraph, that profit or loss shall be computed by comparing with the proceeds of sale—

(a) in the case of an animal bred by the farmer, the cost of breeding it and rearing it to maturity; and

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(b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal (or in the case of an animal acquired otherwise than for valuable consideration, its market value when the farmer acquired it) together, in both cases, with any cost incurred by him in rearing it to maturity.

(11) Where the herd is sold as a whole, and another production herd of the same class is acquired, and the number of animals in the newly acquired herd is less than the number in the original herd, then, if the difference is not substantial, sub-paragraphs (8) and (9) above shall not apply, and sub-paragraph (10) above shall apply to a number of animals in the original herd equal to the difference.

(12) The preceding provisions of this paragraph shall apply in relation to the death or destruction of animals as they apply in relation to their sale, as if any insurance or compensation moneys received by reason of the death or destruction were proceeds of sale, and any reference in this paragraph to the proceeds of sale of an animal includes a reference to any proceeds of sale of its carcase or any part of its carcase.

Farming: provisions applicable to special cases

4 A farmer who, having kept a production herd of a particular class, ceases altogether to keep herds of that class for a period of at least five years shall, as respects production herds kept by him after the end of that period, be treated as if he had never kept any production herds of that class before the end of that period.

5 (1) Where a farmer transfers to another person all or any of the animals which form part of a production herd otherwise than by way of sale or by way of sale but for a price other than that which they would have fetched if sold in the open market, and either—

(a) the transferor is a body of persons over whom the transferee has control or the transferee is a body of persons over whom the transferor has control or both the transferor and the transferee are bodies of persons and some other person has control over both of them; or

(b) it appears with respect to the transfer, or with respect to transactions of which the transfer is one that the sole or main benefit, or one of the main benefits, which (apart from the provisions of this paragraph) might have been expected to accrue to the parties or any of them was a benefit resulting from—

(i) the obtaining of a right to make an election for the herd basis, or

(ii) such an election having effect or ceasing to have effect, or

(iii) such an election having a greater effect or a less effect;

the like consequences shall ensue, in relation to all persons concerned, for the purpose of computing profits or gains under Case I of Schedule D as would have ensued if the animals had been sold for the price which they would have fetched if sold in the open market.

(2) In this paragraph "body of persons" includes a partnership, and "control" has the meaning given by section 840.

6 (1) Where the whole or a substantial part of a production herd kept by a farmer for the purposes of his farming is slaughtered by the order of any Ministry, government

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department or local or public authority under the law relating to the diseases of animals in such circumstances that compensation is payable in respect of it, an election for the herd basis thereupon made by the farmer in relation to that herd and any other production herds of the same class so kept by him shall, subject to sub-paragraph (2) below, be valid notwithstanding that it is not made within the time required by paragraph 2(3) above.

(2) An election for the herd basis made by virtue of sub-paragraph (1) above shall, subject to sub-paragraph (3) below, only be valid if made not later than two years after the end of the first chargeable period for which the tax chargeable on the farmer in respect of the profits or gains of his farming finally falls to be computed by reference to the facts of a period in which the compensation is relevant.

(3) If that first chargeable period is the second year of assessment within the meaning of section 62 and notice is given under subsection (2) of that section, then for the purposes of income tax (but not corporation tax), the election shall be valid if made not later than the giving of that notice.

(4) An election for the herd basis made by virtue of sub-paragraph (1) above shall, notwithstanding paragraph 2(4) above, have effect only for the chargeable period mentioned in sub-paragraph (2) above and subsequent chargeable periods except that for the purposes of income tax (but not corporation tax) the election shall have effect for earlier chargeable periods for the purposes of any claim under section 380 which is made by the farmer for relief in respect of his farming, if the relief falls to be computed wholly or partly by reference to the facts of a period in which the compensation is relevant.

(5) For the purposes of this paragraph, compensation shall be deemed to be relevant in any period if, but only if, it falls (or would but for an election under this paragraph fall) to be taken into account as a trading receipt in computing the profits or gains or losses of that or an earlier period.

Exclusion of working animals, and interpretation of preceding provisions

7 Nothing in this Schedule applies to any animals kept wholly or mainly for the work they do in connection with the carrying on of the farming.

8 (1) In this Schedule "herd" includes a flock, and any other collection of animals however named.

(2) For the purposes of this Schedule, immature animals kept in a herd shall not be treated as forming part of the herd unless—

(a) the land on which the herd is kept is such that animals which die or cease to form part of the herd cannot be replaced except by animals bred and reared on that land; and

(b) the immature animals in question are bred in the herd, are maintained in the herd for the purpose of replacement, and are necessarily maintained for that purpose;

and references in this Schedule to herds shall be construed accordingly.

(3) References in this Schedule to an animal being added to a herd include references to an immature animal which is kept in the herd becoming a mature animal except

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that not more immature animals shall be treated as forming part of a herd than are required to prevent a fall in the numbers of the herd.

(4) Female animals shall be treated for the purposes of this Schedule as becoming mature when they produce their first young.

(5) In this Schedule "a production herd" means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by him wholly or mainly for the sake of the products which they produce for him to sell, being products obtainable from the living animal.

In this sub-paragraph "products obtainable from the living animal" means—

(a) the young of the animal, or

(b) any other product obtainable from the animal, not being a product obtainable only by slaughtering the animal itself.

(6) For the purposes of this Schedule, production herds kept by a farmer shall be deemed to be of the same class if, and only if, all the animals kept in the herds are of the same species (irrespective of breed) and the products produced for him to sell for the sake of which (either wholly or mainly) the herds are kept by him are of the same kinds in the case of all the herds; and elections for the herd basis shall be framed accordingly.

(7) Any reference in this Schedule to profits or gains chargeable to tax under Schedule D includes a reference to profits or gains which would be so chargeable if there were any such profits or gains for the chargeable period in question.

Application of preceding provisions to trades other than farming, creatures other than animals, and animals and creatures kept singly

9 (1) The preceding provisions of this Schedule shall, with the necessary adaptations, apply in relation to trades other than farming, and trades consisting only in part of farming as they apply in relation to farming, and references to farmers shall be construed accordingly.

(2) Those provisions shall (both in relation to farming and in relation to other trades) apply in relation to living creatures other than animals as they apply in relation to animals.

(3) Laying birds shall be treated for the purposes of this Schedule as becoming mature when they first lay.

(4) The provisions of this Schedule shall (both in relation to farming and in relation to other trades) apply, with the necessary adaptations **[**[F1674]—

(a) in relation to animals or other creatures kept singly as they apply in relation to herds; and

(b) in relation to shares in animals or other creatures as they apply in relation to animals or other creatures themselves.**]**

(5) Nothing in this Schedule shall apply in relation to any animal or other creature kept wholly or mainly for public exhibition or for racing or other competitive purposes.

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Textual Amendments

F1674 Words in Sch. 5 para. 9(4) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 76(2)(3)**

Supplemental and saving

10 Where an election for the herd basis is made, every person carrying on any farming or other trade affected by the election shall, if required to do so by notice from the inspector, make and deliver to the inspector, within the time specified in the notice, such returns as to, and as to the products of, the animals or other creatures kept by him for the purposes of the trade as may be required by the notice.

11 Where an election for the herd basis has effect for any chargeable period after an assessment for that period has become final and conclusive, any such assessment or, on a claim therefor, repayment of tax shall be made as may be necessary to give effect to the election.

12 The validity of an election for the herd basis in force immediately before the commencement of this Schedule and made in pursuance of—

(a) section 35 of the Finance Act 1973 on or after 25th July 1973 and before 6th April 1976, or

(b) section 48(6) to (9) of the Finance Act 1984,

shall not be affected by the repeal of those sections by this Act.

VALID FROM 19/03/1997

SCHEDULE 5AA

GUARANTEED RETURNS ON TRANSACTIONS IN FUTURES AND OPTIONS

. . . . . .

VALID FROM 01/05/1995

SCHEDULE 5A

STOCK LENDING: INTEREST ON CASH COLLATERAL

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Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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[F1675SCHEDULE 6

Section 157.]

TAXATION OF DIRECTORS AND OTHERS IN RESPECT OF CARS

Textual Amendments

F1675 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, 7

PART I

TABLES OF FLAT RATE CASH EQUIVALENTS

Table A

CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND HAVING A CYLINDER CAPACITY

Cylinder capacity of car in cubic centimetres	***Age of car at end of relevant year of assessment***	
	Under 4 years	4 years or more
1,400 or less	£2,310	£1,580
More than 1,400 but not more than 2,000	£2,990	£2,030
More than 2,000	£4,800	£3,220

Table B

CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND NOT HAVING A CYLINDER CAPACITY

Original market value of car	***Age of car at end of relevant year of assessment***	
	Under 4 years	4 years or more
Less than £6,000	£2,310	£1,580
£6,000 or more but less than £8,500	£2,990	£2,030
£8,500 or more but not more than £19,250	£4,800	£3,220

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Table C

CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250

Original market value of car	***Age of car at end of relevant year of assessment***	
	Under 4 years	4 years or more
More than £19,250 but not more than £29,000	£6,210	£4,180
More than £29,000	£10,040	£6,660

PART II

SUPPLEMENTARY PROVISIONS

[F1677]*Cash equivalent*

Textual Amendments

F1677 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1678]1 Subject to paragraphs 2 to 7 below, the cash equivalent of the benefit is 35 per cent. of the price of the car as regards the year.

Textual Amendments

F1678 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1679]*Reduction for business travel*

Textual Amendments

F1679 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1680]2 (1) Subject to paragraphs 3 to 7 below, where it is shown to the inspector's satisfaction that the employee was required by the nature of his employment to use, and did use, the car for at least 18,000 miles of business travel in the year concerned, the cash equivalent of the benefit is the amount ascertained under paragraph 1 above, reduced by two thirds.

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(2) Subject to paragraphs 3 to 7 below, where it is shown to the inspector's satisfaction that the employee was required by the nature of his employment to use, and did use, the car for at least 2,500 but less than 18,000 miles of business travel in the year concerned, the cash equivalent of the benefit is the amount ascertained under paragraph 1 above, reduced by one third.

Textual Amendments

F1680 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

F1681 3 In relation to a car which for part of the year concerned was unavailable—

(a) paragraph 2 above shall have effect as if the figure of 18,000, in each place where it occurs, were reduced by a number which bears to 18,000 the same proportion as the number of days in the year on which the car was unavailable bears to 365;

(b) paragraph 2(2) above shall have effect as if the figure of 2,500 were reduced by a number which bears to 2,500 the same proportion as the number of days in the year on which the car was unavailable bears to 365;

but this is subject to paragraph 4(b) below.

Textual Amendments

F1681 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

F1682 4 Where in any year an employee is taxable under section 157 in respect of two or more cars which are available to him concurrently, in relation to each of those cars other than the one which, in the period for which they are concurrently available, is used to the greatest extent for the employee's business travel—

(a) paragraph 2(1) above shall have effect as if for "two thirds" there were substituted "one third", and

(b) paragraph 2(2) above shall not have effect.

Textual Amendments

F1682 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

F1683 Reduction for age of car

Textual Amendments

F1683 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

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F1684 5 Subject to paragraphs 6 and 7 below, where at the end of the year concerned the age of the car is 4 years or more, the cash equivalent of the benefit is the amount ascertained under the preceding provisions of this Schedule, reduced by one third.

Textual Amendments

F1684 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

VALID FROM 28/07/2000

Automatic cars made available to disabled drivers

5A (1) Sub-paragraph (2) below applies where—

(a) paragraph 3 above (car with CO_2 emissions figure) applies to the car,

(b) the car has automatic transmission,

(c) at any time in the year when the car is available to the employee, he holds a disabled person's badge, and

(d) by reason of his disability he must, if he wants to drive a car, drive a car that has automatic transmission.

For this purpose the car is not at any time available to the employee by reason only of its being made available to a member of his family or household.

(2) If the applicable CO_2 figure for the car ("the relevant car") is more than it would have been if the car had been an equivalent manual car, paragraph 3 above shall have effect as if the applicable CO_2 emissions figure in relation to the relevant car were the same as that in relation to an equivalent manual car.

(3) For this purpose "an equivalent manual car" means a car that—

(a) is first registered at or about the same time as the relevant car, and

(b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the relevant car.

(4) For the purposes of this paragraph a car has automatic transmission if—

(a) the driver of the car is not provided with any means whereby he may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or

(b) he is provided with such means, but they do not include a clutch pedal or lever that he may operate manually.

(5) In this paragraph—

"the applicable CO_2 emissions figure" has the same meaning as in paragraph 3 above; and

"disabled person's badge" has the meaning given in section 168AA(3).

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VALID FROM 28/07/2000

"EC certificate of conformit"y, "EC type-approval certificat"e and "UK approval certificat"e

5B In this Schedule—

"EC certificate of conformity" means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as amended;

"EC type-approval certificate" means a type-approval certificate issued under any provision of the law of a Member State implementing Council Directive 70/156/EEC, as amended; and

"UK approval certificate" means a certificate issued under—

(a) section 58(1) or (4) of the [M2141]Road Traffic Act 1988, or

(b) Article 31A(4) or (5) of the [M2142]Road Traffic (Northern Ireland) Order 1981.

Marginal Citations

M2141 1988 c. 52.

M2142 S.I. 1981/154 (N.I. 1).

VALID FROM 28/07/2000

Car with no CO_2 emissions figure

5C (1) This paragraph applies where—

(a) the car is first registered on or after 1st January 1998, and

(b) paragraph 3 above does not apply.

(2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is ascertained from the following Table—

TABLE

Cylinder capacity of car in cubic centimetres	***Appropriate percentage***
1,400 or less	15%
More than 1,400 but not more than 2,000	25%
More than 2,000	35%

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For this purpose a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicle Excise and Registration Act 1994.

(3) If sub-paragraph (2) above does not apply the appropriate percentage for the year is—

(a) 15%, if the car is an electrically propelled vehicle, and

(b) 35%, in any other case.

(4) This paragraph is subject to paragraph 5D (diesel car supplement) and any regulations under paragraph 5E (power to provide for discounts) below.

VALID FROM 28/07/2000

Diesel car supplement

5D (1) This paragraph applies where the car—

(a) is propelled solely by diesel, and

(b) is first registered on or after 1st January 1998.

(2) The appropriate percentage for the year is whichever is the smaller of—

(a) the percentage which is 3% greater than the appropriate percentage for the year ascertained in accordance with paragraphs 2 to 5C above, and

(b) 35%.

(3) In sub-paragraph (1) "diesel" means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council.

(4) This paragraph is subject to any regulations under paragraph 5E below (power to provide for discounts).

VALID FROM 28/07/2000

Discounts

5E The Treasury may by regulations provide for the value of the appropriate percentage as determined in accordance with paragraphs 2 to 5D above to be reduced by such amount as may be prescribed in the regulations, in such circumstances and subject to such conditions as may be so prescribed.

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VALID FROM 28/07/2000

Car registered before 1st January 1998

5F (1) This paragraph applies where the car was first registered before 1st January 1998.

(2) Where the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is ascertained from the following Table—

Table

Cylinder capacity of car in cubic centimetres	***Appropriate percentage***
1,400 or less	15%
More than 1,400 but not more than 2,000	22%
More than 2,000	32%

For this purpose a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicle Excise and Registration Act 1994.

(3) Where sub-paragraph (2) above does not apply, the appropriate percentage for the year is—
(a) 15%, if the car is an electrically propelled vehicle, and
(b) 32%, in any other case.

VALID FROM 28/07/2000

Electrically propelled vehicle

5G For the purposes of this Schedule, a vehicle is not an electrically propelled vehicle unless—
(a) it is propelled solely by electrical power, and
(b) that power is derived from—
(i) a source external to the vehicle, or
(ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.

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[F1685] *Reduction for periods when car unavailable*

Textual Amendments

F1685 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, 7

[F1686] 6 Subject to paragraph 7 below, where for any part of the year concerned the car is unavailable, the cash equivalent of the benefit is the amount ascertained under the preceding provisions of this Schedule ("the full amount") reduced by an amount which bears to the full amount the same proportion as the number of days in the year on which the car is unavailable bears to 365.

Textual Amendments

F1686 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 5, 7

[F1687] *Reduction for payments for use of car*

Textual Amendments

F1687 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, 7

[F1688] 7 (1) Where in the year concerned the employee is required, as a condition of the car being available for his private use, to pay any amount of money (whether by way of deduction from his emoluments or otherwise) for that use, then—

(a) if the amount ascertained under the preceding provisions of this Schedule exceeds the relevant sum, the cash equivalent of the benefit is an amount equal to the excess;

(b) if the relevant sum exceeds or is equal to the amount ascertained under the preceding provisions of this Schedule, the cash equivalent of the benefit is nil.

(2) In sub-paragraph (1) above—

(a) "the relevant sum" means the amount paid by the employee, as there mentioned, in respect of the year concerned;

(b) the reference to the car being available for the employee's private use includes a reference to the car being available for the private use of others being members of his family or household.

Textual Amendments

F1688 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, 7

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[F1689] *Replacement cars*

Textual Amendments

F1689 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1690] 8 The Treasury may by regulations provide that where—

(a) a car is normally available to the employee but for a period of less than 30 days it is not available to him,

(b) another car is made available to the employee in order to replace the car mentioned in paragraph (a) above for the whole or part of the period, and

(c) such other conditions as may be prescribed by the regulations are fulfilled,

this Schedule shall have effect in relation to the cars concerned subject to such modifications as are prescribed by the regulations.

Textual Amendments

F1690 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1691] *Meaning of "unavailable"*

Textual Amendments

F1691 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

9 For the purposes of this Schedule a car is to be treated as being unavailable on any day if—

(a) the day falls before the first day on which the car is available to the employee,

(b) the day falls after the last day on which the car is available to the employee, or

(c) the day falls within a period, of 30 days or more, throughout which the car is not available to the employee.

Modifications etc. (not altering text)

C817 Sch. 6 para. 9(c) restricted (6.4.1994 with effect in accordance with reg. 4(2) of the 1994 affecting S.R.) by Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), **s. 10(6)(a)** (as substituted by The Social Security (Contributions) (Miscellaneous Amendments) Regulations (Northern Ireland) 1994 (S.R. 1994/94), **reg. 4(1)**)

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[F1692]*General*

Textual Amendments

F1692 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[F1693]10 For the purposes of this Schedule a car is available to an employee at a particular time if it is then made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.

Textual Amendments

F1693 Sch. 6 substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras.5, **7**

[[F1694]SCHEDULE 6A

Section 159AA.]

TAXATION OF DIRECTORS AND OTHERS IN RESPECT OF VANS

Textual Amendments

F1694 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1695]**PART I**

BASIC CASE

Textual Amendments

F1695 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1696]*Cash equivalent*

Textual Amendments

F1696 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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F1697 1 (1) This paragraph applies where the van mentioned in section 159AA(1)—

(a) is not a van to which Part II of this Schedule applies for the year concerned, or

(b) is a van to which that Part applies for the year concerned but is a shared van (within the meaning there given) for part only of the year.

(2) Subject to paragraphs 2 and 3 below, the cash equivalent of the benefit is—

(a) £500, if the van is aged less than 4 years at the end of the year concerned;

(b) £350, if the van is aged 4 years or more at the end of the year concerned.

Textual Amendments

F1697 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

F1698 Reductions for periods where van unavailable

Textual Amendments

F1698 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

F1699 2 (1) Subject to paragraph 3 below, where paragraph 1 above applies and for any part of the year concerned—

(a) the van is unavailable, or

(b) the van is a shared van (within the meaning given by Part II of this Schedule),

the cash equivalent of the benefit is the amount ascertained under paragraph 1 above (the full amount) reduced by an amount which bears to the full amount the same proportion as the number of excluded days in the year bears to 365.

(2) For the purposes of sub-paragraph (1) above a van is to be treated as being unavailable on any day if—

(a) the day falls before the first day on which the van is available to the employee,

(b) the day falls after the last day on which the van is available to the employee, or

(c) the day falls within a period, of 30 days or more, throughout which the van is not available to the employee.

(3) For the purposes of sub-paragraph (1) above an excluded day is a day on which the van falls within paragraph (a) or (b) of that sub-paragraph.

Textual Amendments

F1699 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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[F1700]*Reduction for payments for use of van*

Textual Amendments

F1700 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1701]3 (1) Where paragraph 1 above applies and in the year concerned the employee is required, as a condition of the van being available for his private use, to pay any amount of money (whether by way of deduction from his emoluments or otherwise) for that use, then—

(a) if the amount ascertained under paragraphs 1 and 2 above exceeds the relevant sum, the cash equivalent of the benefit is an amount equal to the excess;

(b) if the relevant sum exceeds or is equal to the amount ascertained under paragraphs 1 and 2 above, the cash equivalent of the benefit is nil.

(2) In sub-paragraph (1) above—

(a) "the relevant sum" means the amount paid by the employee, as there mentioned, in respect of the year concerned, and

(b) the reference to the van being available for the employee's private use includes a reference to the van being available for the private use of others being members of his family or household.

(3) If the van is a shared van (within the meaning given by Part II of this Schedule) for part of the year concerned, the reference in sub-paragraph (2) above to the year shall be construed as a reference to the part of the year when the van is not a shared van.

Textual Amendments

F1701 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1702]PART II

SHARED VANS

Textual Amendments

F1702 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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[F1703] *Introduction*

Textual Amendments

F1703 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1704] 4 (1) This Part of this Schedule applies to a van for a year if it is a shared van for any period in the year.

(2) A van is a shared van for a period if the period is one throughout which the van is available concurrently to more than one employee of the same employer.

(3) A van is also a shared van for a period if—

(a) the period is one throughout which the van is available to different employees of the same employer, but

(b) the circumstances are such that the employee or employees to whom the van is available at any given time in the period are not necessarily the same as the employee or employees to whom it is available at any other given time in the period.

(4) But if the van is available to one employee only for a period exceeding 30 days (an exclusive period)—

(a) the exclusive period shall not count towards any period that would otherwise fall within sub-paragraph (3) above;

(b) any period falling within sub-paragraph (3) above shall be treated as ending when the exclusive period begins (without prejudice to the start after the exclusive period of a further period falling within sub-paragraph (3) above).

(5) If a van would (apart from this sub-paragraph) be treated as shared during part of a day it shall be treated as shared throughout the day.

Textual Amendments

F1704 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1705] *Benefit to employee*

Textual Amendments

F1705 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1706] 5 (1) This paragraph applies where for any year this Part of this Schedule—

(a) applies to a van, or

(b) applies to each of two or more vans made available by the same employer.

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(2) For the purposes of this paragraph a participating employee is an employee to whom—
  (a) the van is available for his private use while it is a shared van (where only one van is involved),
  (b) one of the vans is available for his private use while it is a shared van (where more than one van is involved), or
  (c) some or all of the vans are available for his private use while they are shared vans (where more than one van is involved);

but an employee is not a participating employee unless he makes private use of the van, or (if more than one is involved) he makes private use of at least one of them, at least once while it is a shared van.

(3) In sub-paragraph (2) above—
  (a) any reference to a van being available for an employee's private use includes a reference to the van being available for the private use of others being members of his family or household, and
  (b) any reference to an employee making private use of a van includes a reference to a member of his family or household making private use of it.

(4) This paragraph shall apply to each participating employee in the same way, irrespective of—
  (a) the number available to a particular employee of the vans involved;
  (b) the fact that a particular van involved is or is not available to him or used by him;
  (c) the extent to which a particular van involved is available to him or used by him.

(5) Where this paragraph applies—
  (a) find the basic value of the van for the year or (as the case may be) the basic value for the year of each van involved;
  (b) take that basic value or (as the case may be) the aggregate of those basic values;
  (c) find for each participating employee a portion of the figure taken under paragraph (b) above by dividing it equally among the participating employees.

(6) The figure found for a participating employee shall be taken to be the cash equivalent of the benefit to him in the year of—
  (a) the van available to him while it is a shared van (where only one van is involved or only one of the vans involved is available to him), or
  (b) the vans available to him while they are shared vans (where more than one van is involved and more than one of them is available to him).

Textual Amendments

F1706 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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[F1707] *Basic value*

Textual Amendments

F1707 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1708] 6 (1) Subject to sub-paragraph (2) below, the basic value of a van for a year is—

(a) £500, if the van is aged less than 4 years at the end of the year concerned;

(b) £350, if the van is aged 4 years or more at the end of the year concerned.

(2) Where for any part of the year—

(a) the van is not a shared van, or

(b) the van is incapable of use,

its basic value is the amount ascertained under sub-paragraph (1) above (the full value) reduced by an amount which bears to the full value the same proportion as the number of excluded days in the year bears to 365.

(3) For the purposes of sub-paragraph (2) above a van is to be treated as being incapable of use on any day if the day falls within a period, of 30 days or more, throughout which the van is incapable of being used at all.

(4) For the purposes of sub-paragraph (2) above an excluded day is a day on which the van falls within paragraph (a) or (b) of that sub-paragraph.

Textual Amendments

F1708 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1709] *Limit of benefit*

Textual Amendments

F1709 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1710] 7 Where (apart from this paragraph) the figure found under paragraph 5 above for a participating employee for a year would exceed £500, the figure for the employee for the year shall be taken to be £500.

Textual Amendments

F1710 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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[F1711] *Alternative calculation*

Textual Amendments

F1711 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1712] 8 (1) In a case where—

(a) a figure is found under paragraph 5 or 7 above for a participating employee for a year, and

(b) the employee makes a claim for this paragraph to be applied,

the figure found for the employee for the year shall be taken to be the alternative figure found under this paragraph.

(2) The alternative figure is a figure found by—

(a) taking for each van involved the number of relevant days;

(b) aggregating the numbers found under paragraph (a) above where more than one van is involved;

(c) multiplying the number found under paragraph (a) (or paragraphs (a) and (b)) above by £5.

(3) For the purposes of sub-paragraph (2)(a) above a relevant day is a day which falls in the year and during which (or part of which) the employee, or a member of his family or household, makes private use of the van concerned while it is a shared van.

(4) For the purposes of section 95 of the [M2143] Taxes Management Act 1970 (incorrect return etc.) a claim under this paragraph shall be taken to be a claim for relief.

Textual Amendments

F1712 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

Marginal Citations

M2143 1970 c. 9.

[F1713] *Reduction for payments for use*

Textual Amendments

F1713 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1714] 9 (1) Where this Part of this Schedule applies and in the year concerned a participating employee is required, as a condition of the van or vans being available for his private use, to pay any amount of money (whether by way of deduction from his emoluments or otherwise) for that use, then—

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(a) if the figure found for the employee for the year under paragraph 5 or 7 or 8 above exceeds the relevant sum, the figure shall be taken to be a figure equal to the excess;

(b) if the relevant sum exceeds or is equal to the figure found for the employee for the year under paragraph 5 or 7 or 8 above, the figure shall be taken to be nil.

(2) For the purposes of this paragraph the relevant sum shall be found by—

(a) taking for any van involved the amount paid by the employee, as a condition of it being available for his private use, in respect of the period when the van is a shared van in the year concerned, and

(b) where more than one van is involved, aggregating the amounts found under paragraph (a) above.

(3) Any reference in this paragraph to a van being available for the employee's private use includes a reference to the van being available for the private use of others being members of his family or household.

Textual Amendments

F1714 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1715] PART III

GENERAL

Textual Amendments

F1715 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1716] Interaction of Parts I and II

Textual Amendments

F1716 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1717] 10 (1) This paragraph applies where—

(a) a cash equivalent of the benefit of a van to an employee in a year is found under Part I of this Schedule, and

(b) a cash equivalent of the benefit of the same van (or of vans including the same van) to the employee in the year is found under Part II of this Schedule.

(2) Once the different cash equivalents are so found, the employee shall be charged to tax as if the van concerned were different vans, one having a cash equivalent found under

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Part I of this Schedule and the other having (or counting towards) a cash equivalent found under Part II of this Schedule.

Textual Amendments

F1717 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1718] *Limit of cash equivalent*

Textual Amendments

F1718 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1719] 11 In a case where—

(a) the cash equivalent of the benefit of vans to an employee in a year would (apart from this paragraph) total more than £500, and

(b) no more than one of the vans is available to him for his private use, or the private use of others being members of his family or household, at any one time in the year,

the cash equivalent of the benefit of the vans to him in the year shall be £500.

Textual Amendments

F1719 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1720] *Interpretation*

Textual Amendments

F1720 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

[F1721] 12 For the purposes of this Schedule a van is available to an employee at a particular time if it is then made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.

Textual Amendments

F1721 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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SCHEDULE 7

Section 160.

TAXATION OF BENEFIT FROM LOANS OBTAINED BY REASON OF EMPLOYMENT

PART I

MEANING OF "OBTAINED BY REASON OF EMPLOYMENT"

1 (1) [M2144]Subject to sub-paragraph (5) below, the benefit of a loan is obtained by reason of a person's employment if, in relation to that person, it is of a class described in sub-paragraphs (2), (3) or (4) below.

(2) A loan made by his employer.

(3) [M2145]A loan made by a company—

(a) over which his employer had control;

(b) by which his employer (being a company) was controlled; or

(c) which was controlled by a person by whom his employer (being a company) was controlled.

(4) [M2146]A loan made in any case where—

(a) his employer was, or had control over, or was controlled by, a close company; and

(b) the loan was made by a person having a material interest in that close company or, that company being controlled by another company, in that other company.

(5) [M2147]Sub-paragraph (2) above does not apply to a loan made by his employer, being an individual, and shown to have been made in the normal course of his domestic, family or personal relationships.

Marginal Citations

M2144 Source—1976 Sch.8 1(1)
M2145 Source—1976 Sch.8 2
M2146 Source—1976 Sch.8 3
M2147 Source—1976 Sch.8 1(2)

2 [M2148]In paragraph 1 above—

(a) references to a loan being made by any person include references to his assuming the rights and liabilities of the person who originally made the loan and to his arranging, guaranteeing or in any way facilitating the continuation of a loan already in existence;

(b) "employer" includes a prospective employer; and

(c) "company", except in the expression "close company", includes a partnership.

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Marginal Citations

M2148 Source—1976 Sch.8 4

PART II

CALCULATION OF CASH EQUIVALENT OF LOAN BENEFIT

General

3 (1) [M2149] The cash equivalent for any year of the benefit obtained from a loan is—

(a) the amount of interest (calculated in accordance with paragraph 4 or 5 below) which would have been payable for that year had interest at the official rate been payable on the loan, less

(b) the amount of interest actually paid on the loan for that year.

[[F1722] and, in a case where there are two or more loans, the aggregate of the cash equivalents (if any) of the benefit of each of those loans shall be treated for the purposes of section 160 as the cash equivalent of the benefit of all of them.**]**

[F1723] (2) . . . . . .

[F1723] (3) . . . . . .

Textual Amendments

F1722 Words in Sch. 7 para. 3(1) added (for year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para. 3(1)**

F1723 Sch. 7 paras. 3(2)(3) repealed (for year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), ss. 27(6), 123, Sch. 6 para. 3(2), **Sch. 19 Pt. V**, Note 6

Marginal Citations

M2149 Source—1976 Sch.8 5, 6, 7

Normal method of calculation (averaging)

4 In the absence of a requirement or election that paragraph 5 below should apply, the amount of interest at the official rate payable on a loan for any year ("the relevant year") shall be ascertained as follows—

(a) take half the aggregate of—

(i) the maximum amount of the loan outstanding on 5th April preceding the relevant year or, if it was made in that year, on the date on which it was made, and

(ii) the maximum amount of the loan outstanding on 5th April in the relevant year or, if the loan was discharged in that year, the date of discharge;

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(b) multiply that figure by the number of whole months during which the loan was outstanding in that year, and divide by 12;

(c) multiply the result by the official rate of interest in force during the period when the loan was outstanding in that year or, if the official rate changed during that period, the average rate during that period ascertained by reference to the number of days in the period and the number of days for which each rate was in force.

For the purposes of this paragraph, months begin on the sixth day of the calendar month.

Election for alternative method of calculation

5 (1) For any year of assessment ("the relevant year") the alternative method of calculation set out in this paragraph applies if—

(a) the inspector so requires, by notice given to the employee, for the purpose of any assessment to income tax (or the adjustment of any such assessment in consequence of an appeal); or

(b) the employee so elects, by notice given to the inspector within the time allowed by sub-paragraph (2) below.

(2) An election by the employee must be made—

(a) in a case where an assessment including the emoluments in question has been made on the basis of the normal method of calculation, within the time allowed for appealing against that assessment or such further time as the inspector may allow;

(b) where no such assessment has been made, within six years after the end of the relevant year of assessment.

(3) The alternative method of calculating the amount of interest at the official rate payable on a loan for the relevant year is as follows—

(a) take each period in the relevant year during which the official rate of interest remains the same;

(b) for each such period take for each day in the period the maximum amount outstanding of the loan on that day, and add those amounts together;

(c) multiply that sum by the official rate in force during the period divided by 365; and

(d) add together the resulting figures for each period in the relevant year.

VALID FROM 28/07/2000

Apportionment of cash equivalent in case of joint loan etc.

5A (1) Where in any year there are two or more employees chargeable to tax in respect of the same loan—

(a) the cash equivalent of the benefit of the loan (determined in accordance with this Schedule) shall be apportioned between them in a fair and reasonable manner, and

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(b) the portion allocated to each employee shall be treated as the cash equivalent of the benefit of the loan so far as he is concerned.

(2) For the purposes of determining the cash equivalent in such a case, the references in paragraph 5 above to the employee shall be construed as references to all the chargeable employees.

PART III

EXCEPTIONS WHERE INTEREST ELIGIBLE FOR RELIEF

. . . . . .

[F1724]6

Textual Amendments

F1724 Sch. 7 para. 6 repealed (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), ss. 27(6), 123, Sch. 6 para. 4, **Sch. 19 Pt. V**, Note 6

7 Section 160(1) does not apply to a loan in any year—

(a) [M2150]for which interest is paid on the loan and the whole of that interest is eligible for relief, or

(b) for which no interest is paid on the loan but had interest been paid on it at the official rate the whole of that interest would have been eligible for relief.

Marginal Citations

M2150 Source—1976 Sch.8 9, 10, 11

8 Where for any year interest is paid on a loan and part of that interest is eligible for relief, the calculation of the cash equivalent under Part II of this Schedule is modified as follows—

(a) where paragraph 4 applies, the maximum amounts referred to in sub-paragraph (a)(i) and (ii) of that paragraph shall be proportionately reduced by reference to the proportion which so much of that interest paid for that year as is not eligible for relief bears to the whole of the interest so paid;

(b) where paragraph 5 applies, the maximum amounts referred to in sub-paragraph (3)(b) of that paragraph shall be proportionately reduced by reference to the proportion which so much of the interest paid on each such amount for the day in question as is not eligible for relief bears to the whole of the interest so paid; and

(c) the amount of interest eligible for relief shall be left out of account in ascertaining for the purposes of paragraph 3(1)(b) above the amount of interest paid for that year.

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9 (1) Where for any year—

(a) no interest is paid on a loan, but

(b) had interest been paid on it at the official rate part of that interest would have been eligible for relief,

then the calculation of the cash equivalent under Part II of this Schedule shall be modified as provided by paragraph 8(a) or (b) above with the substitution for the references to the amounts of interest paid or not eligible for relief of references to the amounts (ascertained in accordance with the following provisions of this paragraph) which would have been paid or would not have been eligible for relief.

(2) For the purposes of paragraph 8(a) above as applied by this paragraph, the whole amount of interest at the official rate which would have been paid for any year shall be taken to be the amount payable for that year calculated in accordance with paragraph 4 above (disregarding paragraph 8); and the amount of that interest which would not have been eligible for relief shall be ascertained—

(a) by finding that amount on the assumption that the amount referred to in paragraph 4(a)(i) was the amount outstanding for the whole year;

(b) by finding that amount on the assumption that the amount referred to in paragraph 4(a)(ii) was the amount outstanding for the whole year; and

(c) by adding together the resulting figures and dividing by 2.

(3) For the purposes of paragraph 8(b) above as applied by this paragraph, the amount of interest which would have been paid and the amount of it which would not have been eligible for relief shall be ascertained on the assumption that interest at the official rate was paid daily throughout the year on the maximum amount outstanding on each day.

10 (1) If—

(a) [M2151]a person has a loan on which no interest is paid and of which the benefit was obtained by reason of his or any other person's employment ("the employer's loan"); and

(b) that person or his wife or her husband has another loan which was made later than, or at the same time as, the employer's loan and interest on which is, in whole or in part, eligible for relief;

then, for the purposes of determining whether, had interest been paid on the employer's loan at the official rate, the whole or any part of that interest would have been eligible for relief, sections [F1725]. . . 355(1) to (4), 356 to 358 and 360 to 365 shall have effect as if the employer's loan were made after any other loan which falls within paragraph (b) above and which, in the context of the application of sections 354(1) to (4) and 355(5), relates to the same land, caravan or house boat as does the employer's loan.

(2) Where such a loan is made as is mentioned in paragraph (b) of sub-paragraph (1) above, sections [F1725]. . . 355(1) to (4), 356 to 358 and 360 to 365 have effect in accordance with that sub-paragraph with respect to so much of the interest referred to therein as would be paid on and after the day on which the loan is made; and paragraph 9(3) above shall have effect for the purpose of determining how much of that interest would have been eligible for relief.

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Textual Amendments

F1725 Words in Sch. 7 para. 10(1)(2) repealed (27.7.1993 with effect as mentioned in s. 57 of the amending Act) by 1993 c. 34, ss. 57, 213, **Sch. 23 Pt. III(1)**

Marginal Citations

M215 Source—1976 Sch.8 12-14; 1983 (No.2) s.4

11 (1) Where in any year a person has, alone or together with his wife or her husband, two or more loans—

(a) on which no interest is paid, and

(b) which, assuming the application of sections 354(1) to (4) and 355(5), would relate, in the context of those sections, to the same land, caravan or house boat,

then, for the purpose of determining whether, had interest been paid on any of those loans, it would, in whole or in part, have been eligible for relief, it shall be assumed in the first instance that those loans constitute a single loan (equal in amount to the aggregate of the actual loans) and to the extent that, had interest been paid on that single loan, it would have been eligible for relief, the relief shall then be attributed first to the earliest of the actual loans and, if all the relief is not thereby attributed, the balance shall be attributed to the next in time and so on with any of the balance remaining until the relief is wholly attributed.

(2) Nothing in sub-paragraph (1) above affects the operation of paragraph 10 above in relation to the priority which it gives to a loan falling within sub-paragraph (1)(b) of that paragraph, but any question which of two or more loans falling within sub-paragraph (1) above is the earlier shall be determined without regard to that paragraph.

12 References in paragraphs 10 and 11 above to a husband or wife do not include references to a separated husband or wife.

F1726 13 This Part of this Schedule is subject to the provisions of Part IV below.

Textual Amendments

F1726 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

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[F1727]PART IV

INTEREST ELIGIBLE FOR TAX RELIEF: CONSEQUENCES OF RESTRICTION OF RELIEF TO TAX AT THE BASIC RATE ONLY

Textual Amendments

F1727 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

[F1728]14 This Part of this Schedule applies in relation to the employee for any year for which he is, or, apart from paragraph 7, 8 or 9 above as they apply in relation to home loans, would be, liable to income tax at a rate higher than basic rate or to tax chargeable in respect of excess liability.

Textual Amendments

F1728 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

[F1729]15 Where this Part of this Schedule applies in relation to the employee for any year, none of paragraphs 7, 8 and 9 above shall apply in his case in relation to any home loan in that year, except as provided by paragraph 17 below.

Textual Amendments

F1729 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

[F1730]16(1) Where, by virtue only of paragraph 15 above, paragraph 7, 8 or 9 above does not apply in the case of the employee in relation to a home loan in any year, there shall be treated as interest eligible for relief under section 353 by virtue of section 355(1)(a) in that year—

(a) in a case where, apart from paragraph 15 above, paragraph 7 would have applied in relation to the home loan, an amount equal to the cash equivalent of the benefit of that loan in that year, apart from paragraph 7, or

(b) in a case where, apart from paragraph 15 above, paragraph 8 or 9 would have applied in relation to the home loan, an amount equal to the difference between—

(i) the cash equivalent of the benefit of the home loan in that year, apart from paragraphs 8 and 9, and

(ii) what the cash equivalent of the benefit of the home loan would have been in that year, apart from paragraph 15 above,

but subject to the following provisions of this paragraph.

(2) In the application of section 353 by virtue of this paragraph—

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(a) the amount that falls to be treated as mentioned in sub-paragraph (1) above shall be taken to fall within paragraph (a) of subsection (1) of that section; and

(b) subsections (2) and (3) of that section shall be disregarded in relation to that amount.

Textual Amendments

F1730 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(4), **Sch. 6 para.5**

F1731 17 Paragraph 15 above shall not prevent paragraph 7, 8 or 9 applying in the case of the employee in any year if, apart from paragraph 15—

(a) he would not have been charged for that year to income tax at any rate higher than basic rate in respect of any of his total income or to tax in respect of excess liability; and

(b) the aggregate of the following amounts, that is to say—

(i) the amount of income in respect of which, apart from any home loans, he would have been charged to income tax for that year at the basic rate,

(ii) any income which is treated by virtue of section 683(1) or 684(1) as his income for that year for the purposes of excess liability, notwithstanding that he would not have been charged to tax otherwise than at the basic rate,

(iii) the cash equivalents, apart from paragraphs 7, 8 and 9 above, of the benefit of any home loans in that year, and

(iv) his nominal element (if any) for that year, reduced by an amount equal to the cash equivalents, apart from paragraph 15 above, of the benefit of any home loans in that year,

does not exceed the basic rate limit by more than the amount specified in section 161(1) for that year.

Textual Amendments

F1731 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 c. 31, SIF 63:1), s. 27(6), Sch. 6 para.5

F1732 18 If, in the case of the employee, there is a home loan in any year and that is a year for which—

(a) he is liable to income tax at a rate higher than basic rate or to tax chargeable in respect of excess liability (whether or not by virtue of this Part of this Schedule), but

(b) he would not have been so liable apart from any home loans, and

(c) there is in his case a nominal element,

then, in computing his liability to income tax for that year, the amount which falls to be treated as emoluments under section 160(1) in consequence of the operation of paragraph 15 above (or, if more than one, the aggregate of those amounts) shall be

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taken to be the highest part of the income charged to tax, and an amount equal to the nominal element shall be taken to be the lowest portion of that part.

Textual Amendments

F1732 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

[F1733]PART V

INTERPRETATION

Textual Amendments

F1733 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para.5**

[F1734]19(1) In this Schedule—

"eligible for relief" shall be construed in accordance with sub-paragraph (2) below;

"eligible loan" means—

(a) any loan the interest on which is eligible for relief, other than a home loan; and

(b) in a case where part of the interest on a loan is eligible for relief otherwise than by virtue of section 355(1)(a), 356(1) or 365, that proportion of the loan which that part of the interest bears to the whole of the interest;

and in determining for the purposes of this definition whether the whole or any part of the interest on a loan is so eligible for relief, it shall be assumed that interest at a uniform rate is paid on the loan, whether or not that is in fact the case;

"excess liability" means liability to income tax over what it would be if all income tax **[**[F1735]not chargeable at the lower rate**][**[F1736]by virtue of section 1(2)(aa) were charged at the basic rate, or (so far as applicable in accordance with section 207A) the lower rate,**]**, to the exclusion of any higher rate;

"home loan" means—

(a) any loan the interest on which is, or apart from section 357 would have been, eligible for relief by virtue of section 355(1)(a), 356(1) or 365; and

(b) in a case where part of the interest on a loan is or would have been so eligible for relief, that proportion of the loan which that part of the interest bears to the whole of the interest;

and in determining for the purposes of this definition whether the whole or any part of the interest on a loan is or would have been so eligible for relief, it shall be assumed that interest at a uniform rate is paid on the loan, whether or not that is in fact the case;

"loan", except in Part I of this Schedule, shall be construed in accordance with sub-paragraphs (3) to (5) below;

"nominal element", in relation to the employee, means the amount (if any) which, apart from paragraph 15 above, would, by virtue of section 161(1), not have been charged to tax under section 160 in that year in his case.

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(2) Interest is "eligible for relief" for the purposes of this Schedule if it is eligible for relief under section 353 or would be eligible for such relief apart from subsection (2) of that section.

(3) In the definitions of "eligible loan" and "home loan" in sub-paragraph (1) above, "loan" means any such loan as is mentioned in section 160(1), and for this purpose sub-paragraphs (4) and (5) below shall be disregarded.

(4) Where by virtue of sub-paragraph (1) above part of a loan constitutes a home loan or an eligible loan, the loan shall be treated for the purposes of this Schedule, apart from Part I, as if it were two or more separate loans, consisting respectively—

(a) of the part (if any) which is a home loan,

(b) of the part (if any) which is an eligible loan, and

(c) of the part (if any) which is neither a home loan nor an eligible loan,

and, subject to sub-paragraph (5) below, references in this Schedule, apart from Part I, to loans, home loans and eligible loans shall be construed accordingly.

(5) Except for home loans and eligible loans, all the loans between the same lender and borrower for which a cash equivalent falls to be ascertained and which are outstanding at any time, as to any amount, in any year are to be treated for the purposes of this Schedule, apart from Part I, as a single loan.

Textual Amendments

F1734 Sch. 7 paras. 13-19 added (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 27(6), **Sch. 6 para. 5**

F1735 Words in Sch. 7 para. 19(1) inserted (16.7.1992 for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F1736 Words in definition of "excess liability" in Sch. 7 para. 19(1) substituted (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

VALID FROM 28/07/2000

SCHEDULE 7A

BENEFICIAL LOANS: LOANS ON ORDINARY COMMERCIAL TERMS

. . . . . .

SCHEDULE 8

Section 176(9).

[M2152]PROFIT-RELATED PAY SCHEMES: CONDITIONS FOR REGISTRATION

Marginal Citations

M2152 Source—987 (No.2) Sch.1

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Form

1 The terms of the scheme must be set out in writing.

Employer and employment unit

2 The scheme must identify the scheme employer.

3 If the scheme employer does not pay the emoluments of all the employees to whom the scheme relates, the scheme must identify each of the persons who pays the emoluments of any of those employees.

4 (1) The scheme must identify the undertaking to which the scheme relates and that undertaking must be one which is carried on with a view to profit.

(2) The references in sub-paragraph (1) above to an undertaking include references to part of an undertaking; and the provisions of a scheme identifying part of an undertaking must do so in such a way as to distinguish it, otherwise than by name only, from other parts of the undertaking.

Employees

5 The scheme must contain provisions by reference to which the employees to whom the scheme relates may be identified.

6 The scheme must contain provisions ensuring that no payments are made under it by reference to a profit period if the employees to whom the scheme relates constitute less than 80 per cent. of all the employees in the employment unit at the beginning of that profit period, but for this purpose any person who is at that time within paragraph 7 or 8 below shall not be counted.

7 (1) The scheme must contain provisions ensuring that no payments are made under it to any person who is employed in the employment unit by a company and who has [F1737]. . . a material interest in the company.

(2) For the purposes of this paragraph a person shall be treated as having a material interest [[F1738] in a company if he, either on his own or with one or more associates,or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium ofother companies, or by any other indirect means to control, more than 25 percent. of the ordinary share capital of the company, or

(b) in the case of a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent.

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of the assets which would then be available for distribution among the participators**]**.

(3) In this paragraph—

"associate" has the same meaning as in section 417(3) and (4) **[**[F1739], but subject to sub-paragraph (4) below**]**; [F1740]. . .

"control" has the meaning given by section 840; **[**[F1741]and

"participator" has the meaning given by section 417(1)**]**

and the definition of "control" in section 840 applies (with the necessary modifications) in relation to a company which is an unincorporated association as it applies in relation to one that is not.

[[F1742](4) For the purposes of this paragraph, where an employee of a company has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (8) below applies in relation to him.

(5) A trust is an employee benefit trust for the purposes of this paragraph if—

(a) all or most of the employees of the company are eligible to benefit under it, and

(b) none of the property subject to it has been disposed of on or after 14th March 1989 (whether by sale, loan or otherwise) except in the ordinary course of management of the trust or in accordance with sub-paragraph (6) below.

(6) Property is disposed of in accordance with this sub-paragraph if—

(a) it is applied for the benefit of—

(i) individual employees or former employees of the company,

(ii) spouses, former spouses, widows or widowers of employees or former employees of the company,

(iii) relatives, or spouses of relatives, of persons within sub-paragraph (i) or (ii) above, or

(iv) dependants of persons within sub-paragraph (i) above,

(b) it is applied for charitable purposes, or

(c) it is transferred to the trustees of an approved profit sharing scheme (within the meaning of section 187), of another employee benefit trust, or of a qualifying employee share ownership trust (within the meaning of Schedule 5 to the Finance Act 1989),

and the property applied or transferred consists of any of the ordinary share capital of the company or of money paid outright.

(7) In sub-paragraph (6)(a)(iii) above "relative" means parent or remoter forebear, child or remoter issue, brother, sister, uncle, aunt, nephew or niece.

(8) This sub-paragraph applies in relation to an employee if at any time on or after 14th March 1989—

(a) the employee, either on his own or with any one or more of his associates,or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25per cent. of the ordinary share capital of the company.

(9) Where—

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(a) on or after 14th March 1989 an employee of a company, or an associate of his, receives a payment ("the relevant payment") from the trustees of anemployee benefit trust, and

(b) at any time during the period of three years ending with the day on whichthe relevant payment is received, the property subject to the trust consists of or includes any part of the ordinary share capital of the company,

the employee or associate shall be treated for the purposes of sub-paragraph (8) above as if he were the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the day on which the relevant payment is received (in addition to any percentage of that share capital of which he is actually the beneficial owner on that day).

(10) For the purposes of sub-paragraph (9) above, the appropriate percentage is—

$$\frac{A \times 100}{B}$$

where—

A is the smaller of—

(a) the aggregate of the relevant payment and any other payments received by the employee or associates of his from the trustees of the trust during the period of 12 months ending with the day on which the relevant payment is received, and

(b) the aggregate of the distributions made to the trustees of the trust by the company in respect of its ordinary share capital during the period of three years ending with the day on which the relevant payment is received; and

B is the aggregate of—

(a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the day on which the relevant payment is received,

(b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a) above, and

(c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b) above,

divided by the number of the periods mentioned in paragraphs (a) to (c) above in which distributions were so made.

(11) Where—

(a) an employee or associate is treated by sub-paragraph (9) above as if he were the beneficial owner of a percentage of the ordinary share capital of a company by reason of receiving the relevant payment from the trustees of a trust, and

(b) that employee, or an associate of his, has, during the period of 12 months ending with the day on which the relevant payment is received, received one or more payments from trustees of another employee benefit trust or trusts satisfying the requirement in paragraph (b) of sub-paragraph (9) above,

that sub-paragraph shall have effect in relation to the employee or associate mentioned in paragraph (a) above as if he had received the payment from the trustees of the trust or of each of the trusts mentioned in paragraph (b) above (or where

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more than one payment has been received from the trustees of a trust, the last of the payments) on the day on which the relevant paymentis received.

(12) In sub-paragraphs (8) to (11) above "associate", in relation to an employee, does not include the trustees of an employee benefit trust by reason only that the employee has an interest in shares or obligations of the trust.**]**

Textual Amendments

F1737 Words in Sch. 8 para. 7(1) repealed (27.7.1989) by Finance Act 1989 (c. 26), Sch. 4 para. 9(2), **Sch. 17 Pt. 4**

F1738 Words in Sch. 8 para. 7(2) substituted (with effect in accordance with Sch. 12 para. 18(4) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 12 para. 18(2)**

F1739 Words in Sch. 8 para. 7(3) inserted (27.7.1989) by Finance Act 1989 (c. 26), **Sch. 4 para. 9(3)**

F1740 Word in Sch. 8 para. 7(3) repealed (with effect in accordance with Sch. 12 para. 18(4) of the amending Act) by Finance Act 1989 (c. 26), Sch. 12 para. 18(3), **Sch. 17 Pt. 5**, Note 6

F1741 Words in Sch. 8 para. 7(3) inserted (with effect in accordance with Sch. 12 para. 18(4) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 12 para. 18(3)**

F1742 Sch. 8 para. 7(4)-(12) inserted (27.7.1989) by Finance Act 1989 (c. 26), **Sch. 4 para. 9(4)**

Modifications etc. (not altering text)

C818 Sch. 8 para. 7(9)-(12) applied (27.7.1989) by Finance Act 1989 (c. 26), **Sch. 5 para. 16(6)**

C819 Sch. 8 para. 7(9)-(12) applied (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 14 para. 35(4)**

8 The persons within this paragraph are any of the following employees who are excluded by the scheme from receiving any payment of profit-related pay—

(a) those who are not required under the terms of their employment to work in the employment unit for 20 hours or more a week;

(b) those who have not been employed by a relevant employer for a minimum period (of not more than three years) specified in the scheme;

and for this purpose "relevant employer" means the scheme employer or any person who pays the emoluments of any of the employees to whom the scheme relates.

Profit periods

9 The scheme must identify the accounting period or periods by reference to which any profit-related pay is to be calculated.

10 (1) Subject to sub-paragraphs (2) and (3) below, any such accounting period must be a period of 12 months.

(2) If the scheme is a replacement scheme, the first of two profit periods may be a period of less than 12 months, but the scheme may not provide for more than two profit periods.

(3) The scheme may make provision for a profit period to be abbreviated where registration of the scheme is cancelled with effect from a day after the beginning of the period; and a scheme making such provision may exclude the operation of all or any of the provisions of paragraph 13(4) and (5) or (as the case may be) paragraph

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14(3)(b), (4) and (5) below in relation to the determination of the distributable pool for an abbreviated period.

(4) For the purposes of this paragraph, a scheme is a replacement scheme if—

(a) it succeeds another scheme (or two or more other schemes) registration of which was cancelled under section 178(1)(a) on the ground of a change in the employment unit or in the circumstances relating to the scheme; and

(b) that change occurred not more than three months before the beginning of the first (or only) profit period of the new scheme, and the Board are satisfied that it was not brought about with a view to the registration of the new scheme or in circumstances satisfying the conditions in section 177(1)(a), (b) and (c); and

(c) not less than one half of the employees to whom the new scheme relates were employees to whom the previous scheme (or any of the previous schemes) related at the time of that change.

Distributable pool

11 The scheme must contain provisions by reference to which the aggregate sum that may be paid to employees in respect of a profit period ("the distributable pool") may be determined.

12 Except where the scheme is a replacement scheme (within the meaning of paragraph 10 above), the provisions for the determination of the distributable pool must employ either the method specified in paragraph 13 below ("method A") or the method specified in paragraph 14 below ("method B").

13 (1) Method A is that the distributable pool is equal to a *fixed*[F1743] percentage of the profits of the employment unit in the profit period.

[[F1744](1A) That percentage must be a fixed percentage specified in the scheme and, if the scheme relates to more than one period, must be the same for each period.**]**

(2) *That percentage must be such that, on the assumption as to profits mentioned in sub-paragraph* (3)*below, it will produce a distributable pool equal to not less than* 5*per cent. of the standard pay of the employment unit*[F1745].

(3) *The assumption referred to in sub-paragraph* (2)*above is that the profits in the profit period are the same as those in a base year specified in the scheme; and that base year must be a period of* 12*months ending at a time within the period of two years immediately preceding the profit period, or the first of the profit periods, to which the scheme relates*[F1745].

(4) Notwithstanding sub-paragraph (1) above, a scheme employing method A may include provision for disregarding profits in the profit period so far as they exceed 160 per cent. (or such greater percentage as may be specified in the scheme) of—

(a) if the profit period is the first or only period to which the scheme relates, the profits for **[**[F1746]a base year specified in the scheme**]**;

(b) in any other case, the profits for the previous profit period.

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(5) Notwithstanding sub-paragraph (1) above, a scheme employing method A may include provision to the effect that there shall be no distributable pool if the profits in the profit period are less than an amount specified in, or ascertainable by reference to, the scheme; but that amount **[**[F1747]must not exceed the profits for a base year specified in the scheme.**]**

[[F1748](6) The base year referred to in sub-paragraph (4)(a) and sub-paragraph (5) above must be a period of 12 months ending at a time within the period of two years immediately preceding the profit period, or the first of the profit period, to which the scheme relates**]**

[[F1749](7) Any provision included in a scheme by virtue of sub-paragraph (4) or (5) above may take effect either from the scheme's first profit period or from any later profit determined in accordance with the scheme.**]**

Textual Amendments

F1743 *Repealed by* 1989 ss.61*and* 187*and* Schs.4 para.10(2)(a)*and* 17 Part IV.

F1744 1989 s.61*and* Sch.4 para.10(2)(b)(i).

F1745 *Repealed by* 1989 ss.61*and* 187*and* Schs.4 para.10(1), (2)(a)*and* 17 Part IV.

F1746 1989 s.61*and* Sch.4 para.10(2)(b)(ii).*Previously*

"the base year referred to in sub-paragraph (3) above".

F1747 1989 s.61*and* Sch.4 para.10(2)(b)(iii).*Previously*

"must be less than the amount which would produce a distributable pool of 5 per cent. of the standard pay of the employment unit".

F1748 1989 s.61*and* Sch.4 para.10(2)(b)(iv).*Previously*

"(6) The references in this paragraph to the standard pay of the employment unit are references to the amount which the scheme employer, at the time when he applies for registration of the scheme, reasonably estimates will be the annual equivalent of the pay, at the beginning of the profit period or first profit period, of the employees to whom the scheme will then relate; and for this purpose an estimate shall (in the absence of evidence to the contrary) be taken to be a reasonable one if it is based on the most recent information available to the employer as to the monthly or annual pay of the relevant employees.".

F1749 1989 s.61*and* Sch.4 para.11.

VALID FROM 03/05/1994

13A (1) Where a scheme includes provision by virtue of paragraph 13(4) or (5) above the scheme must be so framed that in arriving at the profits for the base year or for the previous profit period any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period.

(2) In sub-paragraph (1) above—

(a) "profit-related pay" means profit-related pay under whatever scheme;

(b) "secondary Class I contributions" means secondary Class I contributions under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975 or Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

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(3) Sub-paragraph (1) above shall apply notwithstanding anything in paragraph 19 below.

(4) Where a scheme includes provision by virtue of paragraph 13(4) above the scheme must also include provision that if the pay for the profit period is less than the pay for the base year or for the previous profit period (as the case may be) the percentage to be applied for the purposes of the provision included by virtue of paragraph 13(4) above shall be the increased percentage (instead of any other percentage).

(5) The increased percentage must be one arrived at by—
- (a) taking the percentage that would be applied for the purposes of the provision included by virtue of paragraph 13(4) above apart from the provision included by virtue of sub-paragraph (4) above, and
- (b) adding the percentage found by expressing the difference in pay as a percentage of the profits for the base year or for the previous profit period (as the case may be).

(6) For the purposes of this paragraph—
- (a) the pay for the profit period or for the previous profit period or for the base year is the pay paid to employees in respect of employment in the period or year concerned in the employment unit concerned;
- (b) the difference in pay is the difference between the pay for the profit period and the pay for the previous profit period or for the base year (as the case may be);

and any profit-related pay shall be ignored in applying paragraph (a) above.

14 (1) Method B is that the distributable pool is—
- (a) if the profit period is the first or only profit period to which the scheme relates, a percentage of a notional pool of an amount specified in the scheme;
- (b) in any other case, a percentage of the distributable pool for the previous profit period.

(2) *The amount of the notional pool referred to in sub-paragraph* (1)*above must not be less than* 5*per cent. of the standard pay of the employment unit*[F1750].

(3) The percentage referred to in sub-paragraph (1) above must be either—
- (a) that arrived at by expressing the profits in the profit period as a percentage of the profits in the preceding period of 12 months; or
- (b) the percentage mentioned in paragraph (a) above reduced (if it is more than 100) or increased (if it is less than 100) by a specified fraction of the difference between it and 100;

and the reference in paragraph (b) above to a specified fraction is a reference to a fraction of not more than one half specified in the scheme.

(4) Notwithstanding sub-paragraph (1) above, a scheme employing method B may include provision for disregarding profits in the profit period so far as they exceed 160 per cent. (or such greater percentage as may be specified in the scheme) of the profits in the preceding period of 12 months.

(5) Notwithstanding sub-paragraph (1) above, a scheme employing method B may include provision to the effect that there shall be no distributable pool if the profits in

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the profit period are less than an amount*specified in*[F1751], or ascertainable by reference to, the scheme; but that amount **[**[F1752]must not exceed the profits in the period of 12 months immediately preceding the first or only profit period to which the scheme relates.**]**

(6) Where by virtue of a provision of the kind described in sub-paragraph (5) above there is no distributable pool for a profit period, any comparison required in accordance with sub-paragraph (1)(b) to be made with the distributable pool for that period shall be made with what would have been the pool but for sub-paragraph (5).

(7) *In this paragraph "standard pay of the employment unit" has the same meaning as it has in paragraph* 13*above*[F1753].

[[F1754](8) Any provision included in a scheme by virtue of sub-paragraph (3)(b), (4) or (5) above may take effect either from the scheme's first profit period or from any later profit period determined in accordance with the scheme.**]**

Textual Amendments

F1750 *Repealed by* 1989 ss.61*and* 187, Schs.4 para.10(1)*and* 17 Part IV.

F1751 *Repealed by* 1989 ss.61*and* 187, Schs.4 paras.10(2)(a), 12*and* 17 Part IV.

F1752 1989 s.61*and* Sch.4 para.10(2)(c).*Previously*

"must be less than the amount which would produce a distributable pool of 5 per cent. of the standard pay of the employment unit.".

F1753 *Repealed by* 1989 ss.61*and* 187, Schs.4 paras.10(2)(a), 12*and* 17 Part IV.

F1754 1989 s.61*and* Sch.4 para.13.

VALID FROM 03/05/1994

14A (1) Where a scheme includes provision to give effect to paragraph 14(3) above or provision by virtue of paragraph 14(4) above the scheme must be so framed that in arriving at the profits in the preceding period of 12 months any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period.

(2) Where a scheme includes provision by virtue of paragraph 14(5) above the scheme must be so framed that in arriving at the profits in the relevant period of 12 months any profit-related pay and any secondary Class I contributions in respect of it are accorded the same accountancy treatment as is accorded to any profit-related pay and any secondary Class I contributions in respect of it in arriving at the profits in the profit period; and for this purpose the relevant period of 12 months is the period of 12 months immediately preceding the first or only profit period to which the scheme relates.

(3) In sub-paragraphs (1) and (2) above—

(a) "profit-related pay" means profit-related pay under whatever scheme;

(b) "secondary Class I contributions" means secondary Class I contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

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(4) Sub-paragraphs (1) and (2) above shall apply notwithstanding anything in paragraph 19 below.

(5) Where a scheme includes provision by virtue of paragraph 14(4) above the scheme must also include provision that if the pay for the profit period is less than the pay for the preceding period of 12 months the percentage to be applied for the purposes of the provision included by virtue of paragraph 14(4) above shall be the increased percentage (instead of any other percentage).

(6) The increased percentage must be one arrived at by—
- (a) taking the percentage that would be applied for the purposes of the provision included by virtue of paragraph 14(4) above apart from the provision included by virtue of sub-paragraph (5) above, and
- (b) adding the percentage found by expressing the difference in pay as a percentage of the profits in the preceding period of 12 months.

(7) For the purposes of this paragraph—
- (a) the pay for the profit period or for the preceding period of 12 months is the pay paid to employees in respect of employment in the period concerned in the employment unit concerned;
- (b) the difference in pay is the difference between the pay for the profit period and the pay for the preceding period of 12 months;

and any profit-related pay shall be ignored in applying paragraph (a) above.

15 If the scheme is a replacement scheme (within the meaning of paragraph 10 above), it must provide for the distributable pool for a profit period to be equal to a specified percentage of the profits for the period.

Payment from distributable pool etc.

16 The scheme must provide for the whole of the distributable pool to be paid to employees in the employment unit.

17 The scheme must make provision as to when payments will be made to employees.

18 (1) The provisions of the scheme must be such that employees participate in the scheme on similar terms.

(2) For the purposes of sub-paragraph (1) above, the fact that the payments to employees vary according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they do not participate on similar terms.

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Ascertainment of profits

19 (1) The scheme must provide for the preparation of a profit and loss account in respect of—

(a) each profit period of the employment unit; and

(b) any other period the profits for which must be ascertained for the purposes of this Chapter.

(2) The profit and loss account must give a true and fair view of the profit or loss of the employment unit for the period to which it relates.

(3) Subject to sub-paragraph (2) above, the requirements of Schedule 4 to the [M2153]Companies Act 1985 shall apply (with any necessary modifications) to a profit and loss account prepared for the purposes of the scheme as they apply to a profit and loss account of a company for a financial year.

(4) Notwithstanding the preceding provisions of this paragraph, a profit and loss account prepared for the purposes of the scheme must not make any deduction, in arriving at the profits or losses of the employment unit, for the remuneration of any person excluded from the scheme by virtue of paragraph 7 above.

[[F1755](4A) In sub-paragraph (4) above "remuneration", in relation to a person, includes fees and percentages, any sums paid by way of expenses allowance (insofar as those sums are charged to income tax), any contributions paid in respect of him under any pension scheme and the estimated value of any other benefits received by him otherwise than in cash.**]**

(5) Notwithstanding the preceding provisions of this paragraph, if the scheme so provides in relation to any of the items listed in sub-paragraph (6) below, a profit and loss account prepared for the purposes of the scheme may, in arriving at the profits or losses of the employment unit—

(a) leave the item out of account notwithstanding that Schedule 4 to the Companies Act 1985 requires it to be taken into account; or

(b) take the item into account notwithstanding that Schedule 4 to the Companies Act 1985 requires it to be left out of account.

(6) The items referred to in sub-paragraph (5) above are—

(a) interest receivable and similar income;

(b) interest payable and similar charges;

(c) goodwill;

(d) tax on profit or loss on ordinary activities (but not any penalty under the Taxes Acts);

(e) research and development costs;

[[F1756](f) profit-related pay payable under the scheme, and profit-related pay payable under any other registered scheme if it is one to which paragraph 21 below applies;

(ff) secondary Class 1 contributions under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975 in respect of profit-related pay payable under the scheme;**]**

(g) extraordinary income;

(h) extraordinary charges;

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(j) extraordinary profit or loss;

(k) tax on extraordinary profit or loss.

(7) References in this paragraph to Schedule 4 to the [M2154]Companies Act 1985 shall be construed, in relation to Northern Ireland, as references to Schedule 4 to the [M2155]Companies (Northern Ireland) Order 1986.

Textual Amendments

F1755 1989 s.61 *and* Sch.4 para.14(2).

F1756 1989 s.61 *and* Sch.4 para.14(3). *Previously*

"(f) profit-related pay payable under the scheme;".

Marginal Citations

M2153 1985 c. 6.

M2154 1985 c. 6.

M2155 S.I. 1986/1032 (N.I. 6).

VALID FROM 01/05/1995

19A (1) The Treasury may by order amend paragraph 19 above so as to add to, delete or vary any of the items mentioned in sub-paragraph (6) of that paragraph.

(2) In this paragraph references to an order are references to an order under sub-paragraph (1) above.

(3) Subject to sub-paragraphs (4) to (8) below, any amendment or amendments made by virtue of an order shall have effect in relation to the preparation, for the purposes of a scheme, of a profit and loss account in respect of a period beginning on or after the day on which the order comes into force.

(4) Any amendment or amendments made by virtue of an order shall not have effect in relation to an existing scheme unless, before the end of the period of 6 months beginning with the day on which the order comes into force, the scheme is altered to take account of the amendment or amendments.

(5) Sub-paragraphs (6) to (8) below apply where, before the end of the period mentioned in sub-paragraph (4) above, an existing scheme is altered as mentioned in that sub-paragraph.

(6) The provision made by the scheme in compliance with paragraph 20(1) below shall not prevent a profit and loss account being prepared in accordance with the alteration.

(7) Where the distributable pool would but for this sub-paragraph be determined by reference—

(a) to an amount shown in a profit and loss account prepared in accordance with the altered scheme, and

(b) to an amount shown in a profit and loss account ("an earlier account") prepared in accordance with the scheme in a form in which it stood before the alteration,

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then, for the purposes of the determination of the pool, the amount shown in the earlier account shall be recalculated using the same method as that used to calculate the amount mentioned in paragraph (a) above.

(8) The alteration of the existing scheme shall be treated as being within subsection (8) of section 177B.

(9) An order may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient.

(10) In this paragraph "an existing scheme", in relation to an order, means a scheme which, immediately before the day on which the order comes into force, is a registered scheme.

20 (1) The scheme must provide that, in preparing a profit and loss account for the purposes of this Schedule, no changes may be made from the accounting policies used in preparing accounts for any earlier period relevant for those purposes, or in the methods of applying those policies, if the effect of the changes (either singly or taken together) would be that the amount of profits (or losses) differed by more than 5 per cent. from what would be that amount if no changes were made.

(2) Sub-paragraph (1) above has effect subject to paragraph 19(2) above.

Parts of undertakings

[[F1757]21 (1) This paragraph shall apply to a scheme if the employment unit is a part of an undertaking, and the scheme states that the profits or losses of the unit are for the purposes of the scheme to be taken to be equivalent to those of the whole undertaking (which must be identified by the scheme).

(2) Where this paragraph applies to a scheme, this Schedule shall have effect as if any reference to the profits or losses of the employment unit were a reference to the profits or losses of the undertakings of which it forms part.**]**

Textual Amendments
F1757 1989 s.61*and* Sch.4 para.15.

22 (1) Where paragraph 21 above applies to a scheme, the scheme must contain provisions ensuring that no payments are made under it by reference to a profit period unless, at the beginning of that profit period,—

(a) there is at least one other registered scheme which relates to employees employed in the same undertaking as that of which the employment unit forms part, and

(b) the number of the employees to whom the scheme relates does not exceed 33 per cent. of the number of the employees to whom that other scheme relates (or if there is more than one other scheme, the aggregate number of the employees to whom they relate).

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(2) Another registered scheme shall be disregarded for the purposes of sub-paragraph (1) above—
  (a) if paragraph 21 above applies to it, or
  (b) if, by virtue of provisions of the kind described in paragraph 6 above, no payments could be made under it by reference to the profit period concerned.

(3) Where paragraph 21 above applies to two or more schemes relating to employment units which are parts of the same undertaking, an employee to whom another scheme relates shall not be counted for the purposes of sub-paragraph (1)(b) above in connection with more than one of those schemes.

VALID FROM 03/05/1994

23 (1) In a case where—
  (a) paragraph 21 above applies to a scheme, and
  (b) method A (specified in paragraph 13 above) is employed for the purposes of the scheme,

  the scheme must contain provisions which comply with this paragraph and which apply as regards each profit period to which the scheme relates.

(2) The scheme must ensure that no payments are made under it by reference to a given profit period if the percentage mentioned in paragraph 13(1) above exceeds the permitted percentage.

(3) The scheme must ensure that the permitted percentage is a percentage found by—
  (a) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  (b) taking the profit-related pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the profit-related pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;
  (c) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the scheme mentioned in paragraph 21 above relates;
  (d) taking the fraction whose denominator is equal to the number of whole pounds found under paragraph (a) above and whose numerator is equal to the number of whole pounds found under paragraph (b) above;
  (e) multiplying the amount found under paragraph (c) above by the fraction found under paragraph (d) above;
  (f) taking the profits for the relevant year of the undertaking mentioned in paragraph 21 above;
  (g) expressing the amount found under paragraph (e) above as a percentage of the amount found under paragraph (f) above;

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(h) taking the percentage found under paragraph (g) above as the permitted percentage.

(4) The scheme must ensure that the relevant year is a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the given profit period.

VALID FROM 03/05/1994

24 (1) In a case where—

(a) paragraph 21 above applies to a scheme, and

(b) method B (specified in paragraph 14 above) is employed for the purposes of the scheme,

the scheme must contain provisions which comply with this paragraph and which apply as regards each profit period to which the scheme relates.

(2) The scheme must ensure that no payments are made under it by reference to the first or only profit period to which the scheme relates if the notional pool mentioned in paragraph 14(1)(a) above exceeds the permitted limit.

(3) The scheme must also ensure that no payments are made under it by reference to a given profit period other than the first if the distributable pool for the previous profit period (mentioned in paragraph 14(1)(b) above) exceeds the permitted limit.

(4) The scheme must ensure that the permitted limit is a limit found by—

(a) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;

(b) taking the profit-related pay paid to employees in respect of employment in the relevant year in the employment unit to which the other scheme mentioned in paragraph 22(1)(a) above relates or (if there are two or more other schemes) the aggregate of the profit-related pay paid to employees in respect of employment in the relevant year in the employment units to which the other schemes relate;

(c) taking the pay paid to employees in respect of employment in the relevant year in the employment unit to which the scheme mentioned in paragraph 21 above relates;

(d) taking the fraction whose denominator is equal to the number of whole pounds found under paragraph (a) above and whose numerator is equal to the number of whole pounds found under paragraph (b) above;

(e) multiplying the amount found under paragraph (c) above by the fraction found under paragraph (d) above;

(f) taking the amount found under paragraph (e) above as the permitted limit.

(5) The scheme must ensure that the relevant year is—

(a) a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the first or only profit period

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to which the scheme relates (in the case of provisions contained in the scheme by virtue of sub-paragraph (2) above);

(b) a period of 12 months identified in the scheme and ending at a time within the period of two years immediately preceding the given profit period (in the case of provisions contained in the scheme by virtue of sub-paragraph (3) above).

SCHEDULE 9

Sections 185, 186, 187.

APPROVED SHARE OPTION SCHEMES AND PROFIT SHARING SCHEMES

Modifications etc. (not altering text)

C820 Sch. 9 excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(2)(c)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

C821 Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 115**

C822 Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)**

C823 Sch. 9 modified (28.7.2000) by Finance Act 2000 (c. 17), **s. 49(1)(2)**

C824 Sch. 9 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

PART I

GENERAL

[F1758 1 (1) M2156 Subject to the provisions of this Schedule, on the application of a body corporate ("the grantor") which has established a share option scheme or a profit sharing scheme, the Board shall approve the scheme if they are satisfied that it fulfils such requirements of Part II and this Part as apply in relation to the scheme in question, and the requirements of Part III, IV or V of this Schedule; and in this Schedule—

"the relevant requirements" means, in relation to any scheme, the requirements of this Schedule by reference to which the scheme is approved; and

"savings-related share option scheme" means a scheme in relation to which the relevant requirements include the requirements of Part III of this Schedule.

(2) M2157 An application under sub-paragraph (1) above shall be made in writing and contain such particulars and be supported by such evidence as the Board may require.

(3) M2158 Where the grantor has control of another company or companies, the scheme may be expressed to extend to all or any of the companies of which it has control and in this Schedule a scheme which is expressed so to extend is referred to as a "group scheme".

(4) M2159 In relation to a group scheme the expression "participating company" means the grantor or any other company to which for the time being the scheme is expressed to extend.

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Textual Amendments

F1758 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

Marginal Citations

M2156 Source—1978 Sch.9 1(1)(a); 1980 Sch.10 1(1)(a); 1984 Sch.10 1(1)
M2157 Source—1978 Sch.9 1(5); 1980 Sch.10 1(2); 1984 Sch.10 1(2)
M2158 Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(3)
M2159 Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(4)

2 (1) [M2160]The Board shall not approve a scheme under this Schedule if it appears to them that it contains features which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of rights to acquire shares or, in the case of a profit sharing scheme, in the nature of interests in shares.

(2) [M2161]A profit sharing scheme shall not be approved under paragraph 1 above unless the Board are satisfied that, whether under the terms of the scheme or otherwise, every participant in the scheme is bound in contract with the grantor—

(a) to permit his shares to remain in the hands of the trustees throughout the period of retention; and

(b) not to assign, charge or otherwise dispose of his beneficial interest in his shares during that period; and

(c) if he directs the trustees to transfer the ownership of his shares to him at any time before the release date, to pay to the trustees before the transfer takes place a sum equal to income tax at the basic rate on the appropriate percentage of the locked-in value of the shares at the time of the direction; and

(d) not to direct the trustees to dispose of his shares at any time before the release date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of the sale or, in the case of redeemable shares in a workers' cooperative, by redemption.

(3) [M2162]The Board must be satisfied in the case of a savings-related share option scheme or a profit sharing scheme—

(a) that there are no features of the scheme (other than any which are included to satisfy requirements of this Schedule) which have or would have the effect of discouraging any description of employees or former employees who fulfil the conditions in paragraph 26(1) or, as the case may be, 36(1) below from actually participating in the scheme; and

(b) where the grantor is a member of a group of companies, that the scheme does not and would not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of the higher or highest levels of remuneration.

(4) For the purposes of sub-paragraph (3) above "a group of companies" means a company and any other companies of which it has control.

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Modifications etc. (not altering text)

C825 Sch. 9 para. 2(2) excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(1)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M2160 Source—1978 Sch.9 1(1)(b); 1980 Sch.10 1(1), (b); 1984 Sch.10 1(1); 1987 Sch.15 13

M2161 Source—1978 s.54(1); 1986 s.24(3)(a)

M2162 Source—1978 Sch.9 2(3), (4); 1980 Sch.10 1(1)(aa), (ab), (1A); 1983 s.25(5); 1984 s.39(2)

3 (1) If, at any time after the Board have approved a share option scheme, any of the relevant requirements ceases to be satisfied or the grantor fails to provide information requested by the Board under paragraph 6 below, the Board may withdraw the approval with effect from that time or such later time as the Board may specify; but where rights obtained under a savings-related share option scheme before the withdrawal of approval from the scheme under this paragraph are exercised after the withdrawal, section 185(3) shall apply in respect of the exercise as if the scheme were still approved.

(2) If at any time after the Board have approved a profit sharing scheme—

(a) a participant is in breach of any of his obligations under paragraph 2(2)(a), (c) and (d) above; or

(b) there is, with respect to the operation of the scheme, any contravention of any of the relevant requirements, Schedule 10, the scheme itself or the terms of the trust referred to in paragraph 30(1)(c) below; or

(c) any shares of a class of which shares have been appropriated to the participants receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—

(i) the dividend payable;

(ii) repayment;

(iii) the restrictions attaching to the shares; or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares; or

(d) the Board cease to be satisfied that the scheme complies with the requirements of paragraph 2(3) above or paragraph 36 below; or

(e) the trustees, the grantor or, in the case of a group scheme, a company which is or has been a participating company fail or fails to furnish any information which they are or it is required to furnish under paragraph 6 below,

the Board may, subject to sub-paragraph (3) below, withdraw the approval with effect from that time or from such later time as the Board may specify.

(3) [M2163]It shall not be a ground for withdrawal of approval of a profit sharing scheme that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

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Marginal Citations

M2163 Source—1978 Sch.9 3(3)

4 [M2164]If an alteration is made in the scheme at any time after the Board have approved the scheme, the approval shall not have effect after the date of the alteration unless the Board have approved the alteration.

Textual Amendments

F1758 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C826 Sch. 9 para. 4 modified (with effect in accordance with Sch. 16 para. 1 of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 16 para. 4**

Marginal Citations

M2164 Source—1978 Sch.9 3(2); 1980 Sch.10 3(2); 1984 Sch.10 2(2)

5 [M2165]If aggrieved—

(a) in any case, by the failure of the Board to approve the scheme or to approve an alteration in the scheme or by the withdrawal of approval; or

(b) in the case of a savings-related share option scheme, by the failure of the Board to decide that a condition subject to which the approval has been given is satisfied; or

(c) in the case of a profit sharing scheme, by the failure of the Board to approve an alteration in the terms of the trust referred to in paragraph 30(1)(c) below;

the grantor may, by notice given to the Board within 30 days from the date on which it is notified of the Board's decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall hear and determine the matter in like manner as an appeal.

Textual Amendments

F1758 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C827 Sch. 9 para. 5 modified (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 158**

Marginal Citations

M2165 Source—1978 Sch.9 4; 1980 Sch.10 4; 1984 Sch.10 3

6 [M2166]The Board may by notice require any person to furnish them, within such time as the Board may direct (not being less than 30 days), with such information as

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the Board think necessary for the performance of their functions under the relevant provisions and as the person to whom the notice is addressed has or can reasonably obtain, including in particular information—

(a) to enable the Board to determine—

(i) whether to approve a scheme or withdraw an approval already given; or

(ii) the liability to tax, including capital gains tax, of any person who has participated in a scheme; and

(b) in relation to the administration of a scheme and any alteration of the terms of a scheme.**]**

Textual Amendments

F1758 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

Marginal Citations

M2166 Source—1978 s.53(7); 1980 Sch.10 25; 1984 Sch.10 14

PART II

REQUIREMENTS GENERALLY APPLICABLE

[F1759 7 The provisions of this Part apply in relation to all schemes unless otherwise stated.

Textual Amendments

F1759 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

8 **M2167** The scheme must not provide for any person to be eligible to participate in it, that is to say, to obtain and exercise rights under it, or in the case of a profit sharing scheme to have shares appropriated to him, at any time when he has, or has within the preceding 12 months had, a material interest in a close company which is—

(a) a company shares in which, in the case of a profit sharing scheme, are to be appropriated or, in the case of a share option scheme, may be acquired pursuant to the exercise of rights obtained under the scheme; or

(b) a company which has control of such a company or is a member of a consortium which owns such a company.

In determining whether a company is a close company for the purposes of this paragraph, sections 414(1)(a) and 415 shall be disregarded.

Textual Amendments

F1759 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

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Marginal Citations

M2167 Source—1978 Sch.9 11(1), (2); 1980 Sch.10 23; 1984 Sch.10 4(1)(b), (3)

[F1760] 8A (1) In the case of a savings-related share option scheme or a profit sharing scheme, the scheme must specify what age is to be the specified age for the purposes of the scheme.

(2) The age specified—

(a) must be the same for men and women, and

(b) must be not less than 60 and not more than 75.]

Textual Amendments

F1759 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

F1760 Sch. 9 Pt. II para. 8A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(5)(6)**

9 (1) [M2168] A share option scheme must provide for directors and employees to obtain rights to acquire shares ("scheme shares") which satisfy the requirements of paragraphs 10 to 14 below.

(2) In the case of a profit sharing scheme, the shares to be acquired by the trustees as mentioned in paragraph 30 below ("scheme shares") must satisfy the requirements of paragraphs 10 to 12 and 14 below.

Marginal Citations

M2168 Source—1978 Sch.9 1(1), (3); 1980 Sch.10 5(a); 1984 Sch.10

10 [M2169] Scheme shares must form part of the ordinary share capital of—

(a) the grantor; or

(b) a company which has control of the grantor; or

(c) a company which either is, or has control of, a company which—

(i) is a member of a consortium owning either the grantor or a company having control of the grantor; [F1761] . . .

[F1761] (ii) . . . . . .

Textual Amendments

F1761 Sch. 9 para. 10(c)(ii) and preceding word repealed by Finance Act 1989 (c. 26), s. 64, **Sch. 17 Pt. 4**

Marginal Citations

M2169 Source—1978 Sch.9 5; 1980 Sch.10 15; 1984 Sch.10 7

11 [M2170] Scheme shares must be—

[M2171] (a) shares of a class quoted on a recognised stock exchange; or

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(b) shares in a company which is not under the control of another company; or

[M2171](c) shares in a company which is under the control of a company (other than a company which is, or would if resident in the United Kingdom be, a close company), whose shares are quoted on a recognised stock exchange.

Marginal Citations

M2170 Source—1978 Sch.9 6; 1980, s.46(10), Sch.10 16; 1984 Sch.10 8

M2171 *See* s.841 *ante for definition.*

VALID FROM 21/03/2000

[F1762 11(1A) In the case of a profit sharing scheme, scheme shares must not be shares—

(a) in an employer company, or

(b) in a company that—

(i) has control of an employer company, and

(ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) below in relation to an employer company.

(2) For the purposes of this paragraph a company is "an employer company" if—

(a) the business carried on by it consists substantially in the provision of the services of the persons employed by it, and

(b) the majority of those services are provided to—

(i) a person who has, or two or more persons who together have, control of the company, or

(ii) a company associated with the company.

(3) For the purposes of sub-paragraph (2)(b)(ii) above a company shall be treated as associated with another company if both companies are under the control of the same person or persons.

(4) For the purposes of sub-paragraphs (1) to (3) above—

(a) references to a person include a partnership, and

(b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.

(5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6).]

Textual Amendments

F1762 Sch. 9 para. 11A inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 52(3)(5)** (with s. 52(6))

12 (1) [M2172]Scheme shares must be—

(a) fully paid up;

(b) not redeemable; and

(c) not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by sub-paragraph (2) below.

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Sub-paragraph (b) above does not apply, in the case of a profit sharing scheme, in relation to shares in a workers' cooperative.

(2) Except as provided below, the shares may be subject to a restriction imposed by the company's articles of association—

(a) requiring all shares held by directors or employees of the company or of any other company of which it has control to be disposed of on ceasing to be so held; and

(b) requiring all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not (or have ceased to be) such directors or employees to be disposed of when they are acquired.

(3) A restriction is not authorised by sub-paragraph (2) above unless—

(a) any disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association; and

(b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2) above) may be required to sell them on terms which are the same as those mentioned in paragraph (a) above.

(4) In the case of a profit sharing scheme, except in relation to redeemable shares in a workers' cooperative, nothing in sub-paragraph (2) above authorises a restriction which would require a person, before the release date, to dispose of his beneficial interest in shares the ownership of which has not been transferred to him.

Marginal Citations

M2172 Source—1978 Sch.9 7; 1980 Sch.10 17; 1984 Sch.10 9; 1986 s.22, 24(2)

13 (1) [M2173] In determining, in the case of a share option scheme, for the purposes of paragraph 12(1)(c) above whether scheme shares which are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantage to him or to a person connected with him.

(2) Sub-paragraph (1) does not apply to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November 1984.

[[F1763] (3) In the case of schemes other than savings-related share option schemes, sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.**]**

Textual Amendments

F1763 Sch. 9 para. 13(3) added (retrospectively) by Finance Act 1988 (c. 39), **s. 69(1)**

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Marginal Citations

M2173 Source—1980 Sch.10 18; 1982 s.41; 1984 Sch.10 10; 1986 s.23(4)

14 (1) [M2174]Except where scheme shares are shares in a company the ordinary share capital of which consists of shares of one class only, the majority of the issued shares of the same class either must be employee-control shares or must be held by persons other than—

(a) persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the grantor or any other company and not in pursuance of an offer to the public;

(b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in sub-paragraph (a) above; and

(c) in a case where the shares fall within sub-paragraph (c), but not within sub-paragraph (a), of paragraph 11 above, companies which have control of the company whose shares are in question or of which that company is an associated company.

(2) In its application to a profit sharing scheme, sub-paragraph (1) above shall have effect with the addition after the words "ordinary share capital of which" of the words " at the time of the acquisition of the shares by the trustees ".

(3) For the purposes of this paragraph, shares in a company are employee-control shares if—

(a) the persons holding the shares are, by virtue of their holding, together able to control the company; and

(b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.

Marginal Citations

M2174 Source—1978 Sch.9 8; 1980 s.46(11), Sch.10 19; 1984 Sch.10 11; 1986 s.23(3)

15 (1) [M2175]Except in the case of a profit sharing scheme, the scheme may provide that if any company ("the acquiring company")—

(a) obtains control of a company whose shares are scheme shares as a result of making a general offer—

(i) to acquire the whole of the issued ordinary share capital of the company which is made on a condition such that if it is satisfied the person making the offer will have control of the company; or

(ii) to acquire all the shares in the company which are of the same class as the scheme shares;

(b) obtains control of a company whose shares are scheme shares in pursuance of a compromise or arrangement sanctioned by the court under section 425 of the [M2176]Companies Act 1985 or Article 418 of the [M2177]Companies (Northern Ireland) Order 1986; or

(c) becomes bound or entitled to acquire shares in a company whose shares are scheme shares under sections 428 to 430 of that Act or Articles 421 to 423 of that Order,

any participant in the scheme may at any time within the appropriate period, by agreement with the acquiring company, release his rights under the scheme (in this

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paragraph referred to as "the old rights") in consideration of the grant to him of rights (in this paragraph referred to as "the new rights") which are equivalent to the old rights but relate to shares in a different company (whether the acquiring company itself or some other company falling within paragraph 10(b) or (c) above).

(2) In sub-paragraph (1) above "the appropriate period" means—
- (a) in a case falling within paragraph (a), the period of six months beginning with the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made is satisfied;
- (b) in a case falling within paragraph (b), the period of six months beginning with the time when the court sanctions the compromise or arrangement; and
- (c) in a case falling within paragraph (c), the period during which the acquiring company remains bound or entitled as mentioned in that paragraph.

(3) The new rights shall not be regarded for the purposes of this paragraph as equivalent to the old rights unless—
- (a) the shares to which they relate satisfy the conditions specified, in relation to scheme shares, in paragraphs 10 to 14 above; and
- (b) the new rights will be exercisable in the same manner as the old rights and subject to the provisions of the scheme as it had effect immediately before the release of the old rights; and
- (c) the total market value, immediately before the release, of the shares which were subject to the participant's old rights is equal to the total market value, immediately after the grant, of the shares in respect of which the new rights are granted to the participant; and
- (d) the total amount payable by the participant for the acquisition of shares in pursuance of the new rights is equal to the total amount that would have been payable for the acquisition of shares in pursuance of the old rights.

(4) Where any new rights are granted pursuant to a provision included in a scheme by virtue of this paragraph they shall be regarded—
- (a) for the purposes of section 185 and this Schedule; and
- (b) for the purposes of the subsequent application (by virtue of a condition complying with sub-paragraph (3)(b) above) of the provisions of the scheme,

as having been granted at the time when the corresponding old rights were granted.

(5) [M2178]Where a scheme which was approved before 1st August 1987 is altered before 1st August 1989 so as to include such a provision as is mentioned above ("an exchange provision"), the scheme as altered may by virtue of this and the following sub-paragraphs apply that provision to rights obtained under the scheme before the date on which the alteration takes effect.

(6) If an exchange provision is applied as mentioned in sub-paragraph (5) above in a case where, on or after 17th March 1987 but before the date on which the alteration takes effect, an event has occurred by reason of which a person holding rights under the scheme would be able to take advantage of the exchange provision—
- (a) the scheme may permit a person who held rights under the scheme immediately before that event to take advantage of the exchange provision; and
- (b) in a case where rights then held would otherwise, by reason of the event, have ceased to be exercisable, the scheme may provide that the exchange provision shall apply as if the rights were still exercisable.

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(7) The application of an exchange provision as mentioned in sub-paragraph (5) or (6) above shall not itself be regarded for the purposes of this Schedule as the acquisition of a right.

(8) Sub-paragraphs (5) and (6) above have effect subject to paragraph 4 above.

Marginal Citations

M2175 Source—1980 Sch.10, 10A; 1984 Sch.10 4A; 1987 Sch.4 1, 2; 1987 (No.2) s.59
M2176 1985 c. 6.
M2177 S.I. 1986/1032 (N.I. 6).
M2178 Source—1987 Sch.4 3

PART III

REQUIREMENTS APPLICABLE TO SAVINGS-RELATED SHARE OPTION SCHEMES

16 (1) [M2179]The scheme must provide for the scheme shares to be paid for with moneys not exceeding the amount of repayments made and any interest paid to them under a certified contractual savings scheme which has been approved by the Board for the purposes of this Schedule.

(2) [M2180]Where the Board are satisfied that—

(a) a person has entered into a certified contractual savings scheme before 15th November 1980, and

(b) he has obtained rights under a scheme established before that date to acquire shares in a company of which he is an employee or director (or a company of which such a company has control) using repayments made under the certified contractual savings scheme;

then, repayments and interest paid under the certified contractual savings scheme shall be treated as repayments and interest paid, under a scheme approved by the Board for the purposes of this Schedule under sub-paragraph (1) above, and, accordingly, may be used for the purchase of shares under a savings-related share option scheme approved under this Schedule.

(3) The repayments and interest to which sub-paragraph (2) above applies shall not exceed the repayments and interest to which the participant would have been entitled if the terms of the scheme had corresponded to those of a certified contractual savings scheme approved by the Board under sub-paragraph (1) above.

Marginal Citations

M2179 Source—1980 Sch.10 5(b)
M2180 Source—1980 Sch.10 24

17 [M2181]Subject to paragraphs 18 to 21 below, the rights obtained under the scheme must not be capable of being exercised before the bonus date, that is to say, the date on

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which repayments under the certified contractual savings scheme are due; and for the purposes of this paragraph and paragraph 16 above—

(a) repayments under a certified contractual savings scheme may be taken as including or as not including a bonus;

(b) the time when repayments are due shall be, where repayments are taken as including the maximum bonus, the earliest date on which the maximum bonus is payable and, in any other case, the earliest date on which a bonus is payable under the scheme; and

(c) the question what is to be taken as so included must be required to be determined at the time when rights under the scheme are obtained.

Marginal Citations

M2181 Source—1980 Sch.10 6

18 [M2182]The scheme must provide that if a person who has obtained rights under the scheme dies before the bonus date the rights must be exercised, if at all, within 12 months after the date of his death and if he dies within six months after the bonus date the rights may be exercised within 12 months after the bonus date.

Marginal Citations

M2182 Source—1980 Sch.10 7

19 [M2183]The scheme must provide that if a person who has obtained rights under it ceases to hold the office or employment by virtue of which he is eligible to participate in the scheme by reason of—

(a) injury or disability or redundancy within the meaning of the [M2184]Employment Protection (Consolidation) Act 1978; or

(b) retirement on reaching **[**[F1764]the specified age**]** or any other age at which he is bound to retire in accordance with the terms of his contract of employment,

then the rights must be exercised, if at all, within six months of his so ceasing and, if he so ceases for any other reason within three years of obtaining the rights, they may not be exercised at all except pursuant to such a provision of the scheme as is mentioned in paragraph 21(1)(e) below; and in relation to the case where he so ceases for any other reason more than three years after obtaining the rights the scheme must either provide that the rights may not be exercised or that they must be exercised, if at all, within six months of his so ceasing.

Textual Amendments

F1764 Words in Sch. 9 para. 19(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(2)(6)**

Marginal Citations

M2183 Source—1980 Sch.10 8; 1986 s.23(3)

M2184 1978 c. 44.

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20 [M2185]The scheme must provide that where a person who has obtained rights under it continues to hold the office or employment by virtue of which he is eligible to participate in the scheme after the date on which he reaches **[**[F1765]the specified age**]**, he may exercise the rights within six months of that date.

Textual Amendments

F1765 Words in Sch. 9 para. 20 substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(2)(6)**

Marginal Citations

M2185 Source—1980 Sch.10 9

21 (1) [M2186]The scheme may provide that—

(a) if any person obtains control of a company whose shares are scheme shares as a result of making a general offer falling within paragraph 15(a)(i) or (ii) above, rights obtained under the scheme to acquire shares in the company may be exercised within six months of the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made has been satisfied;

(b) if under section 425 of the [M2187]Companies Act 1985 or Article 418 of the [M2188]Companies (Northern Ireland) Order 1986 (power to compromise with creditors and members) the court sanctions a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction of a company whose shares are scheme shares or its amalgamation with any other company or companies, rights obtained under the share option scheme to acquire shares in the company may be exercised within six months of the court sanctioning the compromise or arrangement;

(c) if any person becomes bound or entitled, under sections 428 to 430 of that Act of 1985 or Articles 421 to 423 of that Order of 1986 (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), to acquire shares in a company shares in which are scheme shares, rights obtained under the scheme to acquire shares in the company may be exercised at any time when that person remains so bound or entitled;

(d) if a company whose shares are scheme shares passes a resolution for voluntary winding up, rights obtained under a scheme to acquire shares in the company may be exercised within six months of the passing of the resolution; and

(e) if a person ceases to hold an office or employment by virtue of which he is eligible to participate in the scheme by reason only that—

(i) that office or employment is in a company of which the grantor ceases to have control; or

(ii) that office or employment relates to a business or part of a business which is transferred to a person who is neither an associated company of the grantor nor a company of which the grantor has control;

rights under the scheme held by that person may be exercised within six months of his so ceasing.

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(2) For the purposes of this paragraph a person shall be deemed to have obtained control of a company if he and others acting in concert with him have together obtained control of it.

(3) Where a scheme which has been approved before 1st August 1986 has been or is altered before 1st August 1988 so as to include such a provision as is specified in sub-paragraph (1)(e) above, the scheme as altered may by virtue of this sub-paragraph apply that provision to rights obtained under the scheme before the date on which the alteration takes effect, and where that provision is so applied in relation to such rights—

(a) the scheme may permit a person having such rights to take advantage of the provision notwithstanding that under the scheme he would otherwise be unable to exercise those rights after he has ceased to hold the office or employment in question; and

(b) if, before the date on which the alteration takes effect, a person who held such rights on 18th March 1986 ceases, in either of the circumstances set out in sub-paragraph (1)(e) above, to hold an office or employment by virtue of which he was eligible to participate in the scheme, then, so far as concerns the rights so held, the scheme may permit him to take advantage of the provision in question as if the alteration had been made immediately before he ceased to hold that office or employment; and

(c) the application of the provision shall not itself be regarded as the acquisition of a right for the purposes of this Schedule.

This sub-paragraph has effect subject to paragraph 4 above.

Marginal Citations

M2186 Source—1980 Sch.10 10; 1986 s.25(4), (8), (9)

M2187 1985 c. 6

M2188 S.I. 1986/1032 (N.I. 6).

22 [M2189]Except as provided in paragraph 18 above, rights obtained by a person under the scheme must not be capable—

(a) of being transferred by him, or

(b) of being exercised later than six months after the bonus date.

Marginal Citations

M2189 Source—1980 Sch.10 11

23 [M2190]No person shall be treated for the purposes of paragraph 19 or 21(1)(e) above as ceasing to hold an office or employment by virtue of which he is eligible to participate in the scheme until he ceases to hold an office or employment in the grantor or in any associated company or company of which the grantor has control.

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Marginal Citations

M2190 Source—1980 Sch.10 12; 1986 s.25(5)

24 (1) [M2191]The scheme must provide for a person's contributions under the certified contractual savings scheme to be of such amount as to secure as nearly as may be repayment of an amount equal to that for which shares may be acquired in pursuance of rights obtained under the scheme; and for this purpose the amount of repayment under the certified contractual savings scheme shall be determined as mentioned in paragraph 17 above.

(2) [M2192]The scheme must not—

(a) permit the aggregate amount of a person's contributions under certified contractual savings schemes linked to savings-related share option schemes approved under this Schedule to exceed **[**[F1766]£250**]** monthly, nor

(b) impose a minimum on the amount of a person's contributions which exceeds £10 monthly.

(3) The Treasury may by order amend sub-paragraph (2) above by substituting for any amount for the time being specified in that sub-paragraph such amount as may be specified in the order.

Textual Amendments

F1766 Figure in Sch. 9 para. 24(2)(a) substituted (01.09.1991) by virtue of Finance Act 1991 (c. 31, SIF 63:1), **s. 40(1)**; S.I. 1991/1741, **art.2**.

Marginal Citations

M2191 Source—1980 Sch.10 13(1)

M2192 Source—1980 Sch.10 13(2), (3); 1984 s.39(5)

25 [M2193]The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

(a) must be stated at the time the right is obtained, and

(b) must not be manifestly less than **[**[F1767]80%.**]** of the market value of shares of the same class at that time or, if the Board and the grantor agree in writing, at such earlier time or times as may be provided in the agreement,

but the scheme may provide for such variation of the price as may be necessary to take account of any variation in the share capital of which the scheme shares form part.

Textual Amendments

F1767 1989 s.62(3).*Previously*
"90 per cent.".

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Marginal Citations
M2193 Source—1980 Sch.10 14

26 (1) [M2194] Subject to paragraph 8 above, every person who—

(a) is a full-time employee or a full-time director of the grantor or, in the case of a group scheme, a participating company, and

(b) has been such an employee or director at all times during a qualifying period not exceeding five years, and

(c) is chargeable to tax in respect of his office or employment under Case I of Schedule E,

must be eligible to participate in the scheme, that is to say, to obtain and exercise rights under it, on similar terms, and those who do participate in the scheme must actually do so on similar terms.

(2) For the purposes of sub-paragraph (1) above, the fact that the rights to be obtained by the persons participating in a scheme vary according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not eligible to participate in the scheme on similar terms or do not actually do so.

(3) [M2195] Except as provided by paragraph 19 above or pursuant to such a provision as is referred to in paragraph 21(1)(e) above, a person must not be eligible to participate in the scheme at any time unless he is at that time a director or employee of the grantor or, in the case of a group scheme, of a participating company.

Marginal Citations
M2194 Source—1980 Sch.10 20; 1984 s.39(6); 1986 s.25(7)
M2195 Source—1980 Sch.10 21; 1986 s.25(6)

PART IV

REQUIREMENTS APPLICABLE TO OTHER SHARE OPTION SCHEMES

27 (1) [M2196] A person must not be eligible to obtain rights under the scheme at any time unless he is at that time a full-time director or qualifying employee of the grantor or, in the case of a group scheme, of a participating company, but the scheme may provide that a person may exercise rights under it after he has ceased to be a full-time director or qualifying employee.

(2) [M2197] The scheme must not permit any person obtaining rights under it to transfer any of them but may provide that, if a person who has obtained rights under it dies before exercising them, they may be exercised after, but not more than one year after, the date of his death.

(3) Where the scheme contains the provision permitted by sub-paragraph (2) above and any rights are exercised—

(a) after the death of the person who obtained them; but

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(b) before the expiry of the period of ten years beginning with his obtaining them;

subsection (3) of section 185 shall apply with the omission of the reference to subsection (5) of that section.

(4) [M2198]In sub-paragraph (1) above "qualifying employee", in relation to a company, means an employee of the company (other than one who is a director of the company or, in the case of a group scheme, of a participating company) who is required, under the terms of his employment, to work for the company for at least 20 hours a week.

Marginal Citations

M2196 Source—1984 Sch.10 4(1)(a), (2)
M2197 Source—1984 Sch.10, 12
M2198 Source—1984 Sch. 10 15(1)

28 (1) [M2199] The scheme must provide that no person shall obtain rights under it which would, at the time they are obtained, cause the aggregate market value of the shares which he may acquire in pursuance of rights obtained under the scheme or under any other share option scheme, not being a savings-related share option scheme, approved under this Schedule and established by the grantor or by any associated company of the grantor (and not exercised) to exceed or further exceed the appropriate limit.

(2) The appropriate limit is the greater of—

(a) £100,000; or

(b) if there were relevant emoluments for the preceding year of assessment, four times the amount of the relevant emoluments for the current or preceding year of assessment (whichever of those years gives the greater amount); or

(c) if there were no relevant emoluments for the preceding year of assessment, four times the amount of the relevant emoluments for the period of 12 months beginning with the first day during the current year of assessment in respect of which there are relevant emoluments.

(3) For the purposes of sub-paragraph (1) above, the market value of shares shall be calculated as at the time when the rights in relation to those shares were obtained or, in a case where an agreement relating to them has been made under paragraph 29 below, such earlier time or times as may be provided in the agreement.

(4) For the purposes of sub-paragraph (2) above, the relevant emoluments are such of the emoluments of the office or employment by virtue of which the person in question is eligible to participate in the scheme as are liable to be paid under deduction of tax pursuant to section 203 after deducting amounts included by virtue of Chapter II of Part V.

Marginal Citations

M2199 Source—1984 Sch. 10 5

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[F1768 29 (1) The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

(a) must be stated at the time the right is obtained, and

(b) except where stated under provision included in the scheme pursuant to sub-paragraph (2) below, must not be manifestly less than the market value of shares of the same class at the material time.

(2) The scheme may provide that, if sub-paragraph (3) below applies, scheme shares may be acquired by the exercise of a right obtained under the scheme at a price which is not manifestly less than 85 per cent. of the market value of shares of the same class at the material time.

(3) This sub-paragraph applies if the conditions specified in sub-paragraph (4)(a) and, as the case may be, (b) or (c) below, are met—

(a) where at the time the right is obtained the scheme is not a group scheme, as respects the grantor;

(b) where at the time the right is obtained the scheme is a group scheme, as respects each company to which the scheme is expressed to extend at that time.

(4) The conditions are—

(a) that the company has established, or is at the time the right is obtained a participating company in relation to, a scheme which is at that time an approved savings-related share option scheme or an approved profit sharing scheme (a "qualifying scheme");

(b) where there is only one qualifying scheme, that every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme's existence;

(c) where there is more than one qualifying scheme, that, in the case of each of those schemes, every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme's existence.

(5) In determining whether the condition specified in sub-paragraph (4)(a) above is met, the withdrawal of approval under paragraph 3 above with effect from a time before the right is obtained shall be disregarded if the withdrawal takes place retrospectively from a time after the right is obtained.

(6) For the purposes of sub-paragraph (4)(b) and (c) above, an employee has been informed of the existence of a scheme by an appropriate person if he has been informed by one or more of the following—

(a) a company by virtue of employment with which the employee is eligible to participate in the scheme,

(b) the grantor, and

(c) where the scheme under which the right to acquire the shares is obtained is a group scheme, any other company which is a participating company in relation to that scheme.

(7) The scheme may provide for such variation of the price at which scheme shares may be acquired as may be necessary to take account of any variation in the share capital of which the scheme shares form part.

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(8) In this paragraph, references to the material time are to the time the right to acquire the scheme shares is obtained or, if the Board and the grantor agree in writing, such earlier time or times as may be provided in the agreement.**]**

Textual Amendments

F1768 S. 29 substituted (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), **s. 39(1)(7)**

PART V

REQUIREMENTS APPLICABLE TO PROFIT SHARING SCHEMES

30 (1) [M2200]The scheme must provide for the establishment of a body of persons resident in the United Kingdom ("the trustees")—

(a) who, out of moneys paid to them by the grantor or, in the case of a group scheme, a participating company, are required by the scheme to acquire shares in respect of which the conditions in paragraphs 10 to 12 and 14 above are fulfilled; and

(b) who are under a duty to appropriate shares acquired by them to individuals who participate in the scheme, not being individuals who are ineligible by virtue of paragraph 8 or 35 of this Schedule; and

(c) whose functions with respect to shares held by them are regulated by a trust which is constituted under the law of a part of the United Kingdom and the terms of which are embodied in an instrument which complies with the provisions of paragraphs 31 to 34 below.

(2) [M2201]If at any time after the Board have approved the scheme, an alteration is made in the terms of the trust referred to in sub-paragraph (1)(c) above, the approval shall not have effect after the date of the alteration unless the Board have approved the alteration.

(3) [M2202]The scheme must provide that the total of the initial market values of the shares appropriated to any one participant in a year of assessment will not exceed the relevant amount.

(4) [M2203]In this Part of this Schedule "initial market value", in relation to a participant's shares, means the market value of those shares determined—

(a) except where paragraph (b) below applies, on the date on which the shares were appropriated to him; and

(b) if the Board and the trustees agree in writing, on or by reference to such earlier date or dates as may be provided for in the agreement.

Marginal Citations

M2200 Source—1978 Sch.9 1(3)
M2201 Source—1978 Sch.9 3(2)
M2202 Source—1978 Sch.9 1 (4); 1983 s.25(1)
M2203 Source—1978 s.53(4)

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31 [M2204]The trust instrument shall provide that, as soon as practicable after any shares have been appropriated to a participant, the trustees will give him notice of the appropriation—

(a) specifying the number and description of those shares; and

(b) stating their initial market value.

Marginal Citations

M2204 Source—1978 Sch.9 12

32 (1) [M2205]The trust instrument must contain a provision prohibiting the trustees from disposing of any shares, except as mentioned in paragraph 1(1)(a), (b) or (c) of Schedule 10, during the period of retention (whether by transfer to the participant or otherwise).

(2) The trust instrument must contain a provision prohibiting the trustees from disposing of any shares after the end of the period of retention and before the release date except—

(a) pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in his shares is for the time being vested; and

(b) by a transaction which would not involve a breach of the participant's obligations under paragraph 2(2)(c) or (d) above.

Marginal Citations

M2205 Source—1978 Sch.9 13; 1980 s.46(13)

33 [M2206]The trust instrument must contain a provision requiring the trustees—

(a) subject to their obligations under paragraph 7 of Schedule 10 and to any such direction as is mentioned in paragraph 4(2) of that Schedule to pay over to the participant any money or money's worth received by them in respect of or by reference to any of his shares other than money's worth consisting of new shares within the meaning of paragraph 5 of that Schedule; and

(b) to deal only pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in his shares is for the time being vested with any right conferred in respect of any of his shares to be allotted other shares, securities or rights of any description.

Modifications etc. (not altering text)

C828 Sch. 9 para. 33(a) modified (with effect in accordance with s. 101(11)(12) of the affecting Act) by Finance Act 1994 (c. 9), **s. 101(6)** (with s. 101(14))

Marginal Citations

M2206 Source—1978 Sch.9 14

34 [M2207]The trust instrument must impose an obligation on the trustees—

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(a) to maintain such records as may be necessary to enable the trustees to carry out their obligations under paragraph 7 of Schedule 10; and

(b) where the participant becomes liable to income tax under Schedule E by reason of the occurrence of any event, to inform him of any facts relevant to determining that liability.

Marginal Citations

M2207 Source—1978 Sch.9 15

35 (1) [M2208] An individual shall not be eligible to have shares appropriated to him under the scheme at any time unless he is at that time or was within the preceding 18 months a director or employee of the grantor or, in the case of a group scheme, of a participating company.

(2) [M2209] An individual shall not be eligible to have shares appropriated to him under the scheme at any time if in that year of assessment shares have been appropriated to him under another approved scheme established by the grantor or by—

(a) a company which controls or is controlled by the grantor or which is controlled by a company which also controls the grantor, or

(b) a company which is a member of a consortium owning the grantor or which is owned in part by the grantor as a member of a consortium.

Marginal Citations

M2208 Source—1978 Sch.9 9

M2209 Source—1978 Sch.9 10

36 (1) [M2210] Subject to paragraphs 8 and 35 above, every person who at any time—

(a) is a full-time employee or a full-time director of the grantor or, in the case of a group scheme, a participating company, and

(b) has been such an employee or director at all times during a qualifying period, not exceeding five years, ending at that time, and

(c) is chargeable to tax in respect of his office or employment under Case I of Schedule E,

must then be eligible (subject to paragraphs 8 and 35 of this Schedule) to participate in the scheme on similar terms and those who do participate must actually do so on similar terms.

(2) For the purposes of sub-paragraph (1) above, the fact that the number of shares to be appropriated to the participants in a scheme varies by reference to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not eligible to participate in the scheme on similar terms or do not actually do so.

Marginal Citations

M2210 Source—1978 Sch.9 2; 1983 s.25(4)

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PART VI

MATERIAL INTEREST TEST

[F1769 Interests under trusts

Textual Amendments

F1769 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

37 (1) This [M2211] paragraph applies in a case where—

(a) the individual ("the beneficiary") was one of the objects of a discretionary trust; and

(b) the property subject to the trust at any time consisted of or included any shares or obligations of the company.

(2) If neither the beneficiary nor any relevant associate of his had received any benefit under the discretionary trust before 14th November 1986, then, as respects any time before that date, the trustees of the settlement concerned shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been associates (as defined in section 417(3) and (4)) of the beneficiary.

(3) If, on or after 14th November 1986—

(a) the beneficiary ceases to be eligible to benefit under the discretionary trust by reason of—

(i) an irrevocable disclaimer or release executed by him under seal; or

(ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust; and

(b) immediately after he so ceases, no relevant associate of his is interested in the shares or obligations of the company which are subject to the trust; and

(c) during the period of 12 months ending with the date when the beneficiary so ceases, neither the beneficiary nor any relevant associate of his received any benefit under the trust,

the beneficiary shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been interested in the shares or obligations of the company as mentioned in section 417(3)(c) at any time during the period of 12 months referred to in paragraph (c) above.

(4) In sub-paragraphs (2) and (3) above "relevant associate" has the meaning given to "associate" by subsection (3) of section 417 but with the omission of paragraph (c) of that subsection.

(5) Sub-paragraph (3)(a)(i) above, in its application to Scotland, shall be construed as if the words "under seal" were omitted.

Marginal Citations

M2211 Source—1987 Sch.4 6-8

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Options etc.

38 (1) For the purposes of section 187(3)(a) a right to acquire shares (however arising) shall be taken to be a right to control them.

(2) Any reference in sub-paragraph (3) below to the shares attributed to an individual is a reference to the shares which, in accordance with section 187(3)(a), fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company's ordinary share capital.

(3) In any case where—

(a) the shares attributed to an individual consist of or include shares which he or any other person has a right to acquire; and

(b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right;

then, in determining at any time prior to the exercise of that right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b) above.

(4) This paragraph has effect as respects any time after 5th April 1987.

Shares held by trustees of approved profit sharing schemes

39 In applying section 187(3), as respects any time before or after the passing of this Act, there shall be disregarded—

(a) the interest of the trustees of an approved profit sharing scheme in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and

(b) any rights exercisable by those trustees by virtue of that interest.

[F1770 Shares subject to an employee benefit trust

Textual Amendments

F1770 Sch. 9 para. 40 and preceding cross-heading inserted by Finance Act 1989 (c. 26), **s. 65**

40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.

(2) In this paragraph "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8.

(3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent., or in

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the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.

(4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.**]]**

SCHEDULE 10

FURTHER PROVISIONS RELATING TO PROFIT SHARING SCHEMES

Modifications etc. (not altering text)

C829 Sch. 10 excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(2)(c)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

C830 Sch. 10 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)**

C831 Sch. 10 continued (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

Limitations on contractual obligations of participants

1 (1) [M2212]Any obligation placed on the participant by virtue of paragraph 2(2) of Schedule 9 shall not prevent the participant from—

(a) directing the trustees to accept an offer for any of his shares ("the original shares") if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or

(b) directing the trustees to agree to a transaction affecting his shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—

(i) all the ordinary share capital of the company in question or, as the case may be, all the shares of the class in question; or

(ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved scheme; or

(c) directing the trustees to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416; or

(d) agreeing after the expiry of the period of retention to sell the beneficial interest in his shares to the trustees for the same consideration as, in accordance with sub-paragraph (d) of paragraph 2(2) of Schedule 9, would be required to be obtained for the shares themselves.

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(2) [M2213]No obligation placed on the participant by virtue of paragraph 2(2)(c) of Schedule 9 shall be construed as binding his personal representatives to pay any sum to the trustees.

(3) [M2214]If, in breach of his obligation under paragraph 2(2)(b) of Schedule 9 a participant assigns, charges or otherwise disposes of the beneficial interest in any of his shares, then, as respects those shares, he shall be treated for the purposes of the relevant provisions as if at the time they were appropriated to him he was ineligible to participate in the scheme; and paragraph 6 below shall apply accordingly.

Marginal Citations

M2212 Source—1978 s.54(2); 1979 Sch.7
M2213 Source—1978 s.54(1A); 1980 s.46(2)
M2214 Source—1978 s.54(3)

The period of retention

2 [M2215]For the purposes of any of the relevant provisions, "the period of retention", in relation to any of a participant's shares, means the period beginning on the date on which they are appropriated to him and ending on the second anniversary of that date or, if it is earlier—

(a) the date on which the participant ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company by reason of injury or disability or on account of his being dismissed by reason of redundancy, within the meaning of the [M2216]Employment Protection (Consolidation) Act 1978 or the [M2217]Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965; or

(b) the date on which the participant reaches **[**[F1771]the relevant age**]**; or

(c) the date of the participant's death; **[**[F1772]or**]**

(d) in a case where the participant's shares are redeemable shares in a workers' cooperative, the date on which the participant ceases to be employed by, or by a subsidiary of, the cooperative.

For the purposes of sub-paragraph (a) above, in the case of a group scheme, the participant shall not be treated as ceasing to be a director or employee of a participating company until such time as he is no longer a director or employee of any of the participating companies.

[[F1773]In this paragraph, the reference to the relevant age is a reference, in the case of a scheme approved before the day on which the Finance Act 1991 was passed, to pensionable age and, in the case of a scheme approved on or after that day, to the specified age.**]**

Textual Amendments

F1771 Words in Sch. 10 para. 2(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**
F1772 Word at the end of Sch. 10 para. 2(c) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **9**

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F1773 Words in Sch. 10 para. 2 inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**

Marginal Citations

M2215 Source—1978 s.54(4), (5); 1980 s.46(3); 1986 s.24(3)
M2216 1978 c. 44.
M2217 1965 c. 19 (N.I.).

The appropriate percentage

3 [M2218]Subject to paragraph 6(4) below, for the purposes of any of the relevant provisions charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of his shares, any reference to "the appropriate percentage" in relation to those shares shall be determined according to the time of that event, as follows—

(a) if the event occurs before the fourth anniversary of the date on which the shares were appropriated to the participant and paragraph (c) below does not apply, the appropriate percentage is 100 per cent.;

(b) if the event occurs on or after the fourth anniversary and before the fifth anniversary of the date on which the shares were appropriated to the participant and paragraph (c) below does not apply, the appropriate percentage is 75 per cent.;

(c) if the participant—

(i) ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company as mentioned in paragraph 2(a) above, or

(ii) reaches **[**[F1774]the relevant age**]**,

and the event occurs before the fifth anniversary of the date on which the shares were appropriated to him, the appropriate percentage is 50 per cent.

[[F1775]In this paragraph, the reference to the relevant age is a reference, in the case of a scheme approved before the day on which the Finance Act 1991 was passed, to pensionable age and, in the case of a scheme approved on or after that day, to the specified age.**]**

Textual Amendments

F1774 Words in Sch. 10 para. 3(c)(ii) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**
F1775 Words in Sch. 10 para. 3 inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**

Marginal Citations

M2218 Source—1978 s.54(7); 1980 s.46(5); 1985 s.45(3)

VALID FROM 03/05/1994

3A (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.

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(2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is pensionable age.

(3) Where—
- (a) the scheme is approved before 25th July 1991,
- (b) the event occurs on or after 30th November 1993,
- (c) the scheme defines the period of retention by reference to the age of 60 for both men and women, and
- (d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,

the relevant age is 60.

(4) Where—
- (a) the scheme is approved before 25th July 1991,
- (b) the event occurs on or after 30th November 1993, and
- (c) sub-paragraph (3) above does not apply,

the relevant age is pensionable age.

(5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age.

Capital receipts

4 (1) [M2219]Money or money's worth is not a capital receipt for the purposes of section 186(3) if or, as the case may be, to the extent that—
- (a) it constitutes income in the hands of the recipient for the purposes of income tax; or
- (b) it consists of the proceeds of a disposal falling within section 186(4); or
- (c) it consists of new shares within the meaning of paragraph 5 below.

(2) If, pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, the trustees—
- (a) dispose of some of the rights arising under a rights issue, as defined in section 186(8), and
- (b) use the proceeds of that disposal to exercise other such rights,

the money or money's worth which constitutes the proceeds of that disposal is not a capital receipt for the purposes of section 186(3).

(3) If, apart from this sub-paragraph, the amount or value of a capital receipt would exceed the sum which, immediately before the entitlement to the receipt arose, was the locked-in value of the shares to which the receipt is referable, section 186(3) shall have effect as if the amount or value of the receipt were equal to that locked-in value.

(4) Section 186(3) does not apply in relation to a capital receipt if the entitlement to it arises after the death of the participant to whose shares it is referable.

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Marginal Citations

M2219 Source—1978 s.56(2)-(5)

Company reconstructions

5 (1) M2220 This paragraph applies where there occurs in relation to any of a participant's shares ("the original holding") a transaction which results in a new holding being equated with the original holding for the purposes of capital gains tax; and any such transaction is referred to below as a "company reconstruction".

(2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares shall be treated for the purposes of this paragraph as not forming part of the new holding, that is to say—

(a) redeemable shares or securities issued as mentioned in section 209(2)(c);

(b) share capital issued in circumstances such that section 210(1) applies; and

(c) share capital to which section 249 applies.

(3) In this paragraph—

"corresponding shares", in relation to any new shares, means those shares in respect of which the new shares are issued or which the new shares otherwise represent;

"new shares" means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding; and

"original holding" has the meaning given by sub-paragraph (1) above.

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

(a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding;

(b) the date on which any new shares are to be treated as having been appropriated to the participant shall be that on which the corresponding shares were appropriated; and

(c) the conditions in paragraphs 10 to 12 and 14 of Schedule 9 shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares.

(5) In relation to shares comprised in the new holding, section 186(5) shall apply as if the references in that subsection to the initial market value of the shares were references to their locked-in value immediately after the company reconstruction, which shall be determined as follows—

(a) ascertain the aggregate amount of locked-in value immediately before the reconstruction of those shares comprised in the original holding which had at that time the same locked-in value; and

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(b) distribute that amount *pro rata* among—

(i) such of those shares as remain in the new holding, and

(ii) any new shares in relation to which those shares are the corresponding shares, according to their market value immediately after the date of their reconstruction;

and section 186(5)(a) shall apply only to capital receipts after the date of the reconstruction.

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

(7) In the context of a new holding, any reference in this paragraph to shares includes securities and rights of any description which form part of the new holding for the purposes of Chapter II of Part IV of the **[**[F1776]1992**]** Act.

Textual Amendments

F1776 Word in Sch. 10 para. 5(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(58)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M2220 Source—1978 s.57; 1979(C) Sch.7

VALID FROM 03/05/1994

[[F1777]5A(1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant's shares ("the original holding") a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and "relevant transaction" here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.

(2) In paragraph 5(2) to (6) above as applied by this paragraph—

(a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;

(b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;

(c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));

(d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.

(3) In sub-paragraph (1) above "qualifying corporate bond" shall be construed in accordance with section 117 of the 1992 Act.**]**

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Textual Amendments

F1777 Sch. 10 para. 5A inserted (with effect in accordance with s. 101(8) of the amending Act) by Finance Act 1994 (c. 9), **s. 101(4)** (with s. 101(13))

Excess or unauthorised shares

6 (1) [M2221]This paragraph applies in any case where—

(a) the total amount of the initial market value of all the shares which are appropriated to an individual in any one year of assessment (whether under a single approved profit sharing scheme or under two or more such schemes) exceeds the relevant amount; or

(b) the trustees of an approved profit sharing scheme appropriate shares to an individual at a time when he is ineligible to participate in the scheme by virtue of paragraph 8 or 35 of Schedule 9.

(2) In this paragraph—

"excess shares" means any share which caused the relevant amount to be exceeded and any share appropriated after that amount was exceeded; and

"unauthorised shares" means any share appropriated as mentioned in sub-paragraph (1)(b) above.

(3) For the purposes of sub-paragraph (1)(a) above, if a number of shares is appropriated to an individual at the same time under two or more approved profit sharing schemes, the same proportion of the shares appropriated at that time under each scheme shall be regarded as being appropriated before the relevant amount is exceeded.

(4) For the purposes of any of the relevant provisions charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of his shares—

(a) the appropriate percentage in relation to excess or unauthorised shares shall in every case be 100 per cent.; and

(b) without prejudice to section 187(8), the event shall be treated as relating to shares which are not excess or unauthorised shares before shares which are.

(5) Excess or unauthorised shares which have not been disposed of before the release date or, if it is earlier, the date of the death of the participant whose shares they are, shall be treated for the purposes of the relevant provisions as having been disposed of by the trustees immediately before the release date or, as the case may require, the date of the participant's death, for a consideration equal to their market value at that time.

(6) The locked-in value at any time of any excess or unauthorised shares shall be their market value at that time.

(7) Where there has been a company reconstruction to which paragraph 5 above applies, a new share (within the meaning of that paragraph) shall be treated as an excess or unauthorised share if the corresponding share (within the meaning of that paragraph) or, if there was more than one corresponding share, each of them was an excess or unauthorised share.

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Marginal Citations

M2221 Source—1978 s.58; 1983 s.25(1)

P.A.Y.E. deduction of tax

7 (1) [M2222] Subject to sub-paragraphs (4) and (5) below, where the trustees of an approved profit sharing scheme receive a sum of money which constitutes (or forms part of)—

(a) the proceeds of a disposal of shares falling within section 186(4), or

(b) a capital receipt,

in respect of which a participant in the scheme is chargeable to income tax under Schedule E in accordance with section 186, the trustees shall pay out of that sum of money to the company specified in sub-paragraph (3) below an amount equal to that on which income tax is so payable; and the company shall then pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction.

(2) Where a participant disposes of his beneficial interest in any of his shares to the trustees of the scheme and the trustees are deemed by virtue of section 186(9) to have disposed of the shares in question, this paragraph shall apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of shares falling within section 186(4).

(3) The company to which the payment mentioned in sub-paragraph (1) above is to be made is the company—

(a) of which the participant is an employee or director at the time the trustees receive the sum of money referred to in that sub-paragraph, and

(b) whose employees are at that time eligible (subject to the terms of the scheme and Schedule 9) to be participants in the approved profit sharing scheme concerned,

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

(4) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies but—

(a) there is no company which falls within paragraphs (a) and (b) of sub-paragraph (3) above, or

(b) the Board is of opinion that it is impracticable for the company which falls within those paragraphs (or, as the case may be, any of them) to make a P.A.Y.E. deduction and accordingly direct that this sub-paragraph shall apply,

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

(5) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies and the Board direct that this sub-paragraph shall apply—

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(a) the trustees shall make the payment mentioned in that sub-paragraph to the company specified in the Board's direction; and

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

but no such direction shall be given except with the consent of the trustees, the company or companies (if any) specified in sub-paragraph (3) above and the company specified in the direction.

(6) Where, in accordance with this paragraph any person is required to make a P.A.Y.E. deduction in respect of any amount, that amount shall be treated for the purposes of section 203 and any regulations made under that section as an amount of income payable to the recipient and assessable to income tax under Schedule E, and, accordingly, such deduction shall be made as is required by those regulations.

(7) Where, in connection with a transfer of a participant's shares to which sub-paragraph (c) of paragraph 2(2) of Schedule 9 applies, the trustees receive such a sum as is referred to in that sub-paragraph, that sum shall be treated for the purposes of the Income Tax Acts—

(a) as a sum deducted by the trustees pursuant to a requirement to make a P.A.Y.E. deduction under sub-paragraph (4) above; and

(b) as referable to the income tax to which, as a result of the transfer, the participant is chargeable by virtue of section 186(4).

(8) Unless the Board otherwise direct, in the application of this paragraph to a sum of money which constitutes or forms part of the proceeds of a disposal of, or a capital receipt referable to, excess or unauthorised shares (within the meaning of paragraph 6 above), the trustees shall determine the amount of the payment mentioned in sub-paragraph (1) above or, as the case may be, the amount of the P.A.Y.E. deduction to be made under sub-paragraph (4) above as if the shares were not excess or unauthorised shares.

Marginal Citations

M2222 Source—1978 s.59; 1980 s.46(8); 1987 Sch.15 11(3)

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SCHEDULE 11

Section 188.

RELIEF AS RESPECTS TAX ON PAYMENTS ON RETIREMENT OR REMOVAL FROM OFFICE OR EMPLOYMENT

PART I

GENERAL PROVISIONS

Preliminary

1 [M2223]Relief shall be allowed in accordance with the following provisions of this Schedule in respect of tax chargeable by virtue of section 148, where a claim is made under section 188(6).

Marginal Citations
M2223 Source—1970 Sch.8 1

2 (1) [M2224]A person shall not be entitled to relief under this Schedule in so far as such relief, together with any personal relief allowed to him, would reduce the amount of income on which he is chargeable below the amount income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person.

(2) In sub-paragraph (1) above "personal relief" means relief under Chapter I of Part VII.

Marginal Citations
M2224 Source—970 Sch.8 2]

Relief by reduction of sums chargeable

3 [M2225]In computing the charge to tax in respect of a payment chargeable to tax under section 148, being a payment made in respect of an office or employment in which the service of the holder includes foreign service, there shall be deducted from the payment a sum which bears to the amount which would be chargeable to tax apart from this paragraph the same proportion as the length of the foreign service bears to the length of the service before the relevant date.

Marginal Citations
M2225 Source—1970 Sch. 8 6

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Relief by reduction of tax

4 (1) [M2226]*Subject to sub-paragraph* (2)*below, in the case of any payment in respect of which tax is chargeable under section* 148,*the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained—*

(a) *the amount of tax which would be chargeable apart from this paragraph in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income*;

(b) *the amount of tax which would have been so chargeable if the payment had not been made*;

and the amount to be deducted shall be half the difference between the amount ascertained at (a)*and the amount ascertained at* (b).

(2) *In the case of a payment which exceeds* £50,000,*this paragraph applies as if it were a payment of* £50,000*exactly.*

Marginal Citations
M2226 Source—1970 Sch.8 7; 1981 s.31(3); 1982 s.43(1)

5 (1) [M2227]*Subject to sub-paragraph* (2)*below, in the case of a payment which exceeds* £50,000*and in respect of which tax is chargeable under section* 148,*the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained—*

(a) *the amount of tax which would be chargeable apart from this paragraph and paragraph* 4*above in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income; and*

(b) *the amount of tax which would have been so chargeable if the amount of the payment had been* £50,000*exactly*;

and the amount to be deducted shall be one-quarter of the difference between the amount ascertained at (a)*and the amount ascertained at* (b).

(2) *In the case of a payment which exceeds* £75,000,*this paragraph applies as if it were a payment of* £75,000*exactly.*

(3) *Any relief allowed by virtue of this paragraph shall be in addition to that allowed by virtue of paragraph* 4*above.*

Marginal Citations
M2227 Source—1970 Sch.8 7A; 1982 s.43(1)

6 [M2228]*Where tax is chargeable under section* 148*in respect of two or more payments to or in respect of the same person in respect of the same office or employment and is so chargeable for the same chargeable period, those payments shall be treated*

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for the purposes of paragraphs 4*and* 5*above as a single payment of an amount equal to their aggregate amount.*

Marginal Citations

M2228 Source—1970 Sch.8 10; 1986 s.45(2)

7 [M2229] *Where tax is chargeable under section* 148*in respect of two or more payments to or in respect of the same person in respect of different offices or employments and is so chargeable for the same chargeable period, paragraphs* 4*to* 6*above shall apply as if those payments were made in respect of the same office or employment*[F1778].

Textual Amendments

F1778 *Ceases to have effect in respect of payments received on or after* 6*April* 1988*unless a notice is given in relation to it in accordance with* para.12*of this Schedule—see* 1988(F) s.74(2), (3)*and* Sch.14 Part IV.

Marginal Citations

M2229 Source—1970 Sch.8 11

Supplemental

8 [M2230] Any reference in this Schedule to the emoluments of an office or employment is a reference to those emoluments exclusive of any payment chargeable to tax under section 148; and in calculating for any purpose of this Schedule the amount of such emoluments—

(a) there shall be included any balancing charge to which the holder of the office or employment is liable under **[**[F1779]Part II of the 1990 Act**]**, and

(b) there shall be deducted any allowances under [F1780]. . . **[**[F1781]Part II of the 1990 Act**]** and any allowances for expenses under section 198 or 201, to which he is entitled,

and any such charges or allowances for a chargeable period shall, for the purpose of ascertaining the amount of the emoluments for any year of service, be treated as accruing from day to day, and shall be apportioned in respect of time accordingly.

Textual Amendments

F1779 1990(C) s.164*and* Sch.1. para.8(39)(a).*Previously*
"section 33 of the 1968 Act or under Chapter I of Part III of the Finance Act 1971 ("the 1971 Act")".

F1780 Words in Sch. 11 para. 8(b) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 9, **Sch. 26 Pt. 5(22)**

F1781 1990(C) s.164*and* Sch.1. para.8(39)(b).*Previously*
"Chapter I of Part III of the 1971 Act".

Marginal Citations

M2230 Source—1970 Sch.8 14; 1971 Sch.8 16

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9 [M2231]In this Schedule "the relevant date" means, in relation to a payment not being a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which it is made and, in relation to a payment in commutation of annual or other periodical payments, the date of the termination or change in respect of which those payments would have been made.

Marginal Citations
M2231 Source—1970 Sch.8 15

10 In this Schedule, "foreign service", in relation to an office or employment, means __ [M2232]

(a) service before the year 1974-75 such that tax was not chargeable in respect of the emoluments of the office or employment—
  (i) in the case of the year 1956-57 or any subsequent chargeable period, under Case I of Schedule E;
  (ii) in the case of any preceding year of assessment, under Schedule E; or
(b) service after the year 1973-74 such that the emoluments from the office or employment were not chargeable under Case I of Schedule E (or would not have been so chargeable, had there been any) or that a deduction equal to their whole amount was or would have been allowable under paragraph 1 of Schedule 2 to the Finance Act 1974, paragraph 1 of Schedule 7 to the Finance Act 1977 or section 193(1) in charging them.

Marginal Citations
M2232 Source—1970 Sch.8 16; 1974 s.21(4); 1977 s.31(3)

11 Any reference in this Schedule to the amount of tax to which a person is or would be chargeable is a reference to the amount of tax to which he is or would be chargeable either by assessment or by deduction. [M2233]

Marginal Citations
M2233 Source—1970 Sch.8 17

PART II

PAYMENTS IN PURSUANCE OF PRE-10TH MARCH 1981 OBLIGATIONS

12 [M2234]Where a payment is made in pursuance of an obligation incurred before 10th March 1981, the person chargeable to tax in respect of it may, by notice given to the inspector within six years after the year of assessment in which the payment is made, elect that Part I of this Schedule shall have effect in relation to the payment

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subject to the modifications contained in the following provisions of this Part, and those provisions shall have effect accordingly (and not otherwise).

Marginal Citations
M2234 Source—1981 s.31(7)

13 [M2235] The following paragraphs shall be inserted immediately before paragraph 3—

"2A In computing the charge to tax in respect of a payment chargeable to tax under section 148, not being a payment of compensation for loss of office, there shall be deducted from the payment a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds £10,000.

2B (1) In this Schedule "the standard capital superannuation benefit", in relation to an office or employment, means a sum arrived at as follows, that is to say—

(a) there shall be ascertained the average for one year of the holder's emoluments from the office or employment for the last three years of his service before the relevant date (or for the whole period of his service if less than three years);

(b) one-twentieth of the amount ascertained at (a) shall be multiplied by the whole number of complete years of the service of the holder in the office or employment; and

(c) there shall be deducted from the product at (b) a sum equal to the amount, or, as the case may be, to the value at the relevant date, of any lump sum (not chargeable to tax) received or receivable by the holder in respect of the office or employment in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or is described in section 596.

(2) In sub-paragraph (1)(c) above the reference to a lump sum receivable by the holder includes a reference to a lump sum that would be receivable by him if he had exercised or refrained from exercising (with any necessary consent) any option or other right conferred on him by the rules of the scheme or fund.

2C Where tax is chargeable under section 148 in respect of two or more payments to which paragraph 2A above applies, being payments made to or in respect of the same person in respect of the same office or employment or in respect of different offices or employments held under the same employer or under associated employers, then—

(a) paragraph 2A above shall apply as if those payments were a single payment of an amount equal to their aggregate amount and, where they are made in respect of different offices or employments, as if the standard capital superannuation benefit were an amount equal to the sum of the standard capital superannuation benefits for those offices or employments, and

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(b) where the payments are treated as income of different chargeable periods, the relief to be granted under that paragraph in respect of a payment chargeable for any such period shall be the amount by which the relief computed in accordance with the preceding provision in respect of that payment and any payments chargeable for previous chargeable periods exceeds the relief in respect of the last mentioned payments;

and where the standard capital superannuation benefit for an office or employment in respect of which two or more of the payments are made is not the same in relation to each of those payments, it shall be treated for the purpose of this paragraph as equal to the higher or highest of those benefits."

Marginal Citations

M2235 Source—1970 Sch.8 3, 4, 5; 1970(F) Sch.5 Pt.III 12 (6); 1971 Sch.3 12(6); 1978 s.24(1), (2)

14 [M2236]In paragraph 3, after the words "from the payment" there shall be inserted the words " (in addition to any deduction allowed under the preceding provisions of this Schedule) ".

Marginal Citations

M2236 Source—1970 Sch.8 6

15 [M2237]In paragraph 4(1), for the words following sub-paragraph (b) there shall be substituted the following words—

"(c) the difference between the respective amounts of tax which would be so chargeable on the assumptions—

(i) that the appropriate fraction only of the payment (after deducting any relief applicable thereto under the preceding provisions of this Schedule) had been made, and

(ii) that no part of the payment had been made,

and disregarding, in each case, any other emoluments of the office or employment,

and the amount to be deducted shall be the difference between the amount ascertained at (a) and the sum of the amount ascertained at (b) and the appropriate multiple of the difference ascertained at (c)."

Marginal Citations

M2237 Source—1970 Sch.8 7

16 [M2238]The following paragraphs shall be inserted after paragraph 5—

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"5A (1) Where the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income includes income, income tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he is liable to make to any other person, the amounts referred to in sub-paragraphs (a) to (c) of paragraph 4 above shall be calculated as if that tax were not chargeable in respect of that income.

(2) Where for any year of assessment an individual claims relief under paragraph 4 above, and also under section 550 or Schedule 2, or under both that section and that Schedule, then, in computing the relief under paragraph 4 above, his income shall be deemed to include—

(a) in respect of any amount which would otherwise be included therein by virtue of section 547(1)(a), no greater amount than the appropriate fraction thereof within the meaning of section 550, and

(b) in respect of any chargeable sum within the meaning of Schedule 2 (including two or more sums treated for the purposes of paragraph 3 of that Schedule as one chargeable sum), no greater amount than the balance (if any) of the yearly equivalent thereof remaining after the making of any deduction required by that paragraph.

5B In this Schedule "the appropriate fraction" (except in paragraph 5A(2)(a)) and "the appropriate multiple", in relation to any payment, mean respectively—

(a) where the payment is not a payment of compensation for loss of office, one-sixth and six, and

(b) where the payment is a payment of compensation for loss of office, one divided by the relevant number of years of unexpired service, and that number of years,

and for the purposes of this paragraph "the relevant number of years of unexpired service" means the number of complete years taken into account in calculating the amount of the payment, being years for which the holder of the office or employment would have been entitled (otherwise than by virtue of arrangements made in contemplation of his retirement or removal or of any relevant change in the functions or emoluments of the office or employment) to retain the office or employment or its full emoluments, and where the period so taken into account is less than one complete year or exceeds an exact number of years, it shall be treated for the purposes of this paragraph as one complete year or as the next higher number of complete years, as the case may be."

Marginal Citations

M2238 Source—1970 Sch.8 8, 9

17 **M2239** The following proviso shall be added at the end of paragraph 6—

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"Provided that, where the appropriate fraction and the appropriate multiple are not the same for each of the payments, the calculations of relief under paragraph 4 above shall be made separately in relation to each payment or payments having a different appropriate fraction and multiple, and in any such calculation—

(a) any payment for which the appropriate multiple is lower shall be left out of account for all the purposes of that paragraph, and

(b) in ascertaining the difference at (c) of that paragraph it shall be assumed that the appropriate fraction only of any payment for which the appropriate multiple is higher had been made,

and the relief to be allowed shall be the sum of the reliefs so calculated in respect of the payments respectively. "

Marginal Citations

M2239 Source—1970 Sch.8 10

18 [M2240]The following words shall be added at the end of paragraph 7—

"and as if any emoluments of any of those offices or employments were emoluments of the same office or employment."

Marginal Citations

M2240 Source—1970 Sch.8 11

19 [M2241]The following paragraph shall be inserted after paragraph 8—

"8A In this Schedule "payment of compensation for loss of office" means a payment made—

(a) in pursuance of an order of a court in proceedings for wrongful dismissal or otherwise for breach of contract of employment, or by way of settlement of such proceedings or of a claim in respect of which such proceedings could have been brought, or

(b) by way of compensation for the extinguishment of any right the infringement of which would be actionable in such proceedings,

and any question whether, and to what extent, a payment is or is not a payment of compensation for loss of office shall be determined according to all the circumstances and not (or not exclusively) by reference to the terms on which it is expressed to be made."

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M2241 Source—1970 Sch.8 13

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[F1782SCHEDULE 11A

Section 191A.]

REMOVAL EXPENSES AND BENEFITS

Textual Amendments

F1782 Sch. 11A inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para. 2**

Modifications etc. (not altering text)

C832 Sch. 11A modified (6.4.2001 in accordance with reg. 1(1) of the affecting S.I.) by The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004), **Sch. 3 Pt. 8 para. 2(7)**

F1783PART I

TAX RELIEF

Textual Amendments

F1783 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1784 1 (1) Where by reason of a person's employment—

(a) any sums are paid to that person (the employee) in respect of qualifying removal expenses,

(b) any sums are paid on behalf of the employee to another person in respect of qualifying removal expenses, or

(c) any qualifying removal benefit is provided for the employee or for others being members of his family or household,

the employee shall not thereby be regarded as receiving emoluments of the employment for any purpose of Case I or Case II of Schedule E.

(2) Sub-paragraph (1) above shall have effect subject to Part V of this Schedule.

Textual Amendments

F1784 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1785 2 (1) This paragraph applies where—

(a) any payment or benefit would (apart from paragraph 1 above) constitute emoluments of an employment for any purpose of Case I or Case II of Schedule E, and

(b) by virtue of that paragraph it is treated as not being such emoluments.

(2) The payment or benefit shall be treated as not being emoluments of the employment for any purpose of Case III of Schedule E.

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Textual Amendments
F1785 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1786] PART II

QUALIFYING EXPENSES AND QUALIFYING BENEFITS

Textual Amendments
F1786 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1787] *Qualifying removal expenses*

Textual Amendments
F1787 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1788] 3 (1) Expenses are not qualifying removal expenses unless they are eligible removal expenses and the conditions set out in this paragraph and paragraph 5 below are fulfilled.

(2) The expenses must be reasonably incurred by the employee in connection with a change of his residence.

(3) The expenses must be incurred on or before the relevant day.

Textual Amendments
F1788 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1789] *Qualifying removal benefits*

Textual Amendments
F1789 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1790] 4 (1) A benefit is not a qualifying removal benefit unless it is an eligible removal benefit and the conditions set out in this paragraph and paragraph 5 below are fulfilled.

(2) The benefit must be reasonably provided in connection with a change of the employee's residence.

(3) The benefit must be provided on or before the relevant day.

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Textual Amendments
F1790 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1791] *Connection with employment*

Textual Amendments
F1791 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1792] 5 (1) The change of residence mentioned in paragraphs 3(2) and 4(2) above must result from—

(a) the employee becoming employed by an employer,

(b) an alteration of the duties of the employee's employment (where his employer remains the same), or

(c) an alteration of the place where the employee is normally to perform the duties of his employment (where both his employer and the duties of his employment remain the same).

(2) The change must be made wholly or mainly to allow the employee to have his residence within a reasonable daily travelling distance of—

(a) the place where he performs, or is to perform, the duties of his employment (where sub-paragraph (1)(a) above applies);

(b) the place where he performs, or is to perform, the new duties of his employment (where sub-paragraph (1)(b) above applies);

(c) the new place where he performs, or is to perform, the duties of his employment (where sub-paragraph (1)(c) above applies);

and any reference in this sub-paragraph to the place where the employee performs, or is to perform, duties of his employment is to the place where he normally performs, or is normally to perform, those duties.

(3) The employee's former residence must not be within a reasonable daily travelling distance of the place mentioned in sub-paragraph (2) above.

Textual Amendments
F1792 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1793] *The relevant day*

Textual Amendments
F1793 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

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[F1794]6 (1) Subject to sub-paragraph (2) below, the relevant day, in relation to a particular change of residence, is the day on which the relevant year ends; and for the purposes of this sub-paragraph the relevant year is the year of assessment next following the year of assessment in which—

(a) the employee begins to perform the duties of his employment (where paragraph 5(1)(a) above applies);

(b) the employee begins to perform the new duties of his employment (where paragraph 5(1)(b) above applies);

(c) the employee begins to perform the duties of his employment at the new place (where paragraph 5(1)(c) above applies).

(2) If it appears reasonable to the Board to do so, having regard to all the circumstances of a particular change of residence, they may direct that in relation to that change the relevant day is a day which—

(a) falls after the day mentioned in sub-paragraph (1) above, and

(b) is a day on which a year of assessment ends.

Textual Amendments

F1794 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

PART III

[F1795]ELIGIBLE REMOVAL EXPENSES

Textual Amendments

F1795 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1796]Introduction

Textual Amendments

F1796 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1797]7 Expenses are eligible removal expenses if they fall into one of the following categories—

(a) expenses of disposal,

(b) expenses of acquisition,

(c) expenses of abortive acquisition,

(d) expenses of transporting belongings,

(e) travelling and subsistence expenses,

(f) bridging loan expenses, and

(g) duplicate expenses;

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and paragraphs 8 to 14 below apply for the purpose of interpreting the preceding provisions of this paragraph.

Textual Amendments
F1797 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1798] *Expenses of disposal*

Textual Amendments
F1798 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1799] 8 (1) Expenses fall within paragraph 7(a) above if (and only if)—

(a) the employee has an interest in his former residence,

(b) that interest is disposed of, or is intended to be disposed of, in consequence of the change of residence, and

(c) the expenses fall within sub-paragraph (2) below.

(2) Expenses fall within this sub-paragraph if they consist of one of the following—

(a) legal expenses connected with the disposal or intended disposal of the employee's interest in his former residence (including legal expenses connected with the redemption of any loan relating to the residence),

(b) any penalty for redeeming, for the purpose of the disposal or intended disposal, any loan relating to the residence,

(c) fees of any estate agent or auctioneer engaged in the disposal or intended disposal,

(d) expenses of advertising the disposal or intended disposal,

(e) charges for disconnecting, for the purpose of the disposal or intended disposal, public utilities serving the residence,

(f) expenses of maintaining, insuring, or preserving the security of the residence at any time when unoccupied pending the disposal or intended disposal, and

(g) any rent paid in respect of the residence at any such time.

(3) The reference in this paragraph to the employee having an interest in his former residence includes a reference to—

(a) one or more members of the employee's family or household having such an interest;

(b) the employee and one or more members of his family or household having such an interest;

and references to the disposal or intended disposal of the employee's interest in his former residence shall be construed accordingly.

(4) For the purposes of this paragraph a loan relates to a residence if the loan was raised to obtain an interest in the residence, or an interest in the residence forms security for the loan, or both.

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Textual Amendments

F1799 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1800] *Expenses of acquisition*

Textual Amendments

F1800 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1801] 9 (1) Expenses fall within paragraph 7(b) above if (and only if) the employee acquires an interest in his new residence and the expenses consist of one of the following—

(a) legal expenses connected with the acquisition by the employee of the interest (including legal expenses connected with any loan raised to acquire the interest),

(b) any procurement fees connected with any such loan,

(c) the costs of any insurance effected to cover risks which are incurred by the maker of any such loan and which arise because the amount of the loan is equal to the whole, or a substantial part, of the value of the interest,

(d) fees relating to any survey or inspection of the residence undertaken in connection with the acquisition by the employee of the interest,

(e) fees payable to an appropriate registry or appropriate register in connection with the acquisition by the employee of the interest,

(f) stamp duty charged on the acquisition, and

(g) charges for connecting any public utility for use by the employee, if the utility serves the residence.

(2) References in this paragraph to the employee acquiring an interest in his new residence include references to—

(a) one or more members of the employee's family or household acquiring such an interest;

(b) the employee and one or more members of his family or household acquiring such an interest.

(3) References in this paragraph to a loan are to a loan raised by the employee, by one or more members of the employee's family or household or by the employee and one or more members of his family or household.

(4) The reference in this paragraph to a utility for use by the employee includes a reference to a utility for use by the employee and one or more members of his family or household.

(5) For the purposes of this paragraph an appropriate registry is any of the following—

(a) Her Majesty's Land Registry;

(b) the Land Registry in Northern Ireland;

(c) the Registry of Deeds for Northern Ireland;

and an appropriate register is any register under the management and control of the Keeper of the Registers of Scotland.

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Textual Amendments
F1801 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1802] *Expenses of abortive acquisition*

Textual Amendments
F1802 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1803] 10 Expenses fall within paragraph 7(c) above if (and only if)—

(a) they are incurred with a view to the acquisition of an interest in a residence, the interest is not acquired, but (if it were) the residence would be the employee's new residence,

(b) they would fall within paragraph 7(b) above if the interest were acquired, and

(c) the interest is not acquired because of circumstances outside the control of the person seeking to acquire the interest, or because that person reasonably declines to proceed.

Textual Amendments
F1803 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1804] *Expenses of transporting belongings*

Textual Amendments
F1804 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1805] 11 (1) Expenses fall within paragraph 7(d) above if (and only if) they consist of one of the following—

(a) expenses connected with transporting domestic belongings from the employee's former residence to his new residence, and

(b) the costs of any insurance effected to cover such transporting.

(2) For the purposes of this paragraph transporting includes—

(a) packing and unpacking belongings,

(b) temporarily storing them if a direct move from the former to the new residence is not made,

(c) detaching domestic fittings from the former residence if they are to be taken to the new residence, and

(d) attaching domestic fittings to the new residence, and adapting them, if they are brought from the old residence.

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(3) For the purposes of this paragraph domestic belongings are those of the employee and of members of his family or household.

Textual Amendments

F1805 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1806] *Travelling and subsistence expenses*

Textual Amendments

F1806 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1807] 12 (1) Expenses fall within paragraph 7(e) above if (and only if) they consist of one of the following—

(a) the costs of travelling and subsistence of the employee and members of his family or household while making temporary visits to the new area for purposes connected with the change,

(b) the employee's costs of travelling between his former residence and the place where he normally performs his new duties or (where paragraph 5(1)(c) above applies) between his former residence and the new place where he normally performs the duties of his employment,

(c) where paragraph 5(1)(b) or (c) above applies, the employee's costs of travelling, before the alteration mentioned in paragraph 5(1)(b) or (c), between his new residence and his original place of work,

(d) costs of the employee's subsistence (other than costs falling within paragraph (a) above),

(e) the employee's costs of travelling between his former residence and any temporary living accommodation of the employee,

(f) where paragraph 5(1)(b) or (c) above applies, the employee's costs of travelling, before the alteration mentioned in paragraph 5(1)(b) or (c), between his new residence and any temporary living accommodation of the employee,

(g) the costs of travelling of the employee and members of his family or household from the employee's former residence to his new residence in connection with the change,

(h) a relevant child's costs of subsistence while staying, for the purposes of securing the continuity of his education, in living accommodation in the old area after the change,

(i) a relevant child's costs of travelling between the accommodation mentioned in paragraph (h) above and the employee's new residence,

(j) a relevant child's costs of subsistence while staying, for the purposes of securing the continuity of his education, in living accommodation in the new area before the change, and

(k) a relevant child's costs of travelling between the accommodation mentioned in paragraph (j) above and the employee's former residence.

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(2) For the purposes of this paragraph—

(a) the employee's new duties are the duties of his employment (where paragraph 5(1)(a) above applies) or the new duties of his employment (where paragraph 5(1)(b) above applies),

(b) the new area is the area round or near the place where the employee's new duties are, or are to be, normally performed, or (where paragraph 5(1)(c) above applies) the area round or near the new place where the duties of the employee's employment are, or are to be, normally performed,

(c) the employee's original place of work is the place where, before the alteration mentioned in paragraph 5(1)(b) or (c) above, the employee normally performs the duties of his employment,

(d) a relevant child is a person who is a member of the employee's family or household and who is aged under 19 at the material time, and

(e) the old area is the area round or near the former residence of the employee.

(3) For the purposes of this paragraph the material time is the beginning of the year of assessment in which—

(a) the employee becomes employed by an employer,

(b) the alteration of the duties of the employee's employment becomes effective, or

(c) the alteration of the place where the employee is normally to perform the duties of his employment becomes effective.

(4) In a case where—

(a) expenses are incurred by the employee,

(b) the expenses would, apart from this sub-paragraph, fall within paragraph 7(e) above, and

(c) a deduction is allowable under any of sections 193 to 195 in respect of the whole or part of the expenses,

the expenses or, as the case may be, the part of them in respect of which the deduction is allowable shall be treated as not falling within paragraph 7(e) above.

Textual Amendments

F1807 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1808] *Bridging loan expenses*

Textual Amendments

F1808 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1809] 13 (1) Expenses fall within paragraph 7(f) above if (and only if)—

(a) the employee has an interest in his former residence,

(b) he disposes of that interest in consequence of the change of residence,

(c) he acquires an interest in his new residence, and

(d) the expenses consist of interest falling within sub-paragraph (2) below.

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(2) Interest falls within this sub-paragraph if it is payable by the employee in respect of a loan raised by him and the reason, or one of the reasons, for the loan being raised is that a period elapses between—
  (a) the date when expenditure is incurred in connection with the acquisition of the employee's interest in his new residence, and
  (b) the date when the proceeds of the disposal of the employee's interest in his former residence are available.

(3) Interest on so much of the loan as exceeds the market value of the employee's interest in his former residence (taken at the time his interest in his new residence is acquired) shall be regarded as not falling within sub-paragraph (2) above.

(4) Interest on so much of the loan as is not used for any of the following purposes shall also be regarded as not falling within sub-paragraph (2) above—
  (a) the purpose of redeeming any loan relating to the employee's former residence and raised by him;
  (b) the purpose of acquiring the employee's interest in his new residence.

(5) For the purposes of this paragraph a loan relates to a residence if the loan was raised to obtain an interest in the residence, or an interest in the residence forms security for the loan, or both.

(6) References in this paragraph to the employee having, disposing of or acquiring an interest in a residence include references to—
  (a) one or more members of the employee's family or household having, disposing of or acquiring such an interest;
  (b) the employee and one or more members of his family or household having, disposing of or acquiring such an interest;

  and references to the employee's interest shall be construed accordingly.

(7) The reference in this paragraph to interest payable by the employee includes a reference to interest payable by one or more members of the employee's family or household or by the employee and one or more members of his family or household.

(8) References in this paragraph to a loan raised by the employee include references to a loan raised by one or more members of the employee's family or household or by the employee and one or more members of his family or household.

Textual Amendments
F1809 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1810] *Duplicate expenses*

Textual Amendments
F1810 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1811] 14 (1) Expenses fall within paragraph 7(g) above if (and only if)—

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(a) the employee has an interest in his former residence,
(b) he disposes of that interest in consequence of the change of residence,
(c) he acquires an interest in his new residence,
(d) the expenses are incurred by the employee as a result of the change, and
(e) the expenses are incurred on the purchase of domestic goods intended to replace goods which were used at the employee's former residence but which are not suitable for use at his new residence.

(2) In arriving at the total of the expenses any amount mentioned in sub-paragraph (3) below shall be deducted from what would be the total apart from this sub-paragraph; and accordingly an amount equal to the aggregate of such amounts shall not be treated as eligible removal expenses.

(3) The amount is any amount obtained in respect of the sale of the replaced goods.

(4) References in this paragraph to the employee having, disposing of or acquiring an interest in a residence include references to—
(a) one or more members of the employee's family or household having, disposing of or acquiring such an interest;
(b) the employee and one or more members of his family or household having, disposing of or acquiring such an interest.

Textual Amendments
F1811 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1812] *Power to amend*

Textual Amendments
F1812 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1813] 15 (1) The Treasury may make regulations amending the preceding provisions of this Part of this Schedule so as to secure that expenses that would not be eligible removal expenses (apart from the regulations) are such expenses.

(2) Any such regulations may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient; and such provisions may be made by way of amendment to other Parts of this Schedule, or otherwise.

(3) Any such regulations shall have effect as regards any change of an employee's residence which results from—
(a) the employee becoming employed by an employer on or after the specified day;
(b) an alteration, with effect from a time falling on or after the specified day, of the duties of the employee's employment;
(c) an alteration, with effect from a time falling on or after the specified day, of the place where the employee is normally to perform the duties of his employment;

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and in this sub-paragraph "the specified day" means the day specified in the regulations for the purposes of this sub-paragraph.

Textual Amendments
F1813 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1814] PART IV

ELIGIBLE REMOVAL BENEFITS

Textual Amendments
F1814 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1815] *Introduction*

Textual Amendments
F1815 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1816] 16 Benefits are eligible removal benefits if they fall into one of the following categories—

(a) benefits in respect of disposal,
(b) benefits in respect of acquisition,
(c) benefits in respect of abortive acquisition,
(d) benefits in respect of the transporting of belongings,
(e) travelling and subsistence benefits, and
(f) benefits in respect of the new residence;

and paragraphs 17 to 22 below apply for the purpose of interpreting the preceding provisions of this paragraph.

Textual Amendments
F1816 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1817] *Benefits in respect of disposal*

Textual Amendments
F1817 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

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F1818 17 (1) A benefit falls within paragraph 16(a) above if (and only if)—

(a) the employee has an interest in his former residence,

(b) that interest is disposed of, or is intended to be disposed of, in consequence of the change of residence, and

(c) the benefit falls within sub-paragraph (2) below.

(2) A benefit falls within this sub-paragraph if it consists of one of the following—

(a) legal services connected with the disposal or intended disposal of the employee's interest in his former residence (including legal services connected with the redemption of any loan relating to the residence),

(b) the waiving of any penalty for redeeming, for the purpose of the disposal or intended disposal, any loan relating to the residence,

(c) the services of an estate agent or auctioneer engaged in the disposal or intended disposal,

(d) services connected with the advertisement of the disposal or intended disposal,

(e) the disconnection, for the purpose of the disposal or intended disposal, of public utilities serving the residence, and

(f) services connected with the maintenance or insurance, or the preservation of the security, of the residence at any time when unoccupied pending the disposal or intended disposal.

(3) Sub-paragraphs (3) and (4) of paragraph 8 above apply for the purposes of this paragraph as they apply for the purposes of that.

Textual Amendments

F1818 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1819 *Benefits in respect of acquisition*

Textual Amendments

F1819 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1820 18 (1) A benefit falls within paragraph 16(b) above if (and only if) the employee acquires an interest in his new residence and the benefit consists of one of the following—

(a) legal services connected with the acquisition by the employee of the interest (including legal services connected with any loan raised to acquire the interest),

(b) the waiving of any procurement fees connected with any such loan,

(c) the waiving of any amount payable in respect of insurance effected to cover risks which are incurred by the maker of any such loan and which arise because the amount of the loan is equal to the whole, or a substantial part, of the value of the interest,

(d) any survey or inspection of the residence undertaken in connection with the acquisition by the employee of the interest, and

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(e) the connection of any public utility for use by the employee, if the utility serves the residence.

(2) Sub-paragraphs (2) to (4) of paragraph 9 above apply for the purposes of this paragraph as they apply for the purposes of that.

Textual Amendments
F1820 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1821 Benefits in respect of abortive acquisition

Textual Amendments
F1821 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1822 19 A benefit falls within paragraph 16(c) above if (and only if)—

(a) it is provided with a view to the acquisition of an interest in a residence, the interest is not acquired, but (if it were) the residence would be the employee's new residence,

(b) it would fall within paragraph 16(b) above if the interest were acquired, and

(c) the interest is not acquired because of circumstances outside the control of the person seeking to acquire the interest, or because that person reasonably declines to proceed.

Textual Amendments
F1822 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1823 Benefits in respect of the transporting of belongings

Textual Amendments
F1823 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1824 20 (1) A benefit falls within paragraph 16(d) above if (and only if) it consists of one of the following—

(a) the transporting of domestic belongings from the employee's former residence to his new residence, and

(b) the effecting of insurance to cover such transporting.

(2) Sub-paragraphs (2) and (3) of paragraph 11 above apply for the purposes of this paragraph as they apply for the purposes of that.

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Textual Amendments
F1824 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1825] *Travelling and subsistence benefits*

Textual Amendments
F1825 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1826] 21 (1) A benefit falls within paragraph 16(e) above if (and only if) it consists of one of the following—

(a) subsistence, and facilities for travel, provided for the employee and members of his family or household while making temporary visits to the new area for purposes connected with the change,

(b) facilities provided for the employee for travel between his former residence and the place where he normally performs his new duties or (where paragraph 5(1)(c) above applies) between his former residence and the new place where he normally performs the duties of his employment,

(c) where paragraph 5(1)(b) or (c) above applies, facilities provided for the employee for travel, before the alteration mentioned in paragraph 5(1)(b) or (c), between his new residence and his original place of work,

(d) subsistence provided for the employee (other than subsistence falling within paragraph (a) above),

(e) facilities provided for the employee for travel between his former residence and any temporary living accommodation of the employee,

(f) where paragraph 5(1)(b) or (c) above applies, facilities provided for the employee for travel, before the alteration mentioned in paragraph 5(1)(b) or (c), between his new residence and any temporary living accommodation of the employee,

(g) facilities provided for the employee and members of his family or household for travel from the employee's former residence to his new residence in connection with the change,

(h) subsistence provided for a relevant child while staying, for the purposes of securing the continuity of his education, in living accommodation in the old area after the change,

(i) facilities provided for a relevant child for travel between the accommodation mentioned in paragraph (h) above and the employee's new residence,

(j) subsistence provided for a relevant child while staying, for the purposes of securing the continuity of his education, in living accommodation in the new area before the change, and

(k) facilities provided for a relevant child for travel between the accommodation mentioned in paragraph (j) above and the employee's former residence.

(2) Where (apart from this sub-paragraph) a car or van would constitute a facility for the purposes of sub-paragraph (1) above, it shall not do so if the car or van—

(a) is provided as mentioned in that sub-paragraph,

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(b) is also available at any relevant time to the employee, or to others being members of his family or household, for his or their private use not falling within that sub-paragraph, and

(c) is so available by reason of the employee's employment and without any transfer of the property in it.

(3) Sub-paragraphs (2) and (3) of paragraph 12 above apply for the purposes of this paragraph as they apply for the purposes of that.

(4) In this paragraph "car", "van" and "private use" have the same meanings as in Chapter II of this Part of this Act.

(5) Section 168(6) applies for the purposes of this paragraph as it applies for the purposes of Chapter II of this Part of this Act.

(6) For the purposes of this paragraph a relevant time is any time falling on or before the day which is the relevant day (within the meaning given by paragraph 6 above) in relation to the change of residence concerned.

(7) In a case where—

(a) a benefit is provided for the employee or a member of his family or household,

(b) the benefit would, apart from this sub-paragraph, fall within paragraph 16(e) above, and

(c) a deduction is allowable under any of sections 193 to 195 in respect of the whole or part of the cost of the benefit,

the benefit shall, subject to sub-paragraph (8) below, be treated as not falling within paragraph 16(e) above.

(8) Where a deduction is allowed as mentioned in sub-paragraph (7) above in respect of part only of the cost of the benefit, the extent to which the benefit is treated as falling within paragraph 16(e) above shall be determined on a just and reasonable basis.

Textual Amendments

F1826 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1827] *Benefits in respect of new residence*

Textual Amendments

F1827 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1828] 22 (1) A benefit falls within paragraph 16(f) above if (and only if)—

(a) the employee has an interest in his former residence,

(b) he disposes of that interest in consequence of the change of residence,

(c) he acquires an interest in his new residence,

(d) the benefit is provided as a result of the change, and

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(e) the benefit consists of domestic goods provided to replace goods which were used at the employee's former residence but which are not suitable for use at his new residence.

(2) Sub-paragraph (4) of paragraph 14 above applies for the purposes of this paragraph as it applies for the purposes of that.

Textual Amendments
F1828 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1829] *Power to amend*

Textual Amendments
F1829 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1830] 23 (1) The Treasury may make regulations amending the preceding provisions of this Part of this Schedule so as to secure that a benefit that would not be an eligible removal benefit (apart from the regulations) is such a benefit.

(2) Any such regulations may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient; and such provisions may be made by way of amendment to other Parts of this Schedule, or otherwise.

(3) Sub-paragraph (3) of paragraph 15 above applies to regulations made under this paragraph as it applies to regulations made under that.

Textual Amendments
F1830 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1831] PART V

THE QUALIFYING LIMIT

Textual Amendments
F1831 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1832] 24 (1) In a case where, by reason of the employee's employment and in connection with a particular change of residence—

(a) any sums are paid as mentioned in paragraph 1(1)(a) or (b) above, or

(b) any qualifying removal benefit is provided as mentioned in paragraph 1(1)(c) above,

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paragraph 1(1) above shall apply only to the extent that the total value to the employee, found under sub-paragraph (2) below, does not exceed the qualifying limit.

(2) The total value to the employee is the total of the following—
  (a) the aggregate of the amounts of any sums paid as mentioned in paragraph 1(1)(a) or (b) above in connection with the change of residence;
  (b) the aggregate of any amounts represented by qualifying removal benefits which are provided as mentioned in paragraph 1(1)(c) above in connection with the change.

(3) Subject to sub-paragraphs (4) to (8) below, for the purposes of sub-paragraph (2)(b) above the amount represented by a benefit is the amount which would be the cash equivalent of the benefit under Chapter II of this Part of this Act if the benefit were chargeable under the appropriate provision of that Chapter.

(4) In the case of a benefit which—
  (a) consists of living accommodation provided for a person, and
  (b) is, or would be apart from this Schedule, chargeable under section 145 and not under section 146,

  for the purposes of sub-paragraph (2)(b) above the amount represented by the benefit is the amount which, if the benefit were so chargeable, would be the value to the employee of the accommodation for the period in which the accommodation is provided, less the appropriate sum.

(5) For the purposes of sub-paragraph (4) above the value to the employee of accommodation in any period shall be determined in accordance with section 145, and the reference in that sub-paragraph to the appropriate sum is to the total of—
  (a) so much of any sum made good by the employee to those at whose cost the accommodation is provided as is properly attributable to the provision of the accommodation, and
  (b) any amounts which, if the benefit were chargeable under section 145, would be deductible by virtue of section 145(3) from the amount to be treated as emoluments under section 145(1) as regards the benefit.

(6) In the case of a benefit which—
  (a) consists of living accommodation provided for a person, and
  (b) is, or would be apart from this Schedule, chargeable under both section 145 and section 146,

  for the purposes of sub-paragraph (2)(b) above the amount represented by the benefit is the total of the amounts mentioned in sub-paragraph (7) below.

(7) The amounts referred to in sub-paragraph (6) above are—
  (a) the amount which would be found under sub-paragraph (4) above if the benefit were chargeable under section 145 and not under section 146, and
  (b) the amount which, if the benefit were chargeable under section 146, would be the additional value to the employee of the accommodation for the period in which the accommodation is provided, less the appropriate sum.

(8) For the purposes of sub-paragraph (7) above the additional value to the employee of accommodation in any period shall be determined in accordance with section 146, and the reference in that sub-paragraph to the appropriate sum is to the total of—

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(a) so much of any rent paid by the employee in respect of the accommodation to the person providing it as exceeds the value to the employee of the accommodation for the period (determined in accordance with section 145), and

(b) any amounts which, if the benefit were chargeable under section 146, would be deductible by virtue of subsection (9) of that section from the amount to be treated as emoluments under that section as regards the benefit.

(9) The qualifying limit, as regards any change of residence, is £8,000.

(10) The Treasury may by order substitute for the sum for the time being specified in sub-paragraph (9) above a sum of a greater amount.

(11) Any such substitution shall have effect as regards any change of an employee's residence which results from—

(a) the employee becoming employed by an employer on or after the specified day;

(b) an alteration, with effect from a time falling on or after the specified day, of the duties of the employee's employment;

(c) an alteration, with effect from a time falling on or after the specified day, of the place where the employee is normally to perform the duties of his employment;

and in this sub-paragraph "the specified day" means the day specified in the order for the purposes of this sub-paragraph.

Textual Amendments

F1832 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1833] PART VI

GENERAL

Textual Amendments

F1833 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1834] *Interpretation*

Textual Amendments

F1834 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

[F1835] 25 In this Schedule—

(a) references to the residence of the employee are to his sole or main residence,

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(b) references to the former residence of the employee are to his sole or main residence before the change,

(c) references to the new residence of the employee are to his sole or main residence after the change, and

(d) references to an interest in a residence are, in the case of a building, references to an estate or interest in the land concerned.

Textual Amendments

F1835 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1836 26 For the purposes of this Schedule a person is not a member of another person's family or household unless the former is—

(a) the latter's spouse, son, daughter, parent, servant, dependant or guest, or

(b) the spouse of a son or daughter of the latter.

Textual Amendments

F1836 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1837 27 In this Schedule references to employment include references to any office, and related expressions shall be construed accordingly.

Textual Amendments

F1837 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1838 28 References in this Schedule to subsistence are to food, drink and temporary living accommodation.

Textual Amendments

F1838 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1839 Commencement

Textual Amendments

F1839 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

F1840 29 This Schedule applies to any payment made, or any benefit provided, in connection with a change of an employee's residence which results from—

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(a) the employee becoming employed by an employer on or after 6th April 1993,
(b) an alteration, with effect from a time falling on or after 6th April 1993, of the duties of the employee's employment, or
(c) an alteration, with effect from a time falling on or after 6th April 1993, of the place where the employee is normally to perform the duties of his employment.

Textual Amendments
F1840 Sch. 11A inserted (27.7.1993) by 1993 c. 34, s. 76, **Sch. 5 para.2**

SCHEDULE 12

Section 193.

FOREIGN EARNINGS

1 This Schedule shall have effect for the purpose of supplementing the provisions of section 193(1).

[F1841 Amount of emoluments]

Textual Amendments
F1841 Sch. 12 para. 1A and crossheading inserted (16.7.1992 for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 54(1)(2)**

F1842 1A For the purposes of section 193(1) and this Schedule the amount of the emoluments for a year of assessment from any employment shall be taken to be the amount remaining after any capital allowance and after any deductions under section 192(3), 193(4), 194(1), 195(7), 198, 199, 201, 332, 592 or 594.

Textual Amendments
F1842 Sch. 12 para. 1A and crossheading inserted (16.7.1992 for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 54(1)(2)**

Emoluments eligible for relief

2 (1) M2242 This paragraph has effect where a deduction falls to be allowed under section 193(1) in respect of the emoluments from an employment ("the relevant employment") for a year of assessment in which the duties of—
(a) the relevant employment; or

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(b) any other employment or employments held by the person concerned which are associated with the relevant employment,

are not performed wholly outside the United Kingdom.

(2) The amount of the **[**[F1843]emoluments for the year of assessment from the relevant employment in respect of which such a deduction is allowed**]** shall not exceed such proportion of the emoluments for that year from the relevant employment and the other employment or employments (if any) as is shown to be reasonable having regard to the nature of and time devoted to the duties performed outside and in the United Kingdom respectively and to all other relevant circumstances.

(3) For the purposes of this paragraph an employment is associated with another if they are with the same person or with persons associated with each other and—

(a) a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control within the meaning of that section of the same person or persons,

(b) an individual or partnership is associated with another person (whether or not a company) if one of them has control of the other within the meaning of section 840 or both are under the control within the meaning of that section of the same person or persons;

but paragraph (b) above shall not be construed as requiring an individual to be treated in any circumstances as under the control of another person.

Textual Amendments

F1843 1989 s.42(5)*for* 1989-90*and subsequent years of assessment. Previously*

"emoluments from the relevant employment in respect of which such a deduction is allowed for the year of assessment".

Marginal Citations

M2242 Source—1977 Sch.7 4(1), (2), (5)

Qualifying periods

3 (1) [M2243]For the purposes of section 193(1) a qualifying period is a period of consecutive days which either—

(a) consists entirely of days of absence from the United Kingdom; or

(b) consists partly of such days and partly of days included by virtue of sub-paragraph (2) below.

(2) Where, in the case of any person, a period consisting entirely of days of absence from the United Kingdom ("the relevant period") comes to an end and there have previously been one or more qualifying periods, the relevant period and the (or, if more than one, the last) qualifying period together with the intervening days between those periods shall be treated as a single qualifying period provided that—

(a) there are no more than 62 intervening days, and

(b) the number of days in the resulting period which are not days of absence from the United Kingdom does not exceed one-sixth of the total number of days in that period.

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[[F1844](2A) In relation to emoluments from employment as a seafarer, sub-paragraph (2) above shall have effect—

(a) as if the number of days specified in paragraph (a) were **[**[F1845]183**]** instead of 62, and

(b) as if the fraction specified in paragraph (b) were **[**[F1846]one half**]** instead of one sixth;

and for the purposes of this sub-paragraph "employment as a seafarer" means employment consisting of the performance of duties on a ship (or of such duties and of others incidental to them).**]**

(3) For the purposes of section 193(1) the emoluments from an employment attributable to a qualifying period include any emoluments from that employment for a period of leave immediately following that period but not so as to make any emoluments for one year of assessment emoluments for another.

Textual Amendments

F1844 1988(F) s.67*for* 1988-89*and subsequent years subject to certain conditions.*

F1845 Word in Sch. 12 para. 3(2A) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 45(1)-(3)**

F1846 Words in Sch. 12 para. 3(2A) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 45(1)-(3)**

Marginal Citations

M2243 Source—1977 Sch.7 1(2), (3), (4)

Supplementary

4 [M2244]For the purposes of this Schedule a person shall not be regarded as absent from the United Kingdom on any day unless he is so absent at the end of it.

Marginal Citations

M2244 Source—1977 Sch.7 6-8

5 [M2245]Notwithstanding section 132(4)(b), there shall be treated for the purposes of section 193(1) and this Schedule as performed outside the United Kingdom any duties which a person performs on a vessel or aircraft engaged on—

(a) a voyage or journey beginning or ending outside the United Kingdom (but exclusive of any part of it which begins and ends in the United Kingdom); or

(b) any part beginning or ending outside the United Kingdom of a voyage or journey which begins and ends in the United Kingdom;

and for the purposes of this paragraph any area designated under section 1(7) of the Continental Shelf Act 1964 shall be treated as part of the United Kingdom.

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Marginal Citations

M2245 1964 c. 29.

6 Where an employment is in substance one the duties of which fall in the year of assessment to be performed in the United Kingdom, then, for the purposes of section 193(1), there shall be treated as so performed any duties performed outside the United Kingdom the performance of which is merely incidental to the performance of other duties in the United Kingdom.

7 [M2246]In this Schedule references to an employment include references to an office.

Marginal Citations

M2246 Source—1977 Sch.7 11

VALID FROM 11/05/2001

SCHEDULE 12AA

MILEAGE ALLOWANCES: INTERPRETATION

. . . . . .

VALID FROM 31/07/1998

SCHEDULE 12A

ORDINARY COMMUTING AND PRIVATE TRAVEL

. . . . . .

SCHEDULE 13

Section 238(5), 241(4)

COLLECTION OF ADVANCE CORPORATION TAX

Modifications etc. (not altering text)

C847 Sch. 13 excluded (22.3.1992) by S.I. 1992/569, **reg. 17**

C848 *See* 1970(M) s.87—*interest on overdue advance corporation tax.*

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Duty to make returns

1 (1) [M2247]A company shall for each of its accounting periods make, in accordance with this Schedule, returns to the collector of the franked payments made and franked investment income received by it in that period and of the advance corporation tax (if any) payable by it in respect of those payments.

(2) A return shall be made for—

(a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September or 31st December which falls within that period:

(b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;

(c) if none of those dates falls within the accounting period, the whole accounting period.

(3) A return for any period for which a return is required to be made under this paragraph ("a return period") shall be made within 14 days from the end of that period.

(4) Subject to paragraphs 4(2) and 7(3) below, no return need be made under this Schedule by a company for any period in which it has made no franked payments.

Modifications etc. (not altering text)
C849 *See* s.250—*returns in connection with stock dividends.*

Marginal Citations
M2247 Source—1972 Sch.14

Contents of return

2 (1) Subject to paragraph 7(2) below, the return made by a company for any return period shall show—

(a) the amount of the franked payments made by it in that period;

(b) the amount of franked investment income, if any, received by it in that period, and

(c) if any advance corporation tax is payable in respect of those payments, the amount thereof.

(2) The return shall specify whether any amount of franked payments is included under paragraph (a) of sub-paragraph (1) above in consequence of the giving of a notice under section 247(3) and, if so, the amount so included.

(3) For the purposes of paragraph (b) of sub-paragraph (1) above the amount of franked investment income received by a company in a return period shall be treated as including the excess, if any, of—

(a) any surplus of franked investment income carried forward to the accounting period for which the return is made; and

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(b) any amount of franked investment income received by the company in that accounting period but before the beginning of the return period,

over the amount of any franked payments made by the company in that accounting period but before the beginning of the return period.

(4) For the purposes of paragraph (c) of sub-paragraph (1) above advance corporation tax shall be payable in respect of franked payments made in a return period if—

(a) the amount shown under paragraph (a) of that sub-paragraph exceeds the amount shown under paragraph (b) of that sub-paragraph, or

(b) no amount is shown under paragraph (b) of that sub-paragraph;

and the amount of that tax shall be calculated at the rate of advance corporation tax in force for the financial year in which the return period ends on an amount which, when that tax is added to it, is equal to that excess or, if no amount is shown under sub-paragraph (1)(b) above, to the amount shown under sub-paragraph (1)(a) above.

Modifications etc. (not altering text)

C850 *For rates of corporation tax see* Tables K*and* L*in* Vol.1.

Payment of tax

3 (1) Subject to paragraph 7(2) below, advance corporation tax in respect of franked payments required to be included in a return under this Schedule shall be due at the time by which the return for that period is to be made, and advance corporation tax so due shall be payable without the making of any assessment.

(2) Advance corporation tax which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.

(3) If it appears to the inspector that there is a franked payment which ought to have been and has not been included in a return, or if the inspector is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any advance corporation tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

VALID FROM 03/05/1994

International headquarters companies

3A (1) This paragraph and paragraph 3B below apply where—

(a) a company pays a foreign income dividend in a return period, and

(b) at the time it pays the dividend the company treats itself as an international headquarters company by virtue of section 246S(9).

(2) The return made by the company for the return period—

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(a) shall state that the company has so treated itself;
(b) shall show the basis on which it has so treated itself;
(c) shall not include the amount of the dividend in the amount shown under paragraph 2(1)(d) above;
(d) shall state separately that the dividend was paid and show its amount.

(3) The dividend shall be treated for the purposes of section 246F(1) and (2), paragraph 2(5) above and paragraph 4A below as if it had not been paid.

3B (1) Without prejudice to paragraph 3 above, if at any time before the end of the accounting period in which the return period mentioned in paragraph 3A(1) above falls the inspector is not satisfied that there was a reasonable basis for the company treating itself as mentioned in paragraph 3A(1) he may make an assessment on the company to the best of his judgment; and any advance corporation tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not so treated itself.

(2) Where an assessment which takes account of the dividend mentioned in paragraph 3A(1) above is made under sub-paragraph (1) above, then, subject to any appeal—
(a) the company shall be deemed for the purposes of Chapter VA of this Part not to have treated itself as an international headquarters company by virtue of section 246S(9) at the time it paid the dividend;
(b) paragraph 3A(3) above shall not apply to the dividend.

(3) In a case where—
(a) the company is not an international headquarters company in the accounting period in which the return period mentioned in paragraph 3A(1) above falls, and
(b) as regards any relevant return period amount X exceeds amount Y,

after the end of the accounting period the inspector may make an assessment on the company for an amount of advance corporation tax equal to the excess; and a relevant return period is a return period falling within the accounting period in question.

(4) For the purposes of sub-paragraph (3) above—
(a) amount X is the amount of advance corporation tax which, if the company had not treated itself as an international headquarters company at any time in the accounting period and had made a return for the relevant return period under paragraph 2 above accordingly, would have been payable by the company in respect of the relevant return period under paragraph 2(6) above;
(b) amount Y is the aggregate of the amounts mentioned in sub-paragraph (5) below.

(5) The amounts referred to in sub-paragraph (4)(b) above are—
(a) the amount (if any) of advance corporation tax which was in fact payable by the company under paragraph 2(6) above in respect of the relevant return period,
(b) any amount of advance corporation tax to which the company has been assessed under sub-paragraph (1) above in respect of that period, and

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(c) any amount of advance corporation tax to which the company has been assessed under paragraph 3 above in respect of that period and which is attributable to foreign income dividends.

(6) Any advance corporation tax due under an assessment made by virtue of sub-paragraph (3) above shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if the company had not treated itself as an international headquarters company at any time in the accounting period.

Receipt of franked investment income after payment of advance corporation tax

4 (1) This paragraph shall have effect where—

(a) a return has been made of franked payments made in any return period falling within an accounting period and advance corporation tax has been paid in respect of those payments; and

(b) the company receives franked investment income after the end of the return period but before the end of the accounting period.

(2) The company shall make a return under paragraph 1 above for the return period in which the franked investment income is received whether or not it has made any franked payments in that period, and, subject to sub-paragraph (3) below, shall be entitled to repayment of any advance corporation tax paid (and not repaid) in respect of franked payments made in the accounting period in question.

(3) If no franked payments were made by the company in the return period for which a return is made by virtue of sub-paragraph (2) above the amount of the repayment shall not exceed the amount of the tax credit comprised in the franked investment income received; and in any other case the repayment shall not exceed the amount of the tax credit comprised in so much of that franked investment income, if any, as exceeds the amount of the franked payments made in that return period.

VALID FROM 03/05/1994

Receipt of foreign income dividends after payment of advance corporation tax

4A (1) This paragraph shall have effect where—

(a) a return has been made of foreign income dividends paid in any return period falling within an accounting period and advance corporation tax has been paid in respect of those dividends, and

(b) the company receives foreign income dividends after the end of the return period but before the end of the accounting period.

(2) The company shall make a return under paragraph 1 above for the return period in which the foreign income dividends are received whether or not it has made any franked payments, or paid any foreign income dividends, in that period, and, subject to sub-paragraphs (3) to (5) below, shall be entitled to repayment of any advance corporation tax paid (and not repaid) in respect of foreign income dividends paid in the accounting period in question.

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(3) If no foreign income dividends were paid by the company in the return period for which a return is made by virtue of sub-paragraph (2) above (the relevant return period), the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—

(a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and

(b) had received in the period no foreign income dividends or franked investment income.

(4) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends received by it in the period exceeds the amount of the foreign income dividends paid by it in the period, the amount of the repayment shall not exceed the amount which would have been payable under paragraph 2 above as regards the relevant return period if the company—

(a) had paid in the period foreign income dividends of an amount equal to the foreign income dividends actually received by it in the period and had paid in the period no other foreign income dividends or franked payments, and

(b) had received in the period foreign income dividends of an amount equal to the foreign income dividends actually paid by it in the period and had received in the period no other foreign income dividends or franked investment income.

(5) If at least one foreign income dividend was paid by the company in the relevant return period and the amount of the foreign income dividends paid by it in the period exceeds the amount of the foreign income dividends received by it in the period, the company shall not be entitled to a repayment under this paragraph as regards the relevant return period.

Claims for set-off in respect of franked investment income received by a company

5 Where under paragraph 2 or 4 above franked investment income received by a company falls to be taken into account in determining—

(a) whether advance corporation tax is payable or repayable; or

(b) the amount of such tax which is payable or repayable,

the inclusion of that franked investment income in the appropriate return shall be treated as a claim by the company to have it so taken into account, and any such claim shall be supported by such evidence as the inspector may reasonably require.

6 (1) Where a claim has been made under paragraph 5 above no proceedings for collecting tax which would fall to be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but this sub-paragraph shall not affect the date when the tax is due.

(2) When the claim is finally determined any tax underpaid in consequence of sub-paragraph (1) above shall be paid.

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(3) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under any provision of this Schedule, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest thereon, until the claim has been finally determined.

(4) When the claim is finally determined any tax overpaid in consequence of sub-paragraph (3) above shall be repaid.

(5) References in this paragraph to proceedings for the collection of tax include references to proceedings by way of distraint or poinding for tax.

VALID FROM 03/05/1994

Claims for set-off in respect of foreign income dividends received by a company

6A (1) Where under paragraph 2 or 4A above foreign income dividends received by a company fall to be taken into account in determining—

(a) whether advance corporation tax is payable or repayable, or

(b) the amount of such tax which is payable or repayable,

the inclusion of the foreign income dividends in the appropriate return shall be treated as a claim by the company to have them so taken into account, and any such claim shall be supported by such evidence as the inspector may reasonably require.

(2) Paragraph 6 above shall apply in relation to a claim under this paragraph as it applies in relation to a claim under paragraph 5 above.

Qualifying distributions which are not payments and payments of uncertain nature

7 (1) This paragraph applies to—

(a) any qualifying distribution which is not a payment; and

(b) any payment in respect of which the company making it would be liable to pay advance corporation tax if, but only if, it amounted to or involved a qualifying distribution and it is not in the circumstances clear whether or how far it does so.

(2) No amount shall be shown in respect of the qualifying distribution or payment under paragraph 2(1)(a) or (c) above and paragraph 3(1) above shall not apply to the payment of advance corporation tax in respect thereof.

(3) Particulars of the qualifying distribution or payment shall be given separately in the return for the return period in which it is made and if, apart from that distribution or payment, no franked payment is made in that period, a return containing those particulars shall be made for that period under paragraph 1 above.

(4) Any advance corporation tax payable in respect of the qualifying distribution or payment shall be assessed on the company and shall be so assessed without regard to any franked investment income received by the company but—

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(a) relief shall be given from the tax assessed (by discharge thereof) to the extent, if any, to which that tax exceeds the tax that would have been payable if the amount of the franked payment comprising the qualifying distribution or payment, calculated on the amount or value thereof shown in the assessment, had been included in the return under sub-paragraph (1)(a) of paragraph 2 above and the tax had been calculated in accordance with sub-paragraph (4) of that paragraph; and

(b) for the purposes of the application of sub-paragraph (3) of that paragraph to any subsequent return period, the amount of that franked payment shall be taken to be the amount so calculated.

VALID FROM 29/04/1996

Amended return where company becomes aware of an error

7A (1) If a company becomes aware—

(a) that anything which ought to have been included in a return made by it under this Schedule for any return period has not been so included,

(b) that anything which ought not to have been included in a return made by it under this Schedule for any return period has been so included,

(c) that an estimated amount included by virtue of paragraph 7(2)(a) above in a return under this Schedule for any period is incorrect, or

(d) that any other error has occurred in a return made by it under this Schedule for any return period,

it shall forthwith supply to the collector an amended return for that return period.

(2) The duty imposed by sub-paragraph (1) above is without prejudice to any duty that may also arise under paragraph 7A of Schedule 16.

(3) Where an amended return is supplied under this paragraph, all such assessments, adjustments, set-offs or payments or repayments of tax shall be made as may be required for securing that the resulting liabilities to tax (including interest on unpaid or overpaid tax) whether of the company or any other person are the same as they would have been if a correct return had been made.

Modifications etc. (not altering text)

C851 Sch. 13 para. 7A applied (with modifications) (1.7.1997 with effect in accordance with reg. 6(2) of the amending instrument the appointed day being 1.7.1997 (S.I. 1998/3173 art. 2)) by The Manufactured Dividends (Tax) Regulations 1997 (S.I. 1997/993), **reg. 6**

Items included in error

8 Where any item has been included in a return under this Schedule as a franked payment made or as franked investment income received by a company but that item should have been included in a return or claim under Schedule 16, the inspector may make any such assessments, adjustments or set-offs as may be required

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for securing that the resulting liabilities to tax (including interest on unpaid tax) whether of the company or of any other person are the same as they would have been if the item had been included in the right return or claim.

Qualifying distribution made otherwise than in an accounting period

9 Where a company makes a qualifying distribution on a date which does not fall within an accounting period the company shall make a return of that distribution within 14 days from that date, and the advance corporation tax in respect thereof shall be due at the time by which the return is to be made, except where the distribution is not a payment in which case the advance corporation tax shall be assessed on the company.

VALID FROM 03/05/1994

Manufactured foreign income dividends

9A (1) This paragraph applies in any case where, by virtue of paragraph 2(2) and (6) of Schedule 23A, a company is treated as having paid a foreign income dividend.

(2) No amount shall be shown under paragraph 2(1)(d) above in respect of the dividend which is treated as having been paid, but the company's return for the return period in which the dividend is treated as having been paid shall state separately that it was treated as paid and shall show its amount.

Assessments and due date of tax

10 (1) All the provisions of the Corporation Tax Acts as to the time within which an assessment may be made, so far as they refer or relate to the accounting period for which an assessment is made, or the accounting period to which an assessment relates, shall apply in relation to an assessment under this Schedule notwithstanding that, under this Schedule, the assessment may be said to relate to a quarter or other period which is not an accounting period; and the provisions of **[**[F1847]section 36**]** of the Management Act as to the circumstances in which an assessment may be made out of time shall apply accordingly on the footing that any such assessment relates to the accounting period in which the quarter or other period ends or, in the case of an assessment under paragraph 9 above, to an accounting period ending on the date on which the distribution is made.

(2) Advance corporation tax assessed on a company under this Schedule shall be due within 14 days after the issue of the notice of assessment (unless due earlier under paragraph 3(1) or 9 above).

(3) Sub-paragraph (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when tax is due under paragraph 3(1) or 9 above.

(4) On the determination of an appeal against an assessment under this Schedule any tax overpaid shall be repaid.

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(5) Any tax assessable under any one or more of the provisions of this Schedule may be included in one assessment if the tax so included is all due on the same date.

Textual Amendments

F1847 1989 s.149(3)(c)—*not to affect the making of assessments before* 1983-84*or for accounting periods ending before* 1*April* 1983.*Previously*
"sections 36 and 39".

Modifications etc. (not altering text)

C852 Sch. 13 para. 10 applied (with modifications) (1.7.1997) by The Manufactured Dividends (Tax) Regulations 1997 (S.I. 1997/993), **reg. 6**

VALID FROM 29/04/1996

SCHEDULE 13A

SURRENDERS OF ADVANCE CORPORATION TAX

. . . . . .

VALID FROM 27/07/1999

SCHEDULE 13B

CHILDREN'S TAX CREDIT

. . . . . .

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SCHEDULE 14

Section 266(12).

PROVISIONS ANCILLARY TO SECTION 266

PART I

MODIFICATION OF SECTION 266 IN CERTAIN CASES

Husband and wife

1 (1) [M2248] The references in section 266 to an individual's spouse shall include any person who was that individual's spouse at the time the insurance or contract was made, unless the marriage was dissolved before 6th April 1979.

(2) Where an election under section 287 is in force, the relief to which either the husband or the wife is entitled under section 266 in respect of an insurance or contract on the life of the other or made by the other shall not be affected by section 287(4), (5) or (6) [F1848].

(3) Where throughout a year of assessment a woman is a married woman living with her husband, then—

(a) if no election under section 283 is in force, section 274 and paragraph 6 below shall apply as if any relief to which the wife is entitled under section 266 were relief to which the husband is entitled; and

(b) if such an election is in force, section 274 and paragraph 6 below shall apply separately to the amounts paid by each of them, but as if for the limit specified in that section there were substituted, in relation to each of them, a limit of £750 or one-twelfth of their total income, whichever is the greater, plus any amount by which the payments in respect of which relief can be given to the other fall short of the limit so substituted [F1848].

Textual Amendments

F1848 Sch. 14 para. 1(2)(3) repealed by Finance Act 1988 (c. 39), **Sch.14 Part VIII**, Note 6

Marginal Citations

M2248 Source—1976 Sch.4 8, 9, 10

Premiums payable to friendly societies and industrial assurance companies

2 (1) [M2249] This paragraph applies to—

(a) a policy issued in the course of an industrial assurance business; and

(b) a policy issued by a **[**[F1849]friendly society**]** in the course of tax exempt life or endowment business (as defined in section 466).

(2) Subject to paragraph 3(2) below, if a policy to which this paragraph applies was issued before the passing of the Finance Act 1976 (29th July 1976), section 266 shall have effect in relation to it as if subsections (2)(b), (3)(a), (b) and (d) were omitted;

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and if a policy to which this paragraph applies was issued after the passing of that Act, subsection (2)(b) of that section shall have effect in relation to it as if it permitted the insurance to be on the life of the individual's parent or grandparent or, subject to sub-paragraph (3) below, on the life of the individual's child or grandchild.

(3) Relief may be given in respect of premiums under a policy of insurance on the life of an individual's child or grandchild which was or is issued after the passing of the Finance Act 1976 (29th July 1976), as if subsection (3)(d) of section 266 were omitted, but may be given only if the annual amount of the premiums, together with that of any relevant premiums, does not exceed £52 if the policy was issued in respect of an insurance made before 25th March 1982 or £64 in any other case.

(4) For the purposes of sub-paragraph (3) above, a relevant premium, in relation to an insurance made at any time on the life of an individual's child or grandchild, is any premium under a policy of insurance on the same life, where the insurance is made at the same time or earlier, whether it is made by the individual or any other person.

(5) In this paragraph "child" includes a step-child and an illegitimate child whose parents have married each other after his birth, and "grandchild", "parent" and "grandparent" have corresponding meanings.

Textual Amendments

F1849 Words in Sch. 14 para. 2(1)(b) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 18(2)**; S.I. 1993/236, **art.2**

Marginal Citations

M2249 Source—1976 Sch.4 11; 1979/1576; 1982 s.35(2), (4); 1970 s.10

3 (1) [M2250] Where a policy is issued or a contract is made by a **[**[F1850]friendly society**]** or a policy to which paragraph 2 above applies is issued by an industrial assurance company, section 266(4), (5) and (8) shall apply in relation to premiums payable under the policy or contract subject to the following provisions of this paragraph.

(2) References to the deductions authorised under section 266(5) shall be construed as including references to any amount retained by or refunded to the person paying the premium under any scheme made by the society or company in accordance with regulations made under this paragraph.

(3) The appropriate authority may make regulations authorising—

(a) the adoption by **[**[F1850]friendly societies**]** and industrial assurance companies of any prescribed scheme for securing that in the case of policies or contracts to which the scheme applies amounts equal to **[**[F1851]12.5 per cent.**]** of the premiums payable are retained by or refunded to the person paying the premiums or that, in the case of such policies or contracts issued or made before 6th April 1979, the amounts expressed as the amounts of the premiums payable are treated as amounts arrived at by deducting **[**[F1851]12.5 per cent.**]** from the amounts payable and that the amounts of the capital sums assured or guaranteed are treated as correspondingly increased; or

(b) the adoption by any such society or company of any special scheme for that purpose which may, in such circumstances as may be prescribed, be approved by the appropriate authority.

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(4) Increases treated as made in pursuance of regulations under this paragraph shall not be treated as variations of a policy or contract and shall be disregarded for the purposes of paragraph 2(3) above, sections 268(6), 460, 461(1) and 464 of, and paragraph 7 of Schedule 15 to, this Act [F1852] . . . .

(5) The regulations may include such adaptations and modifications of the enactments relating to friendly societies or industrial assurance companies and such other incidental and supplementary provisions as appear to the appropriate authority necessary or expedient for the purpose of enabling such societies or companies to adopt the schemes authorised by the regulations.

(6) Subsections (4), (5) and (7) to (11) of section 6 of the [M2251]Decimal Currency Act 1969 shall, with the necessary modifications, apply in relation to regulations made under this paragraph.

Textual Amendments

F1850 Words in Sch. 14 para. 3(1)(3)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 18(2)(3)**; S.I. 1993/236, **art.2**

F1851 Words in Sch. 14 para. 3(3)(a) substituted (6.4.1989) by Finance Act 1988 (c. 39), **s. 29**

F1852 Words in Sch. 14 para. 3(4) repealed (with effect in accordance with s. 173 of the repealing Act) by Finance Act 1989 (c. 26), **Sch. 17 Pt. 9**, Note

Marginal Citations

M2250 Source—1976 Sch.4 13; 1978 Sch.3 7; 1980 s.29(2)(c); 1987 Sch.15 9

M2251 1969 c.19.

PART II

SUPPLEMENTARY PROVISIONS AS TO RELIEF UNDER SECTION 266

4 (1) [M2252]Where it appears to the Board that the relief (if any) to which a person is entitled under section 266 has been exceeded or might be exceeded unless the premiums payable by him under any policy or contract were paid in full, they may, by notice to that person and to the person to whom the payments are made, exclude the application of subsection (5) of that section in relation to any payments due or made after such date as may be specified in the notice and before such date as may be specified in a further notice to those persons.

(2) Where the application of section 266(5) is so excluded in relation to any payments, the relief (if any) to which the person by whom the payments are made is entitled under section 266 shall be given to him under paragraph 6 below.

Marginal Citations

M2252 Source—1976 Sch.4 14; 1978 Sch.3 2, 8

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5 [M2253]Where a person is entitled to relief under section 266 in respect of a payment to which section 595 applies, section 266(5) shall not apply but the like relief shall be given to him under paragraph 6 below.

Marginal Citations
M2253 Source—1976 Sch.4 14A; 1978 Sch.3 9

6 (1) [M2254]Where in any year of assessment the relief to which a person is entitled under section 266, otherwise than in accordance with subsections (6) and (7) of that section, has not been fully given in accordance with that section and the preceding provisions of this Schedule, he may claim relief for the difference, and relief for the difference shall then be given by a payment made by the Board or by discharge or repayment of tax or partly in one such manner and partly in another; and where relief so given to any person exceeds that to which he is entitled under section 266, he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.

(2) The Management Act shall apply to any assessment under this paragraph as if it were an assessment to tax for the year of assessment in which the relief was given and as if—

(a) the assessment were among those specified in sections 55(1) (recovery of tax not postponed) and 86(2) (interest on overdue tax) of that Act; and

(b) the sum charged by the assessment were tax specified in paragraph 3 of the Table in section 86(4) of that Act (reckonable date).

Marginal Citations
M2254 Source—1976 Sch.4 15

7 (1) [M2255]The Board may make regulations for carrying into effect section 266(4), (5), (8) and (9) and the preceding provisions of this Schedule and paragraphs 9 and 10 of Schedule 15 ("the relevant provisions").

(2) Regulations under this paragraph may, without prejudice to the generality of sub-paragraph (1) above, provide—

(a) for the furnishing of such information by persons by whom premiums are payable as may be necessary for determining whether they are entitled to make deductions under section 266(5) and for excluding the operation of that subsection in relation to payments made by persons who fail to comply with the regulations;

(b) for rounding to a multiple of one penny any payment which, after a deduction authorised under section 266(5), is not such a multiple;

(c) for the manner in which claims for the recovery of any sum under section 266(5)(b) may be made;

(d) for the furnishing of such information by persons by or to whom premiums are payable as appears to the Board necessary for deciding such claims and for exercising their powers under paragraph 4 or 6 above; and

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(e) for requiring persons to whom premiums are paid to make available for inspection by an officer authorised by the Board such books and other documents in their possession or under their control as may reasonably be required for the purposes of determining whether any information given by those persons for the purposes of the relevant provisions is correct and complete.

(3) The following provisions of the Management Act, that is to say—

(a) section 29(3)(c) (excessive relief);

(b) section 30 (recovery of tax repaid in consequence of fraud or negligence etc.);

(c) section 88 (interest); and

(d) section 95 (incorrect return or accounts);

shall apply in relation to the payment of a sum claimed under section 266(5)(b) to which the claimant was not entitled as if it had been income tax repaid as a relief which was not due.

Modifications etc. (not altering text)

C853 *For regulations see* Part III Vol.5.

Marginal Citations

M2255 Source—1976 Sch.4 16; 1978 Sch.3 10

8 (1) [M2256]A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of section 266(3)(b) as issued in respect of one made after that date if varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(2) A variation effected before the end of the year 1968 shall be disregarded for the purposes of sub-paragraph (1) above if its only effect was to bring into conformity with paragraph 2 of Schedule 9 to the Finance Act 1968 (qualifying conditions for endowment policies, and now re-enacted as paragraph 2 of Schedule 15 to this Act) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

(3) [M2257]A policy which was issued in the course of industrial assurance business in respect of an insurance made after 13th March 1984 shall be treated for the purposes of section 266(3)(c) and this paragraph as issued in respect of an insurance made on or before that date if—

(a) the proposal form for the policy was completed on or before that date; and

(b) on or before 31st March 1984 the policy was prepared for issue by the company or society concerned; and

(c) on or before 31st March 1984 and in accordance with the normal business practice of the company or society a permanent record of the preparation of the policy was made in any book or by any other means kept or instituted by the company or society for the purpose.

(4) For the purposes of section 266(3)(c) a policy of life insurance which was issued in respect of an insurance made on or before 13th March 1984 shall be treated as issued

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in respect of an insurance made after that date if the policy is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(5) If a policy of life insurance which was issued as mentioned in sub-paragraph (4) above confers on the person to whom it was issued an option to have another policy substituted for it or to have any of its terms changed, then, for the purposes of that sub-paragraph and section 266(3)(c), any change in the terms of the policy which is made in pursuance of the option shall be deemed to be a variation of the policy.

(6) In any case where—

(a) one policy is replaced by another in such circumstances that the provisions of paragraph 20 of Schedule 15 apply; and

(b) the earlier policy was issued in respect of an insurance made on or before 13th March 1984; and

(c) the later policy confers on the life or lives assured thereby benefits which are substantially equivalent to those which would have been enjoyed by the life or lives assured under the earlier policy, if that policy had continued in force;

then, for the purposes of section 266(3)(c), the insurance in respect of which the later policy is issued shall be deemed to have been made before 13th March 1984; and in this sub-paragraph "the earlier policy" and "the later policy" have the same meaning as in paragraph 20 of Schedule 15.

(7) In any case where—

(a) there is a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15; and

(b) the old policy was issued in respect of an insurance made on or before 13th March 1984;

then, for the purposes of section 266(3)(c), the insurance in respect of which the new policy is issued shall be deemed to have been made before 13th March 1984; and in this sub-paragraph "the old policy" and "the new policy" have the same meaning as in paragraph 17 of Schedule 15.

Marginal Citations

M2256 Source—1970 s.19(5)

M2257 Source—1984 s.72(2)-(4), (6), (7)

SCHEDULE 15

Section 267.

QUALIFYING POLICIES

Modifications etc. (not altering text)

C854 Sch. 15 modified by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 5** (2)

C855 Sch. 15 modified (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 4(2)(3)**

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VALID FROM 17/07/2013

[F1853 PART A1

PREMIUM LIMIT FOR QUALIFYING POLICIES

Textual Amendments

F1853 Sch. 15 Pt. A1 inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 2**

Premium limit for qualifying policies to apply from 6 April 2013

A1 (1) Sub-paragraph (2) applies if—

(a) an event falling within sub-paragraph (3) occurs,

(b) apart from sub-paragraph (2), the policy to which the event relates would be a qualifying policy after the event, and

(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is not to be a qualifying policy after the event.

(3) The events falling within this sub-paragraph are—

(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;

(b) the variation of a policy on or after 6 April 2013 where as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) below;

(d) a deceased beneficiary event on or after 6 April 2013;

(e) the conditions in paragraph 24(3) below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of paragraph 24(2).

(4) An event does not fall within sub-paragraph (3) if—

(a) the policy to which the event relates is—

(i) a protected policy,

(ii) a restricted relief qualifying policy, or

(iii) a pure protection policy,

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(b) the event is the issue of a policy which is a new policy in relation to an earlier policy where—

(i) the new policy is issued in substitution for the earlier policy (and not on its maturity), and

(ii) the life assured under the new policy is different to the life assured under the earlier policy but that is the only difference to what the position would have been had the earlier policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4),

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies, or

(e) the event is an assignment falling within paragraph B2(3)(e) below where the assignment is a mortgage endowment assignment.

(5) In sub-paragraph (3)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(6) A variation is to be ignored for the purposes of sub-paragraph (3)(b) if its effect is nullified before the end of the period of 3 months after the day on which the variation occurs.

(7) Sub-paragraph (4)(a)(i) does not apply in the case of an event mentioned in sub-paragraph (3)(e).

(8) Sub-paragraph (4)(a)(ii) does not apply in the case of—

(a) an event mentioned in sub-paragraph (3)(c) or (d) occurring in relation to a restricted relief qualifying policy ("the assigned policy"),

(b) any subsequent event relating to the assigned policy, or

(c) any event relating to—

(i) a later policy which is a new policy in relation to the assigned policy, or

(ii) any policy which is a new policy in relation to the later policy,

and so on.

(9) In the case of an event mentioned in sub-paragraph (3)(b), sub-paragraph (4)(a)(iii) applies only if the policy is a pure protection policy both before and after the variation.

(10) This paragraph is to be applied after all other provisions of this Schedule relevant to the question of whether a policy is a qualifying policy after an event have been applied.

Restricted relief qualifying policies

A2 (1) Sub-paragraph (2) applies if—

(a) an event falling within sub-paragraph (3) occurs,

(b) the policy to which the event relates is a qualifying policy after the event, and

(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is to be a restricted relief qualifying policy after the event.

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(3) The events falling within this sub-paragraph are—

(a) a premium limit event in relation to a protected policy on or after 21 March 2012;

(b) the issue of a policy as mentioned in paragraph A4(2)(b) below if, assuming that the substitution of the protected policy were instead a variation of that policy, there would be a premium limit event in relation to that policy;

(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a protected policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) below;

(d) a deceased beneficiary event on or after 6 April 2013 where the policy in question is a protected policy;

(e) the issue of a policy in respect of an insurance made on or after 21 March 2012 but before 6 April 2013 otherwise than as mentioned in paragraph A4(2)(b) below;

(f) the variation of a policy, other than a protected policy, on or after 21 March 2012 but before 6 April 2013 where as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

(g) the conditions in either sub-paragraph (3) or sub-paragraph (4) of paragraph 24 below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 21 March 2012 but before 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of sub-paragraph (2) of paragraph 24.

(4) An event does not fall within sub-paragraph (3) if—

(a) the policy to which the event relates is a pure protection policy,

(b) the event is the issue of a policy which is a new policy in relation to an earlier policy where—

(i) the new policy is issued in substitution for the earlier policy (and not on its maturity), and

(ii) the life assured under the new policy is different to the life assured under the earlier policy but that is the only difference to what the position would have been had the earlier policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4),

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies, or

(e) the event is an assignment falling within paragraph B2(3)(e) below where the assignment is a mortgage endowment assignment.

(5) In sub-paragraph (3)(f)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(6) A premium limit event or a variation is to be ignored for the purposes of sub-paragraph (3)(a) or (f) if its effect is nullified before 6 July 2013.

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(7) In the case of a premium limit event which occurs on or after 6 April 2013, in sub-paragraph (6) the reference to 6 July 2013 is to be read as a reference to the end of the period of 3 months after the day on which the premium limit event occurs.

(8) In the case of an event mentioned in sub-paragraph (3)(a) or (f), sub-paragraph (4)(a) applies only if the policy is a pure protection policy both before and after the premium limit event or variation.

(9) A "premium limit event" occurs in relation to a protected policy if—
- (a) the policy is varied or a relevant option is exercised so as to change the terms of the policy, and
- (b) as a result of the variation or exercise of the relevant option—
  - (i) the period over which premiums are payable under the policy is or could be lengthened, or
  - (ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

  or both.

(10) A "premium limit event" also occurs in relation to a protected policy if on or after 6 April 2013—
- (a) the policy is varied or a relevant option is exercised so as to change the terms of the policy, and
- (b) as a result of the variation or exercise of the relevant option—
  - (i) the period over which premiums are payable under the policy is or could be shortened, or
  - (ii) the total amount of the premiums payable under the policy in any relevant period is or could be decreased,

  or both.

(11) In sub-paragraphs (9)(b)(ii) and (10)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation or exercise of the relevant option.

(12) The variation of, or exercise of a relevant option under, a protected policy is not a premium limit event in relation to the policy if—
- (a) the policy secures a capital sum payable either—
  - (i) on survival for a specified term, or
  - (ii) on earlier death or on earlier death or disability,
- (b) the policy is issued and maintained for the sole purpose of ensuring that the borrower under an interest-only mortgage will have sufficient funds to repay the principal lent under the mortgage, and
- (c) the policy is varied, or the relevant option is exercised, for that sole purpose.

(13) In sub-paragraph (3)(g) references to paragraph 24 below are to that paragraph as it has effect before the appointed date for the purposes of section 55 of the Finance Act 1995.

(14) A qualifying policy which is a new policy in relation to an earlier policy is a restricted relief qualifying policy if the earlier policy is a restricted relief qualifying policy.

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(15) A policy which is a restricted relief qualifying policy remains a restricted relief qualifying policy so long as it is a qualifying policy.

(16) Paragraph A1 above is to be ignored in determining for the purposes of sub-paragraph (14) or (15) if a policy is a qualifying policy. This is subject to paragraph A1(8).

(17) For further provision about restricted relief qualifying policies, see sections 463A to 463D of ITTOIA 2005.

The premium limit for qualifying policies

A3 (1) For the purposes of paragraphs A1(1)(c) and A2(1)(c) above an individual is in breach of the premium limit for qualifying policies if the total amount of the premiums payable under relevant policies in any relevant period—

(a) exceeds £3,600, or

(b) could exceed £3,600 as a result of—

(i) the exercise of any one or more relevant options conferred by one or more relevant policies, or

(ii) so far as not covered by sub-paragraph (i), the application of one or more terms of one or more relevant policies relating to increases in premiums.

(2) For the purposes of sub-paragraph (1)—

(a) so much of a premium payable under a relevant policy as is charged on the grounds that an exceptional risk of death or disability is involved is to be left out of account in determining the premiums payable under the policy,

(b) so much of the first premium payable under a relevant policy the liability for the payment of which—

(i) is discharged in accordance with paragraph 15(2) below, or

(ii) in the case of a policy in relation to which paragraph 3 below applies, is discharged under a provision of the policy falling within paragraph 3(4)(c),

is to be left out of account in determining the premiums payable under the policy (subject to sub-paragraph (3) below),

(c) in determining the premiums payable under a relevant policy any provision for the waiver of premiums by reason of a person's disability is to be ignored, and

(d) "relevant period" means any period of 12 months beginning at or after the time when the event falling within paragraph A1(3) or A2(3) above ("the relevant event") occurs.

(3) The maximum amount that may be left out of account under sub-paragraph (2)(b) in the case of a relevant policy is—

$$£3{,}600 \times N$$

where N is the number of complete years for which ran—

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a the other policy involved, or

b if there is more than one other policy involved, the policy which ran for the most number of complete years.

(4) For the purposes of this paragraph the following are "relevant policies"—

(a) the policy to which the relevant event relates, and

(b) any other policy—

(i) which is a qualifying policy, and

(ii) under which the individual is a beneficiary.

(5) But neither a protected policy nor a pure protection policy is to be a relevant policy by virtue of sub-paragraph (4)(b).

(6) Sub-paragraph (7) applies if this paragraph is to be applied in the case of an individual in consequence of two or more events occurring at the same time (including where one or more of the events falls within paragraph A1(3) above and one or more of the events falls within paragraph A2(3) above).

(7) For the purpose of applying this paragraph in the case of the individual in consequence of any of the events, sub-paragraph (4)(a) has effect as if the reference to the policy to which the relevant event relates were a reference to all the policies to which the events, taken together, relate.

(8) But sub-paragraph (7) does not apply, and sub-paragraph (9) applies instead, if—

(a) all the policies in question are policies issued by the same issuer, and

(b) each of them has an unique identifier in a series of unique identifiers which the issuer gives to policies issued by it.

(9) For the purpose of applying this paragraph in the case of the individual in consequence of any of the events, an event relating to a policy ("policy A") is treated as occurring before an event relating to another policy ("policy B") if, in the issuer's series of unique identifiers, policy A's unique identifier comes before policy B's unique identifier.

Protected policies

A4 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) A policy is "protected" if—

(a) it is issued in respect of an insurance made before 21 March 2012, or

(b) it is issued in respect of an insurance made on or after 21 March 2012 where—

(i) it is a new policy in relation to an earlier policy,

(ii) it is issued in substitution for the earlier policy (and not on its maturity), and

(iii) the earlier policy is a protected policy (whether by virtue of paragraph (a) or this paragraph).

(3) A policy which is protected ceases to be protected if it becomes a restricted relief qualifying policy.

(4) A policy issued as mentioned in sub-paragraph (2)(b) is not protected if—

(a) its issue is an event falling within paragraph A2(3) above, and

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(b) after that event it is a restricted relief qualifying policy.

How to determine if an individual is a beneficiary under a policy

A5 (1) This paragraph applies for the purposes of this Part of this Schedule in determining if an individual is a beneficiary under a policy.

(2) An individual is a beneficiary under a policy if the individual beneficially owns—
(a) any rights under the policy, or
(b) any share in any rights under the policy.

(3) An individual is a beneficiary under a policy if—
(a) any rights under the policy are, or any share in any rights under the policy is, held on non-charitable trusts created by the individual, and
(b) those rights are, or that share is, not beneficially owned by any individual.

(4) The following provisions of ITTOIA 2005 apply for the purposes of sub-paragraph (3)(a)—
(a) section 465(6), and
(b) the definition of "non-charitable trust" in section 545(1).

(5) An individual is a beneficiary under a policy if—
(a) any rights under the policy are, or any share in any rights under the policy is, held as security for a debt of the individual, and
(b) those rights are, or that share is, not beneficially owned by any individual.

Further definitions

A6 (1) In this Part of this Schedule—
(a) "new policy" has the meaning given in paragraph 17 below,
(b) references to the variation of a policy are to a variation in relation to which paragraph 18 below applies,
(c) "pure protection policy" means a policy—
(i) which has no surrender value and is not capable of acquiring a surrender value, or
(ii) under which the benefits payable cannot exceed the amount of the premiums paid except on death or in respect of disability, and
(d) "relevant option", in relation to a policy, means an option conferred by the policy on the person to whom it is issued to have another policy substituted for it or to have any of its terms changed.

(2) For the purposes of this Part of this Schedule a "deceased beneficiary event" occurs if, in connection with the death of an individual ("D") who was a beneficiary under a policy, an individual ("B") becomes a beneficiary under that policy by reference (wholly or partly) to any rights, or to any share in any rights, by reference to which D was a beneficiary (wholly or partly).

For this purpose, it does not matter if B is already a beneficiary under the policy.

(3) For the purposes of this Part of this Schedule an assignment is a "mortgage endowment assignment" if—

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(a) the policy to which the assignment relates secures a capital sum payable either—
(i) on survival for a specified term, or
(ii) on earlier death or on earlier death or disability,
(b) the policy is issued and maintained for the sole purpose of ensuring that the borrower under an interest-only mortgage will have sufficient funds to repay the principal lent under the mortgage, and
(c) when the assignment occurs, it is intended that the policy will continue to be maintained for that sole purpose.**]**

PART I

QUALIFYING CONDITIONS

VALID FROM 17/07/2013

[[F1854]RULES FOR QUALIFYING POLICIES

Textual Amendments
F1854 Sch. 15 paras. B1-B3, cross-headings and preceding heading inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 3**

Rights to be beneficially owned by individuals only

B1 (1) Sub-paragraph (2) applies in relation to a policy issued in respect of an insurance made on or after 6 April 2013.

(2) In order for the policy to be a qualifying policy, when it is issued all the rights under it must be beneficially owned by (and only by)—
(a) one individual, or
(b) two or more individuals taken together.
(This is the case notwithstanding any other provision of this Schedule.)

(3) Sub-paragraph (2) does not apply if the policy is protected.

(4) A policy is "protected" if it is a new policy (as defined in paragraph 17 below) in relation to—
(a) a policy issued in respect of an insurance made before 21 March 2012, or
(b) a policy which is protected (whether by virtue of paragraph (a) or this paragraph).

Assignments

B2 (1) Sub-paragraph (2) applies if any rights under a qualifying policy are, or any share in any rights under a qualifying policy is, assigned on or after 6 April 2013.

(2) The policy is not to be a qualifying policy after the assignment (notwithstanding any other provision of this Schedule).

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(3) Sub-paragraph (2) does not apply if—

(a) the assignment is from an individual by way of security for a debt of the individual,

(b) the assignment is to an individual on the discharge of a debt of the individual secured by the rights or share,

(c) the assignment is from an individual to the individual's spouse or civil partner,

(d) the assignment is to an individual in pursuance of an order made by a court,

(e) the assignment is to an individual in pursuance of a legally enforceable obligation relating to a divorce or the dissolution of a civil partnership,

(f) the assignment is from an individual and, as a result of the assignment, the rights assigned are, or the share assigned is, held on trusts created by the individual,

(g) the assignment is to an individual and, as a result of the assignment, the rights assigned are, or the share assigned is, no longer held on trusts, or

(h) the assignment—

(i) is to the personal representatives of a deceased individual, or

(ii) is to an individual where, as a result of the assignment, a deceased beneficiary event (see paragraph A6(2) above) occurs.

(4) Section 465(6) of ITTOIA 2005 applies for the purposes of sub-paragraph (3)(f).

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (2) does not apply if prescribed conditions are met in relation to the assignment.

"Prescribed" means prescribed by the regulations.

(6) Regulations under sub-paragraph (5) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(7) See paragraphs A1 and A2 above which may apply in consequence of an assignment falling within sub-paragraph (3) or (5).

Required statements

B3 (1) Sub-paragraph (2) applies if any of the following events occurs—

(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;

(b) the variation of a policy on or after 6 April 2013 where paragraph 18 below applies in relation to the variation and as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

(c) a premium limit event in relation to a protected policy on or after 6 April 2013 (see paragraph A2(9) to (12) above);

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(d) an event on or after 6 April 2013 which would be a premium limit event in relation to a protected policy but for paragraph A2(12) above;

(e) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) above;

(f) a deceased beneficiary event (see paragraph A6(2) above) on or after 6 April 2013;

(g) the conditions in paragraph 24(3) below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of paragraph 24(2).

(2) Each individual who is a beneficiary under the policy must, before the end of the statement period, make to the issuer of the policy a statement dealing with the prescribed matters.

(3) If an individual does not comply with sub-paragraph (2) the policy is not to be a qualifying policy after the event (notwithstanding any other provision of this Schedule).

(4) In sub-paragraph (1)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(5) Sub-paragraph (2)—

(a) does not apply in the case of an event mentioned in sub-paragraph (1)(a), (e), (f) or (g) if the policy is a pure protection policy, and

(b) does not apply in the case of an event mentioned in sub-paragraph (1)(b), (c) or (d) if the policy is a pure protection policy both before and after the event.

"Pure protection policy" has the meaning given by paragraph A6(1)(c) above.

(6) Sub-paragraph (2) does not apply in the case of an event mentioned in sub-paragraph (1)(e) where the assignment falls within paragraph B2(3)(e) above and is a mortgage endowment assignment.

"Mortgage endowment assignment" is to be read in accordance with paragraph A6(3) above.

(7) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that an individual is not required to comply with sub-paragraph (2) if prescribed conditions are met.

"Prescribed" means prescribed by the regulations.

(8) Accordingly, if by virtue of regulations under sub-paragraph (7) an individual is not required to comply with sub-paragraph (2), sub-paragraph (3) does not apply because that individual does not comply with sub-paragraph (2).

(9) In sub-paragraph (2)—

(a) the reference to an individual who is a beneficiary under the policy is to be read in accordance with paragraph A5 above,

(b) "the statement period" means—

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(i) the period of 3 months after the day on which the event occurs, or
(ii) if the event occurs before the day on which the first regulations under paragraph (c) below come into force, the period of 3 months after that day,

or such longer period as an officer of Revenue and Customs may allow, and

(c) "prescribed" means prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(10) An officer of Revenue and Customs may allow a longer period for the purposes of sub-paragraph (9)(b) only if—
(a) the individual in question has made a request in writing to an officer of Revenue and Customs for a longer period to be allowed, and
(b) such an officer is satisfied—
(i) that there is a reasonable excuse for the required statement not having been made within the period mentioned in sub-paragraph (9)(b)(i) or (ii), and
(ii) that the request under paragraph (a) was made without unreasonable delay after the reasonable excuse ceased.

(11) Sub-paragraph (12) applies in relation to a policy if the obligations under the policy of its issuer are at any time the obligations of another person ("the transferee") to whom there has been a transfer of the whole or any part of a business previously carried on by the issuer.

(12) In relation to that time, in sub-paragraph (2) the reference to the issuer of the policy is to be read as a reference to the transferee.

(13) Regulations under sub-paragraph (7) or (9)(c) may—
(a) make different provision for different cases or circumstances, and
(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.**]**

GENERAL RULES APPLICABLE TO WHOLE LIFE AND TERM ASSURANCES

1 (1) [M2258] Subject to the following provisions of this Part of this Schedule, if a policy secures a capital sum which is payable only on death, or one payable either on death or on earlier disability, it is a qualifying policy if—
(a) it satisfies the conditions appropriate to it under sub-paragraphs (2) to (5) below, and
(b) except to the extent permitted by sub-paragraph (7) below, it does not secure any other benefits.

(2) If the capital sum referred to in sub-paragraph (1) above is payable whenever the event in question happens, or if it happens at any time during the life of a specified person—
(a) the premiums under the policy must be payable at yearly or shorter intervals, and either—
(i) until the happening of the event or, as the case may require, until the happening of the event or the earlier death of the specified person, or

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(ii) until the time referred to in sub-paragraph (i) above or the earlier expiry of a specified period ending not earlier than ten years after the making of the insurance; and

(b) the total premiums payable in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for a period of ten years from the making of the insurance, or, in a case falling within sub-paragraph (ii) of paragraph (a) above, until the end of the period referred to in that sub-paragraph.

(3) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending more than ten years after the making of the insurance, or only if it happens both before the expiry of such a term and during the life of a specified person—

(a) the premiums under the policy must be payable at yearly or shorter intervals, and either—

(i) until the happening of the event or the earlier expiry of that term or, as the case may require, until the happening of the event or, if earlier, the expiry of the term or the death of the specified person, or

(ii) as in sub-paragraph (i) above, but with the substitution for references to the term of references to a specified shorter period being one ending not earlier than ten years after the making of the insurance or, if sooner, the expiry of three-quarters of that term; and

(b) the total premiums payable in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for the term referred to in sub-paragraph (i) of paragraph (a) above, or, as the case may require, for the shorter period referred to in sub-paragraph (ii) of that paragraph.

(4) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending not more than ten years after the making of the insurance, or only if it happens both before the expiry of such a term and during the life of a specified person, the policy must provide that any payment made by reason of its surrender during the period is not to exceed the total premiums previously paid under the policy.

(5) Except where—

(a) the capital sum referred to in sub-paragraph (1) above is payable only in the circumstances mentioned in sub-paragraph (3) or (4) above; and

(b) the policy does not provide for any payment on the surrender in whole or in part of the rights conferred by it; and

(c) the specified term mentioned in sub-paragraph (3) or, as the case may be, (4) above ends at or before the time when the person whose life is insured attains the age of 75 years;

the capital sum, so far as payable on death, must not be less than 75 per cent. of the total premiums that would be payable if the death occurred at the age of 75 years, the age being, if the sum is payable on the death of the first to die of two persons, that of the older of them, if on the death of the survivor of them, that of the younger of them, and in any other case, that of the person on whose death it is payable; and

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if the policy does not secure a capital sum in the event of death occurring before the age of 16 or some lower age, it must not provide for the payment in that event of an amount exceeding the total premiums previously paid under it.

(6) [M2259] In determining for the purposes of sub-paragraph (5) above whether a capital sum is less than 75 per cent. of the total premiums, any amount included in the premiums by reason of their being payable otherwise than annually shall be disregarded, and if the policy is issued in the course of an industrial assurance business, 10 per cent. of the premiums payable under the policy shall be treated as so included.

(7) [M2260] Notwithstanding sub-paragraph (1)(b) above, if a policy secures a capital sum payable only on death, it may also secure benefits (including benefits of a capital nature) to be provided in the event of a person's disability; and no policy is to be regarded for the purposes of that provision as securing other benefits by reason only of the fact that—

(a) it confers a right to participate in profits, or

(b) it provides for a payment on the surrender in whole or in part of the rights conferred by the policy, or

(c) it gives an option to receive payments by way of annuity, or

(d) it makes provision for the waiver of premiums by reason of a person's disability, or for the effecting of a further insurance or insurances without the production of evidence of insurability.

(8) In applying sub-paragraph (2) or (3) above to any policy—

(a) no account shall be taken of any provision for the waiver of premiums by reason of a person's disability, and

(b) if the term of the policy runs from a date earlier, but not more than three months earlier, than the making of the insurance, the insurance shall be treated as having been made on that date, and any premium paid in respect of the period before the making of the insurance, or in respect of that period and a subsequent period, as having been payable on that date.

(9) References in this paragraph to a capital sum payable on any event include references to any capital sum, or series of capital sums, payable by reason of that event but where what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, the 75 per cent. mentioned in sub-paragraph (5) above shall be compared with the smaller or smallest amount so payable; and a policy secures a capital sum payable either on death or on disability notwithstanding that the amount payable may vary with the event.

(10) [M2261] In relation to any policy issued in respect of an insurance made before 1st April 1976 this paragraph shall have effect—

(a) with the omission of sub-paragraphs (5) and (6) and in sub-paragraph (9) the words "but where what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, the 75 per cent. mentioned in sub-paragraph (5) above shall be compared with the smaller or smallest amount so payable"; and

(b) with the substitution, for sub-paragraph (7)(b), of—

"(b) it carries a guaranteed surrender value;".

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Marginal Citations

M2258 Source—1970 Sch.1 1(1)-(4A); 1975 Sch.2 4(2), (3)
M2259 Source—1975 Sch.2 4(4)
M2260 Source—1970 Sch.1 1(5)-(7); 1975 Sch.2 4(5), (6)
M2261 Source—1975 Sch.2 4(1)

GENERAL RULES APPLICABLE TO ENDOWMENT ASSURANCES

2 (1) [M2262] Subject to the following provisions of this Part of this Schedule, a policy which secures a capital sum payable either on survival for a specified term or on earlier death, or earlier death or disability, including a policy securing the sum on death only if occurring after the attainment of a specified age not exceeding 16, is a qualifying policy if it satisfies the following conditions—

(a) the term must be one ending not earlier than ten years after the making of the insurance;

(b) premiums must be payable under the policy at yearly or shorter intervals, and—

(i) until the happening of the event in question; or

(ii) until the happening of that event, or the earlier expiry of a specified period shorter than the term but also ending not earlier than ten years after the making of the insurance; or

(iii) if the policy is to lapse on the death of a specified person, until one of those times or the policy's earlier lapse;

(c) the total premiums payable under the policy in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to run for the specified term;

(d) the policy—

(i) must guarantee that the capital sum payable on death, or on death occurring after the attainment of a specified age not exceeding 16, will, whenever that event may happen, be equal to 75 per cent. at least of the total premiums which would be payable if the policy were to run for that term, disregarding any amounts included in those premiums by reason of their being payable otherwise than annually, except that if, at the beginning of that term, the age of the person concerned exceeds 55 years, the capital sum so guaranteed may, for each year of the excess, be less by 2 per cent. of that total than 75 per cent. thereof, the person concerned being, if the capital sum is payable on the death of the first to die of two persons, the older of them, if on the death of the survivor of them, the younger of them and in any other case the person on whose death it is payable; and

(ii) if it is a policy which does not secure a capital sum in the event of death before the attainment of a specified age not exceeding 16, must not provide for the payment in that event of an amount exceeding the total premiums previously paid thereunder; and

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(e) the policy must not secure the provision (except by surrender in whole or in part of the rights conferred by the policy) at any time before the happening of the event in question of any benefit of a capital nature other than a payment falling within paragraph (d)(ii) above, or benefits attributable to a right to participate in profits or arising by reason of a person's disability.

(2) For the purposes of sub-paragraph (1)(d)(i) above, 10 per cent. of the premiums payable under any policy issued in the course of industrial assurance business shall be treated as attributable to the fact that they are not paid annually.

(3) Sub-paragraphs (8) and (9) of paragraph 1 above shall, with any necessary modifications, have effect for the purposes of this paragraph as they have effect for the purposes of that paragraph.

(4) [M2263] In relation to any policy issued in respect of an insurance made before 1st April 1976 this paragraph shall have effect with the omission in sub-paragraph (1)(d)(i) of the words from "except that if" to the end, and in sub-paragraph (1)(e) of the words "in whole or in part of the rights conferred by the policy".

Marginal Citations

M2262 Source—1970 Sch.1 2; 1975 Sch.2 4(7), (8)

M2263 Source—1975 Sch.2 4(1)

SPECIAL TYPES OF POLICY

(i)Friendly Society policies

3 (1) [M2264] Paragraphs 1 and 2 above do not apply to a policy issued by a **[**[F1855]friendly society**]** in the course of tax exempt life or endowment business in respect of an insurance made or varied on or after 19th March 1985, but such a policy shall not be a qualifying policy unless—

(a) in the case of a policy for the assurance of a gross sum or annuity, the conditions in sub-paragraph (2) are fulfilled with respect to it; and

(b) in the case of a policy for the assurance of a gross sum, the conditions in sub-paragraphs (5) to (11) below are fulfilled with respect to it; [F1856] . . .

[F1856](c) . . . . . .

(2) The conditions referred to in sub-paragraph (1) above are as follows—

(a) subject to sub-paragraph (3) below, the period (the "term" of the policy) between—

(i) the making of the insurance or, where the contract provides for the term to begin on a date not more than three months earlier than the making of the insurance, that date, and

(ii) the time when the gross sum assured is payable (or, as the case may be, when the first instalment of the annuity is payable),

shall be not less than ten years, and must not, on any contingency other than the death, or retirement on grounds of ill health, of the person liable to pay the premiums or whose life is insured, become less than ten years;

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(b) subject to sub-paragraph (4) below, the premiums payable under the policy shall be premiums of equal or rateable amounts payable at yearly or shorter intervals over the whole term of the policy of assurance, or over the whole term of the policy of assurance apart from any period after the person liable to pay the premiums or whose life is insured attains a specified age, being an age which he will attain at a time not less than ten years after the beginning of the term of the policy of assurance;

(c) until the expiration of three-quarters of the term of the policy of assurance, or of ten years from the beginning of the term, whichever is the shorter, the policy may not be surrendered to the friendly society **[**[F1857](or any successor of it)**]** for consideration exceeding the amount of the premiums paid, except that if a surrender value is prescribed by section 24 of the [M2265]Industrial Assurance Act 1923 or section 3 of the [M2266]Industrial Assurance and Friendly Societies Act 1929 or by Article 30 or 35 of and Schedule 7 to the [M2267]Industrial Assurance (Northern Ireland) Order 1979, the limit on the consideration shall be either that value or the amount of the premiums paid whichever is the greater.

(3) Notwithstanding sub-paragraph (2)(a) above, the policy—

(a) may provide for a payment to a person of an age not exceeding 18 years at any time not less than five years from the beginning of the term of the policy if the premium or premiums payable in any period of 12 months in the term of the policy do not exceed £13;

(b) may provide for a payment at any time not less than five years from the beginning of the term of the policy, if it is one of a series of payments falling due at intervals of not less than five years, and the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment.

For the purposes of paragraph (a) above, if the term begins on a date earlier than the making of the insurance, any premium paid in respect of a period before the making of the insurance, or in respect of that period and a subsequent period, shall be treated as having been payable on that date.

(4) Notwithstanding sub-paragraph (2)(b) above, the policy—

(a) may allow a payment at any time after the expiration of one-half of the term of the policy of assurance, or of ten years from the beginning of the term, whichever is the earlier, being a payment in commutation of the liability to pay premiums falling due after that time;

(b) may allow the person liable to pay the premiums to commute any liability for premiums where he ceases to reside in the United Kingdom or gives satisfactory proof of intention to emigrate;

(c) may allow any liability for premiums to be discharged in consideration of surrendering a sum which has become payable on the maturity of any other policy of assurance issued by the same friendly society **[**[F1857](or any predecessor of it)**]** to the person liable to pay the premiums, or to his parent, where that other policy of assurance is issued as part of the friendly society's tax exempt life or endowment business; and

(d) may make provision for the waiver of premiums by reason of a person's disability.

[[F1858](4A) For the purposes of sub-paragraphs (2) and (4) above—

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(a) a friendly society formed on the amalgamation of two or more friendly societies is the successor of each of those societies (and each of those societies was a predecessor of the society so formed), and

(b) an incorporated friendly society that was a registered friendly society before its incorporation is the successor of the registered friendly society (and the registered friendly society was the predecessor of the incorporated friendly society).**]**

(5) Where the policy secures a capital sum which is payable only on death or only on death occurring after the attainment of a specified age not exceeding 16, that capital sum must be not less than 75 per cent. of the total premiums which would be payable if the death of the relevant beneficiary occurred at the age of 75.

(6) Where the policy secures a capital sum which is payable only on survival for a specified term, that capital sum must be not less than 75 per cent. of the total premiums which would be payable if the policy were to run for that term.

(7) Where the policy secures a capital sum which is payable on survival for a specified term or on earlier death, or on earlier death or disability (including a policy securing the sum on death only if occurring after the attainment of a specified age not exceeding 16), the capital sum payable on death, whenever that event occurs, must be not less than 75 per cent. of the total premiums which would be payable if the policy were to run for that term, except that if, at the beginning of that term, the age of the relevant beneficiary exceeds 55, that capital sum may, for each year of the excess, be less by 2 per cent. of that total than 75 per cent. thereof.

(8) For the purposes of sub-paragraphs (5) to (7) above—

(a) "the relevant beneficiary" means—

(i) if the capital sum concerned is payable on the death of the first to die of two persons, the older of them;

(ii) if that capital sum is payable on the death of the survivor of two persons, the younger of them; and

(iii) in any other case, the person on whose death that capital sum is payable; and

(b) in determining the total premiums payable in any circumstances—

(i) where those premiums are payable otherwise than annually, and the policy is issued by a new society, there shall be disregarded an amount equal to 10 per cent. of those premiums;

(ii) where the policy is issued by a society other than a new society, there shall be disregarded an amount equal to £10 for each year for which account is taken of those premiums **[**[F1859]or, where those premiums are payable otherwise than annually, an amount equal to 10 per cent. of those premiums if that is greater**]**; [F1860]. . .

(iii) [F1860]. . . . . .

(c) [F1860]. . . . . .

(9) If the policy does not secure a capital sum in the event of death occurring before the age of 16 or some lower age, it must not provide for the payment in that event of an amount exceeding the total premiums previously paid under it.

(10) References in this paragraph to a capital sum payable on any event include references to a capital sum or series of capital sums payable by reason of that event, but where

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what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, any reference in sub-paragraphs (5) to (7) above to 75 per cent. of the total premiums payable in any circumstances shall be compared with the smaller or smallest amount so payable; and for the purposes of those sub-paragraphs a policy secures a capital sum payable either on death or on disability notwithstanding that the amount may vary with the event.

(11) For the purposes of sub-paragraphs (5) to (7) and (10) above, in the case of a policy which provides for any such payments as are referred to in sub-paragraph (3) above ("interim payments"), the amount of the capital sum which is payable on any event shall be taken to be increased—

(a) in the case of a policy which secures such a capital sum as is referred to in sub-paragraph (5) above, by the total of the interim payments which would be payable if the death of the relevant beneficiary (within the meaning of that sub-paragraph) occurred at the age of 75; and

(b) in the case of a policy which secures such a capital sum as is referred to in sub-paragraph (6) or (7) above, by the total of the interim payments which would be payable if the policy were to run for the specified term referred to in that sub-paragraph.

Textual Amendments

F1855 Words in Sch. 15 para. 3(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(2)**; S.I. 1993/236, **art.2**

F1856 Sch. 15 para. 3(1)(c) and word preceding it repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 50, 123, Sch. 9 para. 4(1)(2), **Sch. 19 Pt. V**, Note 7

F1857 Words in Sch. 15 para. 3(2)(c)(4)(c) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(3)(4)**; S.I. 1993/236, **art.2**

F1858 Sch. 15 para. 3(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(5)**; S.I. 1993/236, **art.2**

F1859 Words in Sch. 15 para. 3(8)(b)(ii) inserted by Finance Act 1990 (c. 29), **s. 49(5)**

F1860 Sch. 15 para. 3(8)(b)(iii)(c) and word preceding para. (b)(iii) repealed (retrospectively with effect in accordance with s. 172(6) of the repealing Act) by Finance Act 2003 (c. 14), s. 172(3), **Sch. 43 Pt. 3(13)**, Note 3

Marginal Citations

M2264 Source—1970 ss.334(2)–(4), 337(5)(a), Sch.1 3, 3A; 1984 s.72(a); 1985 s.41(4), (6), Sch.10 Pt.I; 1979/1576

M2265 1923 c.8

M2266 1929 c.28

M2267 S.I. 1979/1574 (N.I. 13).

4 (1) The provisions of this paragraph have effect notwithstanding anything in paragraph 3 above.

(2) In determining whether a policy—

(a) which affords provision for sickness or other infirmity (whether bodily or mental), and

(b) which also affords assurance for a gross sum independent of sickness or other infirmity, and

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(c) under which not less than 60 per cent. of the amount of the premiums is attributable to the provision referred to in paragraph (a) above,

is a qualifying policy, the conditions referred to in paragraph 3(1)(b) above shall be deemed to be fulfilled with respect to it.

(3) A policy shall cease to be a qualifying policy—

(a) if it falls within sub-paragraph (1) of paragraph 3 above and there is such a variation of its terms that any of the conditions referred to in that sub-paragraph ceases to be fulfilled; or

(b) if—

[[F1861](i) it was effected in the course of business within class VI of Head A or class I of Head B of Schedule 2 to the Friendly Societies Act 1992,**]**

(ii) it was issued by a new society, and

(iii) the rights conferred by it are surrendered in whole or in part.

Textual Amendments

F1861 Sch. 15 para. 4(3)(b)(i) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 19(6), **22**; S.I. 1993/236, **art. 2**

5 [M2268] Section 466 shall apply for the interpretation of paragraphs 3 and 4 above as it applies for the interpretation of sections 460 to 465.

Marginal Citations

M2268 Source—1970 s.337(1)(b); 1985 s.41(7)(a)

6 (1) [M2269] A policy which was issued by **[**[F1862]any registered friendly society (as defined in section 466)**]**, or branch of **[**[F1862]such a society**]**, in the course of tax exempt life or endowment business (as defined in section 466) in respect of insurances made before 19th March 1985 and which has not been varied on or after that date is a qualifying policy notwithstanding that it does not comply with the conditions specified in paragraph 1 or 2 above.

(2) [M2270] Notwithstanding paragraphs 3 to 5 or sub-paragraph (1) above, if, on or after 19th March 1985, a person becomes in breach of the limits in section 464, the policy effected by that contract which causes those limits to be exceeded shall not be a qualifying policy; and in any case where—

(a) the limits in that section are exceeded as a result of the aggregation of the sums assured or premiums payable under two or more contracts, and

(b) at a time immediately before one of those contracts was entered into (but not immediately after it was entered into) the sums assured by or, as the case may be, the premiums payable under the contract or contracts which were then in existence did not exceed the limits in that section,

only those policies effected by contracts made after that time shall be treated as causing the limits to be exceeded.

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Textual Amendments

F1862 Words in Sch. 15 para. 6(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(7)**; S.I. 1993/236, **art.2**

Marginal Citations

M2269 Source—1970 Sch.1, 3; 1985 s.41(4)

M2270 Source—FSA 1974 s.64(2B); 1985 s.41(1); 1987 s.30(6)

VALID FROM 17/07/2012

[F1863 6A Any expression—

(a) which is used in any provision made by any of paragraphs 3 to 6, and

(b) which is used in Part 3 of the Finance Act 2012,

has the same meaning in that provision as it has in that Part.]

Textual Amendments

F1863 Sch. 15 para. 6A inserted (with effect in accordance with s. 178 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 18 para. 13(6)**

(ii) Industrial assurance policies

7 (1) M2271 A policy issued in the course of an industrial assurance business, and not constituting a qualifying policy by virtue of paragraph 1 or 2 above, is nevertheless a qualifying policy if—

(a) the sums guaranteed by the policy, together with those guaranteed at the time the assurance is made by all other policies issued in the course of such a business to the same person and not constituting qualifying policies apart from this paragraph, do not exceed £1,000;

(b) it satisfies the conditions with respect to premiums specified in paragraph 1(2) above;

(c) except by reason of death or surrender, no capital sum other than one falling within paragraph (d) below can become payable under the policy earlier than ten years after the making of the assurance; and

(d) where the policy provides for the making of a series of payments during its term—

(i) the first such payment is due not earlier than five years after the making of the assurance, and the others, except the final payment, at intervals of not less than five years, and

(ii) the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment; or

(e) the policy was issued before 6th April 1976, or was issued before 6th April 1979 and is in substantially the same form as policies so issued before 6th April 1976.

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(2) For the purposes of this paragraph, the sums guaranteed by a policy do not include any bonuses, or in the case of a policy providing for a series of payments during its term, any of those payments except the first, or any sum payable on death during the term by reference to one or more of those payments except so far as that sum is referable to the first such payment.

Marginal Citations

M2271 Source—1970 Sch.1 4; 1976 Sch.4 12

8 [M2272] Where a policy issued in respect of an insurance made after 1st April 1976 in the course of an industrial assurance business is not a qualifying policy by virtue of paragraph 1 or 2 above but is a policy with respect to which the conditions in paragraph 7(1)(b) and (c) above are satisfied, it shall be a qualifying policy whether or not the condition in paragraph 7(1)(a) above is satisfied with respect to it; but where that condition is not satisfied, relief under section 266 in respect of premiums paid under the policy shall be given only on such amount (if any) as would have been the amount of those premiums had that condition been satisfied.

Marginal Citations

M2272 Source—1975 Sch.2 7; 1976 Sch.4 19(4)

VALID FROM 29/04/1996

[[F1864] 8A (1) Paragraphs 7 and 8 above shall have effect in relation to any policy issued on or after the appointed day as if the references to the issue of a policy in the course of an industrial assurance business were references to the issue of a policy by any company in a case in which—

(a) the company, before that day and in the course of such a business, issued any policy which was a qualifying policy by virtue of either of those paragraphs; and

(b) the policies which on 28th November 1995 were being offered by the company as available to be issued included policies of the same description as the policy issued on or after the appointed day.

(2) In this paragraph "the appointed day" means such day as the Board may by order appoint.]

Subordinate Legislation Made

P10 Sch. 15 para. 8A power exercised: 1.12.2001 appointed by S.I. 2001/3643, **art. 2(c)**

Textual Amendments

F1864 Sch. 15 para. 8A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(8)**

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(iii) Family income policies and mortgage protection

9 (1) [M2273] The following provisions apply to any policy which is not a qualifying policy apart from those provisions, and the benefits secured by which consist of or include the payment on or after a person's death of—

(a) one capital sum which does not vary according to the date of death, plus a series of capital sums payable if the death occurs during a specified period, or

(b) a capital sum, the amount of which is less if the death occurs in a later part of a specified period than if it occurs in an earlier part of that period.

(2) A policy falling within sub-paragraph (1)(a) above is a qualifying policy if—

(a) it would be one if it did not secure the series of capital sums there referred to, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and

(b) it would also be one if it secured only that series of sums, and the premiums thereunder were the balance of those actually so payable.

(3) A policy falling within sub-paragraph (1)(b) above is a qualifying policy if—

(a) it would be one if the amount of the capital sum there referred to were equal throughout the period to its smallest amount, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and

(b) it would also be one if it secured only that capital sum so far as it from time to time exceeds its smallest amount, and the premiums payable thereunder were the balance of those actually so payable.

Marginal Citations

M2273 Source—1970 Sch.1 5

OTHER SPECIAL PROVISIONS

(i) Short-term assurances

10 [M2274] A policy which secures a capital sum payable only on death or payable either on death or on earlier disability shall not be a qualifying policy if the capital sum is payable only if the event in question happens before the expiry of a specified term ending less than one year after the making of the insurance.

Marginal Citations

M2274 Source—1976 Sch.4 2, 2A; 1978 Sch.3 4; 1982 s.35(1)

(ii) Personal accident insurance

11 (1) A policy which evidences a contract of insurance to which sub-paragraph (3) below applies shall not be a qualifying policy unless it also evidences a contract falling within Class I or Class III in Schedule 1 to the [M2275]Insurance Companies Act 1982.

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(2) A policy which evidences a contract of insurance to which sub-paragraph (4) below applies shall not be a qualifying policy unless it also evidences a contract falling within section 83(2)(a) of the [M2276]Insurance Companies Act 1974.

(3) This sub-paragraph applies to contracts of insurance issued in respect of insurances made on or after 25th March 1982 against risks of persons dying as a result of an accident or an accident of a specified class, not being contracts which—

(a) are expressed to be in effect for a period of not less than five years or without limit of time; and

(b) either are not expressed to be terminable by the insurer before the expiration of five years from their taking effect or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned.

(4) This sub-paragraph applies to contracts of insurance issued in respect of insurances made before 25th March 1982 against risks of persons dying as a result of an accident or an accident of a specified class, not being contracts falling within section 83(2)(b) of the Insurance Companies Act 1974.

Marginal Citations

M2275 1982 c. 50.

M2276 1974 c. 49.

*(iii) Exceptional **[**[F1865]risk of death or disability**]***

Textual Amendments

F1865 Words in Sch. 15 para. 12 heading substituted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(2)**

12 [M2277] For the purpose of determining whether any policy is a qualifying policy, there shall be disregarded—

(a) so much of any premium thereunder as is charged on the grounds that an exceptional risk of death **[**[F1866]or disability**]** is involved; and

(b) any provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death **[**[F1866]or disability**]**.

Textual Amendments

F1866 Words in Sch. 15 para. 12 inserted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(1)**

Marginal Citations

M2277 Source—1970 Sch.1 6, 7

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(iv) Connected policies

13 [M2278] Subject to paragraph 14 below, where the terms of any policy provide that it is to continue in force only so long as another policy does so, neither policy is a qualifying policy unless, if they had constituted together a single policy issued in respect of an insurance made at the time of the insurance in respect of which the first-mentioned policy was issued, that single policy would have been a qualifying policy.

Marginal Citations

M2278 Source—1980 s.30; 1984 s.74; 1982 s.35(3)

14 (1) A policy shall not be a qualifying policy if the policy is connected with another policy and the terms of either policy provide benefits which are greater than would reasonably be expected if any policy connected with it were disregarded.

(2) For the purposes of this paragraph a policy is connected with another policy if they are at any time simultaneously in force and either of them is issued with reference to the other, or with a view to enabling the other to be issued on particular terms or facilitating its being issued on those terms.

(3) In this paragraph "policy" means a policy effected in the course of long term business, as defined in section 1 of the [M2279]Insurance Companies Act 1982, and includes any such policy issued outside the United Kingdom.

(4) Where any person issues a policy—

(a) which by virtue of this paragraph is not a qualifying policy, or

(b) the issue of which causes another policy to cease by virtue of this paragraph to be a qualifying policy,

he shall within three months of issuing the policy give notice of that fact to the Board.

(5) The Board may, by notice, require any person who is, or appears to them to be, concerned in the issue of any such policy as is mentioned in sub-paragraph (4) above, to furnish them within such time (not being less than 30 days) as may be specified in the notice with such particulars as they think necessary for the purposes of this paragraph and as the person to whom the notice is addressed has or can reasonably obtain; but no solicitor shall be deemed for the purposes of this sub-paragraph to have been concerned in the issue of a policy by reason only that he has given professional advice to a client in connection with that policy.

(6) This paragraph shall apply to policies issued in respect of insurances made before 23rd August 1983 in accordance with sub-paragraphs (7) and (8) below.

(7) Where—

(a) a policy is issued in respect of an insurance made before 23rd August 1983, and

(b) a policy is issued in respect of an insurance made on or after that date which is connected with it within the meaning of this paragraph,

sub-paragraphs (1) to (6) above shall apply to the policy issued in respect of an insurance made before that date.

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(8) Sub-paragraphs (1) to (7) above shall apply to policies issued in respect of insurances made before 23rd August 1983 (other than policies which, disregarding this paragraph, fall within sub-paragraph (7)) with the substitution—

(a) in sub-paragraph (1) for the words "and the terms of either policy" of the words " the terms of which ";

(b) in sub-paragraph (3) for the words from "long term business" to "1982" of the words " ordinary long-term insurance business within the meaning of section 83(2) of the Insurance Companies Act 1974 (as enacted) or, in relation to a policy made after 25th March 1982, section 96(1) of the Insurance Companies Act 1982 "; and

(c) in sub-paragraphs (6) and (7) for the words "23rd August 1983" of the words " 26th March 1980 ".

(9) In any case where payments made—

(a) after 22nd August 1983, and

(b) by way of premium or other consideration in respect of a policy issued in respect of an insurance made before that date,

exceed £5 in any period of 12 months, the policy shall be treated for the purposes of this paragraph as if it were issued in respect of an insurance made after 22nd August 1983; but nothing in this paragraph shall apply with respect to any premium paid in respect of it before that date.

(10) Sub-paragraphs (8) and (9) above do not apply in relation to policies issued in the course of industrial assurance business.

Modifications etc. (not altering text)

C856 *See* S.I.1989 No.1343(N.I.14) Art.10(2)*and* Sch.1 para.38(3)*for construction in the case of a solicitor who is a member of a recognised body.*

Marginal Citations

M2279 1982 c. 50.

(v) Premiums paid out of sums due under previous policies

15 (1) **M2280** Where, in the case of a policy under which a single premium only is payable, liability for the payment of that premium is discharged in accordance with sub-paragraph (2) below, the policy is a qualifying policy notwithstanding anything in paragraph 1(2) or (3) or paragraph 2(1)(b) or (c) above; and where, in the case of any other policy, liability for the payment of the first premium thereunder, or of any part of that premium, is so discharged, the premium or part shall be disregarded for the purposes of paragraphs 1(2)(b) and (3)(b) and 2(1)(c) above.

(2) Liability for the payment of a premium is discharged in accordance with this sub-paragraph if it is discharged by the retention by the company with which the insurance is made of the whole or a part of any sum which has become payable on the maturity of, or on the surrender more than ten years after its issue of the rights conferred by, a policy—

(a) previously issued by the company to the person making the insurance, or, if it is made by trustees, to them or any predecessors in office; or

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(b) issued by the company when the person making the insurance was an infant, and securing a capital sum payable either on a specified date falling not more than one month after his attaining 25, or on the anniversary of the policy immediately following his attainment of that age,

being, unless it is a policy falling within paragraph (b) above and the premium in question is a first premium only, a policy which was itself a qualifying policy, or which would have been a qualifying policy had it been issued in respect of an insurance made after 19th March 1968.

Marginal Citations
M2280 Source—1970 Sch.1 8

(vi) Additional premiums under section 72(9) of the Ginance Act 1984

16 [M2281] In determining whether a policy is a qualifying policy, no account shall be taken of any amount recovered, as if it were an additional premium, in pursuance of section 72(9) of the Finance Act 1984.

Marginal Citations
M2281 Source—1984 s.72(9)(a)

(viii) Substituitions and variations

17 (1) [M2282] Subject to paragraph 19 below, where one policy ("the new policy") is issued in substitution for, or on the maturity of and in consequence of an option conferred by, another policy ("the old policy"), the question whether the new policy is a qualifying policy shall, to the extent provided by the rules in sub-paragraph (2) below, be determined by reference to both policies.

(2) The rules (for the purposes of which, the question whether the old policy was a qualifying policy shall be determined in accordance with this Part of this Schedule, whatever the date of the insurance in respect of which it was issued), are as follows—

(a) if the new policy would apart from this paragraph be a qualifying policy but the old policy was **[**[F1867]not,**]** the new policy is not a qualifying policy unless the person making the insurance in respect of which it is issued was an infant when the old policy was issued, and the old policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining 25 or on the anniversary of the policy immediately following his attainment of that age;

(b) if the new policy would apart from this paragraph be a qualifying policy, and the old policy was also a qualifying policy, the new policy is a qualifying policy unless—

(i) it takes effect before the expiry of ten years from the making of the insurance in respect of which the old policy was issued, and

(ii) subject to sub-paragraph (4) below, the highest total of premiums payable thereunder for any period of 12 months expiring before that

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time is less than one half of the highest total paid for any period of 12 months under the old policy, or under any related policy issued less than ten years before the issue of the new policy ("related policy" meaning any policy in relation to which the old policy was a new policy within the meaning of this paragraph, any policy in relation to which that policy was such a policy, and so on);

(c) if the new policy would not apart from this paragraph be a qualifying policy, and would fail to be so by reason only of paragraph 1(2) or (3) or 2(1)(a), (b) or (c) above, it is nevertheless a qualifying policy if the old policy was a qualifying policy and—

(i) the old policy was issued in respect of an insurance made more than ten years before the taking effect of the new policy, and, subject to sub-paragraph (4) below, the premiums payable for any period of 12 months under the new policy do not exceed the smallest total paid for any such period under the old policy; or

(ii) the old policy was issued outside the United Kingdom, and the circumstances are as specified in sub-paragraph (3) below.

(3) [M2283] The circumstances are—

(a) where the new policy referred to in sub-paragraph (2)(c) above is issued after 22nd February 1984, that the policy holder under the new policy became resident in the United Kingdom during the 12 months ending with the date of its issue;

(b) where paragraph (a) above does not apply, that the person in respect of whom the new insurance is made became resident in the United Kingdom during the 12 months ending with the date of its issue;

(c) that the issuing company certify that the new policy is in substitution for the old, and that the old was issued either by a branch or agency of theirs outside the United Kingdom or by a company outside the United Kingdom with whom they have arrangements for the issue of policies in substitution for ones held by persons coming to the United Kingdom; and

(d) that the new policy confers on the holder benefits which are substantially equivalent to those which he would have enjoyed if the old policy had continued in force.

(4) [M2284] Where the new policy is one issued on or after 1st April 1976 then, in determining under sub-paragraph (2) above whether that policy would or would not (apart from sub-paragraphs (1) to (3) above) be a qualifying policy, there shall be left out of account so much of the first premium payable thereunder as is accounted for by the value of the old policy.

Textual Amendments

F1867 Word in Sch. 15 para. 17(2)(a) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **10**

Marginal Citations

M2282 Source—1970 Sch.1 9(1), (2)

M2283 Source—1970 Sch.1 9(3); 1984 s.76(3), (6)

M2284 Source—1975 Sch.2 5

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18 (1) [M2285] Subject to paragraph 19 below and to the provisions of this paragraph, where the terms of a policy are varied, the question whether the policy after the variation is a qualifying policy shall be determined in accordance with the rules in paragraph 17 above, with references in those rules to the new policy and the old policy construed for that purpose as references respectively to the policy after the variation and the policy before the variation, and with any other necessary modifications.

(2) In applying any of those rules by virtue of this paragraph, the question whether a policy after a variation would be a qualifying policy apart from the rule shall be determined as if any reference in paragraphs **[**[F1868]1, 2, 3(5) to (11), 4 to 9**]**, 12 and 13 above to the making of an insurance, or to a policy's term, were a reference to the taking effect of the variation or, as the case may be, to the term of the policy as from the variation.

(3) This paragraph does not apply by reason of—

(a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect, or

(b) any variation effected before the end of the year 1968 for the sole purpose of converting into a qualifying policy any policy issued (but not one treated, by virtue of paragraph 8(1) and (2) of Schedule 14, as issued) in respect of an insurance made after 19th March 1968 **[**[F1869], or

(d) any variation which alters the method for calculating the benefits secured by the policy.**]**

[[F1870](4) For the purposes of this paragraph there is no variation in the terms of a policy where—

(a) an amount of premium chargeable on the grounds that an exceptional risk of death or disability is involved becomes or ceases to be payable, or

(b) the policy is amended by the insertion, variation or removal of a provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death or disability.**]**

Textual Amendments

F1868 Word in Sch. 15 para. 18(2) substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **11**

F1869 Sch. 15 para. 18(3)(d) and preceding word inserted (partly retrospective, and otherwise with effect in accordance with s. 87(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 87(2)(4)(6)**

F1870 Sch. 15 para. 18(4) inserted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(4)**

Marginal Citations

M2285 Source—1970 Sch.1 10

19 (1) [M2286] The following provisions of this paragraph shall have effect for determining for the purposes of this Schedule whether a policy has been varied or whether a policy which confers on the person to whom it is issued an option to have another policy substituted for it or to have any of its terms changed is a qualifying policy.

(2) If the policy is one issued in respect of an insurance made before 1st April 1976—

(a) any such option shall, until it is exercised, be disregarded in determining whether the policy is a qualifying policy; and

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(b) any change in the terms of the policy which is made in pursuance of such an option shall be deemed to be a variation of the policy.

(3) If the policy is one issued in respect of an insurance made on or after 1st April 1976, the policy shall not be a qualifying policy unless it satisfies the conditions applicable to it under this Schedule before any such option is exercised and—

(a) each policy that might be substituted for it in pursuance of such an option would satisfy those conditions under the rules of paragraph 17 above; and

(b) the policy would continue to satisfy those conditions under the rules of that paragraph as applied by paragraph 18 above if each or any of the changes capable of being made in pursuance of such an option had been made and were treated as a variation;

and it shall not be treated as being varied by reason only of any change made in pursuance of such an option.

Marginal Citations

M2286 Source—1975 Sch.2 3

20 (1) [M2287] Where, as a result of a variation in the life or lives for the time being assured, a qualifying policy ("the earlier policy") is replaced by a new policy ("the later policy") which in accordance with the rules in paragraph 17 above is also a qualifying policy, then, subject to sub-paragraph (2) below, for the purposes of—

(a) sections 268 to 270 and 540 and 541; and

(b) any second or subsequent application of this paragraph;

the later policy and the earlier policy shall be treated as a single policy issued in respect of an insurance made at the time of the making of the insurance in respect of which the earlier policy was issued; and, accordingly, so long as the later policy continues to be a qualifying policy, the single policy shall also be treated as a qualifying policy for those purposes.

(2) Sub-paragraph (1) above does not apply unless—

(a) any sum which would otherwise become payable by the insurer on or in connection with the coming to an end of the earlier policy is retained by the insurer and applied in the discharge of some or all of the liability for any premium becoming due under the later policy; and

(b) no consideration in money or money's worth (other than the benefits for which provision is made by the later policy) is receivable by any person on or in connection with the coming to an end of the earlier policy or the coming into existence of the later policy.

(3) Any sum which is applied as mentioned in sub-paragraph (2)(a) above—

(a) shall be left out of account in determining, for the purposes of sections 268 to 270 and 540 and 541, the total amount which at any time has been paid by way of premiums under the single policy referred to in sub-paragraph (1) above; and

(b) shall not be regarded, in relation to that single policy, as a relevant capital payment, within the meaning of section 541.

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(4) This paragraph applies where the later policy comes into existence on or after 25th March 1982.

Marginal Citations

M2287 Source—1982 s.34

VALID FROM 01/04/2011

[F1871 (viii) Policy reinstated after non-payment of premium

Textual Amendments

F1871 Sch. 15 para. 20ZA and preceding cross-heading inserted (1.4.2011 with effect in accordance with art. 15(2) of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2011 (S.I. 2011/1037), **arts. 1**, 15(1)

20ZA (1) This paragraph applies to a qualifying policy ("the original policy") if conditions A to D are satisfied.

(2) Condition A is that one or more premiums due under the original policy are not paid on or before the date on which they become due.

(3) Condition B is that the original policy, in accordance with its terms, is treated as having lapsed or is converted into a paid-up policy—

(a) by reason only of the failure to pay that premium or those premiums, and

(b) within the period of 12 months beginning with the day following the day on which the earliest unpaid premium becomes due.

(4) Condition C is that the original policy—

(a) is reinstated on the same terms, or

(b) is replaced by another policy in the same terms ("the replacement policy"),

on or before the thirtieth day after the first anniversary of the day following the day on which the earliest unpaid premium becomes due.

(5) Condition D is that all unpaid premiums due under the original policy are paid on or before the date on which the policy is reinstated or replaced.

(6) Where condition C is satisfied by virtue of sub-paragraph (4)(b) the replacement policy is to be treated for the purposes of this Schedule as if it were the original policy.

(7) The policy is to be treated for the purposes of this Schedule as if the premiums payable under it had been paid on their due dates.**]**

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PART II

CERTIFICATION OF QUALIFYING POLICIES

Policies issued in respect of insurances made on or after 1st April 1976 or varied on or after that date

21 (1) [M2288]A policy of life insurance issued in respect of an insurance made on or after 1st April 1976 or varied on or after that date (other than one to which paragraph 22(2)(c) below applies) shall not be a qualifying policy unless—

(a) it is certified by the Board as being a qualifying policy; or

(b) it conforms with a form which at the time the policy is issued or varied is either—

(i) a standard form certified by the Board as a standard form of qualifying policy; or

(ii) a form varying from a standard form so certified in no other respect than by making such additions thereto as are, at the time the policy is issued, certified by the Board as compatible with a qualifying policy when made to that standard form and satisfy any conditions subject to which they are so certified;

and any certificate issued in pursuance of paragraph (a) above shall be conclusive evidence that the policy is a qualifying policy.

(2) In issuing a certificate in pursuance of sub-paragraph (1) above the Board may disregard any provision of the policy, standard form or addition which appears to them insignificant.

(3) Where the Board refuse to certify a policy as being a qualifying policy, the person to whom it is issued may appeal to the General Commissioners or, if he so elects, to the Special Commissioners.

(4) Sub-paragraphs (1) to (3) above do not apply in relation to such a policy as is mentioned in paragraphs 3 to 6 above.

Modifications etc. (not altering text)

C857 Sch. 15 para. 21 restricted by Finance Act 1995 (c. 4), **s. 55(1)(9)** (with s. 55(2)(3)) (as amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**)

Marginal Citations

M2288 Source—1975 Sch.2 1; 1987 Sch.15 7

22 (1) [M2289] A body which issues or which, after 5th April 1979, has issued any policy of life insurance (other than one to which sub-paragraph (2)(c) below applies)—

(a) which is certified by the Board as being a qualifying policy; or

(b) which conforms with such a form as is mentioned in paragraph 21(1)(b) above, and is in the opinion of the body issuing it a qualifying policy,

shall, within three months of receipt of a request in writing by the policy holder, give to the policy holder a duly authenticated certificate to that effect, specifying in

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the certificate the name of the policy holder, the name of the person whose life is assured, the reference number or other means of identification allocated to the policy, the reference number of the relevant Inland Revenue certificate (if any), the capital sum or sums assured and the amounts and dates for payment of the premiums.

(2) [M2290] Subject to sub-paragraph (3) below, where a policy of life insurance is varied after 5th April 1979, and, after the variation—

(a) it is certified by the Board as a qualifying policy, or

(b) it conforms with such a form as is referred to in sub-paragraph (1) above and is in the opinion of the body by whom it was issued a qualifying policy, or

(c) in the case of a policy issued in respect of an insurance made before 1st April 1976, it is in the opinion of the body by whom it was issued a qualifying policy,

that body shall, within three months of receipt of a request in writing by the policy holder, give to the policy holder a like certificate with respect to the policy as varied.

(3) [M2291] Sub-paragraph (2) above shall not apply by reason of—

(a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect; or

(b) any variation of a policy issued in respect of an insurance made on or before 19th March 1968, other than a variation by virtue of which the policy falls, under paragraph 8(1) and (2) of Schedule 14, to be treated as issued in respect of an insurance made after that date **[**[F1872]; or

(c) any variation which alters the method for calculating the benefits secured by the policy.**]**

Textual Amendments

F1872 Sch. 15 para. 22(3)(c) and preceding word inserted (partly retrospective, and otherwise with effect in accordance with s. 87(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 87(3)(4)(6)**

Marginal Citations

M2289 Source—1970 Sch.1 11(1); 1975 Sch.2 2(1); 1976 s.33(1); 1978 Sch.3 13(1)(a), (b)

M2290 Source—1970 Sch.1 11(2); 1975 Sch.2 2(2); 1976 s.33(2); 1978 Sch.3 13(1)(b)

M2291 Source—1970 Sch.1 11(3)

PART III

POLICIES ISSUED BY NON-RESIDENT COMPANIES

23 [M2292] In this Part—

(a) any reference to a paragraph is a reference to that paragraph of this Schedule; and

(b) "the old policy" and "the new policy" have the same meanings as in paragraph 17.

Marginal Citations

M2292 Source—1984 Sch.15 Pt.II 1

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24 (1) [M2293] This paragraph applies to a policy of life insurance—

(a) which is issued in respect of an insurance made after 17th November 1983; and

(b) which is so issued by a company resident outside the United Kingdom;

and in the following provisions of this paragraph such a policy is referred to as "a new non-resident policy" and the company by which it is issued is referred to as "the issuing company".

(2) Notwithstanding anything in paragraph 21—

(a) a new non-resident policy shall not be certified under sub-paragraph (1)(a) of that paragraph, and

(b) a new non-resident policy which conforms with such a form as is mentioned in sub-paragraph (1)(b) of that paragraph shall not be a qualifying policy,

until such time as the conditions in either sub-paragraph (3) or sub-paragraph (4) below are fulfilled with respect to it.

(3) The conditions first referred to in sub-paragraph (2) above are—

(a) that the issuing company is lawfully carrying on in the United Kingdom life assurance business (as defined in section 431(2)); and

(b) that the premiums under the policy are payable to a branch in the United Kingdom of the issuing company, being a branch through which the issuing company carries on its life assurance business; and

(c) the premiums under the policy form part of those business receipts of the issuing company which arise through that branch.

(4) The conditions secondly referred to in sub-paragraph (2) above are—

(a) that the policy holder is resident in the United Kingdom; and

(b) that the income of the issuing company from the investments of its life assurance fund is, by virtue of section 445, charged to corporation tax under Case III of Schedule D;

and expressions used in paragraph (b) above have the same meaning as in section 445(1).

Marginal Citations

M2293 Source—1975 Sch.2 1A; 1984 Sch.5 Pt.I

25 (1) [M2294] In the application of paragraph 17 in any case where—

(a) the old policy was issued in respect of an insurance made after 17th November 1983 and could not be a qualifying policy by virtue of paragraph 24, and

(b) the new policy is not a new non-resident policy as defined in that paragraph,

the rules for the determination of the question whether the new policy is a qualifying policy shall apply with the modifications in sub-paragraph (2) below.

(2) The modifications are the following—

(a) if, apart from paragraph 24, the old policy and any related policy (within the meaning of paragraph 17(2)(b)) of which account falls to be taken would have been, or would have been capable of being certified as, a qualifying

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policy under paragraph 21, that policy shall be assumed to have been a qualifying policy for the purposes of paragraph 17(2); and

(b) if, apart from this paragraph, the new policy would be, or would be capable of being certified as, a qualifying policy, it shall not be such a policy or, as the case may be, be capable of being so certified unless the circumstances are as specified in paragraph 17(3); and

(c) in paragraph 17(3)(b) the words "either by a branch or agency of theirs outside the United Kingdom or" shall be omitted.

(3) In the application of paragraph 17 in any case where—

(a) the old policy is a qualifying policy which was issued in respect of an insurance made on or before 17th November 1983 but, if the insurance had been made after that date, the policy could not have been a qualifying policy by virtue of paragraph 24, and

(b) the new policy is issued after that date and is not a new non-resident policy, as defined in paragraph 24,

the rules for the determination of the question whether the new policy is a qualifying policy shall apply with the modification in sub-paragraph (2)(c) above.

Marginal Citations

M2294 Source—1984 Sch.15 Pt.II 2-4

26 If, in the case of a substitution of policies falling within paragraph 25(1) or (3), the new policy confers such an option as results in the application to it of paragraph 19(3), the new policy shall be treated for the purposes of paragraph 19(3) as having been issued in respect of an insurance made on the same day as that on which was made the insurance in respect of which the old policy was issued.

27 (1) For the purposes of Part I and paragraphs 21 and 24, a policy of life insurance which was issued—

(a) in respect of an insurance made on or before 17th November 1983, and

(b) by a company resident outside the United Kingdom,

shall be treated as issued in respect of an insurance made after that date if the policy is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(2) If a policy of life insurance which was issued as mentioned in sub-paragraph (1)(a) and (b) above confers on the person to whom it is issued an option to have another policy substituted for it or to have any of its terms changed, then for the purposes of that sub-paragraph any change in the terms of the policy which is made in pursuance of the option shall be deemed to be a variation of the policy.

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/05/1995

SCHEDULE 15A

CONTRACTUAL SAVINGS SCHEMES

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VALID FROM 01/05/1995

[[F1873]SCHEDULE 15B

VENTURE CAPITAL TRUSTS: RELIEF FROM INCOME TAX

Textual Amendments

F1873 Sch. 15B inserted (with effect in accordance with s. 71(4) of the amending Act) by Finance Act 1995 (c. 4), s. 71(2), **Sch. 15**

PART I

RELIEF ON INVESTMENT

Entitlement to claim relief

1 (1) Subject to the following provisions of this Schedule, an individual shall, for any year of assessment, be entitled under this Part of this Schedule to claim relief in respect of an amount equal to the aggregate of the amounts (if any) which, by reference to eligible shares issued to him by venture capital trusts in the course of that year, are amounts on which he is eligible for relief in accordance with sub-paragraph (2) below.

(2) The amounts on which an individual shall be taken for the purposes of sub-paragraph (1) above to be eligible for relief shall be any amounts subscribed by him on his own behalf for eligible shares issued by a venture capital trust for raising money.

(3) An individual shall not be entitled under this Part of this Schedule to claim relief for any given year of assessment in respect of an amount of more than £100,000.

(4) An individual shall not be entitled under this Schedule to claim any relief to which he is eligible by reference to any shares unless he had attained the age of eighteen years before those shares were issued.

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(5) Where an individual makes a claim for any relief to which he is entitled under this Part of this Schedule for any year of assessment, the amount of his liability for that year to income tax on his total income shall be equal to the amount to which he would be so liable apart from this Part of this Schedule less whichever is the smaller of—
  (a) an amount equal to tax at the lower rate for that year on the amount in respect of which he is entitled to claim relief for that year, and
  (b) the amount which reduces his liability to nil.

(6) In determining for the purposes of sub-paragraph (5) above the amount of income tax to which a person would be liable apart from this Part of this Schedule, no account shall be taken of—
  (a) any income tax reduction under section 289A,
  (b) any income tax reduction under Chapter I of Part VII or under section 347B,
  (c) any income tax reduction under section 353(1A),
  (d) any income tax reduction under section 54(3A) of the [M2296]Finance Act 1989,
  (e) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1), or
  (f) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

(7) Where, in the case of any claim for relief under this Part of this Schedule in respect of any shares issued in any year of assessment, effect is given to the claim by repayment of tax, section 824 shall have effect in relation to the repayment as if the time from which the twelve months mentioned in subsections (1)(a) and (3)(a) of that section are to be calculated were the end of the year of assessment in which the shares were issued.

(8) A person shall not be entitled to be given any relief under this Part of this Schedule by reference to any shares if circumstances have arisen which would have resulted, had that relief already been given, in the withdrawal or reduction of the relief.

(9) A person shall not under this Part of this Schedule be eligible for any relief on any amount by reference to any shares unless the shares are both subscribed for and issued for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

Marginal Citations
M2296 1989 c. 26.

Loan-linked investments

2 (1) An individual shall not be entitled to relief under this Part of this Schedule in respect of any shares if—

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(a) there is a loan made by any person, at any time in the relevant period, to that individual or any associate of his; and

(b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not subscribed for those shares or had not been proposing to do so.

(2) References in this paragraph to the making by any person of a loan to any individual or an associate of his include references—

(a) to the giving by that person of any credit to that individual or any associate of his; and

(b) to the assignment or assignation to that person of any debt due from that individual or any associate of his.

(3) In this paragraph—

"associate" has the meaning given in subsections (3) and (4) of section 417, except that in those subsections (as applied for the purposes of this paragraph) "relative" shall not include a brother or sister; and

"the relevant period", in relation to relief under this Part of this Schedule in respect of any shares in a company which is a venture capital trust, means the period beginning with the incorporation of the company (or, if the company was incorporated more than two years before the date on which the shares were issued, beginning two years before that date) and ending five years after the issue of the shares.

Loss of investment relief

3 (1) This paragraph applies, subject to sub-paragraph (5) below, where—

(a) an individual who has made any claim for relief under this Part of this Schedule makes any disposal of eligible shares in a venture capital trust, and

(b) that disposal takes place before the end of the period of five years beginning with the issue of those shares to that individual.

(2) If the disposal is made otherwise than by way of a bargain made at arm's length, any relief given under this Part of this Schedule by reference to the shares which are disposed of shall be withdrawn.

(3) Where the disposal was made by way of a bargain made at arm's length—

(a) if, apart from this sub-paragraph, the relief given by reference to the shares that are disposed of is greater than the amount mentioned in sub-paragraph (4) below, it shall be reduced by that amount, and

(b) if paragraph (a) above does not apply, any relief given by reference to those shares shall be withdrawn.

(4) The amount referred to in sub-paragraph (3) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount or value of the consideration which the individual receives for the shares.

(5) This paragraph shall not apply in the case of any disposal of shares which is made by a married man to his wife or by a married woman to her husband if it is made, in either case, at a time when they are living together.

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(6) Where any eligible shares issued to any individual ("the transferor"), being shares by reference to which any amount of relief under this Part of this Schedule has been given, are transferred to the transferor's spouse ("the transferee") by a disposal such as is mentioned in sub-paragraph (5) above, this paragraph shall have effect, in relation to any subsequent disposal or other event, as if—

(a) the transferee were the person who had subscribed for the shares,

(b) the shares had been issued to the transferee at the time when they were issued to the transferor,

(c) there had been, in respect of the transferred shares, such a reduction under this Part of this Schedule in the transferee's liability to income tax as is equal to the actual reduction in respect of those shares of the transferor's liability, and

(d) that deemed reduction were (notwithstanding the transfer) to be treated for the purposes of this paragraph as an amount of relief given by reference to the shares transferred.

(7) Any assessment for withdrawing or reducing relief by reason of a disposal or other event falling within sub-paragraph (6) above shall be made on the transferee.

(8) In determining for the purposes of this paragraph any question whether any disposal relates to shares by reference to which any relief under this Part of this Schedule has been given, it shall be assumed, in relation to any disposal by any person of any eligible shares in a venture capital trust, that—

(a) as between eligible shares acquired by the same person on different days, those acquired on an earlier day are disposed of by that person before those acquired on a later day; and

(b) as between eligible shares acquired by the same person on the same day, those by reference to which relief under this Part of this Schedule has been given are disposed of by that person only after he has disposed of any other eligible shares acquired by him on that day.

(9) Where—

(a) the approval of any company as a venture capital trust is withdrawn, and

(b) the withdrawal of the approval is not one to which section 842AA(8) applies,

any person who, at the time when the withdrawal takes effect, is holding any shares by reference to which relief under this Part of this Schedule has been given shall be deemed for the purposes of this paragraph to have disposed of those shares immediately before that time and otherwise than by way of a bargain made at arm's length.

Assessment on withdrawal or reduction of relief

4 (1) Any relief given under this Part of this Schedule which is subsequently found not to have been due shall be withdrawn by the making of an assessment to tax under Case VI of Schedule D for the year of assessment for which the relief was given.

(2) An assessment for withdrawing or reducing relief in pursuance of paragraph 3 above shall also be made as an assessment to tax under Case VI of Schedule D for the year of assessment for which the relief was given.

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(3) No assessment for withdrawing or reducing relief given by reference to shares issued to any person shall be made by reason of any event occurring after his death.

Provision of information

5 (1) Where an event occurs by reason of which any relief under this Part of this Schedule falls to be withdrawn or reduced, the individual to whom the relief was given shall, within 60 days of his coming to know of the event, give a notice to the inspector containing particulars of the event.

(2) If the inspector has reason to believe that a person has not given a notice which he is required to give under sub-paragraph (1) above in respect of any event, the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this Part of this Schedule.

(3) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a venture capital trust that relief given by reference to a particular number or proportion of its shares has been given or claimed under this Part of this Schedule.

Interpretation of Part I

6 (1) In this Part of this Schedule "eligible shares", in relation to a company which is a venture capital trust, means new ordinary shares in that trust which, throughout the period of five years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed.

(2) In this Part of this Schedule "ordinary shares", in relation to a company, means shares forming part of a company's ordinary share capital.

(3) In this Part of this Schedule references to a disposal of shares shall include references to a disposal of an interest or right in or over the shares.

PART II

RELIEF ON DISTRIBUTIONS

Modifications etc. (not altering text)

C858 Sch. 15B Pt. 2 applied (1.5.1995) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 151A(6)** (as inserted by Finance Act 1995 (c. 4), **s. 72(3)**)

7 (1) A relevant distribution of a venture capital trust shall not be regarded as income for any income tax purposes if the person beneficially entitled to it is a qualifying investor.

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(2) For the purposes of this paragraph a person is a qualifying investor, in relation to any distribution, if he is an individual who has attained the age of eighteen years and is beneficially entitled to the distribution—

(a) as the person who himself holds the shares in respect of which the distribution is made, or

(b) as a person with such a beneficial entitlement to the shares as derives from their being held for him, or for his benefit, by a nominee of his.

(3) In this paragraph "relevant distribution", in relation to a company which is a venture capital trust, means any distribution which—

(a) consists in a dividend (including a capital dividend) which is paid in respect of any ordinary shares in that company which—

(i) were acquired by the person to whom the distribution is made at a time when the company was such a trust, and

(ii) are not shares acquired in excess of the permitted maximum for any year of assessment;

and

(b) is not a dividend paid in respect of profits or gains arising or accruing in any accounting period ending at a time when the company was not such a trust.

Meaning of "permitted maximum"

8 (1) For the purposes of this Part of this Schedule shares in a venture capital trust shall be treated, in relation to any individual, as acquired in excess of the permitted maximum for any year of assessment to the extent that the value of the shares comprised in the relevant acquisitions of that individual for that year exceeds £100,000.

(2) The reference in sub-paragraph (1) above to the relevant acquisitions of an individual for a year of assessment is a reference to all shares which—

(a) are acquired in that year of assessment by that individual or any nominee of his;

(b) are ordinary shares in a company which is a venture capital trust at the time of their acquisition; and

(c) are shares so acquired for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

(3) Sub-paragraph (4) below applies where—

(a) any ordinary shares in a venture capital trust ("the new shares") are acquired by any individual in circumstances in which they are required for the purposes of the 1992 Act to be treated as the same assets as any other shares; and

(b) the other shares consist of or include any ordinary shares in a venture capital trust that were, or are treated as, acquired otherwise than in excess of the permitted maximum for any year of assessment.

(4) Where this sub-paragraph applies—

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(a) the value of the new shares shall be disregarded in determining whether any other shares acquired in the same year of assessment as the new shares are acquired in excess of the permitted maximum for that year; and

(b) the new shares or, as the case may be, an appropriate proportion of them shall be treated as themselves acquired otherwise than in excess of the permitted maximum.

(5) For the purposes of this paragraph the value of any shares acquired by or on behalf of any individual shall be taken to be their market value (within the meaning of the 1992 Act) at the time of their acquisition.

(6) Where any shares in a venture capital trust are acquired in excess of the permitted maximum for any year of assessment, the shares representing the excess shall be identified for the purposes of this Part of this Schedule—

(a) by treating shares acquired later in the year as comprised in the excess before those acquired earlier in the year;

(b) by treating shares of different descriptions acquired on the same day as acquired within the permitted maximum in the same proportions as are borne by the respective values of the shares comprised in the acquisitions of each description to the total value of all the shares in the trust acquired on that day; and

(c) by applying the rules in section 151A(4) and (5) of the 1992 Act for determining the shares to which any disposal of shares in the trust relates (even one which is not a disposal for the purposes of that Act).

Interpretation of Part II]

9 (1) In this Part of this Schedule "ordinary shares", in relation to a company, means shares forming part of the company's ordinary share capital.

(2) In this Part of this Schedule "nominee", in relation to any individual, includes the trustees of a bare trust of which that individual is the only beneficiary.

SCHEDULE 16

Section 350(4).

[M2297] COLLECTION OF INCOME TAX ON COMPANY PAYMENTS WHICH ARE NOT DISTRIBUTIONS

Modifications etc. (not altering text)

C859 Sch. 16 modified by S.I. 1991/512, **reg.3**
Sch. 16 excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d)**
Sch. 16 applied (with modifications) (24.9.1992) by S.I. 1992/2074, **reg. 14(5)**
Sch. 16 applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 13(3)**

C860 *See*—1970(M) s.55—*recovery of tax not in dispute.*1970(M) s.87—*interest on overdue ACT.*1988 s.339—*donations to charity.*1988 s.341—*payments of interest etc between related companies.*1988 s.479—*interest paid on deposits with banks etc.* (*but ceases to have effect as regards interest paid*

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or credited on or after 6*April* 1991).1988 s.480A—*relevant deposits: deduction of tax from interest payments.*S.I. 1988 No.482 (*in* Part III Vol.5) regn. 7—*Building Society Regulations.*

Marginal Citations

M229 Source—1972 Sch.20

Interpretation

1 In this Schedule "relevant payment" means any payment to which section 350(4)(a) applies.

Duty to make returns

2 (1) A company shall for each of its accounting periods make, in accordance with this Schedule, returns to the collector of the relevant payments made by it in that period and of the income tax for which it is accountable in respect of those payments.

(2) A return shall be made for—

(a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September and 31st December which falls within that period;

(b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;

(c) if none of those dates falls within the accounting period, the whole accounting period.

(3) A return for any period for which a return is required to be made under this paragraph shall be made within 14 days from the end of that period.

Modifications etc. (not altering text)

C861 Sch. 16 para. 2(2)(a) modified by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)**

Contents of returns

3 The return made by a company for any period shall show—

(a) the amount of any relevant payments made by the company in that period; and

(b) the income tax in respect of those payments for which the company is accountable.

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Payment of tax

4 (1) Subject to sub-paragraph **[**[F1874](3)**]** below, income tax in respect of any payment required to be included in a return under this Schedule shall be due at the time by which the return is to be made, and income tax so due—

(a) shall be payable by the company without the making of any assessment; and

(b) may be assessed on the company (whether or not it has been paid when the assessment is made) if it, or any part of it, is not paid on or before the due date.

(2) If it appears to the inspector that there is a relevant payment which ought to have been and has not been included in a return, or if the inspector is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any income tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(3) Where a payment has been included in a return under Schedule 13 by virtue of paragraph 7(1)(b) of that Schedule and it becomes apparent that the payment is not a qualifying distribution but a relevant payment—

(a) sub-paragraph (1)(a) above shall not apply to that payment; and

(b) income tax shall be assessed in respect of it on the company.

Textual Amendments

F1874 1990 s.89*and* Sch.14 para.13 (*correction of errors*)*—deemed always to have had effect. Previously* "(4)".

Set-off of income tax borne on company income against tax payable

5 (1) Where in any accounting period a company receives any payment on which it bears income tax by deduction the company may claim to have the income tax thereon set against any income tax which it is liable to pay under this Schedule in respect of payments made by it in that period.

(2) Any such claim shall be included in a return made under paragraph 2 above for the accounting period in question and (where necessary) income tax paid by the company under this Schedule for that accounting period and before the claim is allowed shall be repaid accordingly.

Modifications etc. (not altering text)

C862 Sch. 16 para. 5 restricted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 4(1)(2)**

C863 Sch. 16 para. 5 restricted (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **s. 91(1)(7)** (with Schs. 10, 11, 15)

C864 *See* s.341*—payments of interest between related companies.*

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6 (1) Where a claim has been made under paragraph 5 above no proceedings for collecting tax which would fall to be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but this sub-paragraph shall not affect the date when the tax is due.

(2) When the claim is finally determined any tax underpaid in consequence of sub-paragraph (1) above shall be paid.

(3) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under any provision of paragraph 4 above, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest thereon, until the claim has been finally determined.

(4) When the claim is finally determined any tax overpaid in consequence of sub-paragraph (3) above shall be repaid.

(5) References in this paragraph to proceedings for the collection of tax include references to proceedings by way of distraint or poinding for tax.

7 Income tax set against other tax under paragraph 5 above shall be treated as paid or repaid, as the case may be, and the same tax shall not be taken into account both under this Schedule and under section 7(2).

VALID FROM 29/04/1996

Amended return where company becomes aware of an error

7A (1) If a company becomes aware—

(a) that anything which ought to have been included in a return made by it under this Schedule for any period has not been so included,

(b) that anything which ought not to have been included in a return made by it under this Schedule for any period has been so included, or

(c) that any other error has occurred in a return made by it under this Schedule for any period,

it shall forthwith supply to the collector an amended return for that period.

(2) The duty imposed by sub-paragraph (1) above is without prejudice to any duty that may also arise under paragraph 7A of Schedule 13.

(3) Where an amended return is supplied under this paragraph, all such assessments, adjustments, set-offs or payments or repayments of tax shall be made as may be required for securing that the resulting liabilities to tax (including interest on unpaid or overpaid tax) whether of the company or any other person are the same as they would have been if a correct return had been made.

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Items included in error

8 Where any item has been included in a return or claim under this Schedule as a relevant payment but should have been included in a return under Schedule 13, the inspector may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) whether of the company or of any other person are the same as they would have been if the item had been included in the right return.

Relevant payment made otherwise than in accounting period

9 Where a company makes a relevant payment on a date which does not fall within an accounting period the company shall make a return of that payment within 14 days from that date, and the income tax for which the company is accountable in respect of that payment shall be due at the time by which the return is to be made.

Assessments and due date of tax

10 (1) All the provisions of the Income Tax Acts as to the time within which an assessment may be made, so far as they refer or relate to the year of assessment for which an assessment is made, or the year to which an assessment relates, shall apply in relation to any assessment under this Schedule notwithstanding that, under this Schedule, the assessment may be said to relate to a quarter or other period which is not a year of assessment, and the provisions of **[**[F1875]section 36**]** of the Management Act as to the circumstances in which an assessment may be made out of time shall apply accordingly on the footing that any such assessment relates to the year of assessment in which the quarter or other period ends.

(2) Income tax assessed on a company under this Schedule shall be due within 14 days after the issue of the notice of assessment (unless due earlier under paragraph 4(1) or 9 above).

(3) Sub-paragraph (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when tax is due under paragraph 4(1) or 9 above.

(4) On the determination of an appeal against an assessment under this Schedule any tax overpaid shall be repaid.

(5) Any tax assessable under any one or more of the provisions of this Schedule may be included in one assessment if the tax so included is all due on the same date.

Textual Amendments

F1875 1989 s.149(3)(d)—*not to affect the making of assessments before* 1983-84*or for accounting periods ending before* 1*April* 1983.*Previously*
"sections 36 and 37".

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Saving

11 Nothing in paragraphs 1 to 10 above shall be taken to prejudice any powers conferred by the Income Tax Acts for the recovery of income tax by means of an assessment or otherwise; and any assessment in respect of tax payable under paragraph 9 above shall be treated for the purposes of the provisions mentioned in paragraph 10(1) above as relating to the year of assessment in which the payment is made.

SCHEDULE 17

Section 404.

[M2298]DUAL RESIDENT INVESTING COMPANIES

Marginal Citations
M2298 Source—1987 (No.2) Sch.4

PART I

DIVISION OF ACCOUNTING PERIODS COVERING 1ST APRIL 1987

1 (1) This Part of this Schedule has effect in the circumstances set out in section 404(3)(a).

(2) In this Part of this Schedule—
(a) "the straddling period" means the accounting period of the dual resident investing company which begins before and ends on or after 1st April 1987; and
(b) "dual resident investing company" has the same meaning as in section 404.

(3) It shall be assumed for the purposes of this Chapter (except section 404(3) to (6)) and Part II of this Schedule—
(a) that an accounting period of the company ends on 31st March 1987; and
(b) that a new accounting period begins on 1st April 1987, the new accounting period to end with the end of the straddling period.

(4) In this Part of this Schedule "the component accounting periods" means the two accounting periods referred to in sub-paragraph (3) above.

2 Subject to paragraph 5 below, for the purposes referred to in paragraph 1(3) above, the losses and other amounts of the straddling period of a dual resident investing company, excluding any such excess of charges on income as is referred to in section 403(7), shall be apportioned to the component accounting periods on a time basis according to their lengths.

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3 If, in the straddling period of a dual resident investing company, the company has paid any amount by way of charges on income, then, for the purposes referred to in paragraph 1(3) above, the excess of that amount referred to in section 403(7) shall be apportioned to the component accounting periods—

(a) according to the dates on which, subject to paragraph 6 below, the interest or other payments giving rise to those charges were paid (or were treated as paid for the purposes of section 338); and

(b) in proportion to the amounts of interest or other payments paid (or treated as paid) on those dates.

PART II

EARLY PAYMENTS OF INTEREST ETC. AND CHARGES ON INCOME

Interpretation

4 In this Part of this Schedule—

(a) a "1986 accounting period" means an accounting period which begins or ends (or begins and ends) in the financial year 1986;

(b) a "post-1986 accounting period" means an accounting period which begins on or after 1st April 1987; and

(c) "dual resident investing company" has the same meaning as in section 404.

Early payment of interest etc.

5 (1) If the conditions in sub-paragraph (2) or (3) below are fulfilled and if the Board so direct, this paragraph applies in relation to a 1986 accounting period of a dual resident investing company.

(2) The conditions in this sub-paragraph are applicable only if the company is carrying on a trade in the 1986 accounting period, and those conditions are—

(a) that in that accounting period the company has incurred a loss, computed as for the purposes of section 393(2), in carrying on that trade; and

(b) that in that period the company has made a payment falling within section 404(6)(a)(iii); and

(c) that the payment referred to in paragraph (b) above either did not fall due in that period or would not have fallen due in that period but for the making, on or after 5th December 1986, of arrangements varying the due date for payment.

(3) The conditions in this sub-paragraph are applicable only if the company is an investment company in the 1986 accounting period, and those conditions are—

(a) that for that accounting period the company has (apart from this paragraph) such an excess as is referred to in section 403(4); and

(b) that one or more of the sums which for that accounting period may be deducted as expenses of management under section 75(1) either did not fall due in that period or would not have fallen due in that period but for the

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making, on or after 5th December 1986, of arrangements varying the due date for payment.

(4) The Board shall not give a direction under this paragraph with respect to a 1986 accounting period of a dual resident investing company unless it appears to the Board that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, from the arrangements was that (apart from this paragraph) the company would, for that period, have an amount or, as the case may be, a larger amount available for surrender by way of group relief.

(5) If this paragraph applies in relation to a 1986 accounting period of a dual resident investing company which is carrying on a trade then, for the purposes of this Chapter and, where appropriate, any apportionment under paragraph 2 above—
   (a) the loss (if any) of the company for that period shall be computed (as mentioned in section 403(1)) as if any payment falling within sub-paragraph (2)(b) above had not been made in that period; and
   (b) the loss (if any) of the company for its first post-1986 accounting period shall be computed as if any such payment were made in that period.

(6) If this paragraph applies in relation to a 1986 accounting period of a dual resident investing company which is an investment company, then, for the purposes referred to in sub-paragraph (5) above—
   (a) the amount which may be deducted as expenses of management for that period, as mentioned in section 403(4), shall be computed as if any sum falling within sub-paragraph (3)(b) above had not been disbursed; and
   (b) the amount which may be so deducted as expenses of management for the first of the company's post-1986 accounting periods shall be computed as if any such sum were disbursed in that period.

Early payment of charges on income

6 (1) If, in the case of a dual resident investing company, either of the following conditions is fulfilled—
   (a) that any interest or other payment which is, or is treated as, a charge on income falls due in a post-1986 accounting period but is paid (or treated for the purposes of section 338 as paid) in a 1986 accounting period, or
   (b) that, on or after 5th December 1986, arrangements have been made such that any such interest or other payment which, but for the arrangements, would have fallen due in a post-1986 accounting period, fell due in a 1986 accounting period,

   the interest or other payment shall, if the Board so direct, be treated for the purposes of this Chapter and, where appropriate, paragraph 3 above as paid in the post-1986 accounting period referred to in paragraph (a) or, as the case may be, paragraph (b) above.

(2) The Board shall not give a direction under this paragraph unless it appears to them that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, from the arrangements was that (apart from the direction) the interest or other payment would be attributed or apportioned to a 1986 accounting period rather than a post-1986 accounting period, so that, for the 1986 accounting

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period, the dual resident investing company would have an amount or, as the case may be, a larger amount available for surrender by way of group relief.

Appeals

7 Notice of the giving of a direction under paragraph 5 or 6 above shall be given to the dual resident investing company concerned; and any company to which such a notice is given may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company, appeal to the Special Commissioners against the direction on either or both of the following grounds—

(a) that the conditions applicable to the company under paragraph 5(2) or (3) above are not fulfilled or, as the case may be, that neither of the conditions in paragraph 6(1) above is fulfilled;

(b) that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, the arrangements was not that stated in paragraph 5(4) or, as the case may be, paragraph 6(2) above.

PART III

GENERAL

8 (1) Parts I and II of this Schedule have effect in priority to section 409 and, accordingly, each of the component accounting periods resulting from the operation of Part I of this Schedule shall be regarded as a true accounting period for the purposes of that section.

(2) References in this Schedule to this Chapter do not include any provision of this Schedule.

SCHEDULE 17A

Section 412.

GROUP RELIEF: CLAIMS

Introductory

1 (1) This Schedule has effect as respects claims for group relief.

(2) Section 42 of the Management Act (procedure for making claims) shall not apply to such claims.

Time limits

2 (1) No claim for an accounting period of a company may be made if—

(a) the company has been assessed to corporation tax for the period, and

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(b) the assessment has become final and conclusive.

(2) Sub-paragraph (1) above shall not apply in the case of a claim made before the end of 2 years from the end of the period.

(3) This paragraph applies to the withdrawal of a claim as it applies to the making of a claim.

3 (1) No claim for an accounting period of a company may be made after the end of 6 years from the end of the period, except under paragraph 5 below.

(2) This paragraph applies to the withdrawal of a claim as it applies to the making of a claim.

4 Where under paragraph 2 or 3 above a claim may not be made after a certain time, it may be made within such further time as the Board may allow.

5 (1) A claim for an accounting period of a company may be made after the end of 6 years from the end of the period if—

(a) the company has been assessed to corporation tax for the period before the end of 6 years from the end of the period,

(b) the company has appealed against the assessment, and

(c) the assessment has not become final and conclusive.

(2) No claim for an accounting period of a company may be made under this paragraph after the end of 6 years and 3 months from the end of the period.

Method of making claim

6 (1) A claim shall be made by being included in a return under section 11 of the Management Act (corporation tax return) for the period for which the claim is made.

(2) In sub-paragraph (1) above the reference to a claim being included in a return includes a reference to a claim being included by virtue of an amendment of the return.

(3) This paragraph applies to the withdrawal of a claim as it applies to the making of a claim.

Nature of claim

7 A claim may be made for less than the full amount available.

8 A claim, other than one under paragraph 5 above, shall be for an amount which is quantified at the time the claim is made.

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9 (1) A claim under paragraph 5 above shall be expressed to be conditional, as to the amount claimed, on, and only on, the outcome of one or more relevant matters specified in the claim.

(2) For the purposes of this paragraph a matter is relevant if it is relevant to the determination of the assessment of the claimant company to corporation tax for the period for which the claim is made.

Consent to surrender

10 (1) A claim shall require the consent of the surrendering company.

(2) A consortium claim shall require the consent of each member of the consortium in addition to the consent of the surrendering company.

(3) Consent to surrender shall be of no effect unless, at or before the time the claim is made, notice of consent is given by the consenting company to the inspector to whom the surrendering company makes its returns under section 11 of the Management Act.

(4) Notice of consent to surrender, in the case of consent by the surrendering company, shall be of no effect unless it contains the following particulars—

(a) the name of the surrendering company;

(b) the name of the company to which relief is being surrendered;

(c) the amount of relief being surrendered;

(d) the accounting period of the surrendering company to which the surrender relates;

(e) the tax district references of the surrendering company and the company to which relief is being surrendered.

(5) Where notice of the surrendering company's consent to surrender is given to the inspector after the surrendering company has made a return under section 11 of the Management Act for the period to which the relief being surrendered relates, the notice shall be of no effect unless the surrendering company at the same time amends the return.

(6) Where consent to surrender relates to a loss in respect of which relief has been given under section 393(1), notice of consent to surrender, in the case of the surrendering company, shall be of no effect unless, at the same time as giving the notice to the inspector, the company amends its return under section 11 of the Management Act for the period, or, if more than one, each of the periods, in which relief for the loss has been given under section 393(1).

(7) For the purposes of sub-paragraph (6) above relief under section 393(1) shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

(8) A claim shall require to be accompanied by a copy of the notice of consent to surrender given for the purposes of this paragraph by the surrendering company.

(9) A consortium claim shall in addition require to be accompanied by a copy of the notice of consent to surrender given for the purposes of this paragraph by each member of the consortium.

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11 (1) This paragraph applies in relation to claims under paragraph 5 above.

(2) In the case of consent to surrender by the surrendering company, consent which relates to relief which is the subject of more than one claim under paragraph 5 above shall be of no effect unless it specifies an order of priority in relation to the claims.

Adjustments

12 (1) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to a claim or the withdrawal of a claim.

(2) An assessment under this paragraph shall not be out of time if it is made—

(a) in the case of a claim, within one year from the date on which an assessment of the claimant company to corporation tax for the period for which the claim is made becomes final and conclusive, and

(b) in the case of the withdrawal of a claim, within one year from the date on which the claim is withdrawn.

SCHEDULE 18

Section 413(10).

[M2299] GROUP RELIEF: EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION [F1876]

Textual Amendments

F1876 *See*—s.240(13)—*application of* Sch.18*for purposes of* s.240—*set-off of surplus ACT.*s.247(9A)—*application of* Sch.18*for purposes of.*s.247(8A), (9)(c)—*dividends etc. paid by one member of a group to another.*s.769(6C)—*application of* Sch.18*for purposes of.*s.769(6B)—*rules for ascertaining change in ownership of company.*1990 s.32(12)—*application of* Sch.18*for relief for disposal of shares to employee share ownership trusts.*

Modifications etc. (not altering text)

C865 Sch. 18 applied (E.W.S) (16.1.1992) by S.I. 1992/58, **art. 35(5)**
Sch. 18 applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 170(8)**, 289 (with ss. 60, 101(1), 171, 201(3))
Sch. 18 applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 228(10)**, 289 (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M2299 Source—1973 Sch. 12 Pt. I; 1973 s. 32(6); 1987 Sch. 15 5

1 (1) For the purposes of **[**[F1877]sections 403C and 413(7)**]** and this Schedule, an equity holder of a company is any person who—

(a) holds ordinary shares in the company, or

(b) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

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and any reference in that section to profits or assets available for distribution to a company's equity holders does not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(2) For the purposes of sub-paragraph (1)(a) above "ordinary shares" means all shares other than fixed-rate preference shares.

(3) In this Schedule "fixed-rate preference shares" means shares which—

(a) are issued for consideration which is or includes new consideration; and

F1878(0) do not carry any right either to conversion into shares or securities of any other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;] and

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares; and

(d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares listed in the Official List of the Stock Exchange.

(4) Subsection (7) of section 417 shall apply for the purposes of sub-paragraph (1)(b) above as it applies for the purposes of Part XI, but with the omission of the reference to subsection (9) of that section.

(5) In sub-paragraph (1)(b) above "normal commercial loan" means a loan of or including new consideration and—

F1879(0) which does not carry any right either to conversion into shares or securities of any other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;] and

(b) which does not entitle that loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration lent; and

(c) in respect of which the loan creditor is entitled, on repayment, to an amount which either does not exceed the new consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities listed in the Official List of the Stock Exchange.

[F1880(5A) This sub-paragraph applies to any shares which—

(a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and

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(b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company's quoted parent company, or to the acquisition of any additional shares or securities.

(5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—

(a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and

(b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.

(5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company ("the parent company") is another company's "quoted parent company" if and only if—

(a) the other company is a 75 per cent. subsidiary of the parent company,

(b) the parent company is not a 75 per cent. subsidiary of any company, and

(c) the parent company's ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are quoted on a recognised stock exchange or dealt in on the Unlisted Securities Market;

and in this sub-paragraph "ordinary shares" means shares forming part of ordinary share capital.

(5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the purposes of sub-paragraphs (3) and (5) to (5B) above the other company's quoted parent company.**]**

[[F1881](5E) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest—

(a) shall not be treated as depending to any extent on the results of the company's business or any part of it by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the results of the company's business or any part of it improving, and

(b) shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the value of any of the company's assets increasing.

(5F) Sub-paragraph (5H) below applies where—

(a) a person makes a loan to a company on the basis mentioned in sub-paragraph (5G) below for the purpose of facilitating the acquisition of land, and

(b) none of the land which the loan is used to acquire is acquired with a view to resale at a profit.

(5G) The basis referred to above is that—

(a) the whole of the loan is to be applied in the acquisition of land by the company or in meeting the incidental costs of obtaining the loan,

(b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land which the loan is to be used to acquire, and

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(c) no other security is to be required for the payment of any such amount.

(5H) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land which the loan is used to acquire.

(5I) In sub-paragraph (5G)(a) above the reference to the incidental costs of obtaining the loan is to any expenditure on fees, commissions, advertising, printing or other incidental matters wholly and exclusively incurred for the purpose of obtaining the loan or of providing security for it.**]**

(6) Notwithstanding anything in sub-paragraphs (1) to (5) above but subject to sub-paragraph (7) below, where—

(a) any person has, directly or indirectly, provided new consideration for any shares or securities in the company, and

(b) that person, or any person connected with him, uses for the purposes of his trade assets which belong to the company and in respect of which there is made to the company—

(i) a first-year allowance within the meaning of [[F1882] Part II of the 1990 Act] in respect of expenditure incurred by the company on the provision of machinery or plant;

(ii) a writing-down allowance within the meaning of [[F1883] Part II of the 1990 Act] in respect of expenditure incurred by the company on the provision of machinery or plant; or

(iii) an allowance under section [[F1884] 137 of the 1990 Act] in respect of expenditure incurred by the company on scientific research;

then, for the purposes of this Schedule, that person, and no other, shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(7) In any case where sub-paragraph (6) above applies in relation to a bank in such circumstances that—

(a) the only new consideration provided by the bank as mentioned in paragraph (a) of that sub-paragraph is provided in the normal course of its banking business by way of a normal commercial loan as defined in sub-paragraph (5) above; and

(b) the cost to the company concerned of assets falling within paragraph (b) of that sub-paragraph which are used as mentioned in that paragraph by the bank or a person connected with the bank is less than the amount of that new consideration,

references in sub-paragraph (6) above, other than the reference in paragraph (a), to shares or securities in the company shall be construed as references to so much only of the loan referred to paragraph (a) above as is equal to the cost referred to in paragraph (b) above.

(8) In this paragraph "new consideration" has the same meaning as in section 254 and any question whether one person is connected with another shall be determined in accordance with section 839 .

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Textual Amendments

F1877 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F1878 1989 s.101(2)*from* 27*July* 1989;*from* 14*March* 1989*for purposes of* subss. (1D)*and* (1E)*of* 1970 s.272.*Previously*
"(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities;".

F1879 1989 s.101(3)*from* 27*July* 1989;*from* 14*March*
for purposes of subss. (1D)*and* (1E)*of* 1970 s.272.*Previously*
"(a) which does not carry any right either to conversion into shares or securities of any other description or to the acquisition of additional shares or securities;".

F1880 1989 s.101(4)*from* 27*July* 1989;*from* 14*March* 1989*for purposes of* subss. (1D)*and* (1E)*of* 1970 s.272.

F1881 Sch. 18 para. 1(5E)-(5I) inserted (1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), **s. 77(1)-(3)**

F1882 1990(C) s.164*and* Sch.1 para.8(40)(a).*Previously*
"Chapter I of Part III of the Finance Act 1971 ("the 1971 Act")".

F1883 1990(C) s.164*and* Sch.1 para.8(40)(b).*Previously*
"Chapter II of Part I of the 1968 Act or, as the case may be, Chapter I of Part III of the 1971 Act".

F1884 1990(C) s.164*and* Sch.1. para.8(40)(c).*Previously*
"91 of the 1968 Act".

Modifications etc. (not altering text)

C866 *See* 1990 s.32(12)(b).*Reference to*
"section 413(7) to (9)"
to be construed as a reference to 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C867 Sch. 18 para. 1(5) applied (with modifications) (1.5.1995) by Finance Act 1993 (c. 34), **s. 153(11A)** (as inserted by Finance Act 1995 (c. 4), **Sch. 24 para 4(4)**)

C868 *See* s.291(6)—para.1*applied for purposes of business expansion scheme.*

VALID FROM 21/07/2009

1A (1) This paragraph applies to a right to dividends carried by shares in a company if—
(a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares, and
(b) condition A, B or C is met.

(2) Condition A is that—
(a) the dividends are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
(b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.

(3) Condition B is that—
(a) the dividends are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—
(i) a standard published rate of interest, or

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(ii) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, and

(b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.

(4) Condition C is that condition A or B would be met but for sub-paragraph (2)(b) or (3)(b), and—

(a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in relevant circumstances, or

(b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in relevant circumstances.

(5) For the purposes of sub-paragraph (4) a company reduces the amount of, or does not pay, dividends "in relevant circumstances" if—

(a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or

(b) it does so for the purpose of following a recommendation of a relevant regulatory body.

(6) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of sub-paragraph (5)(a).

(7) In sub-paragraph (5)(b) "relevant regulatory body" means—

(a) in relation to a dividend paid by a company that is authorised for the purposes of the Financial Services and Markets Act 2000, the Financial Services Authority, and

(b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

(8) In this paragraph "new consideration" has the same meaning as in section 254.

2 (1) Subject to the following provisions of this Schedule, for the purposes of **[**[F1885]sections 403C and 413(7)**]** the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company means the percentage to which the first company would be so entitled in the relevant accounting period on a distribution in money to those equity holders of—

(a) an amount of profits equal to the total profits of the other company which arise in that accounting period (whether or not any of those profits are in fact distributed); or

(b) if there are no profits of the other company in that accounting period, profits of £100;

and in the following provisions of this Schedule that distribution is referred to as "the profit distribution".

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(2) For the purposes of the profit distribution, it shall be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(3) Subject to sub-paragraph (2) above, where an equity holder is entitled as such to a payment of any description which, apart from this sub-paragraph, would not be treated as a distribution, it shall nevertheless be treated as an amount to which he is entitled on the profit distribution.

Textual Amendments

F1885 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

Modifications etc. (not altering text)

C869 *See* 1990 s.32(12)(b).*Reference to* "section 413(7) to 9" *to be construed as a reference to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

3 (1) Subject to the following provisions of this Schedule, for the purposes of **[**[F1886]sections 403C and 413(7)**]** the percentage to which one company would be beneficially entitled of any assets of another company available for distribution to its equity holders on a winding-up means the percentage to which the first company would be so entitled if the other company were to be wound up and on that winding-up the value of the assets available for distribution to its equity holders (that is to say, after deducting any liabilities to other persons) were equal to—

(a) the excess, if any, of the total amount of the assets of the company, as shown in the balance sheet relating to its affairs as at the end of the relevant accounting period, over the total amount of those of its liabilities as so shown which are not liabilities to equity holders as such; or

(b) if there is no such excess or if the company's balance sheet is prepared to a date other than the end of the relevant accounting period, £100.

(2) In the following provisions of this Schedule a winding-up on the basis specified in sub-paragraph (1) above is referred to as "the notional winding-up".

(3) If, on the notional winding-up, an equity holder would be entitled as such to an amount of assets of any description which, apart from this sub-paragraph, would not be treated as a distribution of assets, it shall nevertheless be treated, subject to sub-paragraph (4) below, as an amount to which the equity holder is entitled on the distribution of assets on the notional winding up.

(4) If an amount ("the returned amount") which corresponds to the whole or any part of the new consideration provided by an equity holder of a company for any shares or securities in respect of which he is an equity holder is applied by the company, directly or indirectly, in the making of a loan to, or in the acquisition of any shares or securities in, the equity holder or any person connected with him, then, for the purposes of this Schedule—

(a) the total amount referred to in sub-paragraph (1)(a) above shall be taken to be reduced by a sum equal to the returned amount; and

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(b) the amount of assets to which the equity holder is beneficially entitled on the notional winding-up shall be taken to be reduced by a sum equal to the returned amount.

(5) In sub-paragraph (4) above "new consideration" has the same meaning as in section 254 and any question whether one person is connected with another shall be determined in accordance with section 839 .

Textual Amendments

F1886 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

Modifications etc. (not altering text)

C870 *See* 1990 s.32(13)(b).*Reference to* "section 413(7) to 9" *to be construed as a reference to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C871 *See* s.291(6)—para.3*applied for purposes of business expansion scheme.*

4 (1) This paragraph applies if any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are wholly or partly limited by reference to a specified amount or amounts (whether the limitation takes the form of the capital by reference to which a distribution is calculated or operates by reference to an amount of profits or otherwise).

(2) Where this paragraph applies there shall be determined—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if, to the extent that they are limited as mentioned in sub-paragraph (1) above, the rights of every equity holder falling within that sub-paragraph (including the first company concerned if it is such an equity holder) had been waived.

(3) If, on the profit distribution, the percentage of profits determined as mentioned in sub-paragraph (2)(a) above is less than the percentage of profits determined under paragraph 2(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of **[**[F1887]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) If, on the notional winding-up, the percentage of assets determined as mentioned in sub-paragraph (2)(b) above is less than the percentage of assets determined under paragraph 3(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of **[**[F1887]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1)

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above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

Textual Amendments

F1887 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

Modifications etc. (not altering text)

C872 *See* 1990 s.32(12)(b).*References to* "section 413(7) to (9)" *construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C873 *See* 1990 s.32(12)(b).*References to* "section 413(7) to (9)" *construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

F1888 5 (1) This paragraph applies if, at any time in the relevant accounting period, any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are of such a nature (as, for example, if any shares will cease to carry a right to a dividend at a future time) that if the profit distribution or the notional winding-up were to take place in a different accounting period the percentage to which, in accordance with paragraphs 1 to 4 above, that equity holder would be entitled of profits on the profit distribution or of assets on the notional winding-up would be different from the percentage determined in the relevant accounting period.

(2) Where this paragraph applies, there shall be determined—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if the rights of the equity holders in the relevant accounting period were the same as they would be in the different accounting period referred to in sub-paragraph (1) above.

(3) If in the relevant accounting period an equity holder holds, as such, any shares or securities in respect of which arrangements exist by virtue of which, in that or any subsequent accounting period, the equity holder's entitlement to profits on the profit distribution or to assets on the notional winding-up could be different as compared with his entitlement if effect were not given to the arrangements, then for the purposes of this paragraph—

(a) it shall be assumed that effect would be given to those arrangements in a later accounting period, and

(b) those shares or securities shall be treated as though any variation in the equity holder's entitlement to profits or assets resulting from giving effect to the

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arrangements were the result of the operation of such rights attaching to the shares or securities as are referred to in sub-paragraph (1) above.

In this sub-paragraph "arrangements" means arrangements of any kind whether in writing or not.

(4) Sub-paragraph (3) and (4) of paragraph 4 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph and, accordingly, references therein to sub-paragraphs (2)(a) and (2)(b) of that paragraph shall be construed as references to sub-paragraphs (2)(a) and (2)(b) of this paragraph.

Textual Amendments

F1888 Sch. 18 para. 5A substituted (16.7.1992 or as mentioned in Sch. 6 para. 6 of the amending Act) for para. 5(5) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras.1, **6**

[F1889 5A (1) In a case where paragraphs 4 and 5 above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5(2) above;

(c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5(2) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[F1890** sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[F1890** sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.**]**

Textual Amendments

F1889 Sch. 18 para. 5A substituted (16.7.1992 or as mentioned in Sch. 6 para. 6 of the amending Act) for para. 5(5) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras.1, **6**

F1890 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

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[F1891 5B (1) This paragraph applies if, at any time in the relevant accounting period, option arrangements exist; and option arrangements are arrangements of any kind (whether in writing or not) as regards which the two conditions set out below are fulfilled.

(2) The first condition is that the arrangements are ones by virtue of which there could be a variation in—

(a) the percentage of profits to which any of the equity holders is entitled on the profit distribution, or

(b) the percentage of assets to which any of the equity holders is entitled on the notional winding-up.

(3) The second condition is that, under the arrangements, the variation could result from the exercise of any of the following rights (option rights)—

(a) a right to acquire shares or securities in the second company referred to in paragraphs 2(1) and 3(1) above;

(b) a right to require a person to acquire shares or securities in that company.

(4) For the purposes of sub-paragraph (3) above—

(a) it is immaterial whether or not the shares or securities were issued before the arrangements came into existence;

(b) "shares" does not include fixed-rate preference shares;

(c) "securities" does not include normal commercial loans (within the meaning given by paragraph 1(5) above);

(d) "right" does not include a right of an individual to acquire shares, if the right was obtained by reason of his office or employment as a director or employee of the company and in accordance with the provisions of a share option scheme approved under Schedule 9 at the time it was obtained.

(5) As regards each point in time when option arrangements exist in the relevant accounting period—

(a) there shall be taken each possible state of affairs that could then subsist if the outstanding option rights, or any of them or any combination of them, became effective at that point, and

(b) taking each such state of affairs, it shall be assumed that the rights and duties of the equity holders in the relevant accounting period were to be found accordingly.

(6) The following rules shall have effect—

(a) for the purposes of sub-paragraph (5) above outstanding option rights are all such option rights under the arrangements (or sets of arrangements if more than one) as exist at the point in time concerned but have not become effective at or before that point;

(b) for the purpose of applying sub-paragraph (5) above it is immaterial whether or not the rights are exercisable at or before the point in time concerned and it is immaterial whether or not they are capable of becoming effective at or before that point;

(c) for the purposes of sub-paragraph (5) above and this sub-paragraph an option right becomes effective when the shares or securities to which it relates are acquired in pursuance of it.

(7) The determination mentioned in sub-paragraph (8) below shall be made as regards each point in time when option arrangements exist in the relevant accounting period;

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and for each such point in time a separate determination shall be made for each of the possible states of affairs mentioned in sub-paragraph (5) above.

(8) The determination is a determination of—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if the rights and duties of the equity holders in the relevant accounting period were found as mentioned in sub-paragraph (5) above.

(9) Where different determinations yield different percentages of profits and different percentages of assets, only one determination of each percentage (yielding the lowest figure) shall be treated as having been made.

(10) Sub-paragraphs (3) and (4) of paragraph 4 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph and, accordingly, references there to sub-paragraphs (2)(a) and (2)(b) of that paragraph shall be construed as references to sub-paragraphs (8)(a) and (8)(b) of this paragraph.**]**

Textual Amendments

F1891 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

Modifications etc. (not altering text)

C874 Sch. 18 para. 5B excluded (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17(2)**

C875 Sch. 18 para. 5B excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 16** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C876 Sch. 18 para. 5B excluded (19.7.1995) by Crown Agents Act 1995 (c. 24), **s. 7(2)**

C877 Sch. 18 para. 5B excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 8(2)**

C878 Sch. 18 para. 5B excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 20(2)** (with s. 43)

F1892 5C(1) In a case where paragraphs 4 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5B(8) above;

(c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5B(8) above.

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(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[**[F1893]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[**[F1893]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F1892 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F1893 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

[F1894]5D(1) In a case where paragraphs 5 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 5(2) above;

(b) the basis specified in paragraph 5B(8) above;

(c) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 5(2) and 5B(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[**[F1895]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[**[F1895]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

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(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F1894 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F1895 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F1896 5E(1) In a case where paragraphs 4 and 5 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5(2) above;

(c) the basis specified in paragraph 5B(8) above;

(d) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;

(e) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;

(f) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;

(g) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above all taken together;

(h) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2), 5(2) and 5B(8) above.

(3) The lowest of the eight percentages of profits so determined shall be taken for the purposes of **[**[F1897]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the eight percentages of assets so determined shall be taken for the purposes of **[**[F1897]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

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(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F1896 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F1897 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

VALID FROM 28/07/2000

5F (1) This paragraph has effect, in the cases specified in sub-paragraphs (2) and (3) below, for the following purposes ("the relevant purposes")—

(a) the determination, in a case where the surrendering company or the claimant company is a non-resident company, of whether that company is a 75 per cent. or a 90 per cent. subsidiary of another company;

(b) the determination of a member's share in a consortium in any case where the surrendering company or the claimant company is a non-resident company owned by the consortium.

(2) The first case in which this paragraph applies is where any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up of that company,

holds, as such an equity holder of the non-resident company, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which have effect wholly or partly by reference to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(3) The second case in which this paragraph applies is where—

(a) option arrangements (within the meaning of paragraph 5B above) exist at any time in the relevant accounting period; and

(b) the percentage which, in any of the states of affairs referred to in sub-paragraph (5) of that paragraph, is—

(i) the percentage of profits to which any of the equity holders of the non-resident company would be entitled on the profit distribution, or

(ii) the percentage of assets to which any of the equity holders of that company would be entitled on the notional winding-up,

would differ, at any of the times so referred to, according to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(4) If the percentage of profits to which, on the profit distribution, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 2(1) above were made on the basis specified in sub-

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paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(5) If the percentage of assets to which, on the notional winding-up, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 3(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(6) If the percentage that falls to be taken for any of the purposes of section 403C or section 413(7) would, under any of paragraphs 4 to 5E above, be the lower or lowest of a number of percentages determined on different bases—

(a) each of the percentages falling to be compared for the purposes of that paragraph shall be determined both—

(i) on the basis specified in sub-paragraph (7) below, and

(ii) without making the assumption required for a determination on that basis;

and

(b) the comparison required by that paragraph, so far as made for the relevant purposes, shall be made using, in the case of each of the percentages to be compared, only the lower of the percentages determined under paragraph (a) above.

(7) That basis is the assumption—

(a) that the profit distribution or the distribution on the notional winding-up is confined to a distribution of profits or assets that are referable to the non-resident company's UK trade; and

(b) that the amount of the distribution does not exceed whichever is the greater of £100 and the following amount—

(i) in the case of a profit distribution, the amount (if any) of so much of the company's chargeable profits for the relevant accounting period as is referable to its UK trade; and

(ii) in the case of a distribution on a notional winding-up, its net UK assets;

and

(c) that none of the ordinary equity holders has an entitlement to a proportion of the profits or assets mentioned in paragraph (a) above that is any greater than the proportion of the distribution to which he would be entitled if—

(i) the assumptions specified in paragraphs (a) and (b) above were disregarded; but

(ii) it were assumed, where it is less, that the distribution is equal to £100.

(8) In sub-paragraph (7) above—

"net UK assets", in relation to a non-resident company, means the excess, if any, of the total amount of the assets of the company that are referable to its UK trade (as shown in the relevant balance sheet), over the total amount of those of its liabilities (as so shown) which are so referable and are not liabilities to equity holders as such; and

"ordinary equity holder" means any equity holder whose entitlement on the profit distribution or the distribution on the notional winding-up does

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not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to the non-resident company's UK trade.

(9) In sub-paragraph (8) above "relevant balance sheet", in relation to a company, means any balance sheet relating to its affairs as at the end of the relevant accounting period.

(10) For the purposes of this paragraph profits, assets or liabilities of a non-resident company shall be taken to be referable to its UK trade to the extent only that they—

(a) are attributable to, or used for the purposes of, activities the income and gains from which are, or (were there any) would be, brought into account in computing the company's chargeable profits for any accounting period, and

(b) are not attributable to, or used for the purposes of, any activities which (within the meaning of section 403D) are made exempt from corporation tax for any accounting period by any double taxation arrangements.

6 For the purposes of **[**[F1898]sections 403C and 413(7)**]** and paragraphs 2 to **[**[F1899]5E**]** above—

(a) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company, and

(b) the percentage to which one company would be beneficially entitled of any assets of another company on a winding-up,

means the percentage to which the first company is, or would be, so entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

Textual Amendments

F1898 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F1899 Word in Sch. 18 para. 6 substituted (16.7.1992 with application as mentioned in Sch. 6 para. 8 of the substituting Act) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras.3, **8**

Modifications etc. (not altering text)

C879 *See* 1990 s.32(12)(b):*references to* "section 413(7) to (9)" *and to* section 413(7)*construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

7 (1) In this Schedule "the relevant accounting period" means—

(a) in a case falling within subsection (7) of section 413 , the accounting period current at the time in question; and

(b) in a case falling within **[**[F1900]section 403C**]**, the accounting period in relation to which the share in the consortium falls to be determined .

(2) For the purposes of this Schedule, a loan to a company shall be treated as a security, whether or not it is a secured loan, and, if it is a secured loan, regardless of the nature of the security.

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Textual Amendments

F1900 Words in Sch. 18 para. 7(1)(b) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(b)**

Modifications etc. (not altering text)

C880 *See* 1990 s.32(12)(b):*references to*
"section 413(7) to (9)"
and to section 413(7)*construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C881 *See* 1990 s.32(12)(d). Para 7(1)(b)*omitted where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

VALID FROM 19/07/2006

SCHEDULE 18A

Section 403F

GROUP RELIEF: OVERSEAS LOSSES OF NON-RESIDENT COMPANIES

. . . . . .

[F1901F1901]SCHEDULE 19

. . . . . .

Textual Amendments

F1901 Sch. 19 repealed by Finance Act 1989 (c. 26), ss. 103, 187, **Sch. 17 Pt. V**, Notes 1, 3

[[F1906]SCHEDULE 19AA

Section 431]

OVERSEAS LIFE ASSURANCE FUND

Textual Amendments

F1906 Sch. 19AA inserted (for accounting periods beginning on or after 1 January 1990) by Finance Act 1990 (c. 29), Sch.7 paras. 6, **10**

1 (1) This Schedule shall have effect for determining for the purposes of this Chapter the assets of a company which are the assets of its overseas life assurance fund.

(2) The Treasury may by order amend any of the following provisions of this Schedule.

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2 (1) Assets of a company at the end of a period of account which—

(a) were assets of the overseas life assurance fund at the end of the immediately preceding period of account, and

(b) are assets of the long term business fund of the company throughout the period,

shall be assets of the overseas life assurance fund throughout the period .

(2) Where in a period of account assets of a company which were assets of the overseas life assurance fund at the end of the immediately preceding period of account are disposed of by the company, or otherwise cease to be assets of the long term business fund of the company, they shall be assets of the overseas life assurance fund from the beginning of the period until they are disposed of or, as the case may be, they cease to be assets of the long term business fund .

(3) Where—

(a) in any period of account assets are acquired by a company as assets of the long term business fund, or otherwise become assets of that fund,

(b) the assets are disposed of by the company, or otherwise cease to be assets of that fund, later in the same period,

(c) throughout the part of the period during which the assets are assets of the long term business fund they are either—

(i) linked solely to the overseas life assurance business of the company, or

(ii) assets within paragraph 5(5)(c) below, and

(d) it is appropriate having regard to all the circumstances (including a comparison between the relationship of the value of the assets of the overseas life assurance fund and the liabilities of the overseas life assurance business and that of the value of the assets of the long term business fund and the liabilities of the company's long term business) that they be assets of the overseas life assurance fund,

they shall be assets of the overseas life assurance fund for the part of the period during which they are assets of the long term business fund.

Modifications etc. (not altering text)

C891 See 1990 s. 42 and Sch.7 para.10(2) regarding treatment of assets in relation to the first period of account of an insurance company

3 (1) Where the value of the assets mentioned in paragraph 2(1) above at the end of the period is less than the amount mentioned in paragraph 4 below (or where there are no assets within paragraph 2(1)), assets which—

(a) are assets of the long term business fund of the company at the end of the period,

(b) have a value at that time equal to the difference (or to that amount), and

(c) are designated in accordance with paragraph 5 below,

shall become assets of the overseas life assurance fund at the relevant time.

(2) In sub-paragraph (1) above "the relevant time" means—

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(a) where the asset is not an asset of the long term business fund of the company throughout the period, the time when it became such an asset, and
(b) in any other case, the end of the period.

(3) Where the value of the assets mentioned in paragraph 2(1) above at the end of the period is greater than the amount mentioned in paragraph 4 below, assets which—
(a) are assets of the long term business fund of the company at the end of the period,
(b) have a value at that time equal to the difference, and
(c) are designated in accordance with paragraph 5 below,

shall cease to be assets of the overseas life assurance fund at the end of the period.

4 (1) The amount referred to in paragraph 3 above is the aggregate of—
(a) the liabilities of the company's overseas life assurance business at the end of the period of account, and
(b) the appropriate part of the investment reserve at that time.

(2) In sub-paragraph (1)(b) above the "appropriate part", in relation to the investment reserve, means—
(a) where all of the liabilities of the long term business are linked liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of the overseas life assurance business bears to the whole amount of the liabilities of the long term business,
(b) where any of the liabilities of the long term business are not linked liabilities but none (or none but an insignificant proportion) are with-profits liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of the overseas life assurance business which are not linked liabilities bears to the whole amount of the liabilities of the long term business which are not linked liabilities, and
(c) in any other case, the part of that reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of the overseas life assurance business bears to the whole amount of the with-profits liabilities of the long term business;

and in this sub-paragraph "linked liabilities" means liabilities in respect of benefits to be determined by reference to the value of linked assets.

5 (1) Any designation of assets required for the purposes of paragraph 3 above shall be made by a company in accordance with the following provisions of this paragraph.

(2) When designating assets for the purposes of paragraph 3(1) above, a company shall not designate an asset falling within any paragraph of sub-paragraph (5) below unless it designates all assets falling within each of the preceding paragraphs of that sub-paragraph.

(3) When designating assets for the purposes of paragraph 3(3) above, a company shall not designate an asset falling within any paragraph of sub-paragraph (5) below unless it designates all assets falling within each of the succeeding paragraphs of that sub-paragraph.

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(4) When an asset falls within more than one paragraph of sub-paragraph (5) below, it shall be taken for the purposes of this paragraph to fall only within the first of them.

(5) The categories of assets referred to in sub-paragraphs (2) and (3) above are—

(a) assets linked solely to overseas life assurance business;

(b) so many of any assets denominated in an overseas currency, other than any non-overseas linked assets, as have a value at the end of the period not exceeding the amount of the company's liabilities in respect of benefits expressed in that currency so far as referable to overseas life assurance business;

(c) assets the management of which is under the control of a person whose normal place of work is at a branch or agency at or through which the company carries on overseas life assurance business;

(d) securities issued by the Treasury with a FOTRA condition and securities to which section 581 of this Act applies;

(e) assets not within paragraph (f) below;

(f) shares in companies resident in the United Kingdom;

but assets linked solely to pension business or basic life assurance business are not within any paragraph of this sub-paragraph (and may not be designated for the purposes of paragraph 3 above).

(6) For the purposes of sub-paragraph (5)(b) above assets are "non-overseas linked assets" if they are linked assets and none of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of overseas life assurance business.

(7) For the purposes of sub-paragraph (5)(d) above securities are issued with a FOTRA condition if—

(a) they are issued with the condition that the interest on the securities shall not be liable to income tax so long as it is shown, in a manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, or

(b) they are issued with the condition mentioned in section 22(1) of the [M2338]Finance (No.2) Act 1931 whether or not modified by virtue of section 60(1) of the [M2339]Finance Act 1940.

Marginal Citations

M2338 1931 c. 49.

M2339 1940 c. 29.

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[F1907F1908SCHEDULE 19AB

Section 438A.]

PENSION BUSINESS: PAYMENTS ON ACCOUNT OF TAX CREDITS AND DEDUCTED TAX

Textual Amendments

F1907 Sch. 19AB inserted (with effect in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art. 2**

F1908 Sch. 19AB repealed (with effect in accordance with s. 87(2)-(5) of the repealing Act) by Finance Act 2001 (c. 9), s. 87(1), **Sch. 33 Pt. 2(12)**, Note (the provisions of Sch. 19AB not applying in relation to tax credits in respect of distributions made on or after 6th April 2004)

Modifications etc. (not altering text)

C892 Sch. 19AB: power to modify conferred (with application as mentioned in s. 121(2) of the affecting Act) by 1993 c. 34, **s. 121(1)(2)**

C893 Sch. 19AB modified (1.1.1994 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Provisional Repayments for Exempt Business) Regulations 1993 (S.I. 1993/3112), **regs. 2-9** (as amended (20.3.1997 with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Provisional Repayments for Exempt Business) (Amendment) Regulations 1997 (S.I. 1997/474), **regs. 2-5**); and the 1993 modifying S.I. and the 1997 amending S.I. are revoked (30.3.1999 with effect in accordance with reg. 1(2) of the revoking S.I.) by The Friendly Societies (Provisional Repayments for Exempt Business) Regulations 1999 (S.I. 1999/622), **reg. 13**

C894 Sch. 19AB modified (2.1.1996) by The Insurance Companies (Gilt-edged Securities) (Periodic Accounting for Tax on Interest) Regulations 1995 (S.I. 1995/3223), **regs. 4-10**

C895 Sch. 19AB modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 12**

C896 Sch. 19AB applied (with modifications) (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 20**, 21 (as amended (1.1.2002 with effect in accordance with reg. 1 of the amending S.I.) by The Individual Savings Account (Insurance Companies) (Amendment) Regulations 2001 (S.I. 2001/3974), regs. 2-5, **Sch.**)

C897 Sch. 19AB applied (with modifications) (30.3.1999 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Friendly Societies (Provisional Repayments for Exempt Business) Regulations 1999 (S.I. 1999/622), **regs. 2-12**

F1909Entitlement to certain payments on account

Textual Amendments

F1909 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

F1910 1 (1) An insurance company carrying on pension business shall for each provisional repayment period in an accounting period be entitled on a claim made in that behalf to a payment (in this Schedule referred to as a "provisional repayment") of an amount equal to the aggregate of—

(a) the appropriate portion of any income tax borne by deduction on any payment received by the company in that provisional repayment period and referable to its pension business, and

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(b) the appropriate portion of any tax credit in respect of a distribution received by the company in that provisional repayment period and referable to its pension business,

or of such lesser amount as may be specified in the claim.

(2) For the purposes of this paragraph, a "provisional repayment period" of a company—

(a) shall begin whenever—

(i) the company begins to carry on pension business;

(ii) an accounting period of the company begins, at a time when the company is carrying on such business; or

(iii) a provisional repayment period of the company ends, at a time when the company is carrying on such business; and

(b) shall end on the first occurrence of either of the following—

(i) the expiration of three months from the beginning of the provisional repayment period; or

(ii) the end of an accounting period of the company.

(3) In the application of subsections (5) to (9) of section 432A for the purpose of determining the amounts to which a company is entitled by way of provisional repayments in the case of any accounting period, the reference in subsection (5) to "the relevant fraction" shall be taken as a reference to a fraction determined in accordance with subsections (6) to (9)—

(a) for the latest preceding accounting period of the company for which an inspector is satisfied that the company has supplied him with such information as would enable the relevant fraction for that accounting period to be estimated with reasonable accuracy, and

(b) by reference to that information,

and, subject to sub-paragraph (4)(b) below, any reference in this paragraph to "the provisional fraction" is a reference to the fraction so determined.

(4) For the purposes of sub-paragraph (3) above—

(a) "information" means any information, accounts, statements or reports delivered under section 11 of the Management Act; and

(b) unless and until an inspector is satisfied as mentioned in paragraph (a) of that sub-paragraph, the provisional fraction shall be taken to be nil.

(5) In sub-paragraph (1) above "the appropriate portion" means—

(a) in the case of an insurance company carrying on pension business and no other category of long term business, the whole; and

(b) in the case of an insurance company carrying on more than one category of long term business—

(i) where the payment or distribution in question is income arising from an asset linked solely to pension business, the whole; and

(ii) in any other case, the provisional fraction.

(6) An inspector shall not give effect to any claim under this paragraph unless and until he is satisfied that the claimant has supplied to him in connection with the claim such information as will enable the inspector to determine that the amount claimed has been computed in accordance with the provisions of this paragraph.

(7) A provisional repayment for a provisional repayment period shall be regarded as a payment on account of the amount (if any) which, disregarding any pension business

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repayments, the company would be entitled to be paid or repaid in respect of its pension business by the Board for the accounting period in which that provisional repayment period falls, in respect of—

(a) income tax borne by deduction on payments received by the company in that accounting period and referable to its pension business, and

(b) tax credits in respect of distributions received by the company in that accounting period and referable to its pension business,

when the assessment to corporation tax for that accounting period is finally determined or when effect is given to a claim such as is mentioned in section 7(6) or in section 42(5A) of the Management Act made in respect of that accounting period.

(8) Where a company makes an election under section 438(6) as respects all or any part of its franked investment income arising in an accounting period, that franked investment income or, as the case may be, that part of it, and the tax credits in respect thereof, shall be left out of account in making with respect to that accounting period any determination for the purposes of this paragraph or of paragraph 2 or 3 below of the amount referred to in sub-paragraph (7) above.

[F1911](9) . . . . . .

(10) In this paragraph "pension business repayments" means—

(a) provisional repayments; and

(b) repayments of income tax, and payments of tax credits, on any claim such as is mentioned in section 7(6) or in section 42(5A) of the Management Act.

Textual Amendments

F1910 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art. 2**

F1911 Sch. 19AB para. 1(9) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, s. 103(2)(h)(3)(4), 213, **Sch. 23 Pt. III(9)**

Modifications etc. (not altering text)

C898 Sch. 19AB para. 1(8) amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, **s. 78(6)(11)**

[F1912]*Changes in the provisional fraction*

Textual Amendments

F1912 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch.8**; S.I. 1992/1746, **art.2**

[F1913]2 (1) This paragraph applies in any case where, after a claim has been made for a provisional repayment in respect of a provisional repayment period falling within an accounting period, the provisional fraction falling to be applied in the case of that accounting period is varied as a result of a determination such as is mentioned in

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paragraph 1(3) above being made in consequence of the delivery of a return under section 11 of the Management Act.

(2) Where this paragraph applies, the amount of any provisional repayment to which the company is entitled—

(a) for the first provisional repayment period falling within that accounting period for which a claim is made by reference to the later (or, if there has been more than one such determination, the latest) provisional fraction, or

(b) for any subsequent provisional repayment period in that accounting period for which a claim is made,

shall be an amount determined in accordance with sub-paragraph (3) below or such lesser amount as may be specified in the claim.

(3) The amount referred to in sub-paragraph (2) above is the amount (if any) by which total entitlement exceeds total past payments, and for this purpose—

"total entitlement" means the aggregate of the provisional repayments to which the company would have been entitled (apart from this paragraph) for—

(a) the provisional repayment period to which the claim relates, and

(b) any earlier provisional repayment period in the same accounting period,

had the later or, as the case may be, latest provisional fraction applicable in relation to that accounting period been so applicable as from the beginning of that period; and

"total past payments" means the aggregate of any amounts already paid by way of provisional repayments for provisional repayment periods falling within that accounting period.

(4) Expressions used in this paragraph and in paragraph 1 above have the same meaning in this paragraph as they have in that paragraph.

Textual Amendments

F1913 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch.8**; S.I. 1992/1746, **art.2**

[F1914] Repayment, with interest, of excessive provisional repayments

Textual Amendments

F1914 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

[F1915] 3 (1) In any case where—

(a) the assessment to corporation tax for an accounting period of an insurance company has been finally determined, and

(b) the aggregate amount of the provisional repayments made to the company for that accounting period exceeds the amount referred to in paragraph 1(7) above,

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the excess, together with the amount of any relevant interest, shall be treated for the purposes of section 30 of the Management Act as if it were an amount of corporation tax for that accounting period which had been repaid to the insurance company and which ought not to have been so repaid.

(2) In this paragraph, "relevant interest" means interest—
- (a) on so much of the excess referred to in sub-paragraph (1) above as is or was from time to time outstanding,
- (b) for any period for which it is or was so outstanding, and
- (c) at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 87A of the Management Act (interest on overdue corporation tax).

(3) In the application of section 87A of the Management Act in relation to an amount assessed to corporation tax under section 30 of that Act by virtue of this paragraph—
- (a) the amount so assessed shall be taken to have become due and payable on the date on which that assessment was made; and
- (b) the words "(in accordance with section 10 of the principal Act)" in subsection (1) shall accordingly be disregarded.

(4) In determining the amount of any relevant interest, any question whether the excess mentioned in sub-paragraph (1) above (in the following provisions of this paragraph referred to as "the principal") or any part of it is or was "outstanding" at any time shall be determined in accordance with sub-paragraphs (5) to (7) below.

(5) So much of the principal as does not exceed the amount of the last provisional repayment made to the company for the accounting period in question shall be taken to have become outstanding on the date on which that provisional repayment was made.

(6) So much (if any) of the principal as—
- (a) exceeds the amount of the provisional repayment referred to in sub-paragraph (5) above, but
- (b) does not exceed the amount of the preceding provisional repayment for that accounting period,

shall be taken to have become outstanding on the date on which that preceding provisional repayment was made; and so on with any remaining portion of the principal and any preceding provisional repayments for that accounting period.

(7) So much (if any) of the principal as has become outstanding as mentioned in sub-paragraph (5) or (6) above and has at any time neither been repaid to the Board nor been assessed to corporation tax under section 30 of the Management Act by virtue of this paragraph shall be taken to remain outstanding at that time (and an amount shall accordingly be taken to cease being outstanding only when it is repaid to the Board or when it is so assessed).

Textual Amendments

F1915 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch.8**; S.I. 1992/1746, **art.2**

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[F1916]*Reduced entitlement during transitional period*

Textual Amendments

F1916 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch.8**; S.I. 1992/1746, **art.2**

[F1917]4 (1) The Board may by regulations make provision for the amount of any provisional repayment to which a company would otherwise be entitled for any accounting period ending after the opening transitional date and before the closing transitional date to be reduced by a prescribed percentage.

(2) The regulations may require a company claiming a provisional repayment for a provisional repayment period falling within such an accounting period to specify in the claim—

(a) the maximum amount to which it could have been entitled by way of provisional repayment for that provisional repayment period apart from the regulations;

(b) the maximum reduced entitlement for that provisional repayment period; and

(c) the amount of the provisional repayment claimed for that provisional repayment period.

(3) The regulations may make provision—

(a) for the charging of interest in any case where an insurance company claims, and is paid, by way of provisional repayment an amount in excess of the maximum reduced entitlement for the provisional repayment period to which the claim relates;

(b) for the period for which, and the rate at which, any such amount is to carry interest under the regulations;

(c) for any such interest to be treated for the purposes of section 30 of the Management Act as if it were an amount of corporation tax which had been repaid and which ought not to have been repaid; and

(d) for section 87A of that Act to apply in relation to an amount assessed to corporation tax under section 30 of that Act by virtue of the regulations with modifications corresponding to those specified in paragraph 3(3) above.

(4) The regulations may prescribe for the purposes of sub-paragraph (1) above different percentages for accounting periods ending after different dates.

(5) Sub-paragraphs (2) to (4) above are without prejudice to the generality of sub-paragraph (1) above.

(6) In this paragraph—

"the maximum reduced entitlement", in relation to an insurance company and a provisional repayment period, means the maximum amount (as reduced in accordance with the regulations) to which the company could have been entitled by way of provisional repayment for that provisional repayment period;

"the opening transitional date" and "the closing transitional date" mean respectively such date as the Board may specify for the purpose in the first regulations made under this paragraph;

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"prescribed" means specified in the regulations;
"the regulations" means any regulations under this paragraph.

Textual Amendments

F1917 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

[F1918] *Transitional application of pay and file provisions*

Textual Amendments

F1918 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

[F1919] 5 (1) This paragraph applies in relation to an accounting period of an insurance company if—

(a) the accounting period—

(i) begins on or after the commencement day; and

(ii) ends on or before the day appointed for the purposes of section 10;

(b) the company carries on pension business for the whole or part of the accounting period; and

(c) the company makes a claim for a provisional repayment for the accounting period;

and in this paragraph "transitional accounting period" means an accounting period in relation to which this paragraph applies.

(2) An insurance company shall be entitled—

(a) to make a claim for payment of a tax credit in respect of any income of a transitional accounting period, and

(b) to make a claim for the purposes of section 7(5), so far as relating to section 7(2) or 11(3), in respect of any income tax falling to be set off against corporation tax for a transitional accounting period,

(and may do so whether or not the income in question is referable to the company's pension business).

(3) For the purposes of sub-paragraph (2) above, sections 7(2) and 11(3) shall have effect in relation to a transitional accounting period as if the words from "and accordingly" to the end, in each provision, were omitted.

(4) A claim under sub-paragraph (2) above may only be made at such time or within such period as the Board may by regulations provide.

(5) In the application of this Schedule in relation to a transitional accounting period, paragraph 1 above shall have effect as if the reference in each of sub-paragraphs (7) and (10) to a claim such as is mentioned in section 7(6) or in section 42(5A) of

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the Management Act were a reference to a claim under paragraph (a) or (b) of sub-paragraph (2) above.

(6) If and to the extent that the provisions of section 826, or of section 87A of the Management Act, would not, apart from this sub-paragraph, have effect in relation to a transitional accounting period, they shall be treated as having effect for all purposes in relation to that accounting period; and—

(a) in the application of section 826 by virtue of this sub-paragraph, the reference in subsection (1)(a) of that section to an accounting period which ends after the appointed day shall be treated as a reference to a transitional accounting period; and

(b) in the application of section 87A of the Management Act by virtue of this sub-paragraph, corporation tax shall be taken to become due and payable on the day following the expiration of the period within which it is required under section 10(1)(b) to be paid.

(7) If and to the extent that the amendments of section 30 of the Management Act specified in subsections (1) to (4) of section 88 of the Finance (No.2) Act 1987 would not, apart from this sub-paragraph, have effect in relation to a transitional accounting period, they shall be treated as having effect for all purposes in relation to that transitional accounting period.

(8) Subsection (7) of section 88 of the Finance (No.2) Act 1987 shall have effect for the purposes of sub-paragraph (7) above as if the reference in paragraph (a) of that subsection to accounting periods ending after the appointed day were a reference to transitional accounting periods.

(9) In this paragraph "the commencement day" means the day appointed under section 49 of the Finance Act 1991.

Textual Amendments

F1919 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

[F1920] *Interpretation*

Textual Amendments

F1920 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

[F1921] 6 (1) In this Schedule—

"provisional fraction" shall be construed in accordance with paragraphs 1(3), (4)(b) and 2 above;

"provisional repayment" means a provisional repayment under paragraph 1 above;

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"provisional repayment period" shall be construed in accordance with paragraph 1 above.

(2) Any reference in this Schedule to a provisional repayment for an accounting period is a reference to a provisional repayment for a provisional repayment period falling within that accounting period.

(3) Until an insurance company makes a return under section 11 of the Management Act as amended by section 82 of the Finance (No.2) Act 1987, paragraph 1(4) above shall have effect in relation to that company as if for paragraph (a) there were substituted—

(") "information" means any information contained in a return under section 11 of the Management Act as that section has effect apart from section 82 of the Finance (No.2) Act 1987; and".

Textual Amendments

F1921 Sch. 19AB inserted (25.7.1991 with effect as mentioned in s. 49(3) in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art.2**

VALID FROM 27/12/2007

SCHEDULE 19ABA

Section 440D

MODIFICATION OF LIFE ASSURANCE PROVISIONS OF THE CORPORATION TAX ACTS IN RELATION TO BLAGAB GROUP REINSURERS

. . . . . .

[F1922 SCHEDULE 19AC

Section 444B.]

MODIFICATION OF ACT IN RELATION TO OVERSEAS LIFE INSURANCE COMPANIES

Textual Amendments

F1922 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1923 1 In its application to an overseas life insurance company this Act shall have effect with the following modifications.

Textual Amendments

F1923 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
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F1924 2 (1) In section 6(4), the words "and section 444D"shall be treated as inserted after the words "Part XI".

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments
F1924 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1925 3 (1) In subsection (2) of section 11, the following paragraphs shall be treated as inserted after paragraph (a)—

(") where section 11B applies for an accounting period, any trading or other income arising in that period from assets which by virtue of that section are attributed to the branch or agency at the time the income arises (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and

(ab) where section 11C applies for an accounting period, any trading or other income falling within section 11C(2) in that period (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and".

(2) The following shall be treated as inserted after paragraph (b) of that subsection "and

(c) chargeable gains accruing to the company on the disposal of assets of the company's long term business fund situated outside the United Kingdom and used or held for the purposes of the branch or agency immediately before the disposal; and

(d) where section 11B applies for an accounting period, chargeable gains accruing to the company in that period on the disposal of assets which by virtue of that section are attributed to the branch or agency immediately before the disposal; and

(e) where section 11C applies for an accounting period, chargeable gains accruing to the company in that period by virtue of section 11C(3)."

(3) The following subsection shall be treated as inserted after that subsection—

(") For the purposes of subsection (2)(c) above—

(a) section 275 of the 1992 Act (location of assets) shall apply as it applies for the purposes of that Act;

(b) "long term business fundhas the meaning given by section 431(2)."

(4) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments
F1925 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1926 4 (1) The following sections shall be treated as inserted after section 11—

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"11A "Overseas life insurance companies: interpretation of sections 11B and 11C.

(1) For the purposes of this section and sections 11B and 11C—

(a) an asset is at any time a section 11(2)(b) asset if, were it to be disposed of at that time, any chargeable gains accruing to the company on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b);

(b) an asset is at any time a section 11(2)(c) asset if, were it to be disposed of at that time, any chargeable gains accruing to the company on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(c);

(c) relevant contracts and policies are contracts and policies the effecting of which constitutes the carrying on of life assurance business;

and in this section and those sections any expression to which a meaning is given by section 431(2) has that meaning.

(2) For the purposes only of subsection (1)(a) and (b) above any enactment which—

(a) limits any chargeable gain on the disposal of an asset;

(b) treats any gain on the disposal of an asset as not being a chargeable gain; or

(c) treats any disposal of an asset as not giving rise to a chargeable gain,

shall be disregarded.

(3) For the purposes of sections 11B and 11C—

(a) the notional value at any time is the value at that time of the assets which the branch or agency would reasonably be expected to hold at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency;

(b) the section 11B value at any time is the value at that time of such of the section 11(2)(b) and section 11(2)(c) assets as are assets held at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency;

(c) the section 11C value at any time is the value at that time of—

(i) such of the section 11(2)(b) and section 11(2)(c) assets as are assets held at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency; and

(ii) the assets which by virtue of section 11B are attributed to the branch or agency at that time;

(d) a relevant fund is a fund of assets of the company (wherever those assets may be situated) any part of which is held in consequence of any relevant contracts, and any relevant policies, which at any time in the accounting period concerned are carried out at the branch or agency.

(4) In applying subsection (3)(a) above as regards a particular time, it shall be assumed that—

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(a) at that time the branch or agency is a company resident in the United Kingdom, undertaking the activities it then actually undertakes;

(b) the terms of any dealings between the branch or agency and another part of the company are not (or not necessarily) their actual terms but are such as would be the terms if the branch or agency and the other part of the company were independent persons dealing at arm's length.

11B Overseas life insurance companies: attribution of assets.

(1) This section applies for an accounting period where the mean of the notional value at the beginning and end of the accounting period exceeds the mean of the section 11B value at those times.

(2) Where this section applies for an accounting period, assets shall be attributed to the branch or agency in that period in accordance with the following provisions of this section.

(3) There shall be attributed to the branch or agency in the accounting period such of the qualifying assets of the company as (having regard to the excess mentioned in subsection (1) above) it is just and reasonable to attribute to the branch or agency.

(4) For the purposes of subsection (3) above—

(a) where an asset is a qualifying asset for the whole of the accounting period it may, subject to paragraphs (c) and (d) below, be attributed to the branch or the agency for the whole or any part or parts of that period;

(b) where an asset is a qualifying asset for any portion of the accounting period it may, subject to paragraphs (c) and (d) below, be attributed to the branch or agency for the whole or any part or parts of that portion;

(c) an asset shall not be attributed to the branch or agency for any period of time during which it is a section 11(2)(b) or section 11(2)(c) asset;

(d) an asset shall not be attributed to the branch or agency at any particular time unless it is held in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency.

(5) An asset of the company is a qualifying asset at any time if it is an asset of one or more of the following descriptions, that is to say—

(a) an asset which, in relation to any relevant contracts and any relevant policies which at that time are carried out at the branch or agency, is a linked asset within the meaning given by section 431(2);

(b) an asset which at that time is maintained in the United Kingdom as a result of a requirement imposed under section 39 of the [M2343]Insurance Companies Act 1982, other than an asset not treated as so maintained by virtue of a direction under subsection (2) of that section;

(c) an asset which at that time is treated for the purposes of any such requirement as is mentioned in paragraph (b) above as maintained in the United Kingdom by virtue of a direction under subsection (2) of that section;

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(d) an asset which at that time is held in respect of the business carried on by the branch or agency as a result of a condition of an order under section 68 of the Insurance Companies Act 1982;

(e) an asset which at that time is held in a fund which the company is required to maintain under the prudential legislation of a territory outside the United Kingdom in respect of the business carried on by the branch or agency;

(f) an asset which is identified in tax returns submitted to a taxing authority of a territory outside the United Kingdom as an asset which at that time is wholly referable to the business carried on by the branch or agency.

11C Overseas life insurance companies: additional income and gains.

(1) This section applies for an accounting period where the mean of the notional value at the beginning and end of the accounting period exceeds the mean of the section 11C value at those times.

(2) Where this section applies for an accounting period, the income which falls within this subsection in that period shall be the specified amount of each item of relevant income arising in that period from any assets of the relevant fund.

(3) Where this section applies for an accounting period, the chargeable gains accruing to the company in that period by virtue of this subsection shall be the specified amount of each relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund.

(4) For the purposes of this section—

(a) relevant income is income other than income which falls within section 11(2)(a) or (aa);

(b) a relevant gain is a gain (other than a chargeable gain which falls within section 11(2)(b), (c) or (d)) which would be a chargeable gain if the company were resident in the United Kingdom.

(5) For the purposes of this section the specified amount of an item of relevant income arising in the accounting period from any assets of the relevant fund shall be determined by the formula—

$$SI = Iy \frac{(NV - CV)}{RF}$$

(6) For the purposes of this section the specified amount of a relevant gain accruing to the company in the accounting period on the disposal of any assets of the relevant fund shall be determined by the formula—

$$SG = Gy \frac{(NV - CV)}{RF}$$

(7) In subsections (5) and (6) above—

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SI is the specified amount of an item of relevant income arising in the accounting period from any assets of the relevant fund;

I is an item of relevant income arising in that period from any assets of the relevant fund;

NV is the mean of the notional value at the beginning and end of that period;

CV is the mean of the section 11C value at the beginning and end of that period;

RF (subject to subsection (8) below) is the mean of the value of the relevant fund at the beginning and end of that period;

SG is the specified amount of a relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund;

G is a relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund.

(8) Where the assets of the relevant fund at the beginning or end of the accounting period include—

(a) section 11(2)(b) or section 11(2)(c) assets; or

(b) assets which by virtue of section 11B are attributed to the branch or agency,

the value at that time of the relevant fund for the purposes of the definition of RF in subsection (7) above shall be reduced by the value at that time of those assets.

(9) Where in the accounting period the company has more than one relevant fund—

(a) in the definition of RF in subsection (7) above, the reference to the value of the relevant fund shall be treated as a reference to the value of the relevant funds; and

(b) any other reference in this section to the relevant fund shall be treated as a reference to the relevant funds.””

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1926 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para. 1**

Marginal Citations

M2343 1982 c. 50.

VALID FROM 01/05/1995

4A (1) In section 12(7A), the reference to a transfer of the whole or part of a company’s long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the [M2344] Insurance Companies Act 1982 shall be treated as including a reference to a qualifying overseas transfer.

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(2) In this paragraph "a qualifying overseas transfer" means so much of any transfer of the whole or any part of the business of an overseas life insurance company carried on through a branch or agency in the United Kingdom as takes place in accordance with any authorisation granted outside the United Kingdom for the purposes of Article 11 of the third long term insurance Directive.

(3) In sub-paragraph (2) above "the third long term insurance Directive" has the same meaning as in that Act of 1982.

Marginal Citations
M2344 1982 c. 50.

F1927 5 (1) In section 76, the following subsections shall be treated as inserted after subsection (6)—

(") In its application to an overseas life insurance company this section shall have effect as if—

(a) the reference in subsection (1)(ca) to any reinsurance commission were to any such reinsurance commission concerned as is attributable to the branch or agency in the United Kingdom through which the company carries on life assurance business;

(b) the references in subsection (1) to income and gains were to such income and gains concerned as are so attributable.

(6B) In their application to an overseas life insurance company section 75(5) and subsections (2) and (3)(b) above shall have effect as if for "242" there were substituted "444D"."

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments
F1927 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

VALID FROM 28/09/2004

5ZA After subsection (11) there shall be treated as inserted the following subsections—

"(11A) In subsection (11) the reference in paragraph (a) of the definition of "the relevant income" to income and gains shall be treated as a reference to so much of the income and gains mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2) F1928, to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

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(11B) In that subsection the reference in paragraph (b) of that definition to distributions shall be treated as a reference to so much of the distributions mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”.

Textual Amendments

F1928 This section was inserted by section 149 of the Finance Act 2003.

VALID FROM 01/05/1995

5A (1) Where an overseas life insurance company receives a qualifying distribution made by a company resident in the United Kingdom and the distribution (or part of the distribution)—

(a) would fall within paragraph (a), (aa) or (ab) of section 11(2) but for the exclusion contained in that paragraph, and

(b) is referable to life assurance business, but not to overseas life assurance business,

then the recipient shall be treated for the purposes of the Corporation Tax Acts as entitled to such a tax credit in respect of the distribution (or part of the distribution) as it would be entitled to under section 231 if it were resident in the United Kingdom.

(2) Where part only of a qualifying distribution would fall within paragraph (ab) of section 11(2) but for the exclusion contained in that paragraph, the tax credit to which the recipient shall be treated as entitled by virtue of sub-paragraph (1) above is the proportionate part of the tax credit to which the recipient would be so treated as entitled in respect of the whole of the distribution.

VALID FROM 01/05/1995

5B (1) An overseas life insurance company may, on making a claim for the purpose, require that any UK distribution income for an accounting period shall for all or any of the purposes mentioned in sub-paragraph (2) below be treated as if it were a like amount of profits chargeable to corporation tax; and where it does so—

(a) the provisions mentioned in that sub-paragraph shall apply to reduce the amount of the UK distribution income, and

(b) the company shall be entitled to have paid to it the amount of the tax credits comprised in the amount of UK distribution income which is so reduced.

(2) The purposes for which a claim may be made under this paragraph are those of—

(a) the setting of trading losses against total profits under section 393A(1);

(b) the deduction of charges on income under section 338 or paragraph 5 of Schedule 4;

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(c) the deduction of expenses of management under section 76;

(d) the setting of certain capital allowances against total profits under section 145(3) of the 1990 Act.

(3) Subsections (3), (4) and (8) of section 242 shall apply for the purposes of a claim under this paragraph as they apply for the purposes of a claim under that section.

(4) In this paragraph "UK distribution income" means income of an overseas life insurance company which consists of a distribution (or part of a distribution) in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution (or part) and the amount of that credit).

VALID FROM 01/05/1995

5C (1) This paragraph applies to income from the investments of an overseas life insurance company attributable to the basic life assurance and general annuity business of the branch or agency in the United Kingdom through which the company carries on life assurance business.

(2) Where, in computing the income to which this paragraph applies, any interest on any securities issued by the Treasury is excluded by virtue of a condition of the issue of those securities regulating the treatment of the interest on them for tax purposes, the relief under section 76 shall be reduced so that it bears to the amount of relief which would be granted apart from this sub-paragraph the same proportion as the amount of that income excluding that interest bears to the amount of that income including that interest.

F1929 6 (1) In subsection (2) of section 431, the following definition shall be treated as substituted for the definition of "investment reserve"—

" "investment reserve", in relation to an overseas life insurance company, means the excess of the value of the relevant assets over the relevant liabilities, and for the purposes of this definition—

(a) relevant assets are such assets of the company's long term business fund as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business; and

(b) relevant liabilities are such liabilities of the long term business as are attributable to the branch or agency;

and in a case where section 11C applies, the value of the relevant assets shall be increased by the amount by which the notional value exceeds the section 11C value; and any expression used in this definition to which a meaning is given by section 11A has that meaning;."

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(2) In that subsection, the following definition shall be treated as substituted for the definition of "liabilities"—

" "liabilities", where the company concerned is an overseas life insurance company, does not include excluded liabilities and (subject to that) means—

(a) liabilities as estimated for the purposes of the company's periodical return, or

(b) in the case of liabilities not estimated for the purposes of such a periodical return, liabilities as estimated for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or

(c) in the case of liabilities not estimated for the purposes of such a periodical return or equivalent return, liabilities as found from the company's records;

and excluded liabilities are any liabilities that have fallen due or been reinsured and any not arising under or in connection with policies or contracts effected as part of the company's insurance business;".

(3) In that subsection, the following words shall be treated as inserted after paragraph (b) of the definition of "overseas life assurance business"—

"but none of the life assurance business of an overseas life insurance company shall be treated as overseas life assurance business;".

(4) In that subsection, at the end of the definition of "overseas life assurance fund" the following words shall be treated as inserted , "but that Schedule shall not apply in the case of an overseas life insurance company".

(5) In that subsection, the following definition shall be treated as substituted for the definition of "value" —

" "value", in relation to assets and where the company concerned is an overseas life insurance company, means—

(a) their value as taken into account for the purposes of the company's periodical return, or

(b) where their value is not taken into account for the purposes of such a periodical return, their value as taken into account for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or

(c) where their value is not taken into account for the purposes of such a periodical return or equivalent return, their value as found from the company's records;

and the reference in paragraph (c) above to the value of assets as found from the company's records is a reference to the market value as so found or, where applicable, the current value (within the meaning of the Directive of the Council of the European Communities dated 19th December 1991 No. 91/674/EEC (directive on the annual accounts and consolidated accounts of insurance undertakings)) as so found;".

(6) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1929 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/05/1995

6A In section 431D(1), the words "carried on through a branch or agency in the United Kingdom by an overseas life insurance company" shall be treated as inserted after the words "means life assurance business".

F1930 7 (1) In section 432A, the following subsection shall be treated as inserted after subsection (2)—

(") In the case of an overseas life insurance company—
(a) any income which falls within section 11(2)(aa) or (ab); and
(b) any chargeable gains or allowable losses which fall within section 11(2)(d) or (e),
shall be referable to life assurance business."

(2) The following subsection shall be treated as inserted after subsection (9) of that section—

(") In its application to an overseas life insurance company this section shall have effect as if—
(a) the references in subsections (3), (6) and (8) to assets were to such of the assets concerned as are—
(i) section 11(2)(b) assets;
(ii) section 11(2)(c) assets; or
(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;
(b) the references in subsections (6) and (8) to liabilities were to such of the liabilities concerned as are attributable to the branch or agency;
and any expression used in this subsection to which a meaning is given by section 11A has that meaning."

(3) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments
F1930 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1931 8 (1) In subsection (1) of section 432B, the words "or treated as brought into account by virtue of paragraph 1 of Schedule 8A to the Finance Act 1989" shall be treated as inserted after the word "1982".

(2) The following words shall be treated as inserted at the end of subsection (2) of that section " ; but this subsection shall not apply for a period of account in relation to which paragraph 1(6), (7) or (8) of Schedule 8A to the Finance Act 1989 applies. "

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(3) The following subsection shall be treated as inserted after subsection (3) of that section—

"(4) In their application to an overseas life insurance company—

(a) subsection (3) above shall have effect as if after "with which an account is concerned" there were inserted "or in respect of which items are treated as brought into account by virtue of paragraph 1 of Schedule 8A to the Finance Act 1989"; and

(b) that subsection and sections 432C to 432E shall have effect as if the reference to relevant business were to relevant business of the branch or agency in the United Kingdom through which the company carries on life assurance business."

(4) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1931 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1932 9 (1) In section 434, the following subsection shall be treated as inserted after subsection (1)—

"(1A) Nothing in paragraph (a), (aa) or (ab) of section 11(2) shall prevent UK distribution income of an overseas life insurance company from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D."

(2) In subsection (2) of that section, the words "UK distribution income of an overseas life insurance company" shall be treated as substituted for the words "franked investment income of a company so resident".

(3) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1932 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

VALID FROM 01/05/1995

9A In section 434A(1)—

(a) the words "UK distribution income" shall be treated as substituted for "franked investment income", and

(b) the words "an overseas life insurance company" shall be treated as substituted for "a company resident in the United Kingdom".

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VALID FROM 01/05/1995

9B In section 434B the following subsection shall be treated as inserted after subsection (2)—

(”) An overseas life insurance company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to its life assurance business.”.

VALID FROM 01/05/1995

9C In its application to an overseas life insurance company section 434D(4) shall have effect as if the references to liabilities were only to such liabilities as are attributable to the branch or agency in the United Kingdom through which the company carries on the business concerned.

F1933 10(1) In section 438, the following subsection shall be treated as inserted after subsection (3)—

“(3A) Subject to subsection (6) below, nothing in paragraph (a), (aa) or (ab) of section 11(2) shall prevent UK distribution income of an overseas life insurance company from being taken into account as part of the profits in computing under section 436 income from pension business.”

(2) In subsections (6) and (6A) of that section, the words “UK distribution income” shall be treated as substituted for the words “franked investment income” in each place where they occur.

(3) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1933 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

VALID FROM 01/05/1995

10A In section 439B the following subsection shall be treated as inserted after subsection (7) of that section—

(”) In ascertaining whether or to what extent the company has incurred a loss on its life reinsurance business, UK distribution income of an overseas life insurance company shall be taken into account (notwithstanding anything in paragraph (a), (aa) or (ab) of section 11(2)) as part of the profits of that business.”.

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VALID FROM 01/05/1995

10AA In section 440(2)(a), the reference to a transfer of the whole or part of a company's long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the [M2345]Insurance Companies Act 1982 shall be treated as including a reference to a qualifying overseas transfer (within the meaning of paragraph 4A above).

Marginal Citations

M2345 1982 c. 50.

VALID FROM 01/05/1995

10B (1) Where the company mentioned in section 440(1) is an overseas life insurance company, section 440 has effect with the following modifications.

(2) Subsection (4) shall be treated as if—

(a) in paragraphs (a), (b), (d), (e) and (f) the words "UK assets" were substituted for the words "assets"; and

(b) at the end there were inserted—

(") section 11C assets;

(h) non-UK assets.".

(3) The following subsection shall be treated as inserted at the end of the section—

(") For the purposes of this section—

(a) UK assets are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

(b) section 11C assets are assets—

(i) (in a case where section 11C (other than subsection (9)) applies) of the relevant fund, other than UK assets; or

(ii) (in a case where that section including that subsection applies) of the relevant funds, other than UK assets;

(c) non-UK assets are assets which are not UK assets or section 11C assets;

and any expression used in this subsection to which a meaning is given by section 11A has that meaning.".

(4) Where one of the companies mentioned in section 440(2) is an overseas life insurance company, section 440(2)(b) shall have effect as if for the words "is within another of those categories" there were substituted "is not within the corresponding category".

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(5) Where the transferor company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately before the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

(6) Where the acquiring company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately after the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

VALID FROM 01/05/1995

10C (1) In section 440B the following subsection shall be treated as substituted for subsection (3)—

(”) Section 440(1) and (2) have effect as if the only categories specified in subsection (4) of that section were—

(a) UK assets of the long term business fund,

(b) other UK assets,

(c) section 11C assets, and

(d) non-UK assets,

(those expressions having the meanings given by section 440(7)).”.

(2) The following subsection shall be treated as substituted for subsection (4) of that section—

(”) Section 440A applies as if for paragraphs (a) to (e) of subsection (2) there were substituted—

(”) so many of the UK securities as are identified in the company’s records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of long term business, shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,

(b) any remaining UK securities shall be treated for those purposes as a separate holding which is not of the description mentioned in the preceding paragraph,

(c) the section 11C securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs, and

(d) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.”.

F1934 11 (1) In subsection (2) of section 440A, in paragraphs (a) and (b) the words “UK securities” shall be treated as substituted for the word “securities” in the first place where it occurs in each paragraph.

(2) Paragraph (c) of that subsection shall be treated as omitted.

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(3) In paragraphs (d) and (e) of that subsection, the words "UK securities"shall be treated as substituted for the word "securities"

(4) The following paragraphs shall be treated as inserted at the end of that subsection—

(") the section 11C securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs; and

(g) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs."

(5) The following subsection shall be treated as inserted after subsection (6) of that section—

(") For the purposes of this section—

(a) UK securities are such securities as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

(b) section 11C securities are securities—

(i) (in a case where section 11C (other than subsection (9)) applies) which are assets of the relevant fund, other than UK securities; or

(ii) (in a case where that section including that subsection applies) which are assets of the relevant funds, other than UK securities;

(c) non-UK securities are securities which are not UK securities or section 11C securities;

and any expression used in this subsection to which a meaning is given by section 11A has that meaning."

(6) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1934 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

VALID FROM 01/05/1995

11A (1) In section 441A, the following subsection shall be treated as inserted after subsection (1)—

(") The exclusion from section 11(2)(a), (aa) and (ab) of distributions received from companies resident in the United Kingdom shall not apply in relation to a distribution in respect of any asset of the overseas life assurance fund of an overseas life insurance company.".

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(2) The following subsection shall be treated as substituted for subsections (2) and (3) of that section—

(”) An overseas life insurance company shall be entitled to a tax credit in respect of a distribution which—

(a) is a distribution in respect of an asset of the company’s overseas life assurance fund, and

(b) is received from a company resident in the United Kingdom,

if and to the extent that regulations made by the Board so provide.”.

VALID FROM 01/05/1995

11B In section 442A the following subsection shall be treated as inserted after subsection (6)—

(”) In the case of an overseas life insurance company, the investment return treated as accruing under this section in any accounting period in relation to a policy or contract shall be treated as chargeable profits within section 11(2) of the Taxes Act 1988 where the policy or contract is one which in that accounting period gives rise, or but for the reinsurance arrangement would give rise, to such profits.”.

VALID FROM 01/05/1995

11C In sections 444A(1) and 460(10A), the references to a transfer of the whole or part of a company’s long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the [M2346]Insurance Companies Act 1982 shall be treated as including references to a qualifying overseas transfer (within the meaning of paragraph 4A above).

Marginal Citations

M2346 1982 c. 50.

[F1935]12 (1) In paragraph A of section 704, in sub-paragraph (e) the words “UK distribution income under section 444D”shall be treated as substituted for the words “a surplus of franked investment income under section 242 or 243”.

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1935 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

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F1936 13 (1) In subsection (2) of section 794, the following shall be treated as inserted after paragraph (c) "and

(d) for tax paid under the law of any territory in respect of the UK branch income or UK branch gains of an overseas life insurance company for the chargeable period in question but only where the following conditions are fulfilled, namely—

(i) that the territory under whose law the tax was paid is not one in which the company is liable to tax by reason of domicile, residence or place of management; and

(ii) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency concerned had been an insurance company resident in the United Kingdom and the income or gains in question had been income or gains of that company. "

(2) The following subsections shall be treated as inserted after that subsection—

(") For the purposes of subsection (2)(d) above—

(a) "UK branch income", in relation to an overseas life insurance company, means such of its income falling within section 11(2)(a), (aa) or (ab) as arises from assets of its long term business fund;

(b) "UK branch gains", in relation to an overseas life insurance company, means such of its chargeable gains falling within section 11(2)(b), (c), (d) or (e) as accrue on the disposal of assets of its long term business fund;

(c) "long term business fund" has the meaning given by section 431(2).

(4) In relation to any item of income falling within section 11(2)(ab), or any chargeable gain falling within section 11(2)(e), the reference in subsection (2)(d) above to tax paid shall be construed as a reference to that part of the tax paid which bears to the whole of the tax paid the same proportion as that item of income, or that chargeable gain, bears to the relevant income, or relevant gain, by reference to which that item of income, or that chargeable gain, is, by virtue of section 11C, calculated; and, in relation to any such item of income or any such chargeable gain, the reference in section 790(4) to tax paid shall be construed accordingly."

(3) This paragraph shall apply in relation to chargeable periods beginning after 31st December 1992.

Textual Amendments

F1936 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F1937 14 (1) In subsection (1) of section 811, the words "subsections (1A) and (2)"shall be treated as substituted for the words "subsection (2)".

(2) The following subsection shall be treated as inserted after that subsection—

(") In relation to any item of income falling within section 11(2)(ab), the reference in subsection (1) above to any sum which has been paid in respect of tax on that income shall be construed as a reference to the part of that sum which bears to the whole of

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that sum the same proportion as that item of income bears to the relevant income by reference to which that item of income is, by virtue of section 11C, calculated."

(3) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1937 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

VALID FROM 01/05/1995

14A (1) In Schedule 19AA, paragraph 5(5)(c) (and the reference to it in paragraph 2(3) of that Schedule) shall be treated as omitted.

(2) The following paragraph shall be treated as inserted at the end of that Schedule—

""6 In its application to an overseas life insurance company this Schedule shall have effect as if—

(a) the references in paragraphs 2 and 3 to assets of the long term business fund were to such of the assets as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business; and

(b) the references in paragraphs 2 and 4 to the liabilities of the company's long term business were to such of those liabilities as are attributable to the branch or agency;

and any expression used in this paragraph to which a meaning is given by section 11A has that meaning.""."

F1938 15 (1) In paragraph 1(8) of Schedule 19AB, the words "UK distribution income" shall be treated as substituted for the words "franked investment income" in each place where they occur.

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

Textual Amendments

F1938 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

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[F1939F1940SCHEDULE 19A

Section 450.]

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Textual Amendments

F1939 Sch. 19A inserted (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 58(4)(a)(5), **Sch. 5**

F1940 Sch. 19A repealed and superseded (with Sch. 19 of the amending Act) (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 173(2), 213, **Sch. 23 Pt. III(12)** Note 5

VALID FROM 22/07/2004

[F1956SCHEDULE 19B

Section 496A

PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

Textual Amendments

F1956 Sch. 19B inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 286(3), **Sch. 38**

PART 1

INTRODUCTORY

About this Schedule

1 (1) This Schedule entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period ending on or after 1st January 2004, to a supplement (initially of 6%, but variable by Treasury order) in respect of—

(a) qualifying capital expenditure incurred before the trade is set up and commenced,

(b) losses incurred in the trade, determined by reference to allowances under Part 6 of the Capital Allowances Act (expenditure on research and development) in respect of qualifying capital expenditure, and

(c) some or all of the supplement allowed in respect of earlier periods.

(2) To qualify, the capital expenditure in question must be incurred on or after 1st January 2004 in respect of oil and gas exploration and appraisal (as well as satisfying other conditions).

(3) Part 2 makes provision about the application and interpretation of this Schedule.

(4) Part 3 makes provision about supplement in relation to expenditure incurred by the company—

(a) with a view to carrying on a ring fence trade, but

(b) in an accounting period before the company sets up and commences that trade.

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(5) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.

(6) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.

(7) In determining the amount of supplement allowable, reductions fall to be made in respect of—
- (a) disposal receipts by virtue of section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value),
- (b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,
- (c) ring fence losses incurred in earlier periods that fall to be set off under section 393 against profits of succeeding periods,
- (d) unrelieved group ring fence profits.

PART 2

APPLICATION AND INTERPRETATION

Qualifying companies

2 This Schedule applies in relation to any company which—
- (a) carries on a ring fence trade, or
- (b) is engaged in oil and gas exploration and appraisal (see section 837B) with a view to carrying on a ring fence trade,

and in this Schedule any such company is referred to as a "qualifying company".

Accounting periods

3 (1) In this Schedule, in the case of any qualifying company,—

"the commencement period" means the accounting period in which the company sets up and commences its ring fence trade;

"post-commencement period" means any accounting period ending on or after 1st January 2004—
- (a) which is the commencement period, or
- (b) which ends after the commencement period;

"pre-commencement period" means any accounting period ending—
- (a) on or after 1st January 2004, and
- (b) before the commencement period.

(2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying E&A expenditure is to be treated as having such accounting periods as it would have if—
- (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
- (b) it had started to carry on that trade when it started to carry on the research and development on which the expenditure is incurred.

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The relevant percentage

4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period ending on or after 1st January 2004 is 6%.

(2) The Treasury may by order vary the percentage for the time being specified in sub-paragraph (1) for such accounting periods as may be specified in the order.

Limit on number of accounting periods for which supplement may be claimed

5 (1) A company may claim supplement under this Schedule in respect of no more than 6 accounting periods.

(2) The accounting periods in respect of which claims are made need not be consecutive.

Qualifying E&A expenditure

6 (1) For the purposes of this Schedule "qualifying E&A expenditure"is any expenditure as respects which the following conditions are satisfied.

(2) Condition 1 is that the expenditure is incurred on or after 1st January 2004.

(3) Condition 2 is that, for the purposes of Part 6 of the Capital Allowances Act, the expenditure is qualifying expenditure incurred on research and development consisting of oil and gas exploration and appraisal (see section 437(2)(b) of that Act).

(4) Condition 3 is that an allowance under section 441 of that Act is claimed in respect of the expenditure.

(5) Condition 4 is that the expenditure is incurred in the course of oil extraction activities.

(6) Condition 5 is that—

(a) those oil extraction activities are comprised in a ring fence trade, or

(b) after incurring the expenditure, the person incurring it sets up and commences a ring fence trade connected with the research and development.

Unrelieved group ring fence profits for accounting periods

7 (1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company ("company Q") in any case where—

(a) the company and any other company ("company X") are members of the same group of companies, within the meaning given by section 413(3)(a), and

(b) company X has an amount of taxable ring fence profits (see paragraph 8) for a corresponding accounting period.

(2) An accounting period of company X corresponds to an accounting period of company Q if—

(a) it coincides with, or falls wholly within, the accounting period of company Q, or

(b) it falls partly within the accounting period of company Q.

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(3) Where an accounting period of company X—
(a) coincides with an accounting period of company Q, or
(b) falls wholly within an accounting period of company Q,
there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X's taxable ring fence profits for its accounting period.

(4) Where an accounting period of company X falls partly within an accounting period of company Q—
(a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and
(b) that amount is an amount equal to the part of company X's taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 834(4), to the part of that period which falls within the accounting period of company Q.

(5) This paragraph applies for the purposes of this Schedule.

Taxable ring fence profits of an accounting period

8 For the purposes of this Schedule, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to corporation tax for that accounting period after any group relief claimed under Chapter 4 of Part 10.

PART 3

PRE-COMMENCEMENT SUPPLEMENT

Supplement in respect of a pre-commencement accounting period

9 (1) Where—
(a) a qualifying company claims an allowance under section 441 of the Capital Allowances Act (research and development allowances) for the commencement period, and
(b) the claim is for an allowance in respect of qualifying E&A expenditure incurred before that period,
the company may also claim supplement under this Part of this Schedule ("pre-commencement supplement") in respect of one or more pre-commencement periods.

(2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period shall be treated as an allowance under Part 6 of the Capital Allowances Act for the commencement period in respect of qualifying E&A expenditure incurred by the company.

(3) The amount of the supplement for any pre-commencement period in respect of which a claim under this paragraph is made is the relevant percentage for that period of the reference amount for that period.

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If the pre-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.

(5) Paragraphs 10 to 13 have effect for the purpose of determining the reference amount for a pre-commencement period.

The mixed pool of qualifying E&A expenditure and supplement previously allowed

10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company shall be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of qualifying E&A expenditure and pre-commencement supplement.

(2) The pool shall be taken to have consisted of—

(a) the company's qualifying E&A expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and

(b) the company's pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (4).

(3) To allocate qualifying E&A expenditure to the pool for any pre-commencement period, take the following steps—

(a) *Step 1:* count as eligible expenditure for that period so much of the qualifying E&A expenditure mentioned in paragraph 9(1)(b) as was incurred in that period,

(b) *Step 2:* find the total of all the eligible expenditure for that period (amount E),

(c) *Step 3:* if paragraph 11 applies, reduce amount E in accordance with that paragraph,

(d) *Step 4:* if paragraph 12 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that paragraph,

and so much of amount E as remains after making those reductions shall be taken to have been added to the pool in that period.

(4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement shall be taken to have been added to the pool in that period.

Treatment of disposal value on disposal of oil licence with exploitation value

11 (1) This paragraph applies in any case where—

(a) the qualifying company disposes of an interest in an oil licence in a pre-commencement period,

(b) part of the value of the interest (the "deductible amount") is attributable to qualifying E&A expenditure incurred by the company, and

(c) section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value) has effect in relation to the disposal.

(2) For the purpose of allocating qualifying E&A expenditure to the pool for each pre-commencement period—

(a) find the total of the deductible amounts in the case of all such disposals made by the company (amount D), and

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(b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.

(3) In this paragraph "oil licence" has the same meaning as in section 555 of the Capital Allowances Act (see section 552 (1) of that Act).

Reduction in respect of unrelieved group ring fence profits

12 (1) This paragraph applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.

(2) For the purpose of allocating qualifying E&A expenditure to the pool for that period—

(a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under paragraph 11, and

(b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

The reference amount for a pre-commencement period

13 For the purposes of this Part of this Schedule, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—

(a) after the addition to the pool of any qualifying E&A expenditure allocated to the pool for that period in accordance with paragraph 10(3), but

(b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

Claims for pre-commencement supplement

14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made at the same time as, and as if it were part of, the claim under section 441 of the Capital Allowances Act mentioned in paragraph 9(1)(a).

(2) Subsection (3) of that section (claim for reduced amount) applies in relation to any such claim.

PART 4

POST-COMMENCEMENT SUPPLEMENT

Supplement in respect of a post-commencement period

15 (1) A qualifying company which incurs a qualifying E&A loss (see paragraph 17) in a post-commencement period may claim supplement under this Part of this Schedule ("post-commencement supplement") in respect of—

(a) that period, or

(b) any subsequent accounting period in which it carries on its ring fence trade.

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(2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period shall be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule) as if it were a loss—
  (a) incurred in carrying on the ring fence trade in that period,
  (b) which falls in whole to be set off under section 393 against trading income from the ring fence trade in succeeding accounting periods.

(3) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) shall apply in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

Amount of post-commencement supplement for a post-commencement period

16 (1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under paragraph 15 is made is the relevant percentage for that period of the reference amount for that period.

(2) If the post-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.

(3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

Ring fence losses and qualifying E&A losses

17 (1) Where—
  (a) in any post-commencement period ("the period of the loss") a qualifying company carrying on a ring fence trade incurs a loss in the trade, and
  (b) some or all of the loss falls to be set off under section 393 against trading income from the trade in succeeding accounting periods,

so much of the loss as falls to be so set off is a "ring fence loss" of the company.

(2) In determining for the purposes of this Part of this Schedule how much of a loss incurred in a ring fence trade falls to be set off as mentioned in sub-paragraph (1)(b), it shall be assumed that every claim is made that could be made by the company under section 393A to set losses incurred in the ring fence trade against ring fence profits of earlier post-commencement periods.

(3) So much of a ring fence loss as is attributable to qualifying E&A allowances for the period of the loss is a "qualifying E&A loss".

(4) A ring fence loss is attributable to qualifying E&A allowances to the extent that the amount of the ring fence loss does not exceed the amount of the qualifying E&A allowances for the period of the loss.

(5) But a claim for post-commencement supplement may include an election for a ring fence loss to be treated—
  (a) as attributable to qualifying E&A allowances for the period of the loss to such lesser extent as may be specified in the election, or
  (b) as not attributable to such allowances.

(6) "Qualifying E&A allowances", in the case of an accounting period, means allowances for that period under Part 6 of the Capital Allowances Act in respect

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of qualifying E&A expenditure incurred by the company (including any pre-commencement supplement treated under paragraph 9(2) as such an allowance).

(7) This paragraph has effect for the purposes of this Part of this Schedule.

Ring fence losses and non-qualifying losses

18 (1) So much of a ring fence loss as is not a qualifying E&A loss is a non-qualifying loss.

(2) Where—

(a) a loss was incurred by a qualifying company in its ring fence trade in an accounting period ending on or before 31st December 2003, and

(b) some or all of that loss falls to be set off under section 393 against profits of that trade in accounting periods ending on or after that date,

so much of the loss as falls to be so set off is a ring fence loss and that loss is a non-qualifying loss.

(3) This paragraph has effect for the purposes of this Part of this Schedule.

VALID FROM 19/07/2006

Special rule for straddling periods

[F1957 18A (1) This paragraph applies in any case where the period of the loss in which a ring fence loss is incurred is the deemed accounting period under paragraph 3(3) ending before 1st January 2006.

(2) The following assumption shall be made for the purpose of calculating the amount of the qualifying E&A loss and the amount of the non-qualifying loss.

(3) The assumption is that the loss made in the trade is taken to be the loss incurred in the accounting period beginning before 1st January 2006 and ending on or after that date (disregarding paragraph 3(3)).

(4) The amount of the non-qualifying loss (found in accordance with that assumption) is then reduced (but not below nil) by the following amount.

(5) The amount is the amount of the ring fence loss in the deemed accounting period beginning on 1st January 2006 determined under paragraph 18 of Schedule 19C for the purposes of Part 4 of that Schedule.]

Textual Amendments

F1957 Sch. 19B para. 18A inserted (19.7.2006) by Finance Act 2006 (c. 25), **s. 154(9)**

The pool of qualifying E&A losses and the pool of non-qualifying losses

19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company shall be taken at all times in its post-commencement periods to have—

(a) a continuing pool of the company's non-qualifying losses (the "non-qualifying pool"), and

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(b) a continuing mixed pool of the company's qualifying E&A losses and post-commencement supplement (the "qualifying pool").

(2) A pool continues even if the amount in it is nil.

The non-qualifying pool

20 (1) The non-qualifying pool consists of the company's non-qualifying losses, allocated to the pool in accordance with sub-paragraph (2).

(2) A non-qualifying loss is allocated to the pool by adding the amount of the non-qualifying loss to the pool in the period of the loss.

(3) In the case of a non-qualifying loss incurred in an accounting period ending on or before 31st December 2003, the period of the loss shall be taken for the purposes of sub-paragraph (2) to be the first accounting period of the company that ends on or after 1st January 2004.

(4) The amount in the non-qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.

(5) Where a reduction in the amount in the non-qualifying pool falls to be made in any accounting period—

(a) the reduction is to be made after the addition to the pool of any non-qualifying loss allocated to the pool in that period in accordance with sub-paragraph (2), and

(b) references to the amount in the non-qualifying pool shall be construed accordingly.

The qualifying pool

21 (1) The qualifying pool consists of—

(a) the company's qualifying E&A losses, allocated to the pool in accordance with sub-paragraph (2)(a), and

(b) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).

(2) The allocation of qualifying E&A losses and post-commencement supplement to the pool is as follows—

(a) the amount of a qualifying E&A loss is added to the pool in the period of the loss, and

(b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.

(3) The amount in the qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.

(4) Where a reduction in the amount in the qualifying pool falls to be made in any accounting period, the reduction is to be made—

(a) after the addition to the pool of the amount of any qualifying E&A losses allocated to the pool in that period in accordance with sub-paragraph (2)(a), but

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(b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,

and references to the amount in the pool shall be construed accordingly.

Reductions in respect of utilised ring fence losses

22 (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions shall be made in that period in accordance with this paragraph.

(2) The amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.

(3) If any of that sum remains after being so set against the amount in the non-qualifying pool, the amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

Reductions in respect of unrelieved group ring fence profits

23 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions shall be made in that period in accordance with this paragraph.

(2) In the following provisions of this paragraph, references to the remaining amount in a pool are references to so much (if any) of the amount in the pool as remains after making any reductions that fall to be made in accordance with paragraph 22.

(3) The remaining amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

(4) If any of that sum remains after being so set against the remaining amount in the non-qualifying pool, the remaining amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

The reference amount for a post-commencement period

24 For the purposes of this Part of this Schedule the reference amount for a post-commencement period is so much of the amount in the qualifying pool as remains after making any reductions required by paragraph 22 or 23.**]**

VALID FROM 19/07/2006

SCHEDULE 19C

Section 496B

PETROLEUM EXTRACTION ACTIVITIES: RING FENCE EXPENDITURE SUPPLEMENT

. . . . . .

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SCHEDULE 20

Section 506.

CHARITIES: QUALIFYING INVESTMENTS AND LOANS [M2347]

Marginal Citations

M2347 Source—1986 c. 60 Sch. 7 Pts. II—IV.

PART I

QUALIFYING INVESTMENTS

1 Investments specified in any of the following paragraphs of this Part of this Schedule are qualifying investments for the purposes of section 506.

2 Any investment falling within Part I, Part II, apart from paragraph 13 (mortgages etc.) or Part III of Schedule 1 to the [M2348]Trustee Investments Act 1961.

Marginal Citations

M2348 1961 c. 62.

3 Any investment in a common investment fund established under section 22 of the [M2349]Charities Act 1960 **[**[F1958], section 24 of the Charities Act 1993**]** or section 25 of the [M2350]Charities Act (Northern Ireland) 1964 or in any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities.

Textual Amendments

F1958 Words in Sch. 20 para. 3 inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 25(a)**

Marginal Citations

M2349 1960 c. 58.

M2350 1964 c. 33 (N.I.).

[[F1959]3A Any investment in a common deposit fund established under section 22A of the Charities Act 1960 **[**[F1960]or section 25 of the Charities Act 1993**]** or in any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities.**]**

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Textual Amendments

F1959 Sch. 20 para. 3A inserted (1.9.1992) by Charities Act 1992 (c. 41), s. 78(1), **Sch. 6 para. 17**; S.I. 1992/1900, art. 2(1), **Sch. 1**

F1960 Words in Sch. 20 para. 3A inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 25(b)**

4 Any interest in land, other than an interest held as security for a debt of any description.

5 Shares in, or securities of, a company which are quoted on a recognised stock exchange, or which are dealt in on the Unlisted Securities Market.

6 Units, or other shares of the investments subject to the trusts, of a unit trust scheme within the meaning of the [M2351]Financial Services Act 1986.

Marginal Citations

M2351 1986 c. 60.

VALID FROM 28/04/1997

6A Shares in an open-ended investment company.

7 (1) Deposits with an institution authorised under the [M2352]Banking Act 1987 in respect of which interest is payable at a commercial rate.

(2) A deposit mentioned in sub-paragraph (1) above is not a qualifying investment if it is made as part of an arrangement under which a loan is made by the authorised institution to some other person.

Marginal Citations

M2352 1987 c. 22.

VALID FROM 06/04/2005

7A Uncertificated eligible debt security units as defined in section 552(2) of ITTOIA 2005.

8 Certificates of deposit as defined in section 56(5).

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9 (1) Any loan or other investment as to which the Board are satisfied, on a claim made to them in that behalf, that the loan or other investment is made for the benefit of the charity and not for the avoidance of tax (whether by the charity or any other person).

(2) The reference in sub-paragraph (1) above to a loan includes a loan which is secured by a mortgage or charge of any kind over land.

PART II

QUALIFYING LOANS

10 For the purposes of section 506, a loan which is not made by way of investment is a qualifying loan if it consists of—

(a) a loan made to another charity for charitable purposes only; or

(b) a loan to a beneficiary of the charity which is made in the course of carrying out the purposes of the charity; or

(c) money placed on current account with an institution authorised under the Banking Act 1987 otherwise than as part of such an arrangement as is mentioned in paragraph 7(2) above; or

(d) any other loan as to which the Board are satisfied, on a claim made to them in that behalf, that the loan is made for the benefit of the charity and not for the avoidance of tax (whether by the charity or by some other person).

PART III

ATTRIBUTION OF EXCESS NON-QUALIFYING EXPENDITURE TO EARLIER CHARGEABLE PERIODS

11 This Part of this Schedule applies in the circumstances specified in subsection (6) of section 506 and in this Part—

(a) "the primary period" means the chargeable period of the charity concerned in which there is such an excess as is mentioned in that subsection;

(b) "unapplied non-qualifying expenditure" means so much of the excess referred to in that subsection as does not exceed the non-qualifying expenditure of the primary period; and

(c) "earlier period", in relation to an amount of unapplied non-qualifying expenditure, means any chargeable period of the charity concerned which ended not more than six years before the end of the primary period.

12 (1) So much of the unapplied non-qualifying expenditure as is not shown by the charity to be the expenditure of non-taxable sums received by the charity in the primary period shall be treated in accordance with paragraph 13 below as non-qualifying expenditure of earlier periods.

(2) In sub-paragraph (1) above "non-taxable sums" means donations, legacies and other sums of a similar nature which, apart from section 505(1) of this Act and section **[**[F1961]256 of the 1992**]** Act, are not within the charge to tax.

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Textual Amendments

F1961 Words in Sch. 20 para. 12(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(59)** (with ss. 60, 101(1), 171, 201(3))

13 (1) Where, in accordance with paragraph 12 above, an amount of unapplied non-qualifying expenditure ("the excess expenditure") falls to be treated as non-qualifying expenditure of earlier periods—

(a) it shall be attributed only to those earlier periods (if any) which, apart from the attribution, (but taking account of any previous operation of this paragraph) the relevant income and gains exceed the aggregate of the qualifying and non-qualifying expenditure incurred in that period; and

(b) the amount to be attributed to any such earlier period shall not be greater than the excess of that period referred to in paragraph (a) above.

(2) Where there is more than one earlier period to which the excess expenditure can be attributed in accordance with sub-paragraph (1) above, it shall be attributed to later periods in priority to earlier periods.

(3) In so far as any of the excess expenditure cannot be attributed to earlier periods in accordance with this paragraph, it shall be disregarded for the purposes of section 506(6) (and this Part of this Schedule).

14 All such adjustments shall be made, whether by way of the making of assessments or otherwise, as may be required in consequence of the provisions of this Part of this Schedule.

SCHEDULE 21

Sections 570 and 572.

TAX RELIEF IN CONNECTION WITH SCHEMES FOR RATIONALIZING INDUSTRY AND OTHER REDUNDANCY SCHEMES [M2353]

Marginal Citations

M2353 Source—1970 c.10, **Sch.11**

PART I

PRELIMINARY

1 (1) In this Schedule—

"scheme" means a scheme which is for the time being certified or has at any time been certified by the Secretary of State under section 568;

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"payment" means a payment made under a scheme, being a payment made to a person carrying on a trade to which the scheme relates and not being a payment made by way of repayment of contributions;

"the person chargeable" means, in relation to any such payment, the person liable to pay any tax which may fall to be paid by reason of the receipt of the payment;

"damage" includes any loss, liability, expense or other burden, and references to the amount of any damage are references to the sum which would be fair compensation for that damage;

"contribution" includes part of a contribution, and "deductible contribution" means a contribution allowed to be deducted under section 568, any reduction under Part III of this Schedule being left out of account; and

"asset" includes part of an asset.

(2) For the purposes of this Schedule, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

PART II

RELIEF IN RESPECT OF CERTAIN PAYMENTS

2 The question whether any, and if so, what, relief is to be given shall be determined separately in relation to each payment made under the scheme in respect of the trade, but for the purpose of determining that question regard shall be had, as provided by the following provisions of this Part of this Schedule, to the sum ("the total payment") produced by adding the amount of the payment to the amount of any payments previously so made.

3 No relief shall be given in respect of the payment unless the person chargeable shows—

(a) the amount of the damage in respect of which the total payment has been made; and

(b) how much of that amount is referable to damage in respect of which no relief may be given under the Tax Acts.

4 No relief shall be given in respect of the payment unless the total payment, or the amount of the damage in respect of which the total payment has been made, whichever is the smaller, exceeds the aggregate amount of the deductible contributions which have been paid in furtherance of the scheme in respect of the trade in question before the payment is made, exclusive of any contributions which have been repaid before the payment is made.

5 The amount of the reduction to be made in respect of the payment shall be arrived at by—

(a) ascertaining the sum which bears to the excess mentioned in paragraph 4 above the same proportion that the amount mentioned in paragraph 3(b) above bears to the amount mentioned in paragraph 3(a); and

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(b) deducting from that sum the total amount of any reductions which have been or fall to be made under this Schedule in respect of payments previously made under the scheme in respect of the trade.

6 (1) For the purposes of this Schedule, and subject to sub-paragraph (2) below, damage shall be deemed to be damage in respect of which relief may be given under the Tax Acts if and only if—

(a) the damage is attributable to any of the following events, that is to say, the demolition, destruction or putting out of use of any asset, or the disposition or termination of an interest in any asset, and, by reason of that event, an allowance falls to be made under **[**[F1962]Part I or II of the 1990 Act**]** in taxing the trade; or

(b) the damage consists of any loss, liability, expense or other burden in respect of which an allowance may be made in computing the profits or gains of the trade for the purposes of the Tax Acts.

(2) [F1963] . . . . . .

(3) Where any event occurs which would give rise to an allowance under the Tax Acts in respect of any asset in taxing, or computing the profits or gains of, a trade but for any of the following matters, that is to say—

(a) that there are no profits or gains against which the allowance could be made, or

(b) that account is required to be taken of allowances previously made or deemed to have been made in respect of the asset; or

(c) that account is required to be taken of any sum which falls to be written off the expenditure incurred on the asset for the purpose of determining whether any and if so what allowance may be given by reason of the event; or

(d) that account is required to be taken of any sum falling to be taken into account as sale, insurance, salvage or compensation moneys, the like consequences shall ensue under this Schedule as if an allowance had fallen to be made by reason of that event.

(4) Where any damage is attributable to a permanent change in the purposes for which an asset is used, or the temporary or permanent putting out of use of an asset, the question whether the damage is damage in respect of which relief may be given under the Tax Acts shall be determined as if the damage had been attributable to a sale of the asset on the date upon which the change or putting out of use took place.

Textual Amendments

F1962 Words in Sch. 21 para. 6(1)(a) substituted (with effect in accordance with s. 164(1)(2) and with application in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(41)**, s. 164(3)

F1963 Sch. 21 para. 6(2) repealed (with effect in accordance with s. 164(1)(2) of the repealing Act) by Capital Allowances Act 1990 (c. 1), s. 164(4)(5), **Sch. 2**

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PART III

EXCLUSION OF RELIEF IN RESPECT OF CONTRIBUTIONS PAID AFTER RELIEF HAS BEEN GIVEN UNDER PART II

7 The provisions of this Part of this Schedule shall have effect where—

(a) a contribution is paid under a scheme in respect of a trade; and

(b) before the contribution is paid, payments have been made under the scheme to the person carrying on the trade; and

(c) reductions have been made, under Part II of this Schedule, in the amounts which, by reason of those payments, are to be treated as trading receipts of the trade.

8 There shall be ascertained—

(a) the total amount of those reductions; and

(b) the sum by which that total would have been decreased if the contribution, and any previous contributions to which this Part of this Schedule applies, had been paid before any of the payments were made.

9 For the purpose of determining what deduction is to be made in respect of the contribution under section 568, the contribution shall be deemed to be reduced by the sum specified in paragraph 8(b) above, but—

(a) for the purpose of the application of paragraph 8 above in relation to contributions subsequently paid under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum; and

(b) for the purpose of the application of paragraph 5 above in relation to payments subsequently made under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum.

10 When two or more contributions are paid at the same time, the provisions of this Part of this Schedule shall have effect as if they were a single contribution.

SCHEDULE 22

Section 603.

REDUCTION OF PENSION FUND SURPLUSES [M2354]

Marginal Citations

M2354 Source—1986 c. 53, **Sch.12 Pt.II**

1 (1) The Board may make regulations providing for this Schedule to apply, as from a prescribed date, in relation to any exempt approved scheme which is of a prescribed kind.

(2) The Board may make regulations providing for prescribed provisions of this Schedule to apply, as from a prescribed date, in prescribed circumstances, and subject to any prescribed omissions or modifications, in relation to any exempt approved scheme of another prescribed kind.

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(3) In this Schedule "prescribed" means prescribed by regulations made by the Board.

Modifications etc. (not altering text)
C900 *For regulations see* Part III Vol.5 (*under "Pension scheme surpluses: valuation"*).

2 (1) The administrator of a scheme in relation to which this Schedule applies shall, in prescribed circumstances and at a prescribed time, either produce to the Board a written valuation such as is mentioned in sub-paragraph (2) below or give to the Board a certificate such as is mentioned in sub-paragraph (3) below.

(2) The valuation must be a valuation of the assets held for the purposes of the scheme and the liabilities of the scheme, must be determined in accordance with prescribed principles and fulfil prescribed requirements, and must be signed by a person with qualifications of a prescribed kind.

(3) The certificate must state whether or not the value of the assets (as determined in accordance with prescribed principles) exceeds the value of the liabilities (as so determined) by a percentage which is more than a prescribed maximum, must be in a prescribed form, and must be signed by a person with qualifications of a prescribed kind.

3 (1) Subject to paragraph 4(4) below, where a valuation produced under paragraph 2 shows, or a certificate given under that paragraph states, that the value of the assets exceeds the value of the liabilities by a percentage which is more than the prescribed maximum, the administrator of the scheme shall within a prescribed period submit to the Board for their approval proposals which comply with sub-paragraph (2) below.

(2) The proposals must be proposals for reducing (or, subject to paragraph (b) below, eliminating) the excess in a way or ways set out in the proposals and falling within sub-paragraph (3) below; and they must be such as to secure that—
- (a) by the end of a prescribed period the percentage (if any) by which the value of the assets exceeds the value of the liabilities is no more than the prescribed maximum; and
- (b) if the way, or one of the ways, set out in the proposals falls within sub-paragraph (3)(a) below, there remains an excess which is of a level not less than the prescribed minimum.

(3) Subject to sub-paragraph (4) below, the permitted ways of reducing or eliminating the excess are—
- (a) making payments to an employer;
- (b) suspending for a period (of five years or less) set out in the proposals an employer's obligation to pay contributions under the scheme or reducing for such a period the amount of an employer's contributions under the scheme;
- (c) suspending for a period (of five years or less) set out in the proposals the obligation of employees to pay contributions under the scheme or reducing for such a period the amount of employees' contributions under the scheme;
- (d) improving existing benefits provided under the scheme;
- (e) providing new benefits under the scheme;

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(f) such other ways as may be prescribed.

(4) In prescribed circumstances sub-paragraph (3) above shall apply subject to such omissions or modifications as may be prescribed.

(5) Subject to paragraph 4(4) below, if the administrator of the scheme fails to submit proposals to the Board within the period mentioned in subparagraph (1) above, or if the proposals submitted to them within that period are not approved by the Board within a further prescribed period, paragraph 7 below shall apply.

4 (1) Where a valuation has been produced under paragraph 2 above, the Board may serve on the administrator of the scheme a notice requiring him to furnish the Board, within a prescribed period, with such particulars relating to the valuation as may be specified in the notice.

(2) Where a certificate has been given under paragraph 2 above, the Board may serve on the administrator of the scheme a notice requiring him to produce to the Board, within a prescribed period, a written valuation such as is mentioned in paragraph 2(2) above.

(3) Where a valuation has been produced in compliance with a notice served under sub-paragraph (2) above, the Board may serve on the administrator of the scheme a further notice requiring him to furnish the Board, within a prescribed period, with such particulars relating to the valuation as may be specified in the notice.

(4) Where a notice is served on the administrator of a scheme under sub-paragraph (1) or (2) above, paragraph 3(1) and (5) above shall cease to apply.

5 (1) Where particulars have been furnished under paragraph 4 above, or a valuation has been produced under that paragraph, the Board shall, within a prescribed period, serve on the administrator of the scheme a notice—

(a) stating that they accept the valuation produced under paragraph 2 or, as the case may be, 4 above; or

(b) stating that they do not accept the valuation so produced, and specifying their estimate of the value of the liabilities of the scheme at the relevant time and their estimate of the value of the assets held for the purposes of the scheme at that time.

(2) For the purposes of sub-paragraph (1)(b) above, the relevant time is the time specified in the valuation produced under paragraph 2 or 4 above as the time by reference to which the values of the assets and liabilities are determined.

(3) Where—

(a) in a case falling within sub-paragraph (1)(a) above, the valuation shows that the value of the assets exceeds the value of the liabilities by a percentage which is more than the prescribed maximum; or

(b) in a case falling within sub-paragraph (1)(b) above, the value of the assets as estimated by the Board exceeds the value of the liabilities as so estimated by a percentage which is more than the prescribed maximum;

the administrator of the scheme shall within a prescribed period submit to the Board for their approval proposals which comply with paragraph 3(2) to (4) above.

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(4) If the administrator of the scheme fails to submit proposals to the Board within the period mentioned in sub-paragraph (3) above, or if proposals submitted to them within that period are not approved by the Board within a further prescribed period, paragraph 7 below shall apply.

6 (1) Where proposals are submitted to the Board under paragraph 3(1) or 5(3) above and they approve them within the further prescribed period mentioned in paragraph 3(5) or 5(4) above, the administrator of the scheme shall carry out the proposals within the period mentioned in paragraph 3(2) above.

(2) If the administrator fails to carry out the proposals within that period, paragraph 7 below shall apply.

7 (1) Where this paragraph applies the Board may specify a percentage equivalent to the fraction—

$$\frac{A}{B}$$

where—

A represents their estimate of the value of the liabilities of the scheme at the relevant time increased by a prescribed percentage; and

B represents their estimate of the value of the assets held for the purposes of the scheme at that time.

(2) For the purposes of this paragraph the relevant time is the time specified—

(a) in the valuation produced or certificate given under paragraph 2 above; or

(b) where a valuation has been produced under paragraph 4 above, in that valuation,

as the time by reference to which the values of the assets and liabilities are determined.

(3) Where a percentage has been so specified—

(a) section 592(2) shall apply only to that percentage of any income derived in the relevant period from the assets held for the purposes of the scheme;

(b) section 592(3) shall apply only to that percentage of any underwriting commissions applied in the relevant period for the purposes of the scheme;

(c) section 56 shall by virtue of subsection (3)(b) of that section not apply only to that percentage of any profits or gains arising to the scheme in the relevant period; and

(d) section **[**[F1964]271(1)(g) of the 1992**]** Act (capital gains tax exemption) shall apply only to that percentage of any gain accruing on the disposal in the relevant period of any of those assets.

(4) Sub-paragraphs (5) to (8) below shall apply where a percentage has been so specified, securities are transferred in the relevant period, and the transferor or transferee is such that, if he became entitled to any interest on them, exemption could be allowed under section 592(2).

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(5) Section 715(1)(k) shall not apply.

(6) Where, in consequence of sub-paragraph (5) above, section 713(2)(a) or (3)(b) applies, the sum concerned shall be treated as reduced by an amount equal to the specified percentage of itself.

(7) Where, in consequence of sub-paragraph (5) above, section 713(2)(b) or (3)(a) applies, the relief concerned shall be treated as reduced by an amount equal to the specified percentage of itself.

(8) For the purposes of section 714(5), the amount of interest falling to be reduced by the amount of the allowance shall be treated as the amount found after applying section 592(2).

(9) In sub-paragraphs (4) to (8) above expressions which also appear in sections 710 to 728 have the same meanings as in those sections.

(10) In this paragraph "the relevant period" means the period begining at the relevant time and ending when it is proved to the satisfaction of the Board that the value of the assets (as determined in accordance with prescribed principles) exceeds the value of the liabilities (as so determined) by a percentage which is no more than the prescribed maximum.

Textual Amendments

F1964 Words in Sch. 22 para. 7 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(60)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C901 *See* S.I.1989 No.2290, regn.10(5)*in* Part III Vol.5.

C902 Sch. 22 para. 7(3)(d) modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 271(10)**, 289 (with ss. 60, 101(1), 171, 201(3))

C903 *See* S.I.1989 No.2290, regn.10(5)*in* Part III Vol.5.

VALID FROM 06/04/2005

7A (1) This paragraph applies if a calculation falls to be made under paragraph 7 above in a case where—

(a) relief is to be given under section 454 of ITTOIA 2005 (listed deeply discounted securities held since 26th March 2003: relief for losses) in respect of a loss sustained on the disposal of securities, and

(b) had there been a profit on the disposal it would have been eligible for relief from tax for the year of assessment in which the loss is sustained by virtue of section 592(2).

(2) That relief is to be given before the calculation under paragraph 7 above is made.

(3) Then the amount of income to which the specified percentage is applied by virtue of sub-paragraph (3)(a) of that paragraph is reduced by the amount of that relief.

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(4) In this paragraph "disposal" has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005.

8 (1) The Board may make regulations providing that an appeal may be brought against a notice under paragraph 5(1)(b) above as if it were notice of the decision of the Board on a claim made by the administrator of the scheme concerned.

(2) Regulations under this paragraph may include—

(a) provision that bringing an appeal shall suspend the operation of paragraph 5(3) and (4) above; and

(b) other provisions consequential on the provision that an appeal may be brought (including provisions modifying this Schedule).

SCHEDULE 23

Section 609.

OCCUPATIONAL PENSION SCHEMES: SCHEMES APPROVED BEFORE 23RD JULY 1987 [M2355]

Marginal Citations

M2355 Source—1987 (No. 2) c. 51, Sch.3 Pt. II

Preliminary

1 (1) This Schedule shall be deemed to have come into force on 17th March 1987 and, subject to sub-paragraphs (2) and (3) below, applies in relation to any retirement benefits scheme approved by the Board before the passing of the Finance (No.2) Act 1987 (23rd July 1987).

[[F1965](2) The Board may by regulations provide that, in circumstances prescribed in the regulations, this Schedule or any provision of it shall not apply or shall apply with such modifications as may be so prescribed.

(2A) Regulations under sub-paragraph (2) above—

(a) may include provision authorising the Board to direct that this Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate;

(b) may take effect (and may authorise any direction given under them to take effect) as from 17th March 1987 or any later date;

(c) may make such supplementary provision as appears to the Board to be necessary or expedient.]

(3) This Schedule shall not apply to a retirement benefits scheme if, before the end of 1987, the administrator of the scheme gave notice to the Board that it is not to apply.

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(4) Where a notice is given to the Board under sub-paragraph (3) above, the scheme shall, with effect from 17th March 1987 or (if later) the date with effect from which it was approved, cease to be approved.

Textual Amendments

F1965 1988(F) s.56.*Previously*

"(2) The Board may by regulations provide that this Schedule, or any provision of it, shall not apply in relation to a scheme or to an employee—(a) in circumstances prescribed in the regulations; (b) in any case where in the opinion of the Board the facts are such that it would be appropriate for this Schedule, or the provision in question, not to apply."

For regulations see Part III Vol.5*under "Retirement Benefit Schemes: transitional provisions"*.

Accelerated accrual

2 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987.

(2) Notwithstanding anything to the contrary in the rules of the scheme, they shall have effect as if they did not allow the provision for the employee of a pension exceeding one-thirtieth of his relevant annual remuneration for each year of service up to a maximum of 20.

Modifications etc. (not altering text)

C904 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied and when* para.2*modified.*

3 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987 and the scheme allows him to commute his pension or part of it for a lump sum or sums.

(2) If the employee's full pension (that is, the pension before any commutation) is equal to or less than a basic rate commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow him to obtain by way of commutation a lump sum or sums exceeding in all a basic rate lump sum.

(3) If the employee's full pension is greater than a basic rate commutable pension but less than a maximum rate commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow him to obtain by way of commutation a lump sum or sums exceeding in all the aggregate of—

(a) a basic rate lump sum, and

(b) an amount equal to the relevant percentage of the difference between a basic rate lump sum and a maximum rate lump sum.

(4) In this paragraph, as it applies in relation to an employee—

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(a) a "basic rate commutable pension" means a pension of one-sixtieth of his relevant annual remuneration for each year of service up to a maximum of 40;

(b) a "maximum rate commutable pension" means a pension of one-thirtieth of his relevant annual remuneration for each year of service up to a maximum of 20;

(c) a "basic rate lump sum" means a lump sum of three-eightieths of his relevant annual remuneration for each year of service up to a maximum of 40;

(d) a "maximum rate lump sum" means a lump sum of such amount as may be determined by or under regulations made by the Board for the purposes of this paragraph and paragraph 4 below;

(e) "the relevant percentage" means the difference between a basic rate commutable pension and the employee's full pension expressed as a percentage of the difference between a basic rate commutable pension and a maximum rate commutable pension.

Modifications etc. (not altering text)

C905 *For regulations see* Part III Vol.5 (*under "Retirement benefit schemes: maximum lump sum"*).

C906 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

4 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987 and the scheme provides a lump sum or sums for him otherwise than by commutation of his pension or part of it.

(2) If the employee's pension is equal to or less than a basic rate non-commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to him, otherwise than by way of commutation, of a lump sum or sums exceeding in all a basic rate lump sum.

(3) If the employee's pension is greater than a basic rate non-commutable pension but less than a maximum rate non-commutable pension the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to him, otherwise than by way of commutation, of a lump sum or sums exceeding in all the aggregate of—

(a) a basic rate lump sum, and

(b) an amount equal to the relevant percentage of the difference between a basic rate lump sum and a maximum rate lump sum.

(4) In this paragraph, as it applies in relation to an employee—

(a) a "basic rate non-commutable pension" means a pension of one-eightieth of his relevant annual remuneration for each year of service up to a maximum of 40,

(b) a "maximum rate non-commutable pension" means a pension of one-fortieth of his relevant annual remuneration for each year of service up to a maximum of 20,

(c) "basic rate lump sum" and "maximum rate lump sum" have the same meanings as in paragraph 3 above, and

(d) "the relevant percentage" means the difference between a basic rate non-commutable pension and the employee's actual pension expressed as a

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percentage of the difference between a basic rate non-commutable pension and a maximum rate non-commutable pension.

Modifications etc. (not altering text)

C907 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

Final remuneration

5 (1) his paragraph applies where an employee who is a member of the scheme retires on or after 17th March 1987.

(2) The rules of the scheme shall have effect as if they provided that in determining the employee's relevant annual remuneration for the purpose of calculating benefits, no account should be taken of anything excluded from the definition of "remuneration" in section 612(1).

(3) In the case of an employee—

(a) whose employer is a company and who at any time in the last ten years of his service is a controlling director of the company, or

(b) whose relevant annual remuneration for the purpose of calculating benefits, so far as the remuneration is ascertained by reference to years beginning on or after 6th April 1987, would (apart from this Schedule) exceed the permitted maximum,

the rules of the scheme shall have effect as if they provided that his relevant annual remuneration must not exceed his highest average annual remuneration for any period of three or more years ending within the period of ten years which ends with the date on which his service ends.

(4) In the case of an employee within paragraph (b) of sub-paragraph (3) above who retires before 6th April 1991, the rules of the scheme shall have effect as if they provided that his relevant annual remuneration must not exceed the higher of—

(a) the average annual remuneration referred to in that sub-paragraph, and

(b) his remuneration (within the meaning given by section 612(1)) assessable to income tax under Schedule E for the year of assessment 1986-87.

(5) For the purposes of this paragraph a person is a controlling director of a company if—

(a) he is a director (as defined in section 612), and

(b) he is within paragraph (b) of section 417(5),

in relation to the company.

Modifications etc. (not altering text)

C908 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

C909 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4*and* 5(2), 5(3), 6*and* 7*disapplied, and when* paras.5(3), (4)*modified.*

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Lump sums

6 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987.

(2) If the rules of the scheme allow the employee to obtain, (by commutation of his pension or otherwise), a lump sum or sums calculated by reference to his relevant annual remuneration, they shall have effect as if they included a rule that in calculating a lump sum any excess of that remuneration over the permitted maximum should be disregarded.

Modifications etc. (not altering text)
C910 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4*and* 5(2), 5(3), 6*and* 7*disapplied, and when* paras.5(3), (4)*modified.*

Additional voluntary contributions

7 (1) This paragraph applies where—
(a) the rules of the scheme make provision for the payment by employees of voluntary contributions, and
(b) on or after 8th April 1987 an employee enters into arrangements to pay such contributions.

(2) Notwithstanding anything in the rules of the scheme, they shall have effect as if they did not allow the payment to the employee of a lump sum in commutation of a pension if or to the extent that the pension is secured by the voluntary contributions.

Modifications etc. (not altering text)
C911 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

8 (1) *This paragraph applies where an employee who is a member of the scheme* ("*the main scheme*")*is also a member of an approved scheme* ("*the voluntary scheme*")*which provides additional benefits to supplement those provided by the main scheme and to which no contributions are made by any employer of his.*

(2) *Any rules of the main scheme imposing a limit on the amount of a benefit provided for the employee shall have effect* (*notwithstanding anything in them to the contrary*)*as if they provided for the limit to be reduced by the amount of any like benefit provided for the employee by the voluntary scheme*[F1966].

Textual Amendments
F1966*Repealed by* 1989 ss.75*and* 187*and* Sch.6 paras.17*and* 18(10)*and* Sch.17 Part IV.

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Supplementary

9 In this Schedule "relevant annual remuneration" means final remuneration or, if the scheme provides for benefits to be calculated by reference to some other annual remuneration, that other annual remuneration.

VALID FROM 28/07/2000

SCHEDULE 23ZA Section 631A.

CONVERSION OF CERTAIN APPROVED RETIREMENT BENEFITS SCHEMES

. . . . . .

[F1967SCHEDULE 23A Section 736A.]

MANUFACTURED DIVIDENDS AND INTEREST

Textual Amendments

F1967 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

Interpretation

F1968 1 (1) In this Schedule—

"approved stock lending arrangement" means an arrangement such as is mentioned in subsection (1), (2) or (2A) of section 129 and in relation to which that section and section [F1969271(9) of the 1992 Act] apply;

"dividend manufacturer" has the meaning given by paragraph 2(1) below;

"dividend manufacturing regulations" means regulations made by the Treasury under this Schedule;

"interest manufacturer" has the meaning given by paragraph 3(1) below;

"manufactured dividend", "manufactured interest" and "manufactured overseas dividend" shall be construed respectively in accordance with paragraphs 2, 3 and 4 below, as shall references to the gross amount thereof;

"market maker", in relation to any shares, stock or other securities, means a person who—

(a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell shares, stock or other securities of the kind concerned at a price specified by him, and

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(b) is recognised as doing so by the Council of the Stock Exchange,

but subject to any regulations under sub-paragraph (2) below;

"overseas dividend" means any interest, dividend or other annual payment payable in respect of any overseas securities;

"overseas dividend manufacturer" has the meaning given by paragraph 4(1) below;

"overseas securities" means—

(a) shares, stock or other securities issued by a government or public or local authority of a territory outside the United Kingdom or by any other body of persons not resident in the United Kingdom; and

(b) quoted Eurobonds held in a recognised clearing system, within the meaning of section 124;

"overseas tax" means tax under the law of a territory outside the United Kingdom;

"overseas tax credit" means any such credit under the law of a territory outside the United Kingdom in respect of overseas tax as corresponds to a tax credit;

"prescribed" means prescribed in dividend manufacturing regulations;

"recognised clearing house" means a recognised clearing house within the meaning of the Financial Services Act 1986;

"recognised investment exchange" means a recognised investment exchange within the meaning of that Act;

"securities" includes any loan stock or similar security;

"transfer" includes any sale or other disposal;

"unapproved manufactured payment", subject to any regulations under sub-paragraph (2) below, means—

(a) any manufactured dividend, manufactured interest or manufactured overseas dividend paid in connection with an unapproved stock lending arrangement, and

(b) any manufactured dividend or manufactured interest not falling within paragraph (a) above which is paid in respect of United Kingdom securities or United Kingdom equities by a person other than one who is—

(i) a market maker in relation to United Kingdom securities or United Kingdom equities of the kind in question, or

(ii) in such circumstances as may be prescribed, a member, of a prescribed class or description, of a prescribed recognised investment exchange, or

(iii) in such circumstances as may be prescribed, a prescribed recognised clearing house,and which is so paid otherwise than in connection with an approved stock lending arrangement;

"unapproved stock lending arrangement" means an arrangement such as is mentioned in subsection (1), (2) or (2A) of section 129, but which, in consequence of regulations under subsection (4) of that section, is not an approved stock lending arrangement;

"United Kingdom equities" means shares of any company resident in the United Kingdom;

"United Kingdom securities" means securities of the government of the United Kingdom, of any public or local authority in the United Kingdom or of any company or other body resident in the United Kingdom, but does not

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include quoted Eurobonds held in a recognised clearing system, within the meaning of section 124, or United Kingdom equities.

(2) Dividend manufacturing regulations may amend sub-paragraph (1) above—
(a) by changing the definition for the time being of "market maker"; or
(b) by changing the definition for the time being of "unapproved manufactured payment".

Textual Amendments

F1968 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F1969 Words in Sch. 23A para. 1 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(61)** (with ss. 60, 101(1), 171, 201(3))

[F1970] *Manufactured dividends on United Kingdom equities*

Textual Amendments

F1970 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

[F1971] 2 (1) This paragraph applies in any case where, under a contract or other arrangements for the transfer of United Kingdom equities, one of the parties (the "dividend manufacturer") is required to pay to the other ("the recipient") an amount representative of a dividend on the equities; and in this Schedule the "manufactured dividend" means any payment which the dividend manufacturer makes in discharge of that requirement.

(2) If, in a case where this paragraph applies, the dividend manufacturer is a company resident in the United Kingdom, then, for all purposes of the Tax Acts, the manufactured dividend shall be treated as if it were a dividend of, and paid by, the dividend manufacturer (and shall accordingly be a distribution of the dividend manufacturer for those purposes).

(3) If, in a case where this paragraph applies, the dividend manufacturer is not such a company as is mentioned in sub-paragraph (2) above (so that section 737 applies in relation to the dividend manufacturer) the manufactured dividend shall for all purposes of the Tax Acts be treated in relation to the recipient and all persons claiming title through or under him—
(a) as if the manufactured dividend were a dividend on the United Kingdom equities,
(b) as if any amount required in consequence of section 737 to be deducted by the dividend manufacturer on account of income tax in respect of the gross

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amount of the manufactured dividend were required to be accounted for by him as advance corporation tax in respect of the dividend, and

(c) as if any certificate of deduction of tax required in consequence of that section to be issued in connection with the manufactured dividend were the tax credit certificate that would have been issued had the manufactured dividend in fact been a dividend on the United Kingdom equities.

(4) For the purposes of sub-paragraph (3)(b) above, the gross amount of a manufactured dividend is the aggregate of the amount of the manufactured dividend and the amount of the tax credit that would have been issued in respect thereof had the manufactured dividend in fact been a dividend on the United Kingdom equities.

[[F1972](5) Sub-paragraph (3)(c) above shall be without prejudice to the operation of subsection (3) of section 78 of the Finance Act 1993, where that subsection has effect by virtue of sub-paragraph (3)(a) above for determining the amount of any tax credit to which any person is entitled in respect of any manufactured dividend.**]**

Textual Amendments

F1971 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(b), 4)

F1972 Sch. 23A para. 2(5) inserted (27.7.1993 with effect in relation to any payment of a manufactured dividend made on or after 6th April 1993) by 1993 c. 34, s.79, Sch. 6 paras.19, **25(4)**

Modifications etc. (not altering text)

C912 Sch. 23A para. 2(3)(b) modified (22.3.1992) by S.I. 1992/569, **reg. 23**

[F1973]*Manufactured interest on United Kingdom securities*

Textual Amendments

F1973 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

[F1974]3 (1) This paragraph applies in any case where, under a contract or other arrangements for the transfer of United Kingdom securities, one of the parties (the "interest manufacturer") is required to pay to the other ("the recipient") an amount representative of a periodical payment of interest on the securities; and in this Schedule the "manufactured interest" means any payment which the interest manufacturer makes in discharge of that requirement.

(2) If, in a case where this paragraph applies, the interest manufacturer is a company resident in the United Kingdom, then, for all purposes of the Tax Acts, the gross amount of the manufactured interest shall be treated as if it were the gross amount of a periodical payment of interest on the securities, but made by the interest manufacturer.

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(3) If, in a case where this paragraph applies, the interest manufacturer is not such a company as is mentioned in sub-paragraph (2) above (so that section 737 applies in relation to the interest manufacturer) the gross amount of the manufactured interest shall for all purposes of the Tax Acts be treated in relation to the recipient, and all persons claiming title through or under him, as if it were the gross amount of a periodical payment of interest on the securities, but made by the interest manufacturer.

(4) For the purposes of this paragraph the gross amount of any manufactured interest is an amount equal to the gross amount of that periodical payment of interest of which the manufactured interest is representative, as mentioned in sub-paragraph (1) above.

Textual Amendments

F1974 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purpose by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

Modifications etc. (not altering text)

C913 Sch. 23A para. 3(2) modified (24.9.1992) by S.I. 1992/2074, **reg. 5(1)**

VALID FROM 01/05/1995

3A (1) This paragraph applies, except in so far as dividend manufacturing regulations otherwise provide, in any case where paragraph 3 above applies and the United Kingdom securities in question are gilt-edged securities.

(2) In a case where this paragraph applies, sub-paragraphs (2) and (3) of paragraph 3 above shall not have effect, but the gross amount of the manufactured interest shall be treated—

(a) in relation to the interest manufacturer, for all the purposes of the Tax Acts except the determination of whether a deduction of tax is liable to be made on the making of the manufactured payment, and

(b) in relation to the recipient and all persons claiming title through or under him, for all the purposes of those Acts,

as if it were the gross amount of a periodical payment of interest on those gilt-edged securities, but made by the interest manufacturer.

(3) Sub-paragraph (4) of paragraph 3 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

(4) In this paragraph “gilt-edged securities” has the same meaning as in section 51A.

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VALID FROM 19/03/1997

Deductibility of manufactured payment in the case of the manufacturer

2A (1) Where, in the case of a manufactured dividend, the dividend manufacturer—
(a) is resident in the United Kingdom, but
(b) is not a company,
the amount of the manufactured dividend actually paid (so far as is it is not otherwise deductible), together with an amount equal to the notional ACT, shall be allowable for the purposes of income tax as a deduction against the total income of the dividend manufacturer.

(2) Where, in the case of a manufactured dividend, the dividend manufacturer is a company which is not resident in the United Kingdom, no amount at all shall be deductible, in the case of that company, in respect of the payment of that manufactured dividend.

(3) The reference in sub-paragraph (1) above to an amount equal to the notional ACT is a reference to the amount equal to the advance corporation tax that would be payable in respect of the manufactured dividend if—
(a) the dividend manufacturer were a company resident in the United Kingdom, and
(b) the manufactured dividend were a distribution by that company.

(4) The references in this paragraph to an amount being deductible are references to its being either—
(a) deductible in computing the amount of any of the dividend manufacturer's profits or gains for the purposes of income tax or corporation tax; or
(b) deductible for those purposes from the total income or, as the case may be, total profits of the dividend manufacturer.

VALID FROM 19/03/1997

Manufactured dividends representative of foreign income dividends

2B (1) Where a manufactured dividend to which paragraph 2(2) above applies is representative of a foreign income dividend, the Tax Acts shall have effect for all purposes as if—
(a) the deemed dividend of the dividend manufacturer were itself a foreign income dividend; and
(b) that foreign income dividend were one in respect of which the dividend manufacturer is not liable to make any payment of advance corporation tax.

(2) Where a manufactured dividend to which paragraph 2(3) above applies is representative of a foreign income dividend—
(a) the Tax Acts shall have effect, in relation to the recipient and any persons claiming title through or under him, as if the dividend on the United

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Kingdom equities which the recipient is treated as having received were a foreign income dividend;

(b) there shall be no requirement for any person to account for tax in respect of that manufactured dividend by virtue of paragraph 2(3)(a) above;

(c) any deduction made in respect of the manufactured dividend under paragraph 2A(1) above shall be made without including an amount equal to the notional ACT in the deduction; and

(d) the dividend manufacturer, on paying the manufactured dividend in any case falling within sub-paragraph (3) below, shall provide the recipient with a statement in writing setting out the matters specified in sub-paragraph (4) below.

(3) A case falls within this sub-paragraph where, were it not for sub-paragraph (2)(a) and (b) above, the dividend manufacturer would be required to provide such a statement as is mentioned in paragraph 2(6) above.

(4) Those matters are—

(a) the amount of the manufactured dividend;

(b) the date on which it is paid;

(c) the fact that the dividend carries no entitlement to a tax credit; and

(d) in the case of a manufactured dividend which is representative of a qualifying distribution to which Schedule 7 to the Finance Act 1997 applies, the fact that the distribution is a foreign income dividend by virtue of paragraph 2(1) of that Schedule.

(5) The Board may give directions as to the form that must be taken by a statement provided for the purposes of sub-paragraph (2)(d) above.

(6) The duty imposed by sub-paragraph (2)(d) above shall be enforceable at the suit or instance of the recipient.

[F1975]*Manufactured overseas dividends*

Textual Amendments

F1975 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

[F1976]4 (1) This paragraph applies in any case where, under a contract or other arrangements for the transfer of overseas securities, one of the parties (the "overseas dividend manufacturer") is required to pay to the other ("the recipient") an amount representative of an overseas dividend on the overseas securities; and in this Schedule the "manufactured overseas dividend" means any payment which the overseas dividend manufacturer makes in discharge of that requirement.

(2) Subject to sub-paragraph (3) below, where this paragraph applies the gross amount of the manufactured overseas dividend shall be treated for all purposes of the Tax Acts as an annual payment, within section 349, but—

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(a) the amount which is to be deducted from that gross amount on account of income tax shall be an amount equal to the relevant withholding tax on that gross amount; and

(b) in the application of sections 338(4)(a) and 350(4) in relation to manufactured overseas dividends the references to Schedule 16 shall be taken as references to dividend manufacturing regulations;

and paragraph (a) above is without prejudice to any further amount required to be deducted under dividend manufacturing regulations by virtue of sub-paragraph (8) below.

(3) If, in a case where this paragraph applies, the overseas dividend manufacturer is not resident in the United Kingdom and the manufactured overseas dividend is paid by him otherwise than in the course of a trade which he carries on through a branch or agency in the United Kingdom, sub-paragraph (2) above shall not apply; but if the manufactured overseas dividend is received by a person resident in the United Kingdom (the "United Kingdom recipient"), then unless the United Kingdom recipient shows either—

(a) that the overseas dividend manufacturer was entitled to payment of the overseas dividend as the registered holder of the overseas securities, or

(b) that the overseas dividend manufacturer was entitled to payment of the overseas dividend directly or indirectly from a person from whom he acquired the overseas securities, or to whom he transferred them, and who was so entitled to the payment,

the United Kingdom recipient shall account for and pay an amount of tax in respect of the manufactured overseas dividend equal to that which the overseas dividend manufacturer would have been required to account for and pay had he been resident in the United Kingdom; and any reference in this Schedule to an amount deducted under sub-paragraph (2) above includes a reference to an amount of tax accounted for and paid under this sub-paragraph.

(4) Where a manufactured overseas dividend is paid after deduction of the amount required by sub-paragraph (2) above, or where the amount of tax required under sub-paragraph (3) above in respect of such a dividend has been accounted for and paid, then for all purposes of the Tax Acts as they apply in relation to persons resident in the United Kingdom or to persons not so resident but carrying on business through a branch or agency in the United Kingdom—

(a) the manufactured overseas dividend shall be treated in relation to the recipient, and all persons claiming title through or under him, as if it were an overseas dividend of an amount equal to the gross amount of the manufactured overseas dividend, but paid after the withholding therefrom, on account of overseas tax, of the amount deducted under sub-paragraph (2) above; and

(b) the amount so deducted shall accordingly be treated in relation to the recipient, and all persons claiming title through or under him, as an amount so withheld instead of as an amount on account of income tax.

(5) For the purposes of this paragraph—

(a) "relevant withholding tax", in relation to the gross amount of a manufactured overseas dividend, means an amount of tax representative of—

(i) the amount (if any) that would have been deducted by way of overseas tax from an overseas dividend on the overseas securities of the same gross amount as the manufactured overseas dividend; and

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(ii) the amount of the overseas tax credit (if any) in respect of such an overseas dividend;

(b) the gross amount of a manufactured overseas dividend is an amount equal to the gross amount of that overseas dividend of which the manufactured overseas dividend is representative, as mentioned in sub-paragraph (1) above; and

(c) the gross amount of an overseas dividend is an amount equal to the aggregate of—

(i) so much of the overseas dividend as remains after the deduction of the overseas tax (if any) chargeable on it;

(ii) the amount of the overseas tax (if any) so deducted; and

(iii) the amount of the overseas tax credit (if any) in respect of the overseas dividend.

(6) Dividend manufacturing regulations may make provision with respect to the rates of relevant withholding tax which are to apply in relation to manufactured overseas dividends in relation to different overseas territories, but in prescribing those rates the Treasury shall have regard to—

(a) the rates at which overseas tax would have fallen to be deducted, and

(b) the rates of overseas tax credits,

in overseas territories, or in the particular overseas territory, in respect of payments of overseas dividends on overseas securities.

(7) Dividend manufacturing regulations may make provision for a person who, in any chargeable period, is an overseas dividend manufacturer to be entitled in prescribed circumstances to set off against each other, in accordance with the regulations—

(a) overseas tax in respect of any overseas dividends, or amounts deducted under sub-paragraph (2) above from any manufactured overseas dividends, received by him in that chargeable period, and

(b) the sums due from him on account of the amounts deducted by him under sub-paragraph (2) above from the manufactured overseas dividends paid by him in that chargeable period,

and account to the Board for, or as the case may be, claim credit in respect of, the balance.

(8) Dividend manufacturing regulations may also make provision for cases where a manufactured overseas dividend is paid or otherwise dealt with in circumstances such that, had it been an overseas dividend in respect of the overseas securities, it would have been—

(a) a relevant foreign dividend, within the meaning of section 123,

(b) a foreign dividend, within the meaning of that section,

(c) interest on a quoted Eurobond held in a recognised clearing system, within the meaning of section 124, or

(d) an overseas public revenue dividend, within the meaning of Part III,

and, notwithstanding anything in sub-paragraph (2) or (3) above, any such regulations may provide for deductions of an amount determined by reference to the gross amount of the manufactured overseas dividend to be made from the manufactured overseas dividend on account of income tax similar to the deductions that would, in the case of an overseas dividend, be made under subsection (2) or (3) of section 123 or under Part III, as the case may be, and for Parts III and IV of Schedule 3 to apply with prescribed modifications in relation thereto.

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Textual Amendments

F1976 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

Modifications etc. (not altering text)

C914 Sch. 23A para. 4(1) applied (1.10.1993) by S.I. 1993/2004, **reg.2**

C915 Sch. 23A para. 4(2) restricted (1.10.1993) by S.I. 1993/2004, **reg.5(1)**

C916 Sch. 23A para. 4(3) restricted (1.10.1993) by S.I. 1993/2004, **reg.7(1)** (as amended by S.I. 2011/1787, **regs. 1**, 7)

VALID FROM 21/07/2009

4A (1) A reference in paragraph 4(4)(a) or (b) to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007 is—

(a) where the deduction is made in respect of a manufactured overseas dividend that is treated as paid under paragraph 13(1) of Schedule 13 to FA 2007 (sale and repurchase of securities), to amount A, and

(b) otherwise, to the amount deducted under section 922(2) of ITA 2007.

(2) Amount A is—

(a) in a case to which sub-paragraph (3) applies, the amount deducted under section 922(2) of ITA 2007,

(b) in a case to which sub-paragraph (4) applies—

(i) the amount deducted under section 922(2) of ITA 2007, less

(ii) the excess mentioned in that sub-paragraph, and

(c) in any other case, nil.

(3) This sub-paragraph applies to a case in which—

(a) an amount is actually paid by way of manufactured overseas dividend,

(b) the amount so paid equals the relevant net amount, and

(c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.

(4) This sub-paragraph applies to a case in which—

(a) an amount is actually paid by way of manufactured overseas dividend,

(b) the amount so paid exceeds the relevant net amount, and

(c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.

(5) In this paragraph "the repurchase price" of the securities means the price at which the payer of the manufactured overseas dividend is entitled or obliged to sell the securities, or similar securities, to the recipient of the manufactured overseas dividend.

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(6) In this paragraph "the securities" means the securities in respect of which the overseas dividend of which the manufactured overseas dividend is representative is paid.

(7) In this paragraph "the relevant net amount" means—

(a) the gross amount of the overseas dividend of which the manufactured overseas dividend is representative, less

(b) the amount deducted under section 922(2) of ITA 2007.

[F1977]*Dividends and interest passing through the market*

Textual Amendments

F1977 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(b),4)

[F1978]5 (1) Sub-paragraph (2) below applies in any case where, under a contract or other arrangements for the transfer of securities, a party ("the payment manufacturer") who satisfies the following condition, that is to say, that he is entitled either—

(a) to a dividend or a periodical payment of interest as the registered holder of the securities, or

(b) to payment, whether directly or indirectly, of any such dividend or interest from a person from whom he acquired the securities or to whom he transferred them,

is required to pay to the other party ("the recipient") an amount representative of that dividend or interest; and in this paragraph the "manufactured payment" means any payment which the payment manufacturer makes in discharge of that requirement.

(2) Where this sub-paragraph applies—

(a) paragraphs 2, 3 and 4 above and section 737 shall not apply in relation to the manufactured payment,

(b) the dividend or interest shall be treated for all purposes of the Tax Acts as the income of the recipient and not as the income of the payment manufacturer, and

(c) the manufactured payment shall not be regarded as the income of the recipient,

but this sub-paragraph is subject to sub-paragraphs (3) and (4) below.

(3) In any case where—

(a) any dividend or interest would, apart from the application or, as the case may be, the subsequent application of this sub-paragraph, be treated by virtue of any provision of this paragraph as the income of a person (the "subsequent manufacturer") who is a party to a further contract or other arrangements for the transfer of securities, and

(b) under that contract or those arrangements, the subsequent manufacturer is required to pay to the other party (the "subsequent recipient") an amount

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representative of the dividend or interest (the "subsequent manufactured payment"),

sub-paragraph (4) below shall apply instead of sub-paragraph (2) above (and, on any second or subsequent application of this sub-paragraph, instead of sub-paragraph (4) below as it last applied).

(4) Where this sub-paragraph applies—

(a) paragraphs 2, 3 and 4 above and section 737 shall not apply in relation to the manufactured payment or any subsequent manufactured payment;

(b) the dividend or interest shall be treated for all purposes of the Tax Acts as the income of the subsequent recipient (or, on a second or subsequent application of sub-paragraph (3) above, the last of them) and not as the income of any other person; and

(c) neither the manufactured payment nor any subsequent manufactured payment shall be regarded as the income of the recipient or of any subsequent recipient;

but this sub-paragraph is subject to any subsequent application of sub-paragraph (3) above.

(5) Notwithstanding anything in sub-paragraphs (1) to (4) above, in any case where—

(a) the dividend or interest is an overseas dividend,

(b) the payment manufacturer or a subsequent manufacturer is resident in the United Kingdom but the recipient or a subsequent recipient is not so resident, and

(c) the rates of overseas tax or overseas tax credit applicable to the overseas dividend in relation to the payment manufacturer or subsequent manufacturer falling within paragraph (b) above are different from what they would have been in relation to the recipient or subsequent recipient falling within that paragraph, had the overseas dividend been paid directly to him,

dividend manufacturing regulations may, in such cases as may be prescribed, make provision for tax to be charged on, or for credit in respect of tax to be given to, such one of the manufacturers falling within paragraph (b) above as may be determined in accordance with the regulations, at such rates as may be so determined.

(6) Any reference in this paragraph to securities is a reference to United Kingdom equities, United Kingdom securities or overseas securities.

Textual Amendments

F1978 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F1979 Unapproved manufactured payments

Textual Amendments

F1979 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified

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for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F1980 6 (1) This paragraph applies where a person makes an unapproved manufactured payment.

(2) Where the unapproved manufactured payment is a manufactured dividend paid by a company, any advance corporation tax paid by the company in respect of the manufactured dividend—

(a) shall not be set against any liability of the company to corporation tax as mentioned in section 239;

(b) shall not be surrendered under, or otherwise treated as mentioned in, section 240; and

(c) shall not be utilised in any other way for the purposes of the Tax Acts;

and no franked investment income of a company shall be used to frank (within the meaning of section 241(5)) the manufactured dividend.

(3) Where the unapproved manufactured payment is manufactured interest paid by a company—

(a) relief shall not be given to the company under any provision of the Tax Acts in respect of any amount which the company is required to deduct from the payment on account of income tax; and

(b) the company shall not be entitled under paragraph 5(1) of Schedule 16 to claim to set income tax borne by deduction from payments received by it against the income tax which it is liable to pay in respect of the payment of manufactured interest.

(4) Where the unapproved manufactured payment is a manufactured overseas dividend—

(a) relief shall not be given to any person under any provision of the Tax Acts in respect of any amount which he is required to deduct from the payment on account of income tax; and

(b) a person shall not be entitled under or by virtue of this Schedule to set—

(i) overseas tax in respect of overseas dividends received by him, or

(ii) an amount deducted under paragraph 4(2) above in respect of manufactured overseas dividends received by him,

against any income tax which he is liable to pay in respect of the payment of the manufactured overseas dividend.

(5) If it appears to an inspector that, notwithstanding the foregoing provisions of this paragraph, franked investment income of a company has been used to frank a manufactured dividend which is an unapproved manufactured payment, he may make an assessment on the dividend manufacturer under sub-paragraph (3) of paragraph 3 of Schedule 13 and that sub-paragraph shall accordingly apply in relation to the amount of advance corporation tax in question.

(6) If it appears to an inspector that, notwithstanding the foregoing provisions of this paragraph, income tax on income received by an interest manufacturer has been set against an amount deducted by the interest manufacturer on account of income tax on a payment of manufactured interest which is an unapproved manufactured payment, the inspector may make an assessment on the interest manufacturer under paragraph

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4 of Schedule 16 and that paragraph shall accordingly apply in relation to the amount of income tax in question.

(7) In this paragraph "relief" means relief by way of—
(a) deduction in computing profits or gains; or
(b) deduction or set off against income or total profits.

Textual Amendments

F1980 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F1981 *Irregular manufactured payments*

Textual Amendments

F1981 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F1982 7 (1) Except where paragraph 5(2) or (4) above applies, in any case where (apart from this paragraph)—
(a) an amount paid by way of manufactured dividend would exceed the amount of the dividend of which it is representative, or
(b) the aggregate of—
(i) an amount paid by way of manufactured interest or manufactured overseas dividend, and
(ii) the tax required to be accounted for in connection with the making of that payment,
would exceed the gross amount (as determined in accordance with paragraph 3 or 4 above) of the interest or overseas dividend of which it is representative, as the case may be,

the payment shall, to the extent of an amount equal to the excess, not be regarded for the purposes of this Schedule as made in discharge of the requirement referred to in paragraph 2(1), 3(1) or 4(1) above, as the case may be, but shall instead to that extent be taken for all purposes of the Tax Acts to constitute a separate fee for entering into the contract or other arrangements under which it was made, notwithstanding anything in paragraphs 2 to 4 above.

(2) Dividend manufacturing regulations may make provision in such circumstances and for such purposes of the Tax Acts as may be prescribed for such a fee as is mentioned in sub-paragraph (1) above to be treated as paid in any case that would fall within that sub-paragraph, apart from paragraph 5 above; and, without prejudice to the generality of the foregoing, any such regulations may in particular provide—

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(a) for the amount of the fee to be determined in accordance with the regulations, and

(b) for such of the persons mentioned in that paragraph as may be prescribed to be treated as paying or, as the case may be, as receiving the fee,

and it is immaterial for the purposes of paragraph (b) above whether or not the person prescribed would, apart from paragraph 5 above, have been regarded by virtue of sub-paragraph (1) above as paying or receiving a fee, or as paying it to, or receiving it from, any other person prescribed under paragraph (b) above.

(3) For the purpose of giving relief under any provision of the Tax Acts in a case falling within paragraph 3(1) or 4(1) above where (apart from this paragraph) the aggregate referred to in sub-paragraph (1)(b) above would be less than the gross amount there mentioned—

(a) the gross amount of the manufactured interest or manufactured overseas dividend shall be taken to be an amount equal to the aggregate referred to in sub-paragraph (1)(b) above, except where paragraph 6 above applies, and

(b) where paragraph 6 above applies, the gross amount of the manufactured interest or manufactured overseas dividend shall be taken to be only the amount referred to in sub-paragraph (1)(b)(i) above,

notwithstanding anything in paragraph 3, 4 or 6 above.

(4) In this paragraph "relief" means relief by way of—

(a) deduction in computing profits or gains; or

(b) deduction or set off against income or total profits.

Textual Amendments

F1982 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

VALID FROM 22/07/2004

Manufactured payments under arrangements having an unallowable purpose

7A (1) This paragraph applies in any case where—

(a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and

(b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

(2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole

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or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.

(3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—
   (a) the arrangements,
   (b) any related transaction (see sub-paragraphs (6) and (7)), or
   (c) any transaction in pursuance of the arrangements,

   include a purpose ("the unallowable purpose") which is not among the business or other commercial purposes of the company.

(4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.

(5) Where one of the purposes for which a company is at any time a party to—
   (a) any arrangements,
   (b) any related transaction in the case of any arrangements, or
   (c) any transaction in pursuance of any arrangements,

   is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.

(6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—
   (a) the likely effect of the transactions, and
   (b) the circumstances in which the transactions are entered into or effected,

   that none of the transactions would have been entered into or effected independently of the arrangements.

(7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—
   (a) are not between the same parties, or
   (b) are not between the parties to the arrangements.

(8) This paragraph does not apply if, as a result of any of the following provisions—
   (a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),
   (b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),
   (c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

   the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

   The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.

(9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references

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to a transaction, or to a company being party to a transaction, are to be construed accordingly).

(10) In this paragraph—

"arrangements" includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

"manufactured payment" means any of the following—

(a) any manufactured dividend;

(b) any manufactured interest;

(c) any manufactured overseas dividend;

"related transaction" shall be construed in accordance with sub-paragraphs (6) and (7) above;

"relevant tax relief" means any of the following—

(a) any deduction in computing profits or gains for the purposes of corporation tax;

(b) any deduction against total profits;

(c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);

(d) the surrender of an amount by way of group relief;

"tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

"tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.

[F1983]*Dividend manufacturing regulations: general*

Textual Amendments

F1983 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

[F1984]8 (1) Dividend manufacturing regulations may make provision for—

(a) such manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed, or

(b) such dividend manufacturers, interest manufacturers or overseas dividend manufacturers as may be prescribed,

to be treated in prescribed circumstances otherwise than as mentioned in paragraph 2, 3 or 4 above for the purposes of such provisions of the Tax Acts as may be prescribed.

(2) Dividend manufacturing regulations may make provision with respect to—

(a) the accounts and other records which are to be kept,

(b) the vouchers which are to be issued or produced,

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(c) the returns which are to be made,

(d) the manner in which amounts required to be deducted or accounted for under or by virtue of this Schedule on account of tax are to be accounted for and paid,

by dividend manufacturers, interest manufacturers or overseas dividend manufacturers in connection with the manufacturing of dividends, interest or overseas dividends.

(3) Dividend manufacturing regulations may—

(a) make provision for prescribed provisions of the Management Act to apply in relation to manufactured dividends, manufactured interest or manufactured overseas dividends with such modifications, specified in the regulations, as the Treasury think fit;

(b) make such further provision with respect to the administration, assessment, collection and recovery of amounts required to be deducted or accounted for under or by virtue of this Schedule on account of tax as the Treasury think fit.

(4) Dividend manufacturing regulations may make different provision for different cases.

Textual Amendments

F1984 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

SCHEDULE 24

Section 747(6).

[M2360] ASSUMPTIONS FOR CALCULATING CHARGEABLE PROFITS, CREDITABLE TAX AND CORRESPONDING UNITED KINGDOM TAX OF FOREIGN COMPANIES

Marginal Citations

M2360 Source-1984 Sch. 16, 1985 Sch. 14 16

General

1 (1) The company shall be assumed to be resident in the United Kingdom.

(2) Nothing in sub-paragraph (1) above requires it to be assumed that there is any change in the place or places at which the company carries on its activities.

(3) For the avoidance of doubt, it is hereby declared that, if any sums forming part of the company's profits for an accounting period have been received by the company without any deduction of or charge to tax by virtue of section 47 or 48 the effect of the assumption in sub-paragraph (1) above is that those sums are to be brought

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within the charge to tax for the purposes of calculating the company's chargeable profits or corresponding United Kingdom tax.

(4) In any case where—

(a) it is at any time necessary for any purpose of Chapter IV of Part XVII to determine the chargeable profits of the company for an accounting period, and

(b) at that time no direction has been given under section 747(1) with respect to that or any earlier accounting period of the company,

[[F1985]in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above**]** it shall be assumed, for the purpose of any of the following provisions of this Schedule which refer to the first accounting period in respect of which a direction is given under that section, that such a direction has been given for that period (but not for any earlier period).

(5) Nothing in this Schedule affects any liability for, or the computation of, corporation tax in respect of a trade which is carried on by a company resident outside the United Kingdom through a branch or agency in the United Kingdom.

Textual Amendments

F1985 Words in Sch. 24 para. 1(4) inserted (retrospectively) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(1)(2)**

2 (1) The company shall be assumed to have become resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the beginning of the first accounting period in respect of which a direction is given under section 747(1) and that United Kingdom residence shall be assumed to continue throughout subsequent accounting periods of the company (whether or not a direction is given in respect of all or any of them) until the company ceases to be controlled by persons resident in the United Kingdom.

(2) Except in so far as the following provisions of this Schedule otherwise provide, for the purposes of calculating a company's chargeable profits or corresponding United Kingdom tax for any accounting period which is not the first such period referred to in sub-paragraph (1) above (and, in particular, for the purpose of applying any relief which is relevant to two or more accounting periods), it shall be assumed that a calculation of chargeable profits or, as the case may be, corresponding United Kingdom tax has been made for every previous accounting period throughout which the company was, by virtue of sub-paragraph (1) above, assumed to have been resident in the United Kingdom.

3 The company shall be assumed not to be a close company.

4 (1) Subject to sub-paragraph (2) below, where any relief under the Corporation Tax Acts is dependent upon the making of a claim or election, the company shall be assumed to have made that claim or election which would give the maximum amount of relief and to have made that claim or election within any time limit applicable to it.

(2) If, by notice given to the Board at any time not later than the expiry of the time for the making of an appeal under section 753 or within such longer period as the Board may in any particular case allow, the United Kingdom resident company which has

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or, as the case may be, any two or more United Kingdom resident companies which together have, a majority interest in the company so request, the company shall be assumed—

(a) not to have made any claim or election specified in the notice; or

(b) to have made a claim or election so specified, being different from one assumed by sub-paragraph (1) above but being one which (subject to compliance with any time limit) could have been made in the case of a company within the charge to corporation tax; or

(c) to have disclaimed or required the postponement, in whole or in part, of an allowance if (subject to compliance with any time limit) a company within the charge to corporation tax could have disclaimed the allowance or, as the case may be, required such a postponement.

(3) For the purposes of this paragraph, a United Kingdom resident company has, or two or more United Kingdom resident companies together have, a majority interest in the company if on the apportionment of the company's chargeable profits for the relevant accounting period under section 747(3) more than half of the amount of those profits—

(a) which are apportioned to all United Kingdom resident companies, and

(b) which give rise to an assessment on any such companies under subsection (4)(a) of that section,

are apportioned to the United Kingdom resident company or companies concerned.

(4) In sub-paragraph (3) above "the relevant accounting period" means the accounting period or, as the case may be, the first accounting period in which the relief in question is or would be available in accordance with sub-paragraph (1) above.

Modifications etc. (not altering text)

C917 Sch. 24 para. 4(3)(4) applied (with modifications) (23.3.1995) by The Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994 (S.I. 1994/3227), **regs. 1(2)**, 6

[F1986 4A F1987 . . . . . .]

Textual Amendments

F1986 Sch. 24 para. 4A inserted (27.7.1993 with effect as mentioned in s. 96(2) of the amending act in relation to any accounting period on or after such day as may be appointed under s. 165(7)(b) of the amending Act) by 1993 c. 34, **ss. 96(1)(2)**, 165(7)(b)

F1987 Sch. 24 para. 4A deemed never to have been inserted, by virtue of Finance Act 1995 (c. 4), Sch. 25 para. 6(3), **Sch. 29 Pt. 8(18)**, Note

Group relief etc.

5 The company shall be assumed to be neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

6 (1) In relation to section 247 it shall be assumed—

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(a) that the conditions for the making of an election under subsection (1) are not fulfilled with respect to dividends paid or received by the company; and

(b) that the conditions for the making of an election under subsection (4) are not fulfilled with respect to payments made or received by the company.

(2) References in sub-paragraph (1) above to dividends or payments received by the company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

7 The company shall be assumed not to be a subsidiary to which the benefit of any advance corporation tax may be surrendered under section 240.

Company reconstructions

8 Without prejudice to the operation of section 343 in a case where the company is the predecessor, within the meaning of that section, and a company resident in the United Kingdom is the successor, within the meaning of that section—

(a) the assumption that the company is resident in the United Kingdom shall not be regarded as requiring it also to be assumed that the company is within the charge to tax in respect of a trade for the purposes of that section, and

(b) except in so far as the company is actually within that charge (by carrying on the trade through a branch or agency in the United Kingdom), it shall accordingly be assumed that the company can never be the successor, within the meaning of that section, to another company (whether resident in the United Kingdom or not).

Losses in pre-direction accounting periods

9 (1) Subject to sub-paragraph (2) below, this paragraph applies in any case where the company incurred a loss in a trade in an accounting period—

(a) which precedes the first accounting period in respect of which a direction is given under section 747(1) ("the starting period"); and

(b) which ended less than six years before the beginning of the starting period; and

(c) in which the company was not resident in the United Kingdom;

and in this paragraph any such accounting period is referred to as a "pre-direction period".

(2) This paragraph does not apply in any case where a declaration is made under paragraph 11(3) below specifying an accounting period of the company which begins before, or is the same as, the first pre-direction period in which the company incurred a loss as mentioned in sub-paragraph (1) above.

(3) If a claim is made for the purpose by the United Kingdom resident company or companies referred to in paragraph 4(2) above, the chargeable profits (if any) of the company for accounting periods beginning with that pre-direction period which is specified in the claim and in which a loss is incurred as mentioned in sub-

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paragraph (1) above shall be determined (in accordance with the provisions of this Schedule other than this paragraph) on the assumption that that pre-direction period was the first accounting period in respect of which a direction was given under section 747(1).

(4) A claim under sub-paragraph (3) above shall be made by notice given to the Board within 60 days of the date of the notice under subsection (1) or subsection (3) of section 753 relating to the starting period or within such longer period as the Board may in any particular case allow.

(5) For the purposes of a claim under sub-paragraph (3) above, it shall be assumed that Chapter IV of Part XVII was in force before the beginning of the first of the pre-direction periods.

(6) In determining for the purposes of this paragraph which accounting period of the company is the starting period, no account should be taken of the effect of any declaration under paragraph 11(3) below.

Capital allowances

10 (1) Subject to paragraphs 11 and 12 below, if, in an accounting period falling before the beginning of the first accounting period in respect of which a direction is given under section 747(1), the company incurred any capital expenditure on the provision of machinery or plant for the purposes of its trade, that machinery or plant shall be assumed, for the purposes of [[F1988]Part II of the 1990 Act], to have been provided for purposes wholly other than those of the trade and not to have been brought into use for the purposes of that trade until the beginning of that first accounting period, and [[F1988]section 81 of] that Act (expenditure treated as equivalent to market value at the time the machinery or plant is brought into use) shall apply accordingly.

(2) This paragraph shall be construed as one with [[F1989]Part II of the 1990 Act].

Textual Amendments

F1988 Words in Sch. 24 para. 10(1) substituted (with effect in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(42)(a)** (with s. 164(3))

F1989 Words in Sch. 24 para. 10(2) substituted (with effect in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(42)(b)** (with s. 164(3))

11 (1) This paragraph applies in any case where it appears to the Board that the reason why no direction was given under section 747(1) in respect of an accounting period which precedes the starting period was that the effect of any allowance which would be assumed for that preceding period by virtue of this Schedule would be such that—

(a) the company would not have been considered to be subject in that accounting period to a lower level of taxation in the territory in which it was resident; or

(b) the company would have had no chargeable profits for that accounting period; or

(c) the chargeable profits of the company for that accounting period would not have exceeded £20,000 or such smaller amount as was appropriate in accordance with section 748(1)(d).

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(2) In this paragraph "the starting period" means the first accounting period in respect of which a direction is given under section 747(1) and, in a case where a claim is made under sub-paragraph (3) of paragraph 9 above, no account shall be taken of the effect of that sub-paragraph in determining which accounting period is the starting period for the purposes of this paragraph.

(3) If, in a case where this paragraph applies, the Board so declare by notice given to every company to which, in accordance with section 753(1), notice of the making of the direction relating to the starting period is required to be given, the chargeable profits of that period and every subsequent accounting period and the corresponding United Kingdom tax for every subsequent accounting period shall be determined (in accordance with the provisions of this Schedule other than this paragraph) on the assumption that the accounting period specified in the declaration was the first accounting period in respect of which a direction was given and, accordingly, as if allowances had been assumed in respect of that accounting period and any subsequent accounting period which precedes the starting period.

(4) Nothing in sub-paragraph (3) above affects the operation of paragraph 9(3) above in a case where the accounting period specified in a claim under paragraph 9(3) above begins before the period specified in a declaration under sub-paragraph (3) above.

(5) Subject to sub-paragraph (6) below, the Board shall not make a declaration under sub-paragraph (3) above with respect to an accounting period which precedes the starting period unless the facts are such that—

(a) assuming the company to have been subject in that period to a lower level of taxation in the territory in which it was resident, and

(b) assuming the company to have had in that period chargeable profits of such an amount that the condition in section 748(1)(d) would not be fulfilled,

correction could have been given in respect of that period under section (1).

(6) In its application to a company falling within section 749(3), sub-paragraph (5) above shall have effect with the omission of paragraph (a).

(7) In this paragraph "allowance" means an allowance under **[**[F1990]Part I or II of the 1990 Act**]**.

Textual Amendments

F1990 Words in Sch. 24 para. 11(7) substituted (with effect in accordance with s. 164(1)(2) of the amending Act) by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(42)(c)** (with s. 164(3))

VALID FROM 01/05/1995

11A (1) This paragraph applies where by virtue of section 747A the company's chargeable profits for an accounting period (the period in question) are to be computed and expressed in a currency (the relevant foreign currency) other than sterling.

(2) For the purposes of making in relation to the period in question any calculation which—

(a) falls to be made under the enactments relating to capital allowances, and

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(b) takes account of amounts arrived at under those enactments in relation to accounting periods falling before the company's commencement day (within the meaning given by section 747A(9)),

it shall be assumed that any such amount is the equivalent, expressed in the relevant foreign currency, of the amount expressed in sterling.

(3) For the purposes of the application in relation to the period in question of paragraph 11(1)(c) above, it shall be assumed that the company's chargeable profits for the period are the sterling equivalent of its chargeable profits found in the relevant foreign currency.

(4) For the purposes of the application of section 34, 35 or 96 of the 1990 Act (motor cars and dwelling-houses) in relation to expenditure incurred in the period in question, it shall be assumed that any sterling sum mentioned in any of those sections is the equivalent, expressed in the relevant foreign currency, of the amount expressed in sterling.

(5) The translation required by sub-paragraph (2) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the first day of the period in question.

(6) The translation required by sub-paragraph (3) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the last day of the period in question.

(7) The translation required by sub-paragraph (4) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the day on which the expenditure concerned was incurred.

Unremittable overseas income

12 For the purposes of the application of section 584 to the company's income it shall be assumed—

(a) that any reference in paragraph (a) or paragraph (b) of subsection (1) of that section to the United Kingdom is a reference to both the United Kingdom and the territory in which the company is in fact resident; and

(b) that a notice under subsection (2) of that section (expressing a wish to be assessed in accordance with that subsection) may be given on behalf of the company by the United Kingdom resident company or companies referred to in paragraph 4(2) above.

VALID FROM 01/05/1995

[F1991 Exchange gains and losses

Textual Amendments

F1991 Sch. 24 paras. 13-19 and cross-heading inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(5)**

Status: *Point in time view as at 06/04/1994. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

13 Paragraphs 14 to 19 below apply for the purposes of the application of Chapter II of Part II of the [M2361]Finance Act 1993.

Marginal Citations
M2361 1993 c. 34.

14 (1) This paragraph applies where—
(a) by virtue of section 747A the company's chargeable profits for an accounting period are to be computed and expressed in a particular currency (the relevant currency),
(b) in an accrual period an asset or contract was held, or a liability was owed, by the company, and
(c) the accrual period falls within or constitutes the accounting period concerned.

(2) It shall be assumed that—
(a) the local currency for the purposes of sections 125 to 127 of the [M2362]Finance Act 1993 is the relevant currency, and
(b) section 149 of that Act (local currency to be used) does not apply as regards the accrual period concerned.

Marginal Citations
M2362 1993 c. 34.

15 Where the accounting period mentioned in section 139(1) of the [M2363]Finance Act 1993 is one for which, by virtue of section 747A, the company's chargeable profits are to be computed and expressed in a currency other than sterling—
(a) section 142(1) to (4) of that Act shall be assumed not to apply as regards that period;
(b) section 142(5) and (6) of that Act shall be assumed not to apply as regards the next accounting period of the company.

Marginal Citations
M2363 1993 c. 34.

16 (1) This paragraph applies where the last relevant accounting period for the purposes of section 146 of the [M2364]Finance Act 1993 is one for which by virtue of section 747A the company's chargeable profits are to be computed and expressed in a particular currency (the relevant currency).

(2) Subsections (10), (11) and (14) of section 146 of the [M2365]Finance Act 1993 shall be assumed not to apply.

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Marginal Citations
M2364 1993 c. 34.
M2365 1993 c. 34.

17 Where by virtue of section 747A the company's chargeable profits for an accounting period are to be computed and expressed in a particular currency, the references in section 148(9) of the [M2366]Finance Act 1993 to sterling shall be assumed to be references to that particular currency.

Marginal Citations
M2366 1993 c. 34.

18 (1) This paragraph applies where the accounting period mentioned in paragraph (b) of subsection (11) of section 153 of the [M2367]Finance Act 1993 is one for which, by virtue of section 747A, the company's chargeable profits are to be computed and expressed in a particular currency (the relevant currency).

(2) That subsection shall have effect as if the reference to the local currency of the trade for the accounting period were a reference to the relevant currency.

Marginal Citations
M2367 1993 c. 34.

19 (1) This paragraph applies where—

(a) Chapter II of Part II of the [M2368]Finance Act 1993 falls to be applied as regards an accounting period of the company;

(b) under that Chapter, an exchange gain or an exchange loss accrued to the company for an accrual period constituting or falling within an earlier accounting period of the company, and

(c) the accounting period mentioned in paragraph (b) above falls before the company's first relevant accounting period.

(2) It shall be assumed, for the purposes of applying Chapter II of Part II of the [M2369]Finance Act 1993 as respects the accounting period mentioned in sub-paragraph (1)(a) above, that the exchange gain or loss mentioned in sub-paragraph (1)(b) above never existed.

(3) In sub-paragraph (1) above—

(a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;

(b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss;

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(c) the reference in sub-paragraph (1)(b) to an exchange gain or an exchange loss accruing is to the gain or loss accruing before the application of any of sections 131, 136, 137 and 140 of the [M2370]Finance Act 1993 in relation to the accounting period mentioned in sub-paragraph (1)(b);

(d) references to the first relevant accounting period of the company shall be construed in accordance with section 747A.]

Marginal Citations

M2368 1993 c. 34.
M2369 1993 c. 34.
M2370 1993 c. 34.

VALID FROM 31/07/1998

[F1992 *Transfer pricing*

Textual Amendments

F1992 Sch. 24 para. 20 and cross-heading inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 24**; S.I. 1998/3173, **art. 2**

20 (1) Sub-paragraph (2) of paragraph 5 of Schedule 28AA (no potential UK tax advantage where both parties are within charge to income or corporation tax etc) shall be assumed not to apply in any case where, apart from that sub-paragraph (and on the assumption in paragraph 1(1) above),—

(a) paragraph 6 of that Schedule would apply; and

(b) the company would be the disadvantaged person for the purposes of that paragraph.

(2) Schedule 28AA (transfer pricing etc: provision not at arm's length) shall be assumed not to apply in any case where, apart from this sub-paragraph,—

(a) the actual provision would (on the assumption in paragraph 1(1) above) confer a potential advantage in relation to United Kingdom taxation on the company;

(b) the other affected person would be a company resident outside the United Kingdom; and

(c) each accounting period of that company which falls wholly or partly within the accounting period in question is one as regards which—

(i) an apportionment under section 747(3) falls to be made; or

(ii) no such apportionment falls to be made by virtue of the period being an ADP exempt period.

(3) In any case where—

(a) by virtue of sub-paragraph (2) above, Schedule 28AA is assumed not to apply, and

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(b) the actual provision mentioned in paragraph (a) of that sub-paragraph involves (on the assumption in paragraph 1(1) above) any such interest or other distribution out of assets as would constitute a distribution for the purposes of the Corporation Tax Acts by virtue of paragraph (da) of section 209(2),

that interest or distribution out of assets shall be assumed not to constitute such a distribution by virtue of that paragraph.**]**

SCHEDULE 25

Section 748.

[M2371]CASES EXCLUDED FROM DIRECTION-MAKING POWERS

Marginal Citations

M2371 Source-1984 Sch.17; 1987 (No.2) s.65

PART I

ACCEPTABLE DISTRIBUTION POLICY

1 The provisions of this Part of this Schedule have effect for the purposes of paragraph (a) of subsection (1) of section 748.

2 (1) Subject to sub-paragraph (2) below, a controlled foreign company pursues an acceptable distribution policy in respect of a particular accounting period if, and only if—

(a) a dividend which is not paid out of specified profits is paid for that accounting period or for some other period which, in whole or in part, falls within that accounting period; and

(b) the dividend is paid during, or not more than eighteen months after the expiry of, the period for which it is paid or at such later time as the Board may, in any particular case, allow; and

(c) *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*

[F1993](d) the proportion of the dividend or, if there is more than one, of the aggregate of those dividends which is paid to persons resident in the United Kingdom represents at least 50 per cent. of the company's available profits for the accounting period referred to in paragraph (a) above or, where sub-paragraph (4) or (5) below applies, of the appropriate portion of those profits;

and for the purposes of this sub-paragraph a dividend which is not paid for a specified period shall be treated as paid for the period or periods the profits of which are, in relation to the dividend, the relevant profits for the purposes of section 799.

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[[F1994](1A) A payment of dividend to a company shall not fall within sub-paragraph (1)(d) above unless it is taken into account in computing the company's income for corporation tax.**]**

(2) In the case of a controlled foreign company which is not a trading company, sub-paragraph (1) above shall have effect with the substitution of 90 per cent. for 50 per cent.

(3) For the purposes of this Part of this Schedule, a dividend represents those profits of the controlled foreign company in question which in relation to that dividend are the relevant profits for the purposes of section 799 and, accordingly, where those profits are the profits of a period which falls partly within and partly outside an accounting period of that company, the necessary apportionment shall be made to determine what proportion of those profits is attributable to that accounting period.

(4) This sub-paragraph applies where—

(a) throughout the accounting period in question all the issued shares of the controlled foreign company are of a single class, and

(b) at the end of that accounting period some of those shares are held by persons resident outside the United Kingdom, and

(c) at no time during that accounting period does any person have an interest in the company other than an interest derived from the issued shares of the company;

and in a case where this sub-paragraph applies the appropriate portion for the purposes of sub-paragraph (1)(d) above is the fraction of which the denominator is the total number of the issued shares of the company at the end of the accounting period in question and, subject to sub-paragraph (8) below, the numerator is the number of those issued shares by virtue of which persons resident in the United Kingdom have interests in the company at that time.

(5) This sub-paragraph applies where—

(a) throughout the accounting period in question there are only two classes of issued shares of the controlled foreign company and, of those classes, one ("non-voting shares") consists of non-voting fixed-rate preference shares and the other ("voting shares") consists of shares which carry the right to vote in all circumstances at general meetings of the company; and

(b) at the end of that accounting period some of the issued shares of the company are held by persons resident outside the United Kingdom; and

(c) at no time during that accounting period does any person have an interest in the company other than an interest derived from non-voting or voting shares;

and in a case where this sub-paragraph applies the appropriate portion of the profits referred to in sub-paragraph (1)(d) above is the amount determined in accordance with sub-paragraph (6) below.

(6) The amount referred to in sub-paragraph (5) above is that given by the formula—

$$\frac{\mathrm{P}yQ}{R} + \frac{(X-P)yY}{Z}$$

where—

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P is the amount of any dividend falling within (a) and (b) of sub-paragraph (1) above which is paid in respect of the non-voting shares or, if there is more than one such dividend, of the aggregate of them;

Q is, subject to sub-paragraph (8) below, the number of the non-voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of the accounting period in question;

R is the total number at that time of the issued non-voting shares;

X is the available profits for the accounting period in question;

Y is, subject to sub-paragraph (8) below, the number of voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of that accounting period; and

Z is the total number at that time of the issued voting shares.

(7) For the purposes of sub-paragraph (5)(a) above, non-voting fixed-rate preference shares are shares—

(a) which are fixed-rate preference shares as defined in paragraph 1 of Schedule 18; and

(b) which either carry no right to vote at a general meeting of the company or carry such a right which is contingent upon the non-payment of a dividend on the shares and which has not in fact become exercisable at any time prior to the payment of a dividend for the accounting period in question.

(8) In any case where the immediate interests held by persons resident in the United Kingdom who have indirect interests in a controlled foreign company at the end of a particular accounting period do not reflect the proportion of the shares or, as the case may be, shares of a particular class in the company by virtue of which they have those interests (as in the case where they hold, directly or indirectly, part of the shares in a company which itself holds, directly or indirectly, some or all of the shares in the controlled foreign company) the number of those shares shall be treated as reduced for the purposes of sub-paragraph (4) or (6) above, as the case may be, to such number as may be appropriate having regard to—

(a) the immediate interests held by the persons resident in the United Kingdom; and

(b) any intermediate shareholdings between those interests and the shares in the controlled foreign company.

(9) The definition of "profits" in section 747(6)(b) does not apply to any reference in this paragraph to specified profits or to relevant profits for the purposes of section 799.

Textual Amendments

F1993 *Repealed by* 1990 s.67(3)(a)*and* s.132*and* Sch.19 Part IV*in relation to dividends paid on or after* 20*March* 1990.

F1994 1990 s.67(3)(b)*in relation to dividends paid on or after* 20*March* 1990.

VALID FROM 03/05/1994

2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company which is not a trading company pursues

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an acceptable distribution policy in respect of a particular accounting period ("the relevant accounting period").

(2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—

(a) any dividend which is paid for the accounting period ("the preceding period") which immediately precedes the relevant accounting period and is not an excluded period shall be treated as falling within that paragraph, and

(b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period which immediately precedes the preceding period and is not an excluded period shall be treated as falling within that paragraph,

and so on; and in this sub-paragraph "dividend" means a dividend not paid out of specified profits.

(3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—

(a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,

(b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—

(i) the relevant profits for that period, or

(ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and

(c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;

or if there are no relevant profits for the period.

(4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period ("the earlier period") earlier than the relevant accounting period, no direction could be given in respect of the earlier period under section 747(1), sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.

(5) The modifications of paragraph 2 above referred to in sub-paragraph (3)(b) above are that—

(a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,

(b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and

(c) the reference in the definition of "X" in sub-paragraph (6) to available profits is to be read as a reference to relevant profits.

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(6) Paragraph 2(1)(d) above shall have effect as if for "50 per cent. of the company's available profits" there were substituted "90 per cent. of the company's net chargeable profits".

(7) In paragraph 2(6) above, the definition of "X" shall have effect as if the reference to available profits were a reference to net chargeable profits.

(8) For the purposes of this paragraph—
- (a) a period is an excluded period if it is an accounting period in respect of which a direction is given under section 747(1), and
- (b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period.

VALID FROM 11/05/2001

2B (1) This paragraph has effect for the purposes of paragraph 2(1A)(b) above.

(2) No payment of dividend by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period.

(3) "UK tax avoidance scheme" means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—
- (a) would have been liable for any such tax or for a greater amount of any such tax; or
- (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

"arrangement" means an arrangement of any kind, whether in writing or not;

"United Kingdom tax" means corporation tax or any tax chargeable as if it were corporation tax.

3 (1) Subject to sub-paragraphs (2) and (5) below, for the purposes of this Part of this Schedule, the available profits of a controlled foreign company for any accounting period shall be ascertained by—
- (a) determining what would be the relevant profits of that period for the purposes of section 799 if a dividend were paid for that period; and
- (b) deducting so much of those relevant profits as consists of an excess of capital profits over capital losses.

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(2) If, for any accounting period of the controlled foreign company which is of less than 12 months duration, the available profits, as ascertained under sub-paragraph (1) above, are less than the chargeable profits (determined on the additional assumptions in section 750(3)(a)) then, if the Board so declare, for the purposes of this Part of this Schedule the available profits for the accounting period shall be those chargeable profits.

(3) The definition of "profits" in section 747(6)(b) does not apply to the reference in sub-paragraph (1)(a) above to relevant profits for the purposes of section 799.

(4) In sub-paragraph (1)(b) above "capital profits" means gains—

(a) which accrue on the disposal of assets; and

(b) which, if the company were within the charge to corporation tax in respect of the activities giving rise to those disposals, would not be taken into account as receipts in computing the company's income or profits or gains or losses for the purposes of the Income Tax Acts;

and the expression "capital losses" shall be construed accordingly.

(5) In any case where—

(a) a controlled foreign company pays a dividend for any period out of specified profits, and

(b) those profits represent dividends received by the company, directly or indirectly, from another controlled foreign company,

so much of those specified profits as is equal to the dividend referred to in paragraph (a) above shall be left out of account in determining, for the purposes of this Part of this Schedule, the available profits of the controlled foreign company referred to in that paragraph for any accounting period.

4 (1) For the purposes of this Part of this Schedule, where—

(a) a controlled foreign company pays a dividend ("the initial dividend") to another company which is also not resident in the United Kingdom, and

(b) that other company or another company which is related to it pays a dividend ("the subsequent dividend") to a United Kingdom resident, and

(c) *the subsequent dividend is paid at a time when the company paying it is not resident in the United Kingdom; and*

[F1995](d) the subsequent dividend is paid out of profits which are derived, directly or indirectly, from the whole or part of the initial dividend,

so much of the initial dividend as is represented by the subsequent dividend shall be regarded as paid to the United Kingdom resident.

[[F1996](1A) A payment to a company shall not be a subsequent dividend within the meaning of sub-paragraph (1)(b) above unless it is taken into account in computing the company's income for corporation tax.**]**

(2) For the purposes of this paragraph, one company is related to another if the other—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10 per cent. of the voting power in the first-mentioned company; and where one company is so related to another and that other is so related to a third company,

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the first company is for the purposes of this paragraph related to the third, and so on where there is a chain of companies, each of which is related to the next.

Textual Amendments

F1995 *Repealed by* 1990 s.67(3)(a)*and* s.132*and* Sch.19 Part IV*in relation to dividends paid on or after* 20*March* 1990.

F1996 1990 s.67(3)(c)*in relation to dividends paid on or after* 20*March* 1990.

VALID FROM 11/05/2001

4A (1) This paragraph has effect for the purposes of paragraph 4(1A)(b) above.

(2) No payment to a company resident in the United Kingdom which represents the whole or part of a dividend paid by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that—

(a) there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period, and

(b) so much of the dividend as is represented by that payment will (if paragraph 4(1) above has effect) fall to be brought into account in determining whether the controlled foreign company has done so.

(3) "UK tax avoidance scheme" means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

"arrangement" means an arrangement of any kind, whether in writing or not;

"United Kingdom tax" means corporation tax or any tax chargeable as if it were corporation tax.

PART II

EXEMPT ACTIVITIES

5 (1) The provisions of this Part of this Schedule have effect for the purposes of paragraph (b) of subsection (1) of section 748.

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(2) In the case of a controlled foreign company—
  (a) which is, by virtue of section 749(3), presumed to be resident in a territory in which it is subject to a lower level of taxation, and
  (b) the business affairs of which are, throughout the accounting period in question, effectively managed in a territory outside the United Kingdom other than one in which companies are liable to tax by reason of domicile, residence or place of management,

references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to the territory falling within paragraph (b) above, or, if there is more than one, to that one of them which may be notified to the Board by the United Kingdom resident company or companies referred to in paragraph 4(2) of Schedule 24.

6 (1) Throughout an accounting period a controlled foreign company is engaged in exempt activities if, and only if, each of the following conditions is fulfilled—
  (a) that, throughout that accounting period, the company has a business establishment in the territory in which it is resident; and
  (b) that, throughout that accounting period, its business affairs in that territory are effectively managed there; and
  (c) that any of sub-paragraphs (2) to (4) below applies to the company.

(2) This sub-paragraph applies to a company if—
  (a) at no time during the accounting period in question does the main business of the company consist of either—
    (i) investment business, or
    (ii) dealing in goods for delivery to or from the United Kingdom or to or from connected or associated persons; and
  (b) in the case of a company which is mainly engaged in wholesale, distributive or financial business in that accounting period, less than 50 per cent. of its gross trading receipts from that business is derived directly or indirectly from connected or associated persons.

(3) This sub-paragraph applies to a company which is a holding company if at least 90 per cent. of its gross income during the accounting period in question is derived directly from companies which it controls and which, throughout that period—
  (a) are resident in the territory in which the holding company is resident; and
  (b) are not themselves holding companies, but otherwise are, in terms of this Schedule, engaged in exempt activities;

and a holding company to which this sub-paragraph applies is in this Part of this Schedule referred to as a "local holding company".

(4) This sub-paragraph applies to a company which is a holding company, but not a local holding company, if at least 90 per cent. of its gross income during the accounting period in question is derived directly from companies which it controls and which, throughout that period—
  (a) are local holding companies; or
  (b) are not themselves holding companies (whether local or not), but otherwise are, in terms of this Schedule, engaged in exempt activities.

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(5) Any reference in sub-paragraph (3) or (4) above to a company which a holding company controls includes a reference to a trading company in which the holding company holds the maximum amount of ordinary share capital which is permitted under the law of the territory—
  (a) in which the trading company is resident; and
  (b) from whose laws the trading company derives its status as a company.

(6) The following provisions of this Part of this Schedule have effect in relation to sub-paragraphs (1) to (4) above.

7 (1) For the purposes of paragraph 6(1)(a) above, a "business establishment", in relation to a controlled foreign company, means premises—
  (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence; and
  (b) from which the company's business in the territory in which it is resident is wholly or mainly carried on.

(2) For the purposes of sub-paragraph (1) above the following shall be regarded as premises—
  (a) an office, shop, factory or other building or part of a building; or
  (b) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; or
  (c) a building site or the site of a construction or installation project;

but such a site as is referred to in paragraph (c) above shall not be regarded as premises unless the building work or the project, as the case may be, has a duration of at least twelve months.

8 (1) Subject to sub-paragraph (4) below, the condition in paragraph 6(1)(b) above shall not be regarded as fulfilled unless—
  (a) the number of persons employed by the company in the territory in which it is resident is adequate to deal with the volume of the company's business; and
  (b) any services provided by the company for persons resident outside that territory are not in fact performed in the United Kingdom.

(2) For the purposes of sub-paragraph (1)(a) above, persons who are engaged wholly or mainly in the business of the company and whose remuneration is paid by a person connected with, and resident in the same territory as, the company shall be treated as employed by the company.

(3) In the case of a holding company, sub-paragraph (2) above shall apply with the omission of the words "wholly or mainly".

(4) For the purposes of sub-paragraph (1)(b) above, no account shall be taken of services—
  (a) provided through a branch or agency of the controlled foreign company if the profits or gains of the business carried on through the branch or agency are within the charge to tax in the United Kingdom; or
  (b) provided through any other person whose profits or gains from the provision of the services are within the charge to tax in the United Kingdom and who provides the services for a consideration which is, or which is not dissimilar

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from what might reasonably be expected to be, determined under a contract entered into at arm's length; or

(c) which are no more than incidental to services provided outside the United Kingdom.

9 (1) Subject to sub-paragraph (3) below, for the purposes of paragraph 6(2)(a)(i) above, each of the following activities constitutes investment business—

(a) the holding of securities, **[**[F1997]or intellectual property**]**;

(b) dealing in securities, other than in the capacity of a broker;

(c) the leasing of any description of property or rights; and

(d) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of the controlled foreign company in question.

[[F1998](1A) In sub-paragraph (1)(a) above "intellectual property" means patents, registered designs, copyright and design right (or any similar rights under the law of a country outside the United Kingdom)**]**.

(2) In sub-paragraph (1)(b) above "broker" includes any person offering to sell securities to, or purchase securities from, members of the public generally.

(3) For the purposes of paragraph 6(2) above, in the case of a company which is mainly engaged in banking or any similar business falling within paragraph 11(1)(c) below, nothing in sub-paragraph (1) above shall require the main business of the company to be regarded as investment business.

Textual Amendments

F1997 Words in Sch. 25 para. 9(1)(a) substituted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), **Sch. 7 para. 36(9)**; S.I. 1989/816, **art. 2**

F1998 Sch. 25 para. 9(1A) inserted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), **Sch. 7 para. 36(9)**; S.I. 1989/816, **art. 2**

10 Goods which are actually delivered into the territory in which the controlled foreign company is resident shall not be taken into account for the purposes of paragraph 6(2)(a)(ii) above.

11 (1) For the purposes of paragraph 6(2)(b) above, each of the following activities constitutes wholesale, distributive or financial business—

(a) dealing in any description of goods wholesale rather than retail;

(b) the business of shipping or air transport, that is to say, the business carried on by an owner of ships or the business carried on by an owner of aircraft ("owner" including, for this purpose, any charterer);

(c) banking or any similar business involving the receipt of deposits, loans or both and the making of loans or investments;

(d) the administration of trusts;

(e) dealing in securities in the capacity of a broker, as defined in paragraph 9(2) above;

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(f) dealing in commodity or financial futures; and

(g) insurance business which is long-term business or general business, as defined in section 1 of the [M2372]Insurance Companies Act 1982.

(2) In a case where the gross trading receipts of a company include an amount in respect of the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall be a deduction in calculating the company's gross trading receipts for the purposes of paragraph 6(2)(b) above.

(3) In the case of a controlled foreign company engaged in a banking or other business falling within sub-paragraph (1)(c) above—

(a) no payment of interest received from a company resident in the United Kingdom shall be regarded for the purposes of paragraph 6(2)(b) above as a receipt derived directly or indirectly from connected or associated persons, but

(b) it shall be conclusively presumed that the condition in paragraph 6(2)(b) above is not fulfilled if, at any time during the accounting period in question, the amount by which the aggregate value of the capital interests in the company held directly or indirectly by—

(i) the persons who have control of the company, and

(ii) any person connected or associated with those persons,

exceeds the value of the company's fixed assets is 15 per cent. or more of the amount by which the company's outstanding capital exceeds that value.

(4) For the purposes of this paragraph, in relation to a controlled foreign company—

(a) "capital interest" means an interest in the issued share capital or reserves of the company or in a loan to or deposit with the company or the liability of a guarantor under a guarantee given to or for the benefit of the company;

(b) except in the case of the liability of a guarantor, the value of a capital interest is its value as shown in the company's accounts;

(c) in the case of the liability of a guarantor, the value shall be taken to be the market value of the benefit which the controlled foreign company derives from the provision of the guarantee;

(d) the value of the company's fixed assets means the value, as shown in the company's accounts, of the plant, premises and trade investments employed in the company's business; and

(e) "outstanding capital" means the total value of all the capital interests in the company, less the value, as shown in the company's accounts, of any advances made by the company to persons resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above.

(5) For the purposes of sub-paragraph (4) above—

(a) "trade investments", in relation to a controlled foreign company, means securities any profit on the sale of which would not be brought into account as a trading receipt in computing the chargeable profits of an accounting period in which that profit arose; and

(b) the reference in paragraph (e) to advances made to a person by the controlled foreign company includes, in the case of a company which is a person resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above, any securities of that

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company which are held by the controlled foreign company but are not trade investments, as defined in paragraph (a) above;

and in this sub-paragraph "securities" includes stocks and shares.

(6) In the application of paragraph 6(2)(b) above in the case of a controlled foreign company engaged in insurance business of any kind—

(a) the reference to gross trading receipts which are derived directly or indirectly from connected or associated persons is a reference to those which, subject to sub-paragraph (7) below, are attributable, directly or indirectly, to liabilities undertaken in relation to any of those persons or their property;

(b) the only receipts to be taken into account are commissions and premiums received under insurance contracts;

(c) so much of any such commission or premium as is returned is not to be taken into account; and

(d) when a liability under an insurance contract is reinsured, in whole or in part, the amount of the premium which is attributable, directly or indirectly, to that liability shall be treated as reduced by so much of the premium under the reinsurance contract as is attributable to that liability.

(7) In determining, in relation to a controlled foreign company to which sub-paragraph (6) above applies, the gross trading receipts referred to in paragraph (a) of that sub-paragraph, there shall be left out of account any receipts under a local reinsurance contract which are attributable to liabilities which—

(a) are undertaken under an insurance contract made in the territory in which the company is resident; and

(b) are not reinsured under any contract other than a local reinsurance contract; and

(c) relate either to persons who are resident in that territory and are neither connected nor associated with the company or to property which is situated there and belongs to persons who are not so connected or associated;

and in paragraph (a) above "insurance contract" does not include a reinsurance contract.

(8) In sub-paragraph (7) above "local reinsurance contract" means a reinsurance contract—

(a) which is made in the territory in which the controlled foreign company is resident; and

(b) the parties to which are companies which are resident in that territory.

(9) For the purposes of sub-paragraphs (7) and (8) above, any question as to the territory in which a company is resident shall be determined in accordance with section 749 and, where appropriate, paragraph 5(2) above; and, for the purpose of the application of those provisions in accordance with this sub-paragraph, the company shall be assumed to be a controlled foreign company.

Marginal Citations

M2372 1982 c. 50.

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VALID FROM 27/11/2002

11A (1) This paragraph has effect for the interpretation of paragraph 6(2B) above.

(2) "Contract of long-term insurance" means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(3) "Protection business" means contracts of long-term insurance where—

(a) either—

(i) the contract has no surrender value; or

(ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and

(b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;

and references to protection business include a reference to reinsurance of protection business.

(4) "Insurance group" shall be construed in accordance with section 255A(5) of the Companies Act 1985 (meaning of "insurance group" in Part 7) but reading Part 7 of that Act—

(a) as if it extended to Northern Ireland, and

(b) as if any reference to a company (within the meaning of that Act) included a reference to a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986,

but does not include such an insurance group if it falls within sub-paragraph (5) below.

(5) Such an insurance group falls within this sub-paragraph if (within the meaning of that Part as so read) the parent company is a subsidiary undertaking of a parent company which is neither—

(a) the parent company of an insurance group; nor

(b) a subsidiary undertaking of the parent company of an insurance group.

(6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a "member of an insurance group" if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.

(7) A company's main business is "insuring or reinsuring large risks" if (and only if)—

(a) the company's main business is the effecting or carrying out of contracts of insurance; and

(b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.

"Large risks" is defined in paragraph 11B below.

(8) In this paragraph—

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

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"contract of long-term insurance" has the meaning given by sub-paragraph (2) above.

VALID FROM 27/11/2002

11B (1) In paragraph 11A above "large risks" means—

(a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;

(c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.

(2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—

(a) balance sheet total: 6.2 million euros;

(b) net turnover: 12.8 million euros;

(c) number of employees: 250.

(3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—

(a) "balance sheet total" has the meaning given by section 247(5) of that Act or Article 255(5) of that Order;

(b) "net turnover" has the meaning given to "turnover" by section 262(1) of that Act or Article 270(1) of that Order; and

(c) "number of employees" has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;

and for a financial year which is a company's financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.

(4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.

(5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.

(6) In sub-paragraphs (1) to (5) above "business" includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.

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(7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.

(8) In this paragraph—

"euro" means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;

"financial year", in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.

12 (1) Subject to sub-paragraph (2) below, in paragraphs 6 and 8(3) above and sub-paragraphs (4) and (5) below "holding company" means—

(a) a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are either local holding companies and its 90 per cent. subsidiaries or trading companies and either its 51 per cent. subsidiaries or companies falling within paragraph 6(5) above; or

(b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.

(2) In determining whether a company is a holding company for the purposes of paragraph 6(3) above (and, accordingly, whether the company is or may be a local holding company), sub-paragraph (1) above shall have effect with the omission from paragraph (a) thereof of the words "either local holding companies and its 90 per cent. subsidiaries or".

(3) In its application for the purposes of this paragraph, section 838 shall have effect with the omission of—

(a) in subsection (1)(a), the words "or indirectly"; and

(b) subsection (2).

(4) For the purposes of sub-paragraph (3) or (4), as the case may be, of paragraph 6 above, as it applies in relation to a holding company part of whose business consists of activities other than the holding of shares or securities or the holding of property or rights as mentioned in paragraph (a) or (b) of sub-paragraph (1) above, the company's gross income during any accounting period shall be determined as follows—

(a) there shall be left out of account so much of what would otherwise be the company's gross income as is derived from any activity which, if it were the business in which the company is mainly engaged, would be such that paragraph 6(2) above would apply to the company; and

(b) to the extent that the receipts of the company from any other activity include receipts from the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall (to the extent that the cost does not exceed the receipts) be a deduction in calculating the company's gross income, and no other deduction shall be made in respect of that activity.

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(5) For the purposes of sub-paragraphs (3) and (4) of paragraph 6 above, so much of the income of a holding company as—

(a) is derived directly from another company which it controls and which is not a holding company but otherwise is, in terms of this Schedule, engaged in exempt activities, and

(b) was or could have been paid out of any non-trading income of that other company which is derived directly or indirectly from a third company connected or associated with it,

shall be treated, in relation to the holding company, as if it were not derived directly from companies which it controls.

(6) The reference in sub-paragraph (5) above to the non-trading income of a company is a reference to so much of its income as, if the company were carrying on its trade in the United Kingdom, would not be within the charge to corporation tax under Case I of Schedule D.

VALID FROM 31/07/1998

12A (1) In paragraphs 6, 8(3) and 12(5) above and this paragraph, "superior holding company" means—

(a) a company whose business consists wholly or mainly in the holding of shares or securities of companies which—

(i) are holding companies or local holding companies; or

(ii) are themselves superior holding companies; or

(b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.

(2) For the purposes of sub-paragraphs (4A) and (4B) of paragraph 6 above, the income of a company during any period which "represents qualifying exempt activity income of its subsidiaries" is any income of the company during that period which is directly or indirectly derived from companies—

(a) which it controls, and

(b) which, throughout that period, fall within sub-paragraph (4B)(a) of that paragraph, but

(c) which are not holding companies other than local holding companies.

(3) In determining for the purposes of sub-paragraph (4A) or (4B) of paragraph 6 above the companies from which, and the proportions in which, different descriptions of income of a company are derived (whether directly or indirectly), any dividend shall be taken to be paid out of the appropriate profits.

(4) Subsections (3) and (4) of section 799 (which provide rules for determining the profits out of which a dividend is to be regarded as paid for the purpose of subsection (1) of that section) shall apply for determining the appropriate profits for the purposes of subsection (3) above as they apply for determining the relevant profits for the purposes of subsection (1) of that section.

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(5) Sub-paragraphs (4) to (6) of paragraph 12 above shall apply in relation to sub-paragraph (4A) or (4B) of paragraph 6 above and a superior holding company as they apply in relation to sub-paragraph (3) or (4) of paragraph 6 above and a holding company, but taking the reference in sub-paragraph (4) of paragraph 12 above to paragraph (a) or (b) of sub-paragraph (1) of that paragraph as a reference to paragraph (a) or (b) of sub-paragraph (1) above.

VALID FROM 19/07/2011

[F1999 PART 2A

TRADING COMPANIES WITH LIMITED UK CONNECTION

Textual Amendments

F1999 Sch. 25 Pts. 2A, 2B (paras. 12B-12N) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 3**

Introductory

12B (1) For the purposes of section 748(1)(ba), a controlled foreign company ("C") is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.

(2) The requirements are those imposed as to C's—
- (a) business establishment (see paragraph 12C),
- (b) business activities (see paragraph 12D),
- (c) UK connection (see paragraph 12E), and
- (d) finance income and relevant IP income (see paragraph 12F).

Business establishment

12C (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.

(2) For the purposes of sub-paragraph (1)—
- (a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and
- (b) paragraph 7 (meaning of "business establishment") applies as it applies for the purposes of paragraph 6(1)(a).

Business activities

12D (1) The requirement of this paragraph is that—
- (a) C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities, or
- (b) if C is wholly engaged in business falling within paragraph 11(1)(c) (banking etc), C's business does not, at any time during the accounting

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period, include to a substantial extent non-exempt activities which do not constitute investment business.

(2) For this purpose—

"non-exempt activities" means—

(a) the holding or managing of shares or securities,

(b) the holding of intellectual property,

(c) dealing in securities, other than in the capacity of a broker,

(d) the leasing of any description of property or rights,

(e) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of C, and

(f) if C is not a member of an insurance group throughout the accounting period, the effecting or carrying out of contracts of insurance between C and persons related to C;

"investment business" means activities within paragraphs (a) to (d) of paragraph 9(1).

(3) For the purposes of sub-paragraph (2)(f), a person is "related" to C if—

(a) the person is connected or associated with C,

(b) the person has a 25 per cent assessable interest in C in the case of the accounting period in question (within the meaning of paragraph 6(4C)), or

(c) if C is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(4) In sub-paragraph (2)—

"broker" includes any person offering to sell securities to, or purchase securities from, members of the public generally;

"contract of insurance" has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"insurance group" has the meaning given by paragraph 11A(4);

"intellectual property" is to be construed in accordance with paragraph 9(1A);

"member of an insurance group" has the meaning given by paragraph 11A(6).

UK connection

12E (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

(2) C has a significant connection with the United Kingdom during the accounting period if Condition A or B is met.

(3) Condition A is that—

(a) the UK-connected gross income of C's business for that period exceeds 10% of the gross income of that business for that period, and

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(b) sub-paragraph (4) does not apply.

(4) This sub-paragraph applies if—

(a) at all times in the accounting period there are sufficient individuals working for C in the territory in which it is resident, or in any other territory outside of the United Kingdom, who have the competence and authority to undertake all, or substantially all, of C's business,

(b) C's relevant profits for the accounting period do not exceed 10% of C's relevant operating expenses for that period, and

(c) the UK-connected gross income of C's business for that period does not exceed 50% of the gross income of that business for that period.

(5) Condition B is that—

(a) the UK-connected related-party business expenditure of C's business for that period exceeds 50% of the total related-party business expenditure of C's business for that period, and

(b) during the accounting period C has been involved in a scheme where the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to achieve a reduction in corporation tax or any tax chargeable as if it were corporation tax.

(6) For the purposes of sub-paragraph (4)(a), individuals are not to be regarded as working for C in any territory unless—

(a) they are employed by C in the territory, or

(b) they are otherwise directed by C to perform duties on its behalf in the territory.

(7) In this paragraph—

"related-party business expenditure" means any expenditure, other than capital expenditure, which gives rise, directly or indirectly, to income of a person related to C;

"relevant profits", for an accounting period, means the total profits of C for that period calculated in accordance with generally accepted accounting practice (disregarding any capital gains or losses), but before any deduction for interest or tax;

"relevant operating expenses" of C means operating expenses of C other than—

(a) the cost of goods sold, and

(b) related-party business expenditure;

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;

"UK-connected gross income" means the gross income derived, directly or indirectly, from persons who are within the charge to United Kingdom tax for all or part of the accounting period;

"UK-connected related-party business expenditure" means related-party business expenditure which gives rise, directly or indirectly, to income of a person within the charge to United Kingdom tax in respect of that income;

"United Kingdom tax" means income tax or corporation tax;

and paragraph 12D(3) (persons "related" to C) applies for the purposes of this paragraph as it applies for the purposes of paragraph 12D(2)(f).

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(8) In the case of a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there, for the purposes of sub-paragraph (7)—
- (a) the gross income derived from that company is so much of the gross income as is attributable to that establishment, and
- (b) the income received by that company is such of its income as is attributable to that establishment.

Finance income and relevant IP income

12F (1) The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period falls within sub-paragraph (2).

(2) Gross income falls within this sub-paragraph to the extent that it is—
- (a) finance income, or
- (b) relevant IP income.

(3) "Finance income" means—
- (a) any amount which in accordance with UK generally accepted accounting practice falls to be recognised as arising from a financial asset, and
- (b) any return, in relation to an amount, which—
  - (i) is produced for C by an arrangement to which C is party, and
  - (ii) is economically equivalent to interest,

  except to the extent that the return is taken into account in determining an amount within paragraph (a).

(4) "Relevant IP income" means royalties and receipts of a similar nature arising from intellectual property.

(5) For the purposes of sub-paragraph (3)(b), the amount of a return is the amount which by virtue of the return would, in calculating C's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to C from a loan relationship.

(6) But, in calculating that profit for the purposes of sub-paragraph (5), sections 486B(7) and 486C to 486E of CTA 2009 are to be ignored.

(7) In this paragraph—

"economically equivalent to interest" is to be construed in accordance with section 486B(2) and (3) of CTA 2009;

"financial asset" means a financial asset as defined for the purposes of UK generally accepted accounting practice or international accounting standards;

"intellectual property" is to be construed in accordance with paragraph 9(1A).

Gross income

12G (1) References in this Part of this Schedule to C's gross income are to be construed in accordance with this paragraph.

(2) C's gross income for an accounting period does not include—

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(a) any distribution that would not be included in C's chargeable profits by reason of it being exempt for the purposes of Part 9A of CTA 2009 (see section 931A of that Act), or

(b) any amount that would be taken into account in computing chargeable gains if C were within the charge to corporation tax.

(3) C's gross income for an accounting period includes—

(a) any income which accrues during that period to the trustees of a settlement in relation to which C is a settlor or a beneficiary, and

(b) any income which accrues during that period to a partnership of which C is a partner, apportioned between C and the other partners on a just and reasonable basis.

(4) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (3)(a), the income is to be apportioned between C and the other settlors or beneficiaries on a just and reasonable basis.

(5) In this paragraph—

"distribution" has the same meaning as in the Corporation Tax Acts (see Part 23 of CTA 2010);

"partnership" includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly.

VALID FROM 19/07/2011

PART 2B

COMPANIES EXPLOITING INTELLECTUAL PROPERTY WITH LIMITED UK CONNECTION

Introductory

12H (1) For the purposes of section 748(1)(bb), a company ("C") is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.

(2) The requirements are those imposed as to C's—

(a) business establishment (see paragraph 12I),

(b) intellectual property business (see paragraph 12J),

(c) other business activities (see paragraph 12K),

(d) UK connection (see paragraph 12L), and

(e) finance income (see paragraph 12M).

Business establishment

12I (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.

(2) For the purposes of sub-paragraph (1)—

(a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and

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(b) paragraph 7 (meaning of "business establishment") applies as it applies for the purposes of paragraph 6(1)(a).

Intellectual property business

12J (1) The requirement of this paragraph is that C's main business, throughout the accounting period, consists of the exploitation of intellectual property which does not have a relevant UK connection.

(2) For the purposes of sub-paragraph (1), if any part of C's main business consists of the exploitation of intellectual property which has a relevant UK connection, that part is to be ignored if it is an insignificant part of C's main business.

(3) Intellectual property has a relevant UK connection if—

(a) at any time during the accounting period or the 6 years immediately preceding that period, it has been held by a person resident in the United Kingdom, or

(b) activities relating to the creation, maintenance or enhancement of the intellectual property (other than activities of an incidental or insignificant nature) have been carried on by a person who for some or all of the period—

(i) beginning when the activities were first carried on by the person, and

(ii) ending at the end of the accounting period,

was related to C and within the charge to United Kingdom tax.

Other business activities

12K (1) The requirement of this paragraph is that—

(a) C does not, at any time during the accounting period, carry on any activities otherwise than in the course of its main business, or

(b) if it carries on any such activities ("secondary activities"), the secondary activities condition is met.

(2) The secondary activities condition is that either—

(a) the secondary activities do not, at any time during the accounting period, constitute a substantial part of the activities of C's business taken as a whole, or

(b) section 748(1)(b) or (ba) would apply to prevent an apportionment under section 747(3) falling to be made as regards that period, if C's business consisted only of the secondary activities carried on by it during the accounting period.

UK connection

12L (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

(2) C has a significant connection with the United Kingdom during the accounting period if—

(a) all or a substantial proportion of C's gross income for that period consists of income from the exploitation of intellectual property which derives from persons within the charge to United Kingdom tax, or

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(b) during that period C incurs expenditure (other than expenditure of an incidental or insignificant nature) on—

(i) R&D sub-contractor payments, or

(ii) the creation, development or maintenance of relevant intellectual property,

and that expenditure forms part of the income of a person who for some or all of that period is related to C and within the charge to United Kingdom tax.

(3) In this paragraph—

"R&D sub-contractor payment" means a payment made by C to another person in respect of research and development contracted out by C to that person;

"relevant intellectual property" means intellectual property which does not have a relevant UK connection (see paragraph 12J(3)) and which C exploits in the course of its main business.

Finance income

12M The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period consists of finance income (within the meaning of paragraph 12F(3)).

Interpretation of Part 2B

12N (1) For the purpose of this Part of this Schedule—

"intellectual property" is to be construed in accordance with paragraph 9(1A);

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G (meaning of "gross income") applies as it applies for the purposes of Part 2A of this Schedule.

(2) For the purposes of this Part of this Schedule a person is "related" to C at a particular time if at that time—

(a) the person is connected or associated with C,

(b) the person has a 25 per cent assessable interest in C in the case of the accounting period of C in which that time falls (within the meaning of paragraph 6(4C)), or

(c) if C is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(3) In the case of a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there—

(a) for the purposes of paragraph 12J(3)(b), the activities carried on by the company are such of the activities as are carried on through that establishment,

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(b) for the purposes of paragraph 12L(2)(a), the income derived from that company is such of the income so derived as is attributable to that establishment, and

(c) for the purposes of paragraph 12L(2)(b), the income of that company is such of its income as is attributable to that establishment.**]**

PART III

THE PUBLIC QUOTATION CONDITION

13 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(c).

(2) Subject to paragraph 14 below, a controlled foreign company fulfils the public quotation condition with respect to a particular accounting period if—

(a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, the public and, throughout that accounting period, are beneficially held by the public; and

(b) within the period of 12 months ending at the end of the accounting period, any such shares have been the subject of dealings on a recognised stock exchange situated in the territory in which the company is resident; and

(c) within that period of 12 months the shares have been quoted in the official list of such a recognised stock exchange.

14 (1) The condition in paragraph 13(2) above is not fulfilled with respect to an accounting period of a controlled foreign company if at any time in that period the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.

(2) For the purposes of paragraph 13(2) above shares in a controlled foreign company shall be deemed to be beneficially held by the public if they are held by any person other than—

(a) a person connected or associated with the company; or

(b) a principal member of the company;

and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.

15 (1) References in this Part of this Schedule to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.

(2) For the purposes of this Part of this Schedule—

(a) a person is a principal member of a controlled foreign company if he possesses a percentage of the voting power in the company of more than 5 per cent. and—

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(i) where there are more than five such persons, if he is one of the five persons who possess the greatest percentages, or

(ii) if, because two or more persons possess equal percentage of the voting power in the company, there are no such five persons, he is one of six or more persons (so as to include those two or more who possess the equal percentages) who possess the greatest percentages; and

(b) a principal member's holding consists of the shares which carry the voting power possessed by him.

(3) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.

(4) In this Part of this Schedule "shares" include "stock".

VALID FROM 19/07/2011

[F2000 PART 3A

EXEMPT PERIODS

Textual Amendments

F2000 Sch. 25 Pt. 3A (paras. 15A-15G) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 8**

Introductory

15A The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(f).

Beginning of exempt period

15B (1) An exempt period begins in relation to a company ("X") at a time ("the relevant time") when—

(a) X is resident outside the United Kingdom,

(b) X is controlled by persons resident in the United Kingdom,

(c) there is at least one relevant UK corporate investor in X, and

(d) the requirements of paragraph 15C or 15D are met.

(2) There is a "relevant UK corporate investor in X" at a particular time if, at that time, there is a company which—

(a) is resident in the United Kingdom, and

(b) would, on the assumptions set out in sub-paragraph (3), be a company to which an apportionment of X's chargeable profits for the relevant accounting period would fall to be made in circumstances where section 747(5) would not prevent tax being chargeable on the company under section 747(4).

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(3) The assumptions are—
- (a) X has chargeable profits for the relevant accounting period,
- (b) an apportionment of those profits falls to be made under section 747(3) for that period, and
- (c) no reduction of those profits arises under section 751A, 751AA or 751AB.

(4) "The relevant accounting period" means the accounting period of X in which the time mentioned in sub-paragraph (2) falls.

15C (1) The requirements of this paragraph are that—
- (a) no company was, at any time before the relevant time, a relevant UK corporate investor in X,
- (b) no asset owned by X, or part of the business carried on by X, at the relevant time was previously owned, or carried on, by a company which—
  - (i) was under the control of persons resident in the United Kingdom at any time it owned the asset or carried on the part of the business, and
  - (ii) is or has been related to X,
- (c) condition A, B, C or D is met, and
- (d) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) Condition A is that, immediately before the relevant time, X—
- (a) was in existence, but
- (b) was not a member of the same group of companies as any person who, at the relevant time, was a controlling UK person.

(3) Condition B is that—
- (a) at the relevant time X is controlled by a company which is resident in the United Kingdom, and
- (b) immediately before that time, X was controlled by that same company but that company was not then resident in the United Kingdom.

(4) Condition C is that—
- (a) at the relevant time—
  - (i) X is controlled by a company which is resident in the United Kingdom ("the intermediate parent"), and
  - (ii) the intermediate parent is controlled by a company which is not resident in the United Kingdom ("the parent"), and
- (b) immediately before that time X was controlled by the parent but not the intermediate parent.

(5) Condition D is that X—
- (a) is a controlled foreign company at the time it is formed, and
- (b) is formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies at the time when X begins to control the company or companies.

(6) In this paragraph "controlling UK person" means a person resident in the United Kingdom who alone, or together with other such persons, controls X.

15D (1) The requirements of this paragraph are that—

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(a) the relevant time falls after 23 March 2011,

(b) X has an accounting period during which 23 March 2011 falls,

(c) no company was, at any time during that accounting period, a relevant UK corporate investor in X,

(d) no company was, immediately before the relevant time, a relevant UK corporate investor in X,

(e) at the relevant time X is controlled by a company which—

(i) is resident in the United Kingdom, and

(ii) is not under the control of another body corporate, or two or more other bodies corporate taken together, and

(f) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) In determining for the purposes of sub-paragraph (1)(e)(ii) whether a company is under the control of two or more bodies corporate taken together, a body corporate which holds less than 10% of the issued ordinary shares of that company is to be disregarded.

(3) For the purposes of sub-paragraph (2), a body corporate is treated as holding any shares held by persons who are connected or associated with the body corporate.

Disqualifying relevant transactions

15E (1) This paragraph applies for the purposes of paragraph 15C and 15D.

(2) A disqualifying relevant transaction occurs if—

(a) a relevant transaction occurs at the relevant time (whether or not the transaction occurs pursuant to an agreement entered into by X before that time), or

(b) a relevant transaction occurs on or after 9 December 2010 but before the relevant time and that transaction forms part of an avoidance scheme.

(3) "Relevant transaction" means—

(a) the making by X of a loan or advance of an amount (other than a negligible amount) to a person who, at the time it is made, is related to X and subject to United Kingdom tax,

(b) an increase (other than an increase of a negligible amount) in the amount of an existing loan or advance made by X to a person who, at the time of the increase, is related to X and subject to United Kingdom tax,

(c) a change in the terms or conditions of an existing loan or advance made by X where—

(i) the loan or advance is to a person who, at the time the change is made, is related to X and subject to United Kingdom tax, and

(ii) the change has an effect (other than a negligible effect) on the amount of interest payable, or

(d) a transaction to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a transaction if—

(a) it is referable to an activity carried on by X as part, or the whole, of any non-exempt activities carried on by X,

(b) the results of the transaction are reflected in the profits arising in an accounting period of X and are not negligible in value, and

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(c) the results of the transaction alone, or together with the results of one or more other transactions, achieves a reduction in United Kingdom tax.

(5) A transaction achieves, or two or more transactions together achieve, a reduction in United Kingdom tax if, had the transaction or transactions not been effected, any person—

(a) would have been liable for any such tax or for a greater amount of any such tax, or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(6) In this paragraph—

"avoidance scheme" means a scheme the main purpose, or one of the main purposes, of any party to which in entering into the scheme is to secure that section 748(1)(f) prevents an apportionment falling to be made under section 747(3) as regards an accounting period, or accounting periods, of X;

"non-exempt activities" has the meaning given by paragraph 12D(2);

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;

"United Kingdom tax" means corporation tax (or any tax chargeable as if it were corporation tax) or income tax.

Ending of exempt period

15F (1) An exempt period ends on the expiry of the period of 24 months which begins immediately after the first accounting period of X to end after the relevant time, unless sub-paragraph (2) applies.

(2) If an early termination event occurs after the relevant time but before the time the exempt period would end under sub-paragraph (1), the exempt period ends immediately before that event.

(3) An early termination event occurs if and when—

(a) a relevant transaction occurs, whether or not the transaction occurs pursuant to an agreement entered into by X before that time, or

(b) where the exempt period began because Condition D was met, X's business does not consist wholly in the holding of shares of companies which X controls, together with activities incidental to the holding of such shares.

Interpretation of Part 3A

15G (1) In this Part of this Schedule—

"group" means a company and any other companies it controls;

"the relevant time" has the meaning given by paragraph 15B;

"relevant transaction" has the meaning given by paragraph 15E;

"relevant UK corporate investor in X" has the meaning given by paragraph 15B(2);

"X" is to be construed in accordance with paragraph 15B.

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(2) For the purposes of this Part of this Schedule a person is "related" to X at a particular time if—
- (a) the person is connected or associated with X at that time,
- (b) the person has a 25 per cent assessable interest in X in the case of the accounting period in which that time falls (within the meaning of paragraph 6(4C)), or
- (c) if X is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.**]**

PART IV

REDUCTIONS IN UNITED KINGDOM TAX AND DIVERSION OF PROFITS

16 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(3).

(2) Any reference in paragraphs 17 and 18 below to a transaction—
- (a) is a reference to a transaction reflected in the profits arising in an accounting period of a controlled foreign company; and
- (b) includes a reference to two or more such transactions taken together.

17 (1) A transaction achieves a reduction in United Kingdom tax if, had the transaction not been effected, any person—
- (a) would have been liable for any such tax or for a greater amount of any such tax; or
- (b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(2) In this Part of this Schedule and section 748(3) "United Kingdom tax" means income tax, corporation tax or capital gains tax.

18 It is the main purpose or one of the main purposes of a transaction to achieve a reduction in United Kingdom tax if this is the purpose or one of the main purposes—
- (a) of the controlled foreign company concerned; or
- (b) of a person who has an interest in that company at any time during the accounting period concerned.

19 (1) The existence of a controlled foreign company achieves a reduction in United Kingdom tax by a diversion of profits from the United Kingdom in an accounting period if it is reasonable to suppose that, had neither the company nor any company related to it been in existence—
- (a) the whole or a substantial part of the receipts which are reflected in the controlled foreign company's profits in that accounting period would have been received by a company or individual resident in the United Kingdom; and
- (b) that company or individual or any other person resident in the United Kingdom either—

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(i) would have been liable for any United Kingdom tax or for a greater amount of any such tax; or

(ii) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(2) For the purposes of sub-paragraph (1) above, a company is related to a controlled foreign company if—

(a) it is resident outside the United Kingdom; and

(b) it is connected or associated with the controlled foreign company; and

(c) in relation to any company or companies resident in the United Kingdom, it fulfils or could fulfil, directly or indirectly, substantially the same functions as the controlled foreign company.

(3) Any reference in sub-paragraph (1) above to a company resident in the United Kingdom includes a reference to such a company which, if the controlled foreign company in question were not in existence, it is reasonable to suppose would have been established.

SCHEDULE 26

Section 754(5).

RELIEFS AGAINST LIABILITY FOR TAX IN RESPECT OF CHARGEABLE PROFITS

Trading losses and group relief etc. [M2373]

Marginal Citations

M2373 Source—1984 Sch.18.

1 (1) In any case where—

(a) an amount of chargeable profits is apportioned to a company resident in the United Kingdom, and

(b) the company is entitled, or would on the making of a claim be entitled, in computing its profits for the appropriate accounting period, to a deduction in respect of any relevant allowance, and

(c) for the appropriate accounting period the company has no profits against which a deduction could be made in respect of that allowance or, as the case may be, the amount of that allowance exceeds the profits against which a deduction falls to be made in respect of it,

then, on the making of a claim, a sum equal to corporation tax at the appropriate rate on so much of the relevant allowance or, as the case may be, of the excess of it referred to in paragraph (c) above as is specified in the claim shall be set off against the company's liability to tax under section 747(4)(a) in respect of the chargeable profits apportioned to it.

(2) In this paragraph—

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(a) "the appropriate accounting period" means the accounting period for which, by virtue of section 754(2), the company is regarded as assessed to corporation tax in respect of the chargeable profits concerned; and

(b) "the appropriate rate" means the rate of corporation tax applicable to profits of the appropriate accounting period or, if there is more than one such rate, the average rate over the whole accounting period.

(3) In this paragraph "relevant allowance" means—

(a) any loss to which section **[**[F2001]393A(1)**]** applies;

(b) any charge on income to which section 338(1) applies;

(c) any expenses of management to which section 75(1) applies;

(d) so much of any allowance to which section 74 of the 1968 Act applies as falls within subsection (3) of that section; and

(e) any amount available to the company by way of group relief.

(4) In any case where, for the appropriate accounting period, an amount would have been available to the company by way of group relief if a claim had been made under section 412, such a claim may be made for the purposes of this paragraph at any time before the end of the accounting period following that in which the assessment under section 747(4)(a) is made, notwithstanding that the period of two years referred to in section 412(1)(c) has expired.

(5) Where, by virtue of sub-paragraph (1) above, a sum is set off against a liability to tax, so much of the relevant allowance as gives rise to the amount set off shall be regarded for the purposes of the Tax Acts as having been allowed as a deduction against the company's profits in accordance with the appropriate provisions of those Acts.

(6) In its application to a claim under this paragraph, section 43 of the Management Act (time limit for making claims) shall have effect as if, in subsection (2)—

(a) any reference to an assessment to income tax were a reference to an assessment under section 747(4)(a); and

(b) any reference to a year of assessment were a reference to an accounting period.

Textual Amendments

F2001 Words in Sch. 26 para. 1(3)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para.26**

Advance corporation tax

2 (1) In any case where—

(a) an amount of chargeable profits is apportioned to a company resident in the United Kingdom, and

(b) the company has an amount of advance corporation tax which, apart from this paragraph, would, in relation to the appropriate accounting period, be surplus advance corporation tax for the purposes of section 239(3),

then, on the making of a claim, so much of that advance corporation tax as is specified in the claim and does not exceed the relevant maximum shall be set against the company's liability to tax under section 747(4)(a) in respect of the chargeable profits

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apportioned to it, to the extent that that liability has not or could not have been relieved by virtue of paragraph 1 above.

(2) So much of any advance corporation tax as, by virtue of this paragraph, is set against the company's liability to tax under section 747(4)(a) in respect of chargeable profits shall be regarded for the purposes of the Tax Acts as not being surplus advance corporation tax within the meaning of section 239.

(3) In this paragraph "the appropriate accounting period" has the same meaning as in paragraph 1 above and "the relevant maximum", in relation to the liability to tax referred to in sub-paragraph (1) above, is the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the appropriate accounting period of an amount which, together with the advance corporation tax in respect of it, is equal to—

(a) that amount of the chargeable profits apportioned to the company on which it is chargeable to corporation tax for that accounting period, less

(b) any amount which, for that accounting period, is to be regarded, by virtue of paragraph 1(5) above, as having been allowed as a deduction against the company's profits.

Gains on disposal of shares in controlled foreign companies

3 (1) This paragraph applies in any case where—

(a) a direction has been given under subsection (1) of section 747 in respect of an accounting period of a controlled foreign company ("the direction period"); and

(b) the company's chargeable profits for the direction period have been apportioned among the persons in subsection (3) of that section; and

(c) a company resident in the United Kingdom ("the claimant company") disposes of—

(i) shares in the controlled foreign company, or

(ii) shares in another company which, in whole or in part, give rise to the claimant company's interest in the controlled foreign company,

being, in either case, shares acquired before the end of the direction period; and

(d) by virtue of the apportionment referred to in paragraph (b) above, a sum is, under section 747(4)(a), assessed on and recoverable from the claimant company as if it were an amount of corporation tax; and

(e) the claimant company makes a claim for relief under this paragraph;

and in this paragraph the disposal mentioned in paragraph (c) above is referred to as "the relevant disposal".

(2) Subject to the following provisions of this paragraph, in the computation under Chapter **[**[F2002]III of Part II of the 1992**]** Act of the gain accruing on the relevant disposal, the appropriate fraction of the sum referred to in sub-paragraph (1)(d) above shall be allowable as a deduction; but to the extent that any sum has been allowed as a deduction under this sub-paragraph it shall not again be allowed as a deduction on any claim under this paragraph (whether made by the claimant company or another company).

(3) In relation to the relevant disposal, the appropriate fraction is—

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$$\frac{A}{B}$$

where—

A is the average market value in the direction period of the shares disposed of, and

B is the average market value in that period of the interest in the controlled foreign company which, in the case of the claimant company, was taken into account in the apportionment referred to in sub-paragraph (1)(b) above.

(4) Where, before the relevant disposal—

(a) a dividend is paid by the controlled foreign company, and

(b) the profits out of which the dividend is paid are those from which the chargeable profits referred to in sub-paragraph (1)(b) above are derived, and

(c) at least one of the two conditions in sub-paragraph (5) below is fulfilled,

this paragraph does not apply in relation to a sum assessed and recoverable in respect of so much of the chargeable profits as corresponds to the profits which the dividend represents.

(5) The conditions referred to in sub-paragraph (4) above are—

(a) that the effect of the payment of the dividend is such that the value of the shares disposed of by the relevant disposal is less after the payment than it was before it; and

(b) that, in respect of a dividend paid or payable on the shares disposed of by the relevant disposal, the claimant company is, by virtue of paragraph 4(2) below, entitled under Part XVIII to relief (by way of underlying tax) by reference to sums which include the sum referred to in sub-paragraph (1)(d) above.

(6) A claim for relief under this paragraph shall be made before the expiry of the period of three months beginning—

(a) at the end of the accounting period in which the relevant disposal occurs; or

(b) if it is later, on the date on which the assessment to tax for which the claimant company is liable by virtue of section 747(4)(a) becomes final and conclusive.

(7) In identifying for the purposes of this paragraph shares in a company with shares of the same class which are disposed of by the relevant disposal, shares acquired at an earlier time shall be deemed to be disposed of before shares acquired at a later time.

Textual Amendments

F2002 Words in Sch. 26 para. 3 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(62)** (with ss. 60, 101(1), 171, 201(3))

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Dividends from the controlled foreign company

4 (1) This paragraph applies in any case where—

(a) a direction has been given under subsection (1) of section 747 in respect of an accounting period of a controlled foreign company, and

(b) the company's chargeable profits for that period have been apportioned among the persons referred to in subsection (3) of that section, and

(c) the controlled foreign company pays a dividend in whole or in part out of the total profits from which (in accordance with subsection (6)(a) of that section) those chargeable profits are derived.

(2) Subject to paragraphs 5 and 6 below, where this paragraph applies, the aggregate of the sums assessed on and recoverable from companies resident in the United Kingdom in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1)(b) above shall be treated for the purposes of Part XVIII as if it were an amount of tax paid in respect of the profits concerned under the law of the territory in which the controlled foreign company was resident and, accordingly, as underlying tax for the purposes of Chapter II of that Part.

(3) In the following provisions of this paragraph and in paragraphs 5 and 6 below, the aggregate of the sums which, under sub-paragraph (2) above, fall to be treated as underlying tax is referred to as the "gross attributed tax".

(4) If, in the case of a person who receives the dividend, section 796 or section 797 has the effect of reducing the amount which (apart from that section) would have been the amount of the credit for foreign tax which is to be allowed to that person, then, for the purposes of sub-paragraph (5) below, the amount of that reduction shall be determined and so much of it as does not exceed the amount of the foreign tax, exclusive of underlying tax, for which credit is to be allowed in respect of the dividend is in that sub-paragraph referred to as "the wasted relief".

(5) Except for the purpose of determining the amount of the wasted relief, the gross attributed tax shall be treated as reduced by the aggregate of the wasted relief arising in the case of all the persons falling within sub-paragraph (4) above and, on the making of a claim by any of the companies referred to in sub-paragraph (2) above—

(a) the amount of tax assessed on and recoverable from the company in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1) (b) above shall, where appropriate, be reduced; and

(b) all such adjustments (whether by repayment of tax or otherwise) shall be made as are appropriate to give effect to any reduction under paragraph (a) above.

5 (1) In so far as any provision of—

(a) arrangements having effect by virtue of section 788, or

(b) section 790,

makes relief which is related to foreign dividends received by a company resident in the United Kingdom conditional upon that company either having a particular degree of control of the company paying the dividend or being a subsidiary of another company which has that degree of control, that condition shall be treated as fulfilled

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in considering whether any such company is by virtue of paragraph 4(2) above entitled to relief under Part XVIII in respect of any of the gross attributed tax.

(2) Notwithstanding anything in paragraph 4(2) above, in section 795(2)(b) the expression "underlying tax" does not include gross attributed tax.

(3) In a case where the controlled foreign company pays a dividend otherwise than out of specified profits and, on the apportionment referred to in paragraph 4(1) above, less than the whole of the chargeable profits of the controlled foreign company concerned is apportioned to companies which are resident in the United Kingdom and liable for tax thereon as mentioned in section 747(4)(a)—

(a) the gross attributed tax shall be regarded as attributable to a corresponding proportion of the profits in question, and in this sub-paragraph the profits making up that proportion are referred to as "taxed profits";

(b) so much of the dividend as is received by, or by a successor in title of, any such company shall be regarded as paid primarily out of taxed profits; and

(c) so much of the dividend as is received by any other person shall be regarded as paid primarily out of profits which are not taxed profits.

(4) The reference in sub-paragraph (3)(b) above to a successor in title of a company resident in the United Kingdom is a reference to a person who is such a successor in respect of the whole or any part of that interest in the controlled foreign company by virtue of which an amount of its chargeable profits was apportioned to that company.

6 (1) In any case where—

(a) on a claim for relief under paragraph 3 above, the whole or any part of any sum has been allowed as a deduction on a disposal of shares in any company; and

(b) that sum forms part of the gross attributed tax in relation to a dividend paid by that company; and

(c) a person receiving the dividend in respect of the shares referred to in paragraph (a) above ("the primary dividend") or any other relevant dividend is, by virtue of paragraph 4(2) above, entitled under Part XVIII to relief (by way of underlying tax) by reference to the whole or any part of the gross attributed tax;

the amount which, apart from this paragraph, would be available by way of any such relief to the person referred to in paragraph (c) above shall be reduced or, as the case may be, extinguished by deducting therefrom the amount allowed by way of relief as mentioned in paragraph (a) above.

(2) For the purposes of sub-paragraph (1)(c) above, in relation to the primary dividend, another dividend is a relevant dividend if—

(a) it is a dividend in respect of shares in a company which is resident outside the United Kingdom; and

(b) it represents profits which, directly or indirectly, consist of or include the primary dividend.

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SCHEDULE 27

Section 760.

DISTRIBUTING FUNDS [M2374]

Modifications etc. (not altering text)

C918 Sch. 27 applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds Regulations 2004 (S.I. 2004/2572), **regs. 1(1)**, 4

Marginal Citations

M2374 Source—[1984 Sch.19; 1986 s.50; 1987 (No.2) s.66]

PART I

THE DISTRIBUTION TEST

Requirements as to distributions

1 (1) For the purposes of this Chapter, an offshore fund pursues a full distribution policy with respect to an account period if—

(a) a distribution is made for that account period or for some other period which, in whole or in part, falls within that account period; and

(b) subject to Part II of this Schedule, the amount of the distribution which is paid to the holders of material and other interests in the fund—

(i) represents at least 85 per cent. of the income of the fund for that period, and

(ii) is not less than 85 per cent. of the fund's United Kingdom equivalent profits for that period; and

(c) the distribution is made during that account period or not more than six months, or such longer period as the Board may in any particular case allow, after the expiry of it; and

(d) the form of the distribution is such that, if any sum forming part of it were received in the United Kingdom by a person resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under Case IV or V of Schedule D;

and any reference in this sub-paragraph to a distribution made for an account period includes a reference to any two or more distributions so made or, in the case of paragraph (b), the aggregate of them.

(2) Subject to sub-paragraph (3) below, with respect to any account period for which—

(a) there is no income of the fund, and

(b) there are no United Kingdom equivalent profits of the fund,

the fund shall be treated as pursuing a full distribution policy notwithstanding that no distribution is made as mentioned in sub-paragraph (1) above.

(3) For the purposes of this Chapter, an offshore fund shall be regarded as not pursuing a full distribution policy with respect to an account period for which the fund does not make up accounts.

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(4) For the purposes of this paragraph—

(a) where a period for which an offshore fund makes up accounts includes the whole or part of two or more account periods of the fund, then, subject to paragraph (c) below, income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the accounts are made up;

(b) where a distribution is made for a period which includes the whole or part of two or more account periods of the fund, then, subject to sub-paragraph (5) below, the distribution shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the distribution is made;

(c) where a distribution is made out of specified income but is not made for a specified period, that income shall be attributed to the account period of the fund in which it in fact arose and the distribution shall be treated as made for that account period; and

(d) where a distribution is made neither for a specified period nor out of specified income, then, subject to sub-paragraph (5) below, it shall be treated as made for the last account period of the fund which ended before the distribution was made.

(5) If, apart from this sub-paragraph, the amount of a distribution made, or treated by virtue of sub-paragraph (4) above as made, for an account period would exceed the income of that period, then, for the purposes of this paragraph—

(a) if the amount of the distribution was determined by apportionment under sub-paragraph (4)(b) above, the excess shall be re-apportioned, as may be just and reasonable, to any other account period which, in whole or in part, falls within the period for which the distribution was made or, if there is more than one such period, between those periods; and

(b) subject to paragraph (a) above, the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distribution or, as the case may be, the aggregate distributions would otherwise be less than the income of the period, applying the excess to later account periods before earlier ones, until it is exhausted.

(6) In any case where—

(a) for a period which is or includes an account period, an offshore fund is subject to any restriction as regards the making of distributions, being a restriction imposed by the law of any territory outside the United Kingdom; and

(b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concepts of "profits" and "losses" in the sense in which and to the extent to which they are relevant for the purposes of the law in question);

then in determining for the purposes of the preceding provisions of this paragraph the amount of the fund's income for that account period, there shall be allowed as a deduction any amount which, apart from this sub-paragraph, would form part of the income of the fund for that account period and which cannot be distributed by virtue of the restriction.

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Funds operating equalisation arrangements

2 (1) In the case of an offshore fund which throughout any account period operates equalisation arrangements, on any occasion in that period when there is a disposal to which this sub-paragraph applies, the fund shall be treated for the purposes of this Part of this Schedule as making a distribution of an amount equal to so much of the consideration for the disposal as, in accordance with this paragraph, represents income accrued to the date of the disposal.

(2) Sub-paragraph (1) above applies to a disposal—

(a) which is a disposal of a material interest in the offshore fund concerned; and

(b) which is a disposal to which this Chapter applies (whether by virtue of section 758(3) or otherwise) or is one to which this Chapter would apply if subsections (5) and (6) of that section applied generally and not only for the purpose of determining whether, by virtue of subsection (3) of that section, there is a disposal to which this Chapter applies; and

(c) which is not a disposal with respect to which the conditions in subsection (4) of that section are fulfilled; and

(d) which is a disposal to the fund itself or to the persons concerned in the management of the fund ("the managers") in their capacity as such.

(3) On a disposal to which sub-paragraph (1) above applies, the part of the consideration which represents income accrued to the date of the disposal is, subject to sub-paragraph (4) and paragraph 4(4) below, the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the material interest which is disposed of were acquired by another person by way of initial purchase.

(4) If, after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (3) above is calculated, the material interest disposed of by a disposal to which sub-paragraph (1) above applies was acquired by way of initial purchase (whether or not by the person making the disposal)—

(a) there shall be deducted from the amount which, in accordance with sub-paragraph (3) above, would represent income accrued to the date of the disposal, the amount which on that acquisition was credited to the equalisation account of the fund in respect of accrued income; and

(b) if in that period there has been more than one such acquisition of that material interest by way of initial purchase, the deduction to be made under this sub-paragraph shall be the amount so credited to the equalisation account on the latest such acquisition prior to the disposal in question.

(5) Where, by virtue of this paragraph, an offshore fund is treated for the purposes of this Part of this Schedule as making a distribution on the occasion of a disposal, the distribution shall be treated for those purposes—

(a) as complying with paragraph 1(1)(d) above; and

(b) as made out of the income of the fund for the account period in which the disposal occurs; and

(c) as paid, immediately before the disposal, to the person who was then the holder of the interest disposed of.

(6) In any case where—

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(a) a distribution in respect of an interest in an offshore fund is made to the managers of the fund, and
(b) their holding of that interest is in their capacity as such, and
(c) at the time of the distribution, the fund is operating equalisation arrangements,

the distribution shall not be taken into account for the purposes of paragraph 1(1) above except to the extent that the distribution is properly referable to that part of the period for which the distribution is made during which that interest has been held by the managers of the fund in their capacity as such.

(7) Subsection (2) of section 758 applies for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case IV or Case V of Schedule D

3 (1) Sub-paragraph (2) below applies if any sums which form part of the income of an offshore fund falling within section 759(1)(b) or (c) are of such a nature that—
(a) the holders of interests in the fund who are either companies resident in the United Kingdom or individuals domiciled and resident there—
(i) are chargeable to tax under Case IV or Case V of Schedule D in respect of such of those sums as are referable to their interests; or
(ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom; and
(b) the holders of interests who are not such companies or individuals would be chargeable as mentioned in sub-paragraph (i) or (ii) above if they were resident in the United Kingdom or, in the case of individuals, if they were domiciled and both resident and ordinarily resident there.

(2) To the extent that sums falling within sub-paragraph (1) above do not actually form part of a distribution complying with paragraphs 1(1)(c) and (d) above, they shall be treated for the purposes of this Part of this Schedule—
(a) as a distribution complying with those paragraphs and made out of the income of which they form part; and
(b) as paid to the holders of the interests to which they are referable.

Commodity income

4 (1) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, one half of those profits shall be left out of account in determining for the purposes of paragraphs 1(1)(b) and 5 below—
(a) the income of the fund for that period; and
(b) the fund's United Kingdom equivalent profits for that period;

but in any account period in which an offshore fund incurs a loss in dealing in commodities the amount of that loss shall not be varied by virtue of this paragraph.

(2) In this paragraph "dealing in commodities" shall be construed as follows—

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(a) "commodities" does not include currency, securities, debts or other assets of a financial nature but, subject to that, means tangible assets which are dealt with on a commodity exchange in any part of the world; and

(b) "dealing" includes dealing by way of futures contracts and traded options.

(3) Where the income of an offshore fund for any account period consists of profits from dealing in commodities and other income, then—

(a) in determining whether the condition in paragraph 1(1)(b) above is fulfilled with respect to that account period, the expenditure of the fund shall be apportioned in such manner as is just and reasonable between the profits from dealing in commodities and the other income; and

(b) in determining whether, and to what extent, any expenditure is deductible under section [75 [F2003]] in computing the fund's United Kingdom equivalent profits for that period, so much of the business of the fund as does not consist of dealing in commodities shall be treated as a business carried on by a separate company.

(4) Where there is a disposal to which paragraph 2(1) above applies, then, to the extent that any amount which was or would be credited to the equalisation account in respect of accrued income, as mentioned in sub-paragraph (3) or (4) of that paragraph, represents profits from dealing in commodities, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the part of the consideration for the disposal which represents income accrued to the date of the disposal.

Textual Amendments

F2003 1988(F) s.146*and* Sch.13 para.12 (*deemed always to have had effect*).

United Kingdom equivalent profits

5 (1) Any reference in this Schedule to the United Kingdom equivalent profits of an offshore fund for an account period is a reference to the amount which, on the assumptions in sub-paragraph (3) below, would be the total profits of the fund for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable.

(2) In this paragraph the expression "profits" does not include chargeable gains.

[[F2004](2A) In applying sub-paragraph (1) above the effect of sections 125 to 133 of the Finance Act 1993 (exchange gains and losses) shall be ignored.**]**

(3) The assumptions referred to in sub-paragraph (1) above are—

(a) that the offshore fund is a company which, in the account period in question, but not in any other account period, is resident in the United Kingdom; and

(b) that the account period is an accounting period of that company; and

(c) that any dividends or distributions which, by virtue of section 208, should be left out of account in computing income for corporation tax purposes are nevertheless to be brought into account in that computation in like manner as if they were dividends or distributions of a company resident outside the United Kingdom.

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(4) Without prejudice to any deductions available apart from this sub-paragraph, the deductions referred to in sub-paragraph (1) above include—

(a) a deduction equal to any amount which, by virtue of paragraph 1(6) above, is allowed as a deduction in determining the income of the fund for the account period in question; and

(b) a deduction equal to any amount of tax (paid under the law of a territory outside the United Kingdom) which was taken into account as a deduction in determining the income of the fund for the account period in question but which, because it is referable to capital rather than income, does not fall to be taken into account by virtue of section 811.

(5) For the avoidance of doubt it is hereby declared that, if any sums forming part of the offshore fund's income for any period have been received by the fund without any deduction of or charge to tax by virtue of section 47 or 48, the effect of the assumption in sub-paragraph (3)(a) above is that those sums are to be brought into account in determining the total profits referred to in sub-paragraph (1) above.

Textual Amendments

F2004 Sch. 27 para. 5(2A) inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 170, **Sch. 18 para.6**

PART II

MODIFICATIONS OF CONDITIONS FOR CERTIFICATION IN CERTAIN CASES

Exclusion of investments in distributing offshore funds

6 (1) In any case where—

(a) in an account period of an offshore fund (in this Part of this Schedule referred to as the "primary fund"), the assets of the fund consist of or include interests in another offshore fund; and

(b) those interests (together with other interests which the primary fund may have) are such that, by virtue of subsection (3)(a) or, if the other fund concerned is a company, subsection (3)(b) or (c) of section 760, the primary fund could not, apart from this paragraph, be certified as a distributing fund in respect of that account period; and

(c) without regard to the provisions of this paragraph, that other fund could be certified as a distributing fund in respect of its account period or, as the case may be, each of its account periods which comprises the whole or any part of the account period of the primary fund;

then, in determining whether anything in section 760(3)(a) to (c) prevents the primary fund being certified as mentioned in paragraph (b) above, the interests of the primary fund in that other fund shall be left out of account except for the purposes of determining the total value of the assets of the primary fund.

(2) In this Part of this Schedule an offshore fund falling within sub-paragraph (1)(c) above is referred to as a "qualifying fund".

(3) In a case falling within sub-paragraph (1) above—

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(a) section 760(3)(a) to (c) shall have effect in relation to the primary fund with the modification in paragraph 7 below (in addition to that provided for by sub-paragraph (1) above); and

(b) Part I of this Schedule shall have effect in relation to the primary fund with the modification in paragraph 8 below.

7 The modification referred to in paragraph 6(3)(a) above is that, in any case where—

(a) at any time in the account period referred to in paragraph 6(1) above, the assets of the primary fund include an interest in an offshore fund or in any company (whether an offshore fund or not); and

(b) that interest falls to be taken into account in determining whether anything in section 760(3)(a) to (c) prevents the primary fund being certified as a distributing fund in respect of that account period; and

(c) at any time in that account period the assets of the qualifying fund include an interest in the offshore fund or company referred to in paragraph (a) above;

for the purposes of the application in relation to the primary fund of section 760(3)(a) to (c), at any time when the assets of the qualifying fund include the interest referred to in paragraph (c) above, the primary fund's share of that interest shall be treated as an additional asset of the primary fund.

8 (1) The modification referred to in paragraph 6(3)(b) above is that, in determining whether the condition in paragraph 1(1)(b)(ii) above is fulfilled with respect to the account period of the primary fund referred to in paragraph 6(1) above, the United Kingdom equivalent profits of the primary fund for that period shall be treated as increased by the primary fund's share of the excess income (if any) of the qualifying fund which is attributable to that period.

(2) For the purposes of this paragraph, the excess income of the qualifying fund for any account period of that fund is the amount (if any) by which its United Kingdom equivalent profits for that account period exceed the amount of the distributions made for that period, as determined for the purposes of the application of paragraph 1(1) above to the qualifying fund.

(3) If an account period of the qualifying fund coincides with an account period of the primary fund, then the excess income (if any) of the qualifying fund for that period is the excess income which is attributable to that period of the primary fund.

(4) In a case where sub-paragraph (3) above does not apply, the excess income of the qualifying fund which is attributable to an account period of the primary fund is the appropriate fraction of the excess income (if any) of the qualifying fund for any of its account periods which comprises the whole or any part of the account period of the primary fund and, if there is more than one such account period of the qualifying fund, the aggregate of the excess income (if any) of each of them.

(5) For the purposes of sub-paragraph (4) above, the appropriate fraction is—

$$\frac{A}{B}$$

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where—

A is the number of days in the account period of the primary fund which are also days in an account period of the qualifying fund; and

B is the number of days in that account period of the qualifying fund or, as the case may be, in each of those account periods of that fund which comprises the whole or any part of the account period of the primary fund.

9 (1) The references in paragraphs 7 and 8(1) above to the primary fund's share of—

(a) an interest forming part of the assets of the qualifying fund, or

(b) the excess income (as defined in paragraph 8 above) of the qualifying fund,

shall be construed as references to the fraction specified in sub-paragraph (2) below of that interest or excess income.

(2) In relation to any account period of the primary fund, the fraction referred to in sub-paragraph (1) above is—

$$\frac{C}{D}$$

where—

C is the average value of the primary fund's holding of interests in the qualifying fund during that period; and

D is the average value of all the interests in the qualifying fund held by any persons during that period.

Offshore funds investing in trading companies

10 (1) In any case where the assets of an offshore fund for the time being include an interest in a trading company, as defined in sub-paragraph (2) below, the provisions of section 760(3) have effect subject to the modifications in sub-paragraphs (3) and (4) below.

(2) In this paragraph "trading company" means a company whose business consists wholly of the carrying on of a trade or trades and does not to any extent consist of—

(a) dealing in commodities, as defined in paragraph 4(2) above, or dealing, as so defined, in currency, securities, debts or other assets of a financial nature; or

(b) banking or money-lending.

(3) In the application of section 760(3)(b) to so much of the assets of an offshore fund as for the time being consists of interests in a single trading company, for the words "10 per cent." there shall be substituted the words " 20 per cent. ".

(4) In the application of section 760(3)(c) to an offshore fund the assets of which for the time being include any issued share capital of a trading company or any class of that share capital, for the words "more than 10 per cent." there shall be substituted the words " 50 per cent. or more ".

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Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Offshore funds with wholly-owned subsidiaries

11 (1) In relation to an offshore fund which has a wholly-owned subsidiary which is a company the provisions of section 760(3) and Part I of this Schedule shall have effect subject to the modifications in sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below, for the purposes of this paragraph, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—

(a) in the case of an offshore fund falling within section 759(1)(a), directly and beneficially owned by the fund; and

(b) in the case of an offshore fund falling within section 759(1)(b), directly owned by the trustees of the fund for the benefit of the fund; and

(c) in the case of an offshore fund falling within section 759(1)(c), owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.

(3) In the case of a company which has only one class of issued share capital, the reference in sub-paragraph (2) above to the whole of the issued share capital shall be construed as a reference to at least 95 per cent. of that share capital.

(4) The modifications referred to in sub-paragraph (1) above are that, for the purposes of section 760(3) and Part I of this Schedule—

(a) that percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in sub-paragraph (2) above shall be regarded as the receipts, expenditure, assets and liabilities of the fund; and

(b) there shall be left out of account the interest of the fund in the subsidiary and any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

Offshore funds with interests in dealing and management companies

12 (1) Section 760(3)(c) shall not apply to so much of the assets of an offshore fund as consists of issued share capital of a company which is either—

(a) a wholly-owned subsidiary of the fund which falls within sub-paragraph (2) below; or

(b) a subsidiary management company of the fund, as defined in sub-paragraph (3) below.

(2) A company which is a wholly-owned subsidiary of an offshore fund is one to which sub-paragraph (1)(a) above applies if—

(a) the business of the company consists wholly of dealing in material interests in the offshore fund for the purposes of and in connection with the management and administration of the business of the fund; and

(b) the company is not entitled to any distribution in respect of any material interest for the time being held by it;

and paragraph 11(2) above shall apply to determine whether a company is, for the purposes of this paragraph, a wholly-owned subsidiary of an offshore fund.

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(3) A company in which an offshore fund has an interest is for the purposes of sub-paragraph (1)(b) above a subsidiary management company of the fund if—
  (a) the company carries on no business other than providing services falling within sub-paragraph (4) below either for the fund alone or for the fund and for any other offshore fund which has an interest in the company; and
  (b) the company's remuneration for the services which it provides to the fund is not greater than it would be if it were determined at arm's length between the fund and a company in which the fund has no interest.

(4) The services referred to in sub-paragraph (3) above are—
  (a) holding property (of any description) which is occupied or used in connection with the management or administration of the fund; and
  (b) providing administrative, management and advisory services to the fund.

(5) In determining, in accordance with sub-paragraph (3) above, whether a company in which an offshore fund has an interest is a subsidiary management company of that fund—
  (a) every business carried on by a wholly-owned subsidiary of the company shall be treated as carried on by the company; and
  (b) no account shall be taken of so much of the company's business as consists of holding its interests in a wholly-owned subsidiary; and
  (c) any reference in sub-paragraph (3)(b) above to the company shall be taken to include a reference to a wholly-owned subsidiary of the company.

(6) Any reference in sub-paragraph (5) above to a wholly-owned subsidiary of a company is a reference to another company the whole of the issued share capital of which is for the time being directly and beneficially owned by the first company.

Disregard of certain investments forming less than 5 per cent. of a fund

13 (1) In any case where—
  (a) in any account period of an offshore fund, the assets of the fund include a holding of issued share capital (or any class of issued share capital) of a company; and
  (b) that holding is such that by virtue of section 760(3)(c) the fund could not (apart from this paragraph) be certified as a distributing fund in respect of that account period;

then, if the condition in sub-paragraph (3) below is fulfilled, that holding shall be disregarded for the purposes of section 760(3)(c).

(2) In this paragraph any holding falling within sub-paragraph (1) above is referred to as an "excess holding".

(3) The condition referred to in sub-paragraph (1) above is that at no time in the account period in question does that portion of the fund which consists of—
  (a) excess holdings, and
  (b) interests in other offshore funds which are not qualifying funds,

exceed 5 per cent. by value of all the assets of the fund.

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Power of Board to disregard certain breaches of conditions

14 If, in the case of any account period of an offshore fund ending after the passing of the [M2375]Finance (No. 2) Act 1987 (23rd July 1987), it appears to the Board that there has been a failure to comply with any of the conditions in paragraphs (a) to (c) of section 760(3) (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,

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

Marginal Citations

M2375 1987 c. 51.

PART III

CERTIFICATION PROCEDURE

Application for certification

15 (1) The Board shall, in such manner as they think appropriate, certify an offshore fund as a distributing fund in respect of an account period if—

(a) an application in respect of that period is made under this paragraph; and

(b) the application is accompanied by the accounts of the fund for, or for a period which includes, the account period to which the application relates; and

(c) there is furnished to the Board such information as they may reasonably require for the purpose of determining whether the fund should be so certified; and

(d) they are satisfied that nothing in section 760(2) or (3) prevents the fund being so certified.

(2) An application under this paragraph shall be made to the Board by the fund or by a trustee or officer thereof on behalf of the fund and may be so made—

(a) before the expiry of the period of six months beginning at the end of the account period to which the application relates; or

(b) at such later time as the Board may in any particular case allow.

(3) In any case where, on an application under this paragraph, the Board determine that the offshore fund concerned should not be certified as a distributing fund in respect of the account period to which the application relates, they shall give notice of that fact to the fund.

(4) If at any time it appears to the Board that the accounts accompanying an application under this paragraph in respect of any account period of an offshore fund or any information furnished to the Board in connection with such an application is or are not such as to make full and accurate disclosure of all facts and considerations

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relevant to the application, they shall give notice to the fund accordingly, specifying the period concerned.

(5) Where a notice is given by the Board under sub-paragraph (4) above, any certification by them in respect of the account period in question shall be void.

Appeals

16 (1) An appeal to the Special Commissioners—

(a) against such a determination as is referred to in paragraph 15(3) above, or

(b) against a notification under paragraph 15(4) above,

may be made by the offshore fund or by a trustee or officer thereof on behalf of the fund, and shall be so made by notice specifying the grounds of appeal and given to the Board within 90 days of the date of the notice under paragraph 15(3) or (4), as the case may be.

(2) The jurisdiction of the Special Commissioners on an appeal under this paragraph shall include jurisdiction to review any decision of the Board which is relevant to a ground of the appeal.

PART IV

SUPPLEMENTARY

Assessment: effect of non-certification

17 No appeal may be brought against an assessment to tax on the ground that an offshore fund should have been certified as a distributing fund in respect of an account period of the fund.

18 (1) Without prejudice to paragraph 17 above, in any case where no application has been made under paragraph 15 above in respect of an account period of an offshore fund, any person who is assessed to tax for which he would not be liable if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Board to take action under this paragraph with a view to determining whether the fund should be so certified.

(2) Subject to sub-paragraphs (3) and (5) below, if the Board receive a notice under sub-paragraph (1) above, they shall by notice invite the offshore fund concerned to make an application under paragraph 15 above in respect of the period in question.

(3) Where sub-paragraph (2) above applies, the Board shall not be required to give notice under that sub-paragraph before the expiry of the account period to which the notice is to relate nor if an application under paragraph 15 above has already been made; but where notice is given under that sub-paragraph, an application under paragraph 15 above shall not be out of time under paragraph 15(2)(a) above if it is made within 90 days of the date of that notice.

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(4) If an offshore fund to which notice is given under sub-paragraph (2) above does not, within the time allowed by sub-paragraph (3) above or, as the case may be, paragraph 15(2)(a) above, make an application under paragraph 15 above in respect of the account period in question, the Board shall proceed to determine the question of certification in respect of that period as if such an application had been made.

(5) Where the Board receive more than one notice under sub-paragraph (1) above with respect to the same account period of the same offshore fund, their obligations under sub-paragraphs (2) and (4) above shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any one of them.

(6) Notwithstanding anything in sub-paragraph (5) above, for the purpose of a determination under sub-paragraph (4) above with respect to an account period of an offshore fund, the Board shall have regard to accounts and other information furnished by all persons who have given notice under sub-paragraph (1) above with respect to that account period; and paragraph 15 above shall apply as if accounts and information so furnished had been furnished in compliance with sub-paragraph (1) of that paragraph.

(7) Without prejudice to sub-paragraph (5) above, in any case where—

(a) at a time after the Board have made a determination under sub-paragraph (4) above that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under sub-paragraph (1) above with respect to that period; and

(b) the person giving that notice furnishes the Board with accounts or information which had not been furnished to the Board at the time of the earlier determination;

the Board shall reconsider their previous determination in the light of the new accounts or information and, if they consider it appropriate, may determine to certify the fund accordingly.

(8) Where any person has given notice to the Board under sub-paragraph (1) above with respect to an account period of an offshore fund and no application has been made under paragraph 15 above with respect to that period—

(a) the Board shall notify that person of their determination with respect to certification under sub-paragraph (4) above; and

(b) paragraph 16 above shall not apply in relation to that determination.

Postponement of tax pending determination of question as to certification

19 (1) In any case where—

(a) an application has been made under paragraph 15 above with respect to an account period of an offshore fund and that application has not been finally determined; or

(b) paragraph (a) above does not apply but notice has been given under paragraph 18(1) above in respect of an account period of an offshore fund and the Board have not yet given notice of their decision as to certification under paragraph 18(4) above;

any person who has been assessed to tax and considers that, if the offshore fund were to be certified as a distributing fund in respect of the account period in question, he

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would be overcharged to tax by the assessment may, by notice given to the inspector within 30 days after the date of the issue of the notice of assessment, apply to the General Commissioners for a determination of the amount of tax the payment of which should be postponed pending the determination of the question whether the fund should be so certified.

(2) A notice of application under sub-paragraph (1) above shall state the amount in which the applicant believes that he is over-charged to tax and his grounds for that belief.

(3) Subsections (3A) onwards of section 55 of the Management Act (recovery of tax not postponed) shall apply with any necessary modifications in relation to an application under sub-paragraph (1) above as if it were an application under subsection (3) of that section and as if the determination of the question as to certification (whether by the Board or on appeal) were the determination of an appeal.

Information as to decisions on certification etc.

20 No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an inspector from disclosing to any person appearing to have an interest in the matter—

(a) any determination of the Board or (on appeal) the Special Commissioners whether an offshore fund should or should not be certified as a distributing fund in respect of any account period; or

(b) the content and effect of any notice given by the Board under paragraph 15(4) above.

VALID FROM 22/07/2004

Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

21 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.

(2) Regulations under this paragraph may—

(a) make different provision for different cases, and

(b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.

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SCHEDULE 28

Section 761(1).

COMPUTATION OF OFFSHORE INCOME GAINS [M2376]

Marginal Citations

M2376 Source—[1984 Sch.20.]

PART I

DISPOSALS OF INTERESTS IN NON-QUALIFYING FUNDS

Interpretation

1 In this Part of this Schedule "material disposal" means a disposal to which this Chapter applies, otherwise than by virtue of section 758.

Calculation of unindexed gain

2 (1) Where there is a material disposal, there shall first be determined for the purposes of this Part of this Schedule the amount (if any) which, in accordance with the provisions of this paragraph, is the unindexed gain accruing to the person making the disposal.

(2) Subject to section 757(3) to (6) and paragraph 3 below, the unindexed gain accruing on a material disposal is the amount which would be the gain on that disposal for the purposes of the **[**[F2005]1992**]** Act if it were computed—

(a) without regard to any charge to income tax or corporation tax by virtue of section 761; and

(b) without regard to any indexation allowance on the disposal under **[**[F2005]the 1992 Act**]**.

Textual Amendments

F2005 Words in Sch. 28 para. 2 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(a)** (with ss. 60, 101(1), 171, 201(3))

3 (1) If the amount of any chargeable gain or allowable loss which (apart from section 763) would accrue on the material disposal would fall to be determined in a way which, in whole or in part, would take account of the indexation allowance on an earlier disposal to which **[**[F2006]section 56(2) of the 1992 Act**]** (disposals on a no gain/no loss basis) applies, the unindexed gain on the material disposal shall be computed as if—

(a) no indexation allowance had been available on any such earlier disposal; and

(b) subject to that, neither a gain nor a loss had accrued to the person making such an earlier disposal.

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(2) If the material disposal forms part of a transfer to which section **[**[F2006]162 of the 1992 Act**]** (roll-over relief on transfer of business) applies, the unindexed gain accruing on the disposal shall be computed without regard to any deduction which falls to be made under that section in computing a chargeable gain.

(3) If the material disposal is made otherwise than under a bargain at arm's length and a claim for relief is made in respect of that disposal under **[**[F2006]section 165 or 260 of the 1992 Act (relief for gifts) the claim shall**]** not affect the computation of the unindexed gain accruing on the disposal.

(4) Where, in the case of an insurance company carrying on [life assurance business,—

[F2007](a) . . . . . .

(b) a profit arising from overseas life assurance business and attributable to a material disposal falls to be taken into account in the computation under section 441,

the unindexed gain [F2008],] if any, accruing to the company on the disposal shall be computed as if section **[**37(1) of the 1992 Act**]**(exclusion of certain sums in computing chargeable gain) did not apply.

(5) Notwithstanding section **[**[F2006]16 of the 1992 Act**]** (losses determined in like manner as gains) if, apart from this sub-paragraph, the effect of any computation under the preceding provisions of this Part of this Schedule would be to produce a loss, the unindexed gain on the material disposal shall be treated as nil; and accordingly for the purposes of this Part of this Schedule no loss shall be treated as accruing on a material disposal.

(6) Section 431 has effect in relation to sub-paragraph (4) above as if it were included in Chapter I of Part XII.

Textual Amendments

F2006 Words in Sch. 28 para. 3 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(b)** (with ss. 60, 101(1), 171, 201(3))

F2007 Sch. 28 Pt. I para. 3(4)(a) repealed (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 10, 18, **Sch. 19 Pt. V**, Note 3

F2008 1990 s.42*and* Sch.7 para.7*for accounting periods beginning on or after* 1*January* 1990 (*see* para.10).*Previously*

"life assurance business, a profit arising from general annuity business and attributable to a material disposal falls (or would but for the reference to offshore income gains in section 437(2) fall) to be taken into account in the computation under section 436, the unindexed gain,".

Gains since 1st January 1984

4 (1) This paragraph applies where—

(a) the interest in the offshore fund which is disposed of by the person making a material disposal was acquired by him before 1st January 1984; or

(b) he is treated by virtue of any provision of sub-paragraphs (3) and (4) below as having acquired the interest before that date.

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(2) Where this paragraph applies, there shall be determined for the purposes of this Part of this Schedule the amount which would have been the gain on the material disposal—

(a) on the assumption that, on 1st January 1984, the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time; and

(b) subject to that, on the basis that the gain is computed in like manner as, under paragraphs 2 and 3 above, the unindexed gain on the material disposal is determined;

and that amount is in paragraph 5 below referred to as the "post-1983 gain" on the material disposal.

(3) Where the person making the material disposal acquired the interest disposed of—

(a) on or after 1st January 1984, and

(b) in such circumstances that, by virtue of any enactment other than section **[**[F2009]56, 57, 131 or 145 of the 1992 Act**]** (indexation provisions), he and the person from whom he acquired it ("the previous owner") fell to be treated for the purposes of the **[**1992**]** Act as if his acquisition were for a consideration of such an amount as would secure that, on the disposal under which he acquired it, neither a gain nor a loss accrued to the previous owner,

the previous owner's acquisition of the interest shall be treated as his acquisition of it.

(4) If the previous owner acquired the interest disposed of on or after 1st January 1984 and in circumstances similar to those referred to in sub-paragraph (3) above, his predecessor's acquisition of the interest shall be treated for the purposes of this paragraph as the previous owner's acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before 1st January 1984 or, as the case may be, until an acquisition on a material disposal on or after that date.

Textual Amendments

F2009 Words in Sch. 28 para. 4(3)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(c)** (with ss. 60, 101(1), 171, 201(3))

The offshore income gain

5 (1) Subject to sub-paragraph (2) below, a material disposal gives rise to an offshore income gain of an amount equal to the unindexed gain on that disposal.

(2) In any case where—

(a) paragraph 4 above applies, and

(b) the post-1983 gain on the material disposal is less than the unindexed gain on the disposal,

the offshore income gain to which the disposal gives rise is an amount equal to the post-1983 gain.

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PART II

DISPOSALS INVOLVING AN EQUALISATION ELEMENT

6 (1) Subject to paragraph 7 below, a disposal to which this Chapter applies by virtue of section 758(3) gives rise to an offshore income gain of an amount equal to the equalisation element relevant to the asset disposed of.

(2) Subject to sub-paragraphs (4) to (6) below, the equalisation element relevant to the asset disposed of by a disposal falling within sub-paragraph (1) above is the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the asset which is disposed of were acquired by another person by way of initial purchase.

(3) In the following provisions of this Part of this Schedule, a disposal falling within sub-paragraph (1) above is referred to as a "disposal involving an equalisation element".

(4) Where the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the following amount, that is to say—

(a) if that acquisition took place on or after 1st January 1984, the amount which, on that acquisition, was credited to the equalisation account of the offshore fund concerned in respect of accrued income or, as the case may be, would have been so credited if that acquisition had been an acquisition by way of initial purchase; and

(b) in any other case, the amount which would have been credited to that account in respect of accrued income if that acquisition had been an acquisition by way of initial purchase taking place on 1st January 1984.

(5) In any case where—

(a) the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal at or before the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, and

(b) that period began before 1st January 1984 and ends after that date,

the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the amount which would have been credited to the equalisation account of the offshore fund concerned in respect of accrued income if the acquisition referred to in paragraph (a) above had been an acquisition by way of initial purchase taking place on 1st January 1984.

(6) Where there is a disposal involving an equalisation element, then, to the extent that any amount which was or would be credited to the equalisation account of the offshore fund in respect of accrued income, as mentioned in any of sub-paragraphs (2) to (5) above, represents profits from dealing in commodities, within the meaning of paragraph 4 of Schedule 27, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the equalisation element relevant to the asset disposed of by that disposal.

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7 (1) For the purposes of this Part of this Schedule, there shall be determined, in accordance with paragraph 8 below, the Part I gain (if any) on any disposal involving an equalisation element.

(2) Notwithstanding anything in paragraph 6 above—

(a) if there is no Part I gain on a disposal involving an equalisation element, that disposal shall not give rise to an offshore income gain; and

(b) if, apart from this paragraph, the offshore income gain on a disposal involving an equalisation element would exceed the Part I gain on that disposal, the offshore income gain to which that disposal gives rise shall be reduced to an amount equal to that Part I gain.

8 (1) On a disposal involving an equalisation element, the Part I gain is the amount (if any) which, by virtue of Part I of this Schedule (as modified by sub-paragraphs (2) to (5) below), would be the offshore income gain on that disposal if it were a material disposal within the meaning of that Part.

(2) For the purposes only of the application of Part I of this Schedule to determine the Part I gain (if any) on a disposal involving an equalisation element, subsections (5) and (6) of section 758 shall have effect as if, in subsection (5), the words "by virtue of subsection (3) above" were omitted.

(3) If a disposal involving an equalisation element is one which, by virtue of any enactment other than section **[**[F2010]56, 57, 131 or 145 of the 1992 Act**]**, is treated for the purposes of the **[**[F2010]1992**]** Act as one on which neither a gain nor a loss accrues to the person making the disposal, then, for the purpose only of determining the Part I gain (if any) on the disposal, that enactment shall be deemed not to apply to it (but without prejudice to the application of that enactment to any earlier disposal).

[F2011](4) . . . . . .

[F2011](5) . . . . . .

Textual Amendments

F2010 Words in Sch. 28 para. 8(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(c)** (with ss. 60, 101(1), 171, 201(3))

F2011 Sch. 28 para. 8(4)(5) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

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VALID FROM 22/07/2004

PART 3

SUPPLEMENTARY

Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

9 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.

(2) Regulations under this paragraph may—

(a) make different provision for different cases, and

(b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.

VALID FROM 01/05/1995

SCHEDULE 28A

CHANGE IN OWNERSHIP OF INVESTMENT COMPANY: DEDUCTIONS

. . . . . .

VALID FROM 31/07/1998

SCHEDULE 28AA

PROVISION NOT AT ARM'S LENGTH

Modifications etc. (not altering text)

C919 Sch. 28AA modified (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 58(1)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 12**) (with Sch. 22 para. 58(3))

C920 Sch. 28AA applied (with modifications) (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 59(1)(2)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 13**) (with Sch. 22 para. 59(4))

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C921 Sch. 28AA applied by Finance Act 1996 (c. 8), **s. 100** (as substituted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), Sch. 23 para. 6 (with s. 81(4)(5), **Sch. 23 para. 25**))

C922 Sch. 28AA modified by Finance Act 1996 (c. 8), **Sch. 9 para. 11A(1)** (as inserted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), Sch. 23 para. 11 (with s. 81(4)(5), **Sch. 23 para. 25**))

. . . . . .

VALID FROM 07/04/2005

SCHEDULE 28AB

SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

. . . . . .

VALID FROM 01/05/1995

SCHEDULE 28B

VENTURE CAPITAL TRUSTS: MEANING OF "QUALIFYING HOLDINGS"

. . . . . .

SCHEDULE 29

s.844

CONSEQUENTIAL AMENDMENTS

THE CAPITAL ALLOWANCES ACTS

F2015 1 and 2 . . . . . .

Textual Amendments

F2015 Sch. 29 paras. 1, 2 repealed by Capital Allowances Act 1990 (c. 1), s. 164, **Sch. 2**

TAXES MANAGEMENT ACT 1970 C.9

3 The Taxes Management Act 1970 shall have effect subject to the amendments made by paragraphs 4 to 10 below.

F2016 4 . . . . . .

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Textual Amendments

F2016 Sch. 29 para. 4 repealed (with effect in accordance with s. 90 of the repealing Act) by Finance Act 1990 (c. 29), **Sch. 19 Pt. 5**, Note 2

F2017 5 . . . . . .

Textual Amendments

F2017 Sch. 29 para. 5 repealed by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 8**; S.I. 1989/816

6 The following section shall be inserted after section 16—[*for text see* 1970(M) s.16A—*agency workers*].

7 F2018 (1) . . . . . .

(2) In subsection (2) and (3) of that section for the words "this section" there shall be substituted the words " subsection (1) above ".

F2018 (3) . . . . . .

Textual Amendments

F2018 Sch. 29 para. 7(1)(3) repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Pt. 4**, Note 9

8 (1) In subsection (1) of section 55 (recovery of tax not postponed) the following paragraph shall be **[**F2019 substituted for paragraph (g)**]**—[*for text see Taxes Management Act 1970 (c. 9), s. 55(1)(g)*].

(2) The following subsection shall be inserted in that section after subsection (6)—[*for text see Taxes Management Act 1970 (c. 9), s. 55(6A)*].

Textual Amendments

F2019 Words in Sch. 29 para. 8 substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **13**

9 The following Table shall be substituted for the Table in section 98—[*for text see Taxes Management Act 1970 (c. 9), s. 98*].

10 (1) The Taxes Management Act 1970, as amended by the Finance (No.2) Act 1987, shall have effect, after the day appointed under section 95 of the 1987 Act for the purposes of the provision in question, subject to the following amendments.

(2) In section 11(8) for "286" there shall be substituted " 419 ".

(3) In section 30(2A) and (3A) for "87 of the Finance (No.2) Act 1987" there shall be substituted " 826 of the principal Act ".

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(4) In section 87A—

(a) in subsection (1) for "243(4)" there shall be substituted " 10 ";

F2020(b) . . . . . .

(c) in subsection (4), in paragraph (a) for "85 of the Finance Act 1972" there shall be substituted " 239 of the principal Act ", and in paragraph (b) for "85" there shall be substituted " 239 "; and

(d) in subsection (5) for the words from "subsection" to "1972" there shall be substituted " section 252(5) of the principal Act ".

(5) In section 89 for "87 of the Finance (No.2) Act 1987" there shall be substituted " 826 of the principal Act ".

(6) In section 91(2A) for "90 of the Finance (No.2) Act 1987" there shall be substituted " 10 of the principal Act ".

(7) In section 94(8) for the words from "subsection (3)" to "1972" there shall be substituted " section 239(3) of the principal Act ";

(8) In section 109—

(a) in subsection (3) for "286" and "(4)" there shall be substituted " 419 " and " (3) ";

(b) in subsection (3A) for "(5)" and "286" (twice) there shall be substituted " (4) " and " 419 ".

Textual Amendments

F2020 Sch. 29 para. 10(4)(b) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

THE FRIENDLY SOCIETIES ACT (NORTHERN IRELAND) 1970 C.31 (N.I.)

F2021 11 . . . . . .

Textual Amendments

F2021 Sch. 29 para. 11 repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), **Sch. 22 Pt. I** (with ss. 7(5), 93(4)); S.I. 1993/2213, art. 2(1), **Sch.6** Appendix

THE FINANCE ACT 1973 C.51

F2022 12 . . . . . .

Textual Amendments

F2022 Sch. 29 para. 12 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

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FRIENDLY SOCIETIES ACT 1974 C.46

13 In section 7 of the Friendly Societies Act 1974 at the end of subsection (3) there shall be added the following—

"but nothing in this subsection shall apply with respect to—

(a) policies issued in respect of insurances made on or after 19th March 1985; or

(b) policies issued in respect of insurances made before that date which are varied on or after that date."

THE SOCIAL SECURITY ACTS

F2023 14 . . . . . .

Textual Amendments

F2023 Sch. 29 para. 14 repealed (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch.1** (with Sch. 3 paras. 2, 4)

CAPITAL GAINS TAX ACT 1979 C.14

F2024 15 . . . . . .

Textual Amendments

F2024 Sch. 29 para. 15 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2025 16 . . . . . .

Textual Amendments

F2025 Sch. 29 para. 16 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2026 17 . . . . . .

Textual Amendments

F2026 Sch. 29 para. 17 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2027 18 . . . . . .

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Textual Amendments

F2027 Sch. 29 para. 18 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2028 19 . . . . . .

Textual Amendments

F2028 Sch. 29 para. 19 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2029 20 . . . . . .

Textual Amendments

F2029 Sch. 29 para. 20 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2030 21 . . . . . .

Textual Amendments

F2030 Sch. 29 para. 21 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2031 22 . . . . . .

Textual Amendments

F2031 Sch. 29 para. 22 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2032 23 . . . . . .

Textual Amendments

F2032 Sch. 29 para. 23 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2033 24 . . . . . .

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Textual Amendments

F2033 Sch. 29 para. 24 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2034 25 . . . . . .

Textual Amendments

F2034 Sch. 29 para. 25 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2035 26 . . . . . .

Textual Amendments

F2035 Sch. 29 para. 26 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2036 27 . . . . . .

Textual Amendments

F2036 Sch. 29 para. 27 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F2037 28 . . . . . .

Textual Amendments

F2037 Sch. 29 para. 28 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

ADMINISTRATION OF JUSTICE ACT 1985 C.61

30 In paragraph 36(3) of Schedule 2 to the Administration of Justice Act 1985 for all the words preceding “any reference” there shall be substituted the words “ (3) In sections 745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988 ”.

LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1985 C.73

31 In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 for the heading preceding paragraph 41 there shall be substituted the following—

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" Income and Corporation Taxes Act 1988;"and in paragragh 41 for "30(5)" there shall be substituted the words " (3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988 ".

TRANSLATION OF REFERENCES TO
ENACTMENTS REPEALED AND RE-ENACTED

32 In the enactments specified in Column 1 of the following Table for the words set out or referred to in Column 2 there shall be substituted the words set out in the corresponding entry in Column 3.

Enactment amended	***Words to be omitted***	***Words to be substituted***
In the Provisional Collection of Taxes Act 1968 c. 2		
Section 1(1A)(a)	343 of the Income and Corporation Taxes Act 1970	476 of the Income and Corporation Taxes Act 1988
1(1A)(b)	27 of the Finance Act 1984	479 of that Act
5(1)(c)	from "243(6)" to "1972"	8(5) of the Income and Corporation Taxes Act 1988
5(2)	from "the said" to "1972"	sections 8(5) and 822 of the 1988 Act (over-deductions from preference dividends before passing of annual Act)
In the Capital Allowances Act 1968 c.3		
[*Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*]		
In the Finance Act 1969 c. 32		
Section 58(1)(a)	204 of the Income and Corporation Taxes Act 1970	203 of the Income and Corporation Taxes Act 1988
In the Taxes Management Act 1970 c. 9		
Section 6(1)(c)	463	706
8(8)	457 or 458	683 or 684

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8(9)	86 of the Finance Act 1972	231 of the principal Act
9(4)	155	114
11(6)	85(4) of the Finance Act 1972	239(4) of the principal Act
12(5)	137(4)	100(2)
15(7)(a)	from “section 196” to “1977”	sections 141, 142, 143, 145 or 154 to 165 of the principal Act
15(11)(b)	Part II of the Finance Act 1976	Part V of the principal Act
	80 to 82	34 to 36
27(2)	454(3)	681(4)
29(2)	*Schedule* 16*to the Finance Act* 1972	*sections* 426*to* 430*of the principal Act*
F2038 29(8)	39(3)	284(4) **F2039**
30	47 or 48 (twice)	824 or 825 of the principal Act or section 47
31	all of subsection (3)	(3) The appeal shall be to the Special Commissioners if the assessment is made— (a) by the Board; or (b) under section 350, 426, 445, 740, 743(1) or 747(4)(a) of the principal Act; or (c) under section 38 of the Finance Act 1973 or section 830 of the principal Act and is not an assessment to tax under Schedule E; or if the appeal involves any question as to the application of Part XV or XVI of the principal Act.
35(2)(b)	187	148
42(3)(a)	27	278
42(3)(c)	section 218	subsection (5) of section 614

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42(3)(c)	that section	section 615(3) of that Act
47B	Schedule 5 to the Finance Act 1983	Chapter III of Part VII of the principal Act
47B	paragraph 5A(5) of that Schedule	section 294(5) of that Act
55(1)(b)	204	203
55(1)(c)	Schedule 20 to the Finance Act 1972	Schedule 16 to the principal Act
55(1)(e)	Schedule 14 to the Finance Act 1972	Schedule 13 to the principal Act
55(1)(g)	88*of the Finance Act* 1984	753*of the principal Act*
F2040 55(1)(g)	82(4)(a)	747(4)(a) **F2040**
58(3)(b)	from "sections" to "that Act or"	section 102, 113(5), 263(5) and (6), 343(10) or 783(9) of the principal Act, or paragraph 22 of Schedule 7 to the Income and Corporation Taxes Act 1970, or **F2041**
63(3) (as substituted by Schedule 4 to the Debtors (Scotland) Act 1987 c.18)	204	203
71(1)	Part XI	sections 6 to 12 and Parts VIII and XI
78(1)	89	43
F2042	**F2042**	**F2042**
. . .	. . .	. . .
78(5)	533	839
86(2)(b)	204	203
86(2)(d)	14 to the Finance Act 1972	13 to the principal Act
86(4)	5 (three times)	3
86(4)	4(3)	5(4)
86(4)	14 to the Finance Act 1972	13 to the principal Act
86(4)	243(4)	10(1)
86(4)	344	478
87	14 (four times)	13

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87	20 (four times)	16
87	the Finance Act 1972	the principal Act
88(2)	14 or 20 to the Finance Act 1972	13 or 16 to the principal Act
88(5)(b)	4(2)	5(2)
88(5)(c)	4(3)	5(4)
91(3)(c)	204	203
93(1)	39(3)	284(4) **F2043**
93(3)	204	203
94(2)	240(5) or 246(3)	7(2) or 11(3)
95(1)(a)	39(3)	284(4) **F2043**
109(4)	286(5)	419(4)
109(1)-(3),(5)	section 286	sections 419 and 420
118(1)	526(5)	832(1)
118(1)	354	468
118(1)	1970	1988
Schedule 2, para.2(2), in column 1 of the Table	II of Part I	I of Part VII
	65(4)	351(5)
	3	2
para.2(2), in column 2 of the Table	158(1)	121(1), (2)
	315(3)	441(3)
	331	459
	332	460
	338	467
	339	484
	384	527
	389	534
	391	536
	392	538
3, para.3,5	204 (three times)	203
para.5B	65 of the Finance Act 1976	159 of the principal Act
para.8	section 286	sections 419 and 420

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para.8	15 of Schedule 16 to the Finance Act 1972	13 of Schedule 19 to the principal Act
last para.	from "11" to "to the principal Act"	102, 113(5), 263(5) and (6), 343(10) and 783(9) of the principal Act, to paragraph 22 of Schedule 7 to the Income and Corporation Taxes Act 1970
F2044		
. . .		
F2044		
. . .		
In the Friendly Societies Act (Northern Ireland) 1970 c. 31 (N.I.)		
Section 1(5)	(2) and (3) respectively of section 337 of the Income and Corporation Taxes Act 1970	(1) and (2) respectively of section 466 of the Income and Corporation Taxes Act 1988
82(4)	226(13) of the Income and Corporation Taxes Act 1970	620(9) of the Income and Corporation Taxes Act 1988
In the Finance Act 1971 c. 68		
Section 21	the whole of subsection (6)	(6) Part II of Schedule 3 to this Act shall have effect.
40(2)(a), 43(3)	533	839 **F2045**
44(5), (6)	VIII*of the Taxes Act or Chapter* II*of Part* III*of the Finance Act* 1976*(Schedule E) (twice)*	*Schedule E*
F2046 44(6)	63*of the Finance* (No. 2)*Act* 1987	404*of the Taxes Act*
F2046 44(6)	533*of the Taxes Act*	839*of that Act*
F2046 44(7)	533	839 **F2046**
47(1)	*the whole of paragraph* (ii)	(ii)*the provisions of this Chapter as applied by this subsection shall have effect subject to section* 198(2)*of the Taxes Act*

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		(offices and employments with duties abroad).
F2046 47(2)	*from beginning to "shall each"*	*Section* 306*of the Income and Corporation Taxes Act* 1970*(capital allowances for machinery and plant used by investment or life assurance companies) shall*
F2046 69(2)	1970	1988
Schedule 3, para.8(1), (5)	the Taxes Act	the Income and Corporation Taxes Act 1970
para.8(3)	the words from "sub-paragraphs" to "this Schedule)"	section 598(2) to (4) of the Taxes Act
para.8(4)	1970	1970 or Chapter I of Part XIV of the Taxes Act
8,*para.*3	533 (*three times*)	839 **F2046**
*para.*8(4), 8A(11)	169(4)(d), 174(6)*and* 259(2)	383(5)(d), 388(7)*and* 403(3) **F2046**
*para.*13	533*of the Taxes Act*	839*of that Act*
F2046 ***F2047*** *para.*13 ***F2046*** ***F2047***	63*of the Finance* (No.2)*Act* 1987	404*of the Taxes Act*
In the Finance Act 1972 c. 41		
Section 68(10)	533	839 **F2048**
69(1)(c)(i)	533	839 **F2048**
69(4)	80	34 **F2048**
134(2)	1970	1988
In the Finance Act 1973 c. 51		
Section 32(1)(b)	30 above	395 of the Taxes Act 1988

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32(1)(c)	31 above	116 of that Act
32(1)(c)	85(5) of the Finance Act 1972	239(5) of that Act
32(1)(d)	92 of the Finance Act 1972	240 of that Act
32(2)	from beginning of paragraph (a) to end of paragraph (d)	(a) section 410(1) or (2) of or paragraph 5(3) of Schedule 18 to the Taxes Act 1988; (b) section 395(1)(c) of that Act; (c) section 116(1) of that Act; (d) paragraph 5(3) of Schedule 18 to or section 240(11) of that Act.
32(3)	258 of the Income and Corporation Taxes Act 1970	402 of the Taxes Act 1988
38(2)(d)	237(5) of the Taxes Act	254(1) of the Taxes Act 1988
38(3)	from beginning to "such rights"	Any gains accruing on the disposal of exploration or exploitation rights
38(3B)	533 of the Taxes Act	839 of the Taxes Act 1988
38(5)	the Taxes Act	the Taxes Act 1970
59	all of subsection (2)	(2) In this Act— (a) "the Taxes Act 1970" means the Income and Corporation Taxes Act 1970; and (b) "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.
Schedule 15, para.2,4	this Act	this Act or section 830 of the Taxes Act 1988
15, para.6	533 of the Taxes Act	839 of the Taxes Act 1988
In the Friendly Societies Act 1974 c. 46		
Section 7(5)	(2) and (3) respectively of section 337 of the Income	(1) and (2) respectively of section 466 of the Income

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	and Corporation Taxes Act 1970	and Corporation Taxes Act 1988
93(4)	226(13) of the Income and Corporation Taxes Act 1970	620(9) of the Income and Corporation Taxes Act 1988
F2049		
. . .		
F2044		
. . .		
In the Finance Act 1976 c. 40		
Section 41(1)	*section* 168*of the Taxes Act*	*sections* 380*and* 381*of the Income and Corporation Taxes Act* 1988 **F2050**
41(2)	*section* 168	*sections* 380*and* 381 **F2050**
41(2)	533*of the Taxes Act*	839*of the Income and Corporation Taxes Act* 1988 **F2050**
41(6)	*section* 168	*sections* 380*and* 381 **F2050**
131(2)	from beginning to "such a security"	A security issued by the Inter-American Development Bank
In the Finance Act 1978 c. 42		
Section 37(4)	*section* 84(1), (2)*and* (3)*of the Taxes Act*	*subsections* (1)*to* (4)*and* (6)*of section* 38*of the Income and Corporation Taxes Act* 1988 **F2050**
37(6)(a)	533	839*of the Income and Corporation Taxes Act* 1988 **F2050**
F2044		
. . .		
In the European Parliament (Pay and Pensions) Act 1979 c. 50		
Section 8(1)	subsections (1A) and (1B) of section 229 of the	section 629(2) and (3) of the Income and

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	Income and Corporation Taxes Act 1970	Corporation Taxes Act 1988
In the Finance Act 1980 c.48		
Section		
64(9)(b)	154(2)*or* 155(1)*of the Taxes Act*	113(2)*or* 114(1)*of the Taxes Act* 1988 **F2051**
65(5), 66(5)	154(2), 155(1)*or* 252(2)*of the Taxes Act*	113(2), 114(1)*or* 343(2)*of the Taxes Act* 1988 **F2052**
70(3)	*the said Act of* 1971	*the Finance Act* 1971 **F2052**
73(6)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F2052**
118	the whole of subsection (3)	(3) The trustees of the National Heritage Memorial Fund shall be treated for the purposes of section 49(2) of the Finance Act 1974 and section 99 above as a body of persons established for charitable purposes only.
122(2)	1970	1970 and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988
Schedule		
F2044		
. . .		
In the Finance Act 1981 c. 35		
F2044		
. . .		
139(2)	1970	1988
In the Housing (Northern Ireland) Order 1981 (S.I. No.156 N.I.3)		
Article 146(3)	341 (three times)	488
146(3)	1970 (three times)	1988

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In the Iron and Steel Act 1982 c. 25		
Section 13(3)	252(3) of the Income and Corporation Taxes Act 1970	343(3) of the Income and Corporation Taxes Act 1988
13(4)	265(1) of the Income and Corporation Taxes Act 1970	345(1) of the Income and Corporation Taxes Act 1988
In the Finance Act 1982 c. 39		
Section 27	this Act (three times)	this Act or the Taxes Act 1988
70(1)	38(4)*of the Finance Act* 1973	830(4)*of the Taxes Act* 1988 **F2053**
70(12)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F2053**
72(5)	137(4)*of the Taxes Act*	100(2)*of the Taxes Act* 1988 **F2053**
88(9)(a)	Chapter IV of Part II of the Finance Act 1985	section 710 of the Taxes Act 1988
88(9)(b)	section 36 of the Finance Act 1984	Schedule 4 to that Act
88(9)(c)	VII of Part II of that Act	V of Part XVII of the Taxes Act 1988
147(1)	532(1)(b) of the Taxes Act	838 of the Taxes Act 1988
147(2), (3)	the Taxes Act	the Taxes Act 1970
157	the whole of subsection (2)	(2) In this Act—
		(a) "the Taxes Act 1970" means the Income and Corporation Taxes Act 1970; and
		(b) "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.
Schedule 11,*para.*4(3)	154(2),*section* 155(1)*or section* 255(2)*of the Taxes Act*	113(2), 114(1)*or* 243(2)*of the Taxes Act* 1988 **F2054**
	533*of the Taxes Act*	839*of the Taxes Act* 1988

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		F2054
*para.*4(4)	341*of the Taxes Act*	488*of the Taxes Act* 1988 **F2054**
12,*para.* 3(3)(b)	Chapter III of Part XI*of the Taxes Act*	*Part* XI*of the Taxes Act* 1988 **F2054**
para. 3(3)(e)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F2054**
para. 3(3)	*the Taxes Act*	*the Taxes Act* 1970 **F2054**
13, para.3(3)(a)	463 of the Taxes Act	706 of the Taxes Act 1988
21, para.3(2)		
In the Finance Act 1983 c. 28		
Section 46(3)	Commission	Historic Buildings and Monuments Commission
F2044		
. . .		
		(ab) deep discount securities (within the meaning of Schedule 4 to the Income and Corporation Taxes Act 1988); nor
In the Telecommunications Act 1984 c. 12		
Section 62(7)	subsection (10) of section 48 of the Finance Act 1981	section 400(9) of the Income and Corporation Taxes Act 1988
72(3)(b)	paragraph (a) of the proviso to section 21(3) of the Finance Act 1970	section 592(5) of the Income and Corporation Taxes Act 1988
72(3)	II of Part II of the said Act of 1970	I of Part XIV of that Act
72(4)	“416” and “1970”	“581” and “1988”
In the Finance Act 1984 c. 43		
F2044		
. . .		
60(1)	252*of the Taxes Act*	343*of the Taxes Act* 1988 **F2055**

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128	1970	1970; and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988
Schedule 14, para.1(1)	VII of Part II of this Act	V of Part XVII of the Taxes Act 1988
para.7(6)(b)	45 of the Finance Act 1981	740 of the Taxes Act 1988
para.8(6)	45 of the Finance Act 1981	740 of the Taxes Act 1988
para.12(7)	45 of the Finance Act 1981	740 of the Taxes Act 1988
para.15(2)	(5) of section 481 of the Taxes Act	(6) of section 745 of the Taxes Act 1988
In the Finance Act 1985 c. 54		
Section 56(1)(c)	*enactment*	*enactment (including any contained in the Taxes Act)*
F2056 56(8)	*Chapter* I*of* Part XIV	*sections* 520*to* 533 **F2056**
57(7)	533	839 **F2056**
F2044 . . .		
80(5)(b)	13*of the Oil Taxation Act* 1975	492*of the Taxes Act*
F2057 98(2)	1970	1988
Schedule 17, para.3(2), 5(4)(a),6(d)	533	839 **F2056**
F2044 . . .		
In the Companies Act 1985 c. 6		
Section 209(3)(b)	444 of the Income and Corporation Taxes Act 1970	670 of the Income and Corporation Taxes Act 1988
266(4)		
266(4)	359 (*twice*)	842 **F2058**
	1970	1988

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F2058

In the Trustee Savings Bank Act 1985 c. 58		
Schedule 2 para.4(2)	Taxes Act (twice)	the Income and Corporation Taxes Act 1970
6(1)	137	100
(4)	177	393
(8)	29 of the Finance Act 1973	410(1) to (6) of the Taxes Act
7(2)	26 of the Finance Act 1982	369 of the Taxes Act
9(1)	1970	1988
In the Bankruptcy (Scotland) Act 1985 c. 66		
Schedule 3 Part I para.1(1)	204 of the Income and Corporation Taxes Act 1970	203 of the Income and Corporation Taxes Act 1988
para.1(2)	69 of the Finance (No.2) Act 1975	559 of the Income and Corporation Taxes Act 1988
In the Housing Associations Act 1985 c. 69		
Section 62(2)	341	488
62(2)	1970	1988
In the Airports Act 1986 c. 31		
Section 77(2)	1970 Act	Income and Corporation Taxes Act 1970
77(4)	48(10) of the Finance Act 1981	400(9) of the 1988 Act
77(5)	261(2) of the 1970 Act	408(2) of the 1988 Act
77(5)	262(1) of the 1970 Act	409(1) of that Act
77(5)	262(2)	409(2)
77(6)	1970 (twice)	1988
77(6)	258 to 264	Chapter IV of Part X
In the Finance Act 1986 c. 41		
Section 24(4)	Finance Act 1978	Taxes Act 1988

F2044

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. . .

114(2)	1970	1970 and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.
Schedule 13, para.17	134*of the Taxes Act*	87*of the Taxes Act* 1988 **F2059**
para.17	(5)*of the said section* 134	(7)*of that section*
F2059	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F2059**
15, para.10(1)		
para.10(4)	80*of the Taxes Act*	34*of the Taxes Act* 1988 **F2059**
16, para.8(5)	*from* "154(2)" *to first "Act"*	113(2), 114(1)*or* 343(2)*of the Taxes Act* 1988 **F2059**
para.8(8)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F2059**
In the Gas Act 1986 c. 44		
Section 63(9)	533 of the Income and Corporation Tax Act 1970	839 of the Income and Corporation Taxes Act 1988
In the Insolvency Act 1986 c. 45		
Schedule 6, para. 1	204 of the Income and Corporation Taxes Act 1970	203 of the Income and Corporation Taxes Act 1988
para. 2		
	69 of the Finance (No. 2) Act 1975	559 of the Income and Corporation Taxes Act 1988
F2060		
. . .		
In the Building Societies Act 1986 c. 53		
Schedule 8, para.7	Schedule 8 to the Finance Act 1986	section 333 of the Income and Corporation Taxes Act 1988
In the Financial Services Act 1986 c. 60		
Schedule 15, para.14(5)	332	460(1) or 461(1)
para.14(5)	1970	1988

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In the Companies (Northern Ireland) Order 1986 (S.I.No.1032 N.I.6)		
Article 217(3)(b)	444*of the Income and Corporation Taxes Act* 1970	670*of the Income and Corporation Taxes Act* 1988 **F2061**
274(4)	359 (*twice*)	842 **F2061**
274(4)	1970	1988 **F2061**
F2062		
. . .		
In the Finance Act 1987 c. 16		
Section		
72	1970	1988
In the Debtors (Scotland) Act 1987 c. 18		
Section 53(6)	65(1A)	351(2)
53(6)	1970	1988
63(9)	65(1A)	351(2)
63(9)	1970	1988
In the Abolition of Domestic Rates Etc. (Scotland) Act 1987 c. 47		
Section 3(5)	the whole of paragraph (b)	(b) "retail prices index" has the meaning given by section 833 of the Income and Corporation Taxes Act 1988
In the Finance (No.2) Act 1987 c. 51		
Section 84(1)	247 of the Taxes Act	12 of the Income and Corporation Taxes Act 1988

Textual Amendments

F2038 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F2039 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

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F2040 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F2041 *Repealed by* 1988(F) s.148*and* Sch.14 Part IX*from* 3*April* 1989*—commencement order* S.I. 1989 No.473 (*in* Part III Vol.5).

F2042 Entry in Sch. 29 para. 32 Table repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 81, 123, **Sch 19 Pt. V**, Note 1

F2043 *Repealed by* 1988(F) Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F2044 Entries in Sch. 29 para. 32 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 172, 201(3), Sch. 11 paras. 22, 26(2), 27).

F2045 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2046 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2047 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F2048 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2049 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch. 1** and by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch. 1**

F2050 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2051 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2052 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2053 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2054 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2055 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2056 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2057 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F2058 *Repealed by* 1988(F) s.148*and* Sch.14 Part VI*for accounting periods ending after* 5*April* 1988.

F2059 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F2060 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch. 1**

F2061 *Repealed by* 1988(F) s.148*and* Sch.14 Part VI*for disposals made on or after* 6*April* 1988.

F2062 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch. 1**

Modifications etc. (not altering text)

C934 *See* 1990 s.132*and* Sch.19 Part V*for repeal in relation to allowances and charges falling to be made for chargeable periods ending after the day to be appointed* (*see* 1988 s.10).

C935 *See* 1990 s.132*and* Sch.19 Part V*for repeal in relation to allowances and charges falling to be made for chargeable periods ending after the day to be appointed* (*see* 1988 s.10).

SCHEDULE 30

Section 844.

TRANSITIONAL PROVISIONS AND SAVINGS

Corporation tax payment dates

1 (1) In this paragraph, an "old company" means a company to which section 244 of the 1970 Act applied in respect of the last accounting period ending before 17th March 1987.

(2) In relation to an old company —

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(a) "the company's section 244 interval" means the interval after the end of an accounting period of the company which, in accordance with section 244 of the 1970 Act, was the period within which corporation tax assessed for that period was required to be paid; and

(b) "the period of reduction" means the number of whole days which are comprised in a period equal to one-third of the difference between nine months and the company"s section 244 interval.

(3) Subject to sub-paragraph (6) below, with respect to the first accounting period of an old company beginning on or after 17th March 1987, section 243(4) of the 1970 Act and section 10(1) of this Act (time for payment of corporation tax) shall have effect as if for the reference to nine months there were substituted a reference to a period which is equal to the company"s section 244 interval less the period of reduction.

(4) Subject to sub-paragraph (6) below, with respect to any accounting period of an old company which begins —

(a) after the accounting period referred to in sub-paragraph (3) above, but

(b) before the second anniversary of the beginning of that period,

section 10(1) of this Act shall have effect as if for the reference to nine months there were substituted a reference to a period equal to the previous payment interval less the period of reduction.

(5) In relation to any accounting period of an old company falling within sub-paragraph (4) above, "the previous payment interval"means the interval after the end of the immediately preceding accounting period within which corporation tax for that preceding period is required to be paid by virtue of section 243(4) of the 1970 Act or section 10(1) of this Act, as modified by this paragraph.

(6) If the accounting period referred to in sub-paragraph (3) above or any accounting period falling within sub-paragraph (4) above is less than 12 months, the sub-paragraph in question shall have effect in relation to that accounting period as if for the reference in that sub-paragraph to the period of reduction there were substituted a reference to the number of whole days comprised in a period which bears to the period of reduction the same proportion as that accounting period bears to 12 months.

(7) With respect to any accounting period of an old company which falls within sub-paragraph (3) or (4) above, section 86(4) of the Management Act (interest on overdue tax) shall have effect as if, in paragraph 5(a) of the Table (the reckonable date in relation to corporation tax), the reference to the nine months mentioned in section 243(4) of the 1970 Act or section 10(1) of this Act were a reference to the period which, under sub-paragraphs (3) to (6) above, is substituted for those nine months.

(8) In section 88(5)(e) of the Management Act (the date when corporation tax ought to have been paid) for the words from "where section 244(1)" to "the interval" there shall be substituted " in the case of an accounting period in respect of which section 10(1) of the principal Act applies as modified by sub-paragraph 1(3) or (4) of Schedule 30 to that Act, at the end of the period which, under that sub-paragraph, is substituted for the period of nine months ".

(9) With respect to any accounting period of an old company which falls within sub-paragraph (3) or (4) above, section 825 shall have effect as if, in subsection (8) in paragraph (a) of the definition of "the material date", the reference to the nine

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months mentioned in section 10(1) were a reference to the period which, under sub-paragraphs (1) to (8) above is substituted for those nine months.

Duration of leases

2 (1) Subject to sub-paragraph (2) and paragraph 3 below, section 38 has effect —
(a) as respects a lease granted after 12th June 1969; and
(b) so far as it relates to section 34(5), as respects a variation or waiver the contract for which is entered into after that date.

(2) So far as relates to relief under —
(a) section 385 **[**[F2063]or**]** 393 **[**[F2064]or 393A(1)**]**; or
(b) section 380(1) as applied by subsection (2) of that section; or
(c) section 25(1);
given by setting a loss against, or making a deduction from, income of —
(i) the year 1988-89 or any subsequent year of assessment, or
(ii) a company's accounting period ending after 5th April 1988,
section 38 shall be deemed to have had effect as from the passing of the Finance Act 1963, and as respects leases granted at any time.

(3) Notwithstanding section 31 or any other enactment governing the order in which reliefs are given, in applying sub-paragraph (2) above it shall be assumed that all relief which could not be affected by the operation of that sub-paragraph was given (for all years of assessment and accounting periods before or after the passing of this Act) before relief which could be affected by the operation of that sub-paragraph.

(4) All such adjustments shall be made, whether by way of assessment or discharge of repayment of tax, as are required to give effect to section 38 with this paragraph.

Textual Amendments

F2063 Word "or" repealed by 1991 s. 123 and Sch. 19 Part V in relation to losses incurred in accounting periods ending on or after 1 April 1991.

F2064 1991 s.73(3)-(5) and Sch. 15 para. 27(1) in relation to losses incurred in accounting periods ending on or after 1 April 1991 - deemed always to have had effect.

3 (1) Sections 24 and 38 shall have effect subject to the modifications set out in sub-paragraphs (2) to (4) below in relation to any lease granted after 12th June 1969 and before 25th August 1971 and, so far as section 38 relates to section 34(5), in relation to any variation or waiver the contract for which was entered into between those dates, except to the extent that section 38 affects the computation of the profits or gains or losses of a trade, profession or vocation or relates to relief under —
(a) section 25(1);
(b) section 385 **[**[F2065]or **]**393 **[**[F2066]or 393A(1)**]**;
(c) subsection (1) of section 380 as applied by subsection (2) of that section; or
(d) section 779(5).

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(2) In section 24, in subsection (1), in the definition of "premium", the words from "or to" to "landlord ", and subsections (3) and (4) shall be omitted.

(3) In subsection (1) of section 38 the following paragraph shall be inserted before paragraph (a) —

"(aa) where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice so given;"and sub-paragraph (ii) of paragraph (a) and paragraph (c) shall be omitted.

(4) In subsection (2) of that section for the words "Subsection (1)" there shall be substituted the words " Subsection (1)(a) ", and subsection (4) of that section shall be omitted.

Textual Amendments

F2065 Word "or" repealed by 1991 s. 123 and Sch. 19 Part V in relation to losses incurred in accounting periods ending on or after 1 April 1991.

F2066 1991 s. 73(3)-(5) and Sch. 15 para. 27(1) in relation to losses incurred in accounting periods ending on or after 1 April 1991 - deemed always to have had effect.

4 (1) Where section 38 does not have effect, the following provisions of this paragraph shall apply in ascertaining the duration of a lease for the purposes of sections 34 to 36.

(2) Subject to sub-paragraph (4) below, where the terms of the lease include provision for the determination of the lease by notice given either by the landlord or by the tenant, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice.

(3) Subject to sub-paragraph (4) below, where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date.

(4) Where the duration of a lease falls to be ascertained after the date on which the lease has for any reason come to an end, the duration shall be taken to have extended from its commencement to that date, and where the duration falls to be ascertained at a time when the lease is subsisting the preceding provisions of this paragraph shall be applied in accordance with circumstances prevailing at that time.

(5) In relation to Scotland, "term " in this paragraph, where referring to the duration of a lease, means "period".

(6) This paragraph shall be construed as one with Part II.

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Repeal of section 136 of the Income Tax Act 1952: allowance of annual value of land as a business expense

5 (1) This paragraph has effect for allowing deductions by reference to those which would have fallen to be made if section 136 of the Income Tax Act 1952 had applied for the years 1963-64 and 1964-65.

(2) Subject to the provisions of this paragraph, an allowance under this paragraph shall be made to the person ("the occupier") carrying on a trade where land which was occupied by him at any time before the end of the year 1962-63 for the purposes of the trade permanently ceases to be occupied by him for those purposes.

(3) The amount of the allowance shall be the excess of —

(a) the aggregate of any deductions in respect of the annual value of the land which, by virtue of section 136, would have been made in computing the profits or gains of the trade for the years 1963-64 and 1964-65 but for section 29(1) of the Finance Act 1963 and the repeal by that Act of section 136;

over

(b) the aggregate of any deductions relating to the land made in computing the profits or gains of the trade for those years, being —

(i) deductions permitted by section 29(2) of the Finance Act 1963, so far as made in respect of the period in respect of which the deductions mentioned in paragraph (a) above would have been made; or

(ii) deductions in respect of rent from which an amount representing tax was deducted under section 173 of the Income Tax Act 1952, so far as made in respect of that period.

(4) The allowance shall be made by —

(a) treating the amount of it as rent paid for the land by the occupier (in addition to any actual rent), becoming due from day to day during the period defined in sub-paragraph (5) below; and

(b) allowing deductions accordingly in computing the profits or gains of the trade chargeable under Case I of Schedule D for any chargeable period the profits or gains for which fall to be computed by reference to a period including the period defined in sub-paragraph (5) below or any part thereof.

(5) The period referred to in sub-paragraph (4) above is that ending when the land permanently ceases to be occupied by the occupier for the purposes of the trade, and of a duration, equal to the aggregate of —

(a) the number of months and fractions of months during which the land was occupied by him for the purposes of the trade in so much of the period by reference to which the profits or gains of the trade for the year 1963-64 fell to be computed as fell before the beginning of that year; and

(b) the number of months and fractions of months during which the land was so occupied in so much of the period by reference to which the profits or gains of the trade for the year 1964-65 fell to be computed as fell before the beginning of the year 1963-64.

(6) No allowance shall be made under this paragraph where the date on which the land permanently ceases to be occupied by the occupier for the purposes of the trade

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(a) falls within a chargeable period in which he permanently ceases to carry on the trade; or

(b) where the occupier is not a company, falls within a year of assessment and also within a period by reference to which the profits or gains of the trade for that year of assessment fall to be computed.

(7) Where, by reason of a change in the persons carrying on the trade, the trade falls to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, a person engaged in carrying on the trade immediately before the change occurred who continues to be so engaged immediately after it occurred shall be treated for the purposes of this paragraph as not having been in occupation of the land at any time before it occurred.

(8) Where there has been a change in the persons carrying on the trade, but by virtue of section 113 of this Act or section 17(1) of the Finance Act 1954 (company reconstructions before introduction of corporation tax), the trade does not by reason of the change fall to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, this paragraph (including this sub-paragraph) shall apply as if any occupation of the land before the change occurred by the persons carrying on the trade immediately before it occurred were occupation by the persons carrying on the trade immediately after it occurred.

(9) Where section 343(1) applies, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the predecessor shall be treated as having been the occupation of the successor.

Subsection (6) of that section shall apply to this sub-paragraph as it applies to subsections (2) to (5) of that section, and in this paragraph "predecessor" and "successor" have the same meaning as in that section.

(10) Where section 518 has effect, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the transferor shall be treated as having been the occupation of the transferee. This sub-paragraph shall be construed as one with section 518.

(11) Sub-paragraphs (1) to (10) above shall apply in relation to a profession or vocation as they apply in relation to a trade, but as if the reference in sub-paragraph (4) to Case I of Schedule D were a reference to Case II of that Schedule.

(12) For the purposes of this paragraph, any occupation of land by the London Transport Board which was by virtue of paragraph 6 of Schedule 3 to the Finance Act 1970 immediately before the commencement of this Act treated as occupation by another body, shall continue to be so treated by virtue of this sub-paragraph.

Loss relief etc.

6 (1) The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) so far as it determines whether and to what extent —

(a) losses or expenditure incurred in, or other amounts referable to, a chargeable period earlier than those to which this Act applies may be taken into account for any tax purposes in a chargeable period to which this Act applies; or

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(b) losses or expenditure incurred in, or other amounts referable to, a chargeable period to which this Act applies may be taken into account for any tax purposes in a chargeable period earlier than those to which this Act applies.

(2) Without prejudice to sub-paragraph (1) above, the repeals made by this Act shall not affect the following enactments (which are not re-enacted) —

(a) section 27(4) of the Finance Act 1952 (restrictions on removal of six year time limit on carry forward of trading losses);

(b) section 29(3) of the Finance Act 1953 (Isles of Scilly);

(c) section 17 of, and Schedule 3 to, the Finance Act 1954 (company reconstructions before corporation tax) so far as in force by virtue of the saving in Part IV of Schedule 22 to the Finance Act 1965, and section 80(8) of the Finance Act 1965 (which amends Schedule 3 to the Finance Act 1954);

(d) section 82(4) of the Finance Act 1965 (losses allowable against chargeable gains);

(e) section 85 of the Finance Act 1965 (carry forward of surplus of franked investment income: dividends paid out of pre-1966-67 profits) and the enactments amending that section;

(f) paragraph 25 of Schedule 15 to the Finance Act 1965 (continuity of elections for purposes of corporation tax);

(g) paragraph 7 of Schedule 16 to the Finance Act 1965 (overseas trade corporations);

in so far as those enactments may be relevant to tax for any chargeable period to which this Act applies.

7 (1) This paragraph shall apply with respect to claims for group relief in respect of any amount which is attributable —

(a) to writing-down allowances, within the meaning of Chapter II of Part I of the 1968 Act, or, as the case may require, Chapter I of Part III of the Finance Act 1971, in respect of expenditure incurred by the surrendering company on the provision of machinery or plant; or

(b) to initial allowances under section 56 of the 1968 Act (expenditure in connection with mines etc.) in respect of expenditure incurred by the surrendering company and falling within section 52(1) of that Act of 1971 (works in a development area or in Northern Ireland); or

(c) to allowances under section 91 of the 1968 Act in respect of expenditure incurred by the surrendering company on scientific research;

where the expenditure is incurred under a contract entered into by the surrendering company before 6th March 1973.

(2) Notwithstanding anything in section 410(1) to (6) or 413(7) to (10) or in Schedule 18 but subject to sub-paragraph (5) below, group relief may be claimed in respect of any such amount as is referred to in sub-paragraph (1) above if —

(a) immediately before 6th March 1973 —

(i) the surrendering company and the company claiming relief were members of a group of companies, and

(ii) throughout the period beginning on that date and ending at the end of the accounting period in respect of which the claim is made, there

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is no reduction in the rights of the parent company with respect to the matters specified in section 413(7)(a) and (b); or

(b) immediately before 6th March 1973 the company claiming relief was a member of a consortium and, throughout the period beginning on that date and ending at the end of the accounting period in respect of which the claim is made, there is

(i) no variation in the percentage of the ordinary share capital of the company owned by the consortium which is beneficially owned by that member, and

(ii) no reduction in the rights of that member (in respect of the company owned by the consortium) with respect to the matters specified in section 413(7)(a) and (b);

and in either case no such arrangements as are specified in section 410(1) or (2) have come into existence after 5th March 1973 with respect to any of the companies concerned and no variation is made in any such arrangements which are in existence on that date with respect to any of those companies.

(3) For the purposes of sub-paragraph (2)(a) above, "the parent company" means the company of which another member of the group referred to in that sub-paragraph was, immediately before 6th March 1973, a 75 per cent subsidiary, and the rights of the parent company referred to in that paragraph are —

(a) if the parent company is either the surrendering company or the company claiming relief, its rights in the other company; and

(b) in any other case, its rights in both the surrendering company and the company claiming relief.

(4) For the purposes of this paragraph an amount which the claimant company claims by way of group relief shall be treated as attributable to an allowance falling within any of paragraphs (a) to (c) of sub-paragraph (1) above to the extent that that amount would not have been available for surrender by the surrendering company if no such allowance had been available to the surrendering company in respect of the expenditure concerned.

(5) Sub-paragraph (2) above shall not apply if, during the period referred to in that sub-paragraph —

(a) there is a major change in the nature or conduct of a trade or business carried on by the relevant company; or

(b) the relevant company sets up and commences a trade or business which it did not carry on immediately before 6th March 1973.

(6) In sub-paragraph (5) above —"a major change in the nature or conduct of a trade or business" has the same meaning as in section 245(1); and "the relevant company" means, if the machinery or plant to which the allowance relates was brought into use on or before 6th March 1978, the company claiming group relief and in any other case either that company or the company which if sub-paragraph (5) did not apply would be the surrendering company.

(7) This paragraph shall be construed as if it were contained in Chapter IV of Part X.

Capital allowances

8 Without prejudice to paragraphs 6 and 7 above, where a person is, immediately before the commencement of this Act, entitled to a capital allowance by virtue

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of any enactment repealed by this Act, he shall not cease to be so entitled by reason only of that repeal, notwithstanding that the enactment in question is not re-enacted by this Act; and accordingly the provisions of this Act shall apply, with any necessary modifications, so far as may be necessary to give effect to any such entitlement.

Social security benefits

9 (1) In relation to any period before regulations containing the first schemes under section 20 of the Social Security Act 1986 and Article 21 of the Social Security (Northern Ireland) Order 1986 providing for income support come into force —

(a) the repeal by this Act of sections 27 and 28 of the Finance Act 1981 shall not have effect;

(b) sections 151 and 152 of this Act shall not have effect;

(c) section 204 of this Act shall have effect with the substitution for paragraph (b) of the following paragraph —

"(b) he has claimed a payment of supplementary allowance under the Supplementary Benefits Act 1976 or the Supplementary Benefits (Northern Ireland) Order 1977 in respect of a period including that time and his right to the allowance is subject to any condition contained in section 5 of the said Act of 1976 or, in Northern Ireland, Article 7 of the said Order (requirements as to registration and availability for employment)"and with the addition at the end of the following —

"(2) Any reference in this section to section 5 of the Supplementary Benefits Act 1976 or to Article 7 of the Supplementary Benefits (Northern Ireland) Order 1977 includes a reference to that section or Article as amended by any other enactment including an enactment passed or made after the passing of this Act"; and

(2) In relation to any period before regulations containing the first schemes under section 20 of theSocial Security Act 1986 and Article 21 of the Social Security (Northern Ireland) Order 1986 providing for family credit come into force, section 617(2) of this Act shall have effect with the addition after paragraph (b) of the following paragraph —

"(bb) payments in respect of family income supplement under the Family Income Supplements Act 1970 or the Family Income Supplements Act (Northern Ireland) 1970;."

Children's settlements: irrevocable dispositions made before 22nd April 1936

10 (1) Sub-paragraph (2) below applies to any disposition which —

(a) was made, directly or indirectly, by any person ("the settlor") after 5th April 1914 and before 22nd April 1936, and

(b) immediately before 22nd April 1936, was an irrevocable settlement within the meaning of Chapter II of Part XV.

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(2) Subject to the provisions of this paragraph, any income which, by virtue or in consequence of any disposition to which this sub-paragraph applies, is payable to or applicable for the benefit of a child of the settlor for some period less than the life of the child, shall, if and so long as the child is an infant and unmarried, be deemed for all purposes of the Income Tax Acts to be the income of the settlor, if living and not to be the income of any other person.

(3) Sub-paragraph (2) above shall not apply as regards any income —

(a) which is derived from capital which, at the end of the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child; or

(b) which is payable to or applicable for the benefit of a child during the whole period of the life of the settlor.

(4) Income shall not be deemed, for the purposes of this paragraph, to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon, being executed by the child.

(5) In this paragraph, unless the context otherwise requires —

"child" includes a step-child or an illegitimate child, and

"disposition" includes any trust, covenant, agreement or arrangement.

(6) Sections 661 and 662 shall apply as if this paragraph were contained in Chapter I of Part XV, and this paragraph, notwithstanding that it is referred to in Chapter II of that Part, shall not be construed as one with that Chapter.

Pre-1959 settlements

11 (1) Where, in the case of any settlement made before 16th April 1958, any sums payable by the settlor or by the wife or husband of the settlor would, by virtue only of section 671(3), fall to be treated as the income of the settlor and not as the income of any other person, the sums shall not be so treated if —

(a) no power by reason of which they would fall to be so treated has been exercised after 15th April 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow, and

(b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) above,

or if the settlement was entered into in connection with any judicial separation or any agreement between spouses to live separate and apart, or with the dissolution or annulment of a marriage.

(2) Where, in the case of any settlement made before 16th April 1958, any income arising under the settlement would, by virtue only of section 672(3), fall to be treated as the income of the settlor and not as the income of any other person, the income shall not be so treated if —

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(a) no power by reason of which it would fall to be so treated has been exercised after 15th April 1958 or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and

(b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) above.

12 Where, in the case of any settlement made before 9th July 1958, any income arising under the settlement would, by virtue only of section 674, fall to be treated as the income of the settlor and not as the income of any other person, it shall not be so treated if —

(a) no power by reason of which it would fall to be so treated has been exercised after 8th July 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and

(b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) above.

General powers of amendment in Acts relating to overseas countries

13 Where under any Act passed before this Act and relating to a country or territory outside the United Kingdom there is a power to affect Acts passed or in force before a particular time, or instruments made or having effect under such Acts, and the power would but for the passing of this Act have included power to change the law which is reproduced in, or is made or has effect under, this Act, then that power shall include power to make such provision as will secure the like change in the law reproduced in, or made or having effect under, this Act notwithstanding that it is not an Act passed or in force before that time.

Double taxation agreements

14 The repeal by this Act of section 16 of the Finance (No.2) Act 1979 shall not prejudice the effect of any Order in Council which gives effect to arrangements contained in the Convention mentioned in that section and is made under section 497 of the 1970 Act.

Securities

15 The repeal by this Act of Schedule 22 to the Finance Act 1985 shall not affect the continued operation of paragraph 6 of that Schedule in relation to the holding of securities by any person at any time during the year (within the meaning of that Schedule).

Building societies

16 Any enactment relating to building societies contained in this Act which re-enacts an enactment which was an existing enactment for the purposes of section 121 of

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the Building Societies Act 1986 shall continue to be an existing enactment for those purposes.

Pension business

17 Any reference to pension business in any enactment (other than an enactment repealed by this Act) which immediately before the commencement of this Act was such a reference by virtue of paragraph 11(3) of Part III of Schedule 5 to the Finance Act 1970 shall not be affected by the repeal by this Act of that paragraph and accordingly the business in question shall continue to be known as pension business.

Stock relief

18 Schedule 9 to the Finance Act 1981 shall continue to have effect in relation to any relief to which paragraph 9 or 17(1) of that Schedule applied immediately before the commencement of this Act notwithstanding the repeal by this Act of that Schedule **F2067**.

Textual Amendments

F2067 For 1981 Sch. 9 see 1987 edition.

18A (1) This paragraph applies in any case where a person is entitled to a relief to which Part II of Schedule 9 to the Finance Act 1981 applies (income tax: stock relief) for a year of assessment and —

(a) he and the inspector have come to an agreement, in writing, as to the extent to which the relief is to be given effect in that year (whether by deduction from profits or gains or by discharge or repayment of tax, or both); and

(b) no assessment giving effect to the relief is made for that year.

(2) In a case to which this paragraph applies the relief shall be taken to have been given effect in the year of assessment in question, as if an assessment had been made, to the extent set out in the agreement mentioned in subsection (1) above.

Modifications etc. (not altering text)

C936 Sch. 30 para. 18A continued (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 3 para. 114**

Schedule E emoluments

19 The repeal by this Act of section 21 of the Finance Act 1974 shall not affect the taxation of emoluments which if that section had been in force before 1973-74 would have fallen within Case I or Case II of Schedule E, and, accordingly, any such emoluments shall not be chargeable under Case III of Schedule E.

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Unitary states

20 The repeal by this Act of section 54 of and Schedule 13 to the Finance Act 1985 shall not prevent the Treasury making an order under subsection (7) of section 54 exercising the powers conferred on the Treasury by that subsection in relation to distributions made in chargeable periods ending before 6th April 1988 and, accordingly, subsections (7) and (8) of section 54 shall continue to have effect in later chargeable periods for that purpose.

Continuity and construction of references to old and new law

21 (1) The continuity of the operation of the Tax Acts and of the law relating to chargeable gains shall not be affected by the substitution of this Act for the enactments repealed by this Act and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Act and any Act amended by this Act) to, or to things done or falling to be done under or for the purposes of, any provision of this Act shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in this Act has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Any reference to Case VIII of Schedule D, whether a specific reference or one imported by more general words, in any enactment, instrument or document shall, in relation to the chargeable periods to which section 843(1) applies, be construed as a reference to Schedule A, and for the purposes of sub-paragraph (2) above, Schedule A in this Act shall be treated as corresponding to Case VIII of Schedule D in the repealed enactments, and any provision of this Act or of any Act passed after 12th March 1970 and before this Act referring to Schedule A shall be construed accordingly.

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SCHEDULE 31

Section 844.

REPEALS

Chapter	Short title	Extent of repeal
1965 c. 25.	Finance Act 1965	Section 84. Schedule 20.
	* * *	* *
1970 c. 9.	Taxes Management Act 1970	In section 88(5)(e) the words from "or" to the end. In section 118(1)(a) the words from "as" to "Act". In Schedule 2, in paragraph 2(2), the words "section 311".
1970 c. 10.	Income and Corporation Taxes Act 1970	[*See* 1991 *edition for these repeals.*]
1970 c. 24.	Finance Act 1970.	Sections 11 to 14. Section 16. Sections 19 to 26. Section 29(1), (2), (3)(a), (4) and (8). * * * * * In Schedule 4, paragraphs 6, 8, 9(6) and 11. Schedule 5.
1970 c. 54.	Income and Corporation Taxes (No.2) Act 1970	The whole Act.
1971 c. 68.	Finance Act 1971	Sections 13 to 20. Section 21(1) to (5). Sections 22 to 28. Sections 32 to 36. Section 39. * * * * * Schedule 2. Schedule 3, except paragraph 8. Schedule 4. In Schedule 6, Parts I and III. Schedule 7. * * * * *

Chapter	Short title	Extent of repeal
		In Schedule 9, paragraph 4.
1972 c. 41.	Finance Act 1972	Sections 62 to 66. Section 67(2)(c). Sections 70 to 77. Sections 79 to 95. Sections 97 to 110. Section 111(2). Section 124. Schedules 9 to 23. In Schedule 24, paragraphs 15 to 33.
1973 c. 51.	Finance Act 1973	Sections 10 to 31. In section 32, subsection (5) and in subsection (6) the words from "sections" to "1972". Sections 33 to 36. In section 38, in subsection (1) the words "income tax" and "and corporation tax" and subsection (6). Sections 39 and 40. Section 43. Sections 52 and 53. In section 54(1) the words "income tax, corporation tax or". Schedules 8 to 14. In Schedule 15, paragraphs 1 and 3. Schedule 16. In Schedule 21, paragraphs 6 to 9.
1974 c. 30.	Finance Act 1974	Sections 7 to 16. Sections 18 to 23. Sections 25 to 28. Section 30. Sections 36 and 37. In section 52 the words "the Income Tax Acts, the Corporation Tax Acts and". Schedules 1 and 2. In Schedule 12, paragraphs 7 to 12.

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Chapter	Short title	Extent of repeal
	* * *	* *
1974 c. 46.	Friendly Societies Act 1974	Section 64. In Schedule 9, paragraph 23.
	* * *	* *
1975 c. 7.	Finance Act 1975	Sections 5 to 12. Sections 16 and 17. Schedules 1 and 2. In Schedule 12, paragraphs 16 and 19.
	* * *	* *
1975 c. 22 [*See* Oil Taxation Acts.]		
1975 c. 45.	Finance (No. 2) Act 1975	Sections 25 to 43. Section 44(1) to (3) and (6). Section 46(6). * * * * * Section 48. Sections 50 to 53. Sections 68 to 71. Schedule 8. Schedules 12 and 13.
1976 c. 40.	Finance Act 1976	Sections 24 to 38. Sections 44 to 50. Sections 60 to 71. Section 72(1) to (12). Schedules 4, 7 and 8. In Schedule 9, paragraphs 3, 4, 8, 9 and 12 to 16.
	* * *	* *
1977 c. 36.	Finance Act 1977	Sections 17 to 39. Sections 45 to 48. Schedules 7 and 8.
	* * *	* *

Chapter	Short title	Extent of repeal
1977 c. 53.	Finance (Income Tax Reliefs) Act 1977	The whole Act.
	* * *	* *
1978 c. 42.	Finance Act 1978	Sections 13 to 28. Section 29(1), (2) and (4). Sections 30 to 36. Sections 41 to 43. Sections 53 to 61. Schedules 2 to 5. Schedule 9.
	* * *	* *
1979 c. 14.	Capital Gains Tax Act 1979	* * * * *
1979 c. 25.	Finance Act 1979	The whole Act.
	* * *	* *
1979 c. 47.	Finance (No.2) Act 1979	Sections 5 to 13. Sections 15 and 16. * * * * * Schedules 1 and 2.
1980 c. 48.	Finance Act 1980	Sections 18 to 56. Section 57(1), (2)(b), (3) and (4). Sections 59 and 60. Section 61(1). Section 63. Section 70(1), (2), (4), (5) and (6). Section 88(7). * * * * * Section 118(1) and (2). Section 119. Section 121. Schedules 8 to 11. * * * * *

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Chapter	Short title	Extent of repeal
1981 c. 35.	Finance Act 1981	Sections 19 to 37. Section 38(1) and (2). Sections 39 to 72. * * * * * Section 138. Schedules 9 to 12.
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1982 c. 39.	Finance Act 1982	Sections 20 to 26. Sections 28 to 67. Section 78. * * * * * Schedules 7 to 10. * * * * *
	* * *	* *
1983 c. 28.	Finance Act 1983	Sections 10 to 28. Section 46(1), (2) and (3)(a) and (b). Schedules 4 and 5.
1983 c. 49.	Finance (No. 2) Act 1983	Sections 1 to 5. Schedule 1.
1983 c. 56 [*See* Oil Taxation Acts.]		
	* * *	* *
1984 c. 43.	Finance Act 1984	Sections 17 to 43. * * * * * Sections 45 to 49. * * * * *

Chapter	Short title	Extent of repeal
		Sections 51 to 55. In section 56, subsections (1) and (2) and in subsection (4) the words from the beginning to "assessment and". Section 72. In section 73, subsections to (3), (5) and (6). Sections 74 to 77. * * * * * Sections 82 to 100. Section 126(3)(a). Schedules 7 to 10. * * * * * Schedules 15 to 20.
	* * *	* *
1984 c. 51.	Inheritance Tax Act 1984	In Schedule 8, paragraphs 8, 17, 18, 21 and 22.
	* * *	* *
1985 c. 54.	Finance Act 1985	Sections 34 to 49. Sections 51 to 54. Section 60. Sections 64 and 65. * * * * * Sections 73 to 77. Schedules 9 to 13. In Schedule 14, paragraph 16. Schedule 18. Schedules 22 and 23. In Schedule 25, paragraphs 7, 8 and 9.
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Chapter	Short title	Extent of repeal
1986 c. 41.	Finance Act 1986	Sections 16 to 23. Section 24(1) to (3). Sections 25 to 32. Sections 34 to 54. Section 56(7)(a) and (b). Sections 61 to 63. Schedules 7 and 8. In Schedule 9, paragraphs 1 to 21 and 23. Schedules 10, 11 and 12. In Schedules 13, paragraphs 2(5)(a) and (b) and 26 and 27. In Schedule 16, paragraph 10(7). Schedule 17. In Schedule 18, paragraphs 1 to 6, in paragraph 9(1), paragraph (a) and in paragraph (c) the words "section 477 or" and paragraph 9(2).
	* * *	* *
1987 c. 16.	Finance Act 1987	Sections 20 to 39. Section 40(1) and (2). Sections 41 to 46. Section 70(1). Section 71. Schedules 3 to 6. * * * * * Schedule 15, except paragraph 12.
	* * *	* *

Chapter	Short title	Extent of repeal
1987 c. 51.	Finance (No. 2) Act 1987	Sections 1 to 63. Section 64(2). Sections 65 to 68. Sections 70 and 71. In section 73(1) the words "income tax, corporation tax or". Sections 74 to 77. Section 87. In section 88, subsections (5) and (6) and the words following paragraph (c) in subsection (7). Section 90. Sections 92 and 93. Schedules 1 to 5. In Schedule 6, paragraphs 1, 3, 6 and 8.

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