



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XIX

#### SUPPLEMENTAL

##### *Interpretation*

#### **831 Interpretation of this Act.**

- (1) <sup>M1</sup>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—
  - [<sup>F1</sup>“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;]
  - [<sup>F2</sup>“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005;]
  - “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.
  - [<sup>F3</sup>“the 1990 Act” means the Capital Allowances Act 1990.]
  - [<sup>F4</sup>“the 1992 Act” means the Taxation of Chargeable Gains Act 1992.]
- (4) Section 1 of the <sup>M2</sup>Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the <sup>M3</sup>Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and

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section 1(3) of the <sup>M4</sup>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) <sup>M5</sup>This Act, so far as it relates to capital gains tax, shall be construed as one with the [<sup>F5</sup>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

- F1** S. 831(3): definition of "ITEPA 2003" 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. 107** (with Sch. 7)
- F2** S. 831(3): definition of "ITTOIA 2005" 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. 336** (with Sch. 2)
- F3** 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**
- F4** 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))
- F5** 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)

- C1** S. 831(4) applied (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 22 para. 144(2)**

#### Marginal Citations

- M1** Source—1970 s.526(1), (2); 1987 Sch.15 12
- M2** 1987 c. 42.
- M3** 1978 c. 30.
- M4** 1986 c. 9.
- M5** Source—1970 s.540(2)

## 832 Interpretation of the Tax Acts.

- (1) <sup>M6</sup>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;
- <sup>F6</sup> .....
- “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;

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“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 <sup>M7</sup>Building Societies Act 1986;

“capital allowance” means any allowance under [<sup>F7</sup>the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)];

[<sup>F8</sup>“the Capital Allowances Act” means the Capital Allowances Act 2001;

“chargeable gain” has the same meaning as in the [<sup>F9</sup>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;

“distribution” has the meaning given by Part VI with section 418;

[<sup>F10</sup>“estate in land”, in relation to any land in Scotland, includes the land;]

“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;

[<sup>F11</sup>“for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice;]

[<sup>F12</sup>“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);

<sup>F13</sup> .....

[<sup>F14</sup>“generally accepted accounting practice” [<sup>F15</sup>has the meaning given by section 50(1) of the Finance Act 2004];]

<sup>F16</sup> .....

“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) <sup>F17</sup>;

“industrial assurance business” [<sup>F18</sup>means any such business carried on before the day appointed for the coming into force of section 167(4) of the Finance Act 1996 as was industrial assurance business within] the meaning given by section 1(2) of the <sup>M8</sup>Industrial Assurance Act 1923 or Article 3(1) of the <sup>M9</sup>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;

[<sup>F19</sup>“international accounting standards” has the meaning given by section 50(2) of the Finance Act 2004;]

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[<sup>F20</sup>“investment LLP” and “property investment LLP” have the meaning given by section 842B;]

[<sup>F21</sup>“local authority association” has the meaning given by section 519;]

[<sup>F22</sup>[<sup>F23</sup>“lower rate”, in relation to the charging of income tax for any year of assessment, means the rate of income tax specified in or determined in pursuance of section 1A(1B);

“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 [<sup>F24</sup>or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998];

[<sup>F25</sup>“offshore installation” has the meaning given by section 837C;]

[<sup>F26</sup>“open-ended investment company”, and “authorised corporate director”, “owner of shares” and “scheme property” in relation to an open-ended investment company, have the meanings given by subsection (10) of section 468, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;

“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;

[<sup>F27</sup>“overseas property business”—

- (a) for the purposes of income tax, has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005;
- (b) for the purposes of corporation tax, has the meaning given by section 70A(4);]

[<sup>F28</sup>“period of account”—

- (a) in relation to a person, means any period for which the person draws up accounts, and
- (b) in relation to a trade, profession, vocation or other business means any period for which accounts of the business are drawn up;]

[<sup>F29</sup>“permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;]

“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;

[<sup>F30</sup>“the rate applicable to trusts” shall be construed in accordance with section 686(1A);]

<sup>F31</sup> .....

<sup>F32</sup> .....

[<sup>F33</sup>“relevant foreign income” has the meaning given by subsections (1) to (3) of section 830 of ITTOIA 2005 but also includes, for any purpose mentioned in any provision listed in subsection (4) of that section, income treated as relevant foreign income for that purpose by that provision;]

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[<sup>F34</sup>“Schedule A business” means any business the profits or gains of which are chargeable to [<sup>F35</sup>corporation tax] under Schedule A, including the business in the course of which any transaction is by virtue of paragraph 1(2) of that Schedule to be treated as entered into;

[<sup>F36</sup>“starting 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 starting rate limit shall be construed in accordance with section 1(2A);]

[<sup>F37</sup>“the [<sup>F38</sup>dividend] ordinary rate” shall be construed in accordance with section 1B(2);]

[<sup>F37</sup>“the [<sup>F38</sup>dividend] trust rate” shall be construed in accordance with section 686(1A);]

[<sup>F37</sup>“the [<sup>F38</sup>dividend] upper rate” shall be construed in accordance with section 1B(2);]

<sup>F39</sup>

.....

[<sup>F40</sup>“tax credit” means—

- (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;]

“trade” includes every trade, manufacture, adventure or concern in the nature of trade;

[<sup>F41</sup>“UK generally accepted accounting practice” has the meaning given by section 50(4) of the Finance Act 2004;]

[<sup>F42</sup>“UK property business” has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005;]

<sup>F43</sup>

.....

“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) <sup>M10</sup> 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).

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- (3) <sup>M11</sup>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.
- [ Any reference in the Tax Acts to franked investment income received by a company <sup>F44</sup>(4A) apply to any such income received by another person on behalf of or in trust for the company, but not to any such income received by the company on behalf of or in trust for another person.]
- (5) <sup>M12</sup>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

- F6** S. 832(1): definition of "additional rate" repealed (with effect in accordance with Sch. 18 Pt. 6(1) Note of the repealing Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 18 Pt. 6\(1\)](#)
- F7** S. 832(1): words in definition of "capital allowance" substituted (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 60\(a\)](#)
- F8** S. 832(1): definition of "the Capital Allowances Act" substituted for definition of "the Capital Allowances Acts" (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 60\(b\)](#)
- F9** 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)).
- F10** S. 832(1): definition of "estate in land" inserted (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act \(asp 5\)](#), ss. 71, 77(2)(c); [S.S.I. 2003/456](#), [art. 2](#)
- F11** S. 832(1): definition of "for accounting purposes" inserted (with effect in accordance with s. 103(6) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 103\(1\)](#)
- F12** S. 832(1): definition of "franked investment income" substituted (with effect in accordance with [Sch. 3 para. 39\(8\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 3 para. 39\(2\)](#)
- F13** S. 832(1): definition of "franked payment" repealed (with effect in accordance with [Sch. 3 para. 39\(8\)](#) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 3 para. 39\(3\)](#), [Sch. 27 Pt. 3\(2\)](#), Note
- F14** S. 832(1): definition of "generally accepted accounting practice" inserted (with effect in accordance with s. 103(6) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 103\(1\)](#)
- F15** S. 832(1): words in definition of "generally accepted accounting practice" substituted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by [2005 c. 7](#), [Sch. 4 para. 50](#), [Sch. 11 Pt. 2\(7\)](#), Note 1)) by [Finance Act 2004 \(c. 12\)](#), [s. 50\(5\)\(a\)](#)
- F16** S. 832(1): definition of "group income" repealed (with effect in accordance with [Sch. 3 para. 39\(9\)](#) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 3 para. 39\(4\)](#), [Sch. 27 Pt. 3\(2\)](#), Note
- F17** *Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.*
- F18** S. 832(1): words in definition of "industrial assurance business" substituted (1.12.2001) by [Finance Act 1996 \(c. 8\)](#), [s. 167\(4\)\(11\)](#); [S.I. 2001/3643](#), [art. 2\(a\)](#)

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- F19** S. 832(1): definition of "international accounting standards" inserted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**, Note 1)) by **Finance Act 2004 (c. 12), s. 50(5)(b)**
- F20** S. 832(1): definition of "investment LLP" and "property investment LLP" 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(2)**
- F21** 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;".
- F22** 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)**
- F23** S. 832(1): definition of "lower rate" substituted (with effect in accordance with s. 22(12) of the amending Act) by **Finance Act 1999 (c. 16), s. 22(10)(a)**
- F24** S. 832(1): words in definition of "notice" inserted (31.7.1998) by **Finance Act 1998 (c. 36), s. 118(10)**
- F25** S. 832(1): definition of "offshore installation" inserted (with effect in accordance with Sch. 27 para. 3 of the amending Act) by **Finance Act 2004 (c. 12), Sch. 27 para. 2**
- F26** S. 832(1): definitions of "open-ended investment company", "authorised corporate director", "owner of shares" and "scheme property" inserted (28.4.1997) by The Open-ended **Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), reg. 14**
- F27** S. 832(1): definition of "overseas property business" 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. 337(a)** (with Sch. 2)
- F28** S. 832(1): definition of "period of account" inserted (with effect in accordance with s. 103(6) of the amending Act) by **Finance Act 2002 (c. 23), s. 103(1)**
- F29** S. 832(1): definition of "permanent establishment" inserted (10.7.2003) by **Finance Act 2003 (c. 14), s. 148(6)**
- F30** 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)**
- F31** S. 832(1): definition of "the rate of advance corporation tax" repealed (with effect in accordance with Sch. 3 para. 39(9) of the repealing Act) by **Finance Act 1998 (c. 36), Sch. 3 para. 39(5), Sch. 27 Pt. 3(2)**, Note
- F32** S. 832(1): definition of "recognised clearing system" repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by **Finance Act 1996 (c. 8), Sch. 7 para. 25, Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)
- F33** S. 832(1): definition of "relevant foreign income" 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. 337(b)** (with Sch. 2)
- F34** S. 832(1): definition of "Schedule A business" inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by **Finance Act 1995 (c. 4), Sch. 6 para. 28**
- F35** S. 832(1): words in definition of "Schedule A business" 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. 337(c)** (with Sch. 2)
- F36** S. 832(1): definition of "starting rate" and "starting rate limit" inserted after the definition of "Schedule A business" (with effect in accordance with s. 22(12) of the amending Act) by **Finance Act 1999 (c. 16), s. 22(10)(b)**
- F37** S. 832(1): definitions of "the Schedule F ordinary rate", "the Schedule F trust rate", and "the Schedule F upper rate" inserted (with effect in accordance with Sch. 4 para. 22(2) of the amending Act) by **Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 22(1)**
- F38** S. 832(1): words in definitions of "the Schedule F ordinary rate", "the Schedule F trust rate" and "the Schedule F upper rate" 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. 337(d)** (with Sch. 2)
- F39** S. 832(1): definition of "surplus of franked investment income" repealed (with effect in accordance with Sch. 3 para. 39(8) of the repealing Act) by **Finance Act 1998 (c. 36), Sch. 3 para. 39(6), Sch. 27 Pt. 3(2)**, Note

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- F40** S. 832(1): definition of "tax credit" 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. 337\(e\)](#) (with Sch. 2)
- F41** S. 832(1): definition of "UK generally accepted accounting practice" inserted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, [Sch. 11 Pt. 2\(7\)](#), Note 1)) by [Finance Act 2004 \(c. 12\), s. 50\(5\)\(b\)](#)
- F42** S. 832(1): definition of "UK property business" 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. 337\(f\)](#) (with Sch. 2)
- F43** S. 832(1): definition of "Ulster Savings Certificates" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 337\(g\), Sch. 3](#) (with Sch. 2)
- F44** S. 832(4A) inserted (with effect in accordance with [Sch. 3 para. 39\(8\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 3 para. 39\(7\)](#)

#### Marginal Citations

- M6** 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)
- M7** 1986 c. 53.
- M8** 1923 c. 8.
- M9** [S.I. 1979/1574 \(N.I. 13\)](#).
- M10** Source—1970 s.526(6)
- M11** Source—1970 s.526(3), (4)
- M12** Source—1970 s.526(5A); 1987 Sch.15 2(21)

### 833 Interpretation of Income Tax Acts.

- (1) <sup>M13</sup>In the Income Tax Acts references to profits or gains shall not include references to chargeable gains.
- (2) <sup>M14</sup>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 [<sup>F45</sup>Office for National Statistics]; 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 [<sup>F46</sup>that Office].
- (3) <sup>M15</sup>For the purposes of any provision of the Income Tax Acts (other than [<sup>F47</sup>sections 535 to 537 of ITTOIA 2005]<sup>F48</sup>. . . ) 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—
- [<sup>F49</sup>(a) any payment or other benefit charged to tax under Chapter 3 of Part 6 of ITEPA 2003 (payments and other benefits on termination of employment);] or
- (b) any amount included in his total income by virtue of section [<sup>F50</sup>465 of ITTOIA 2005][<sup>F51</sup>which is a sum in relation to which section [<sup>F52</sup>530 of that Act] applies]; or
- (c) *any chargeable sum as defined in paragraph 2 of Schedule 2* <sup>F48</sup>.
- (4) <sup>M16</sup>Subject to subsections (5) [<sup>F53</sup>to] (6) below, in the Income Tax Acts "earned income" means, in relation to any individual—
- [<sup>F54</sup>(a) any income charged to tax under ITEPA 2003 except—
- (i) payments that meet the conditions in section 623 of that Act (return of surplus employee additional voluntary contributions); and



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- (ii) jobseeker's allowance (to which Chapter 3 of Part 10 of that Act applies);
- (b) any income from any property which is attached to or forms part of the general earnings from any employment;] and
- (c) any income which is charged [<sup>F55</sup>under Part 2 of ITTOIA 2005 (trading income)] 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<sup>F56</sup>.*

- (5) <sup>M17</sup>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 [<sup>F57</sup>—
  - (a) income to which subsection (5A) applies, and
  - (b) income to which subsection (5B) applies.]

[<sup>F58</sup>(5A) This subsection applies to income arising to the individual if—

- (a) it is charged to tax under section 583 of ITTOIA 2005 (income from disposals of know-how), and
- (b) the individual, alone or jointly, devised the know-how in question.

(5B) This subsection applies to income arising to the individual if—

- (a) it is patent income, and
- (b) the individual, alone or jointly, devised the invention for which the patent in question was granted.

This is subject to subsection (5C).

(5C) If—

- (a) any part of the rights in respect of the patent, or of any rights out of which they were granted, has at any time belonged to any other person, and
- (b) any part of the income is properly attributable to the rights which have belonged to that other person,

subsection (5B) does not apply to that part of the income (and so it is not earned income).

(5D) In subsection (5B) “patent income” means—

- (a) royalties or other sums paid in respect of the use of a patent charged to tax under section 579 of ITTOIA 2005,
- (b) amounts on which tax is payable under section 587 or 593 of ITTOIA 2005, and
- (c) amounts on which tax is payable under—
  - (i) section 472(5) of the Capital Allowances Act (patent allowances: balancing charges), or
  - (ii) paragraph 100 of Schedule 3 to that Act (balancing charges in respect of pre-1st April 1986 expenditure on the purchase of patent rights).

(5E) References in subsection (5C) to the rights in respect of the patent are to any right to do or authorise the doing of anything which would, but for the right, be an infringement of the patent.]

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- (6) <sup>M18</sup>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

- F45** Words in s. 833(2) substituted (1.4.1996) by [The Transfer of Functions \(Registration and Statistics\) Order 1996 \(S.I. 1996/273\)](#), [Sch. 2 para. 22\(a\)](#)
- F46** Words in s. 833(2) substituted (1.4.1996) by [The Transfer of Functions \(Registration and Statistics\) Order 1996 \(S.I. 1996/273\)](#), [Sch. 2 para. 22\(b\)](#)
- F47** Words in s. 833(3) 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. 338\(2\)\(a\)](#) (with Sch. 2)
- F48** *Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.*
- F49** S. 833(3)(a) substituted (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. 108\(2\)](#) (with Sch. 7)
- F50** Words in s. 833(3)(b) 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. 338\(2\)\(b\)\(i\)](#) (with Sch. 2)
- F51** Words in s. 833(3)(b) inserted (with effect in accordance with s. 173(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 35 para. 5](#)
- F52** Words in s. 833(3)(b) 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. 338\(2\)\(b\)\(ii\)](#) (with Sch. 2)
- F53** Word in s. 833(4) 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. 338\(3\)\(a\)](#) (with Sch. 2)
- F54** S. 833(4)(a)(b) substituted (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. 108\(3\)](#) (with Sch. 7)
- F55** Words in s. 833(4)(c) 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. 338\(3\)\(b\)](#) (with Sch. 2)
- F56** *Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.*
- F57** S. 833(5)(a)(b) substituted for words in s. 833(5) (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. 338\(4\)](#) (with Sch. 2)
- F58** S. 833(5A)-(5E) 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. 338\(5\)](#) (with Sch. 2)

#### Marginal Citations

- M13** Source—1979(C) s.155(5).
- M14** Source—1980 s.24(8)
- M15** Source—1970 s.529
- M16** Source—1970 s.530(1)
- M17** Source—1970 s.530(2), 383; 1981 s.27(10); 1982 s.31(2); 1987 Sch.3 5
- M18** Source—1970 s.530(3).

### 834 Interpretation of the Corporation Tax Acts.

- <sup>M19</sup>(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 <sup>F59</sup> . . . ;

“accounting period” shall be construed in accordance with section 12;

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“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;

[<sup>F60</sup>“chargeable profits”, in relation to a company that is not resident in the United Kingdom—

- (a) for corporation tax purposes generally, has the meaning given by section 11(2), and
- (b) for the purposes of Chapter 4 of Part 17 (controlled foreign companies), has the meaning given by section 747(6);]

“charges on income” has the meaning given by section [<sup>F61</sup>338A];

[<sup>F62</sup>“derivative contract” has the same meaning as it has for the purposes of Schedule 26 to the Finance Act 2002;]

“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;

[<sup>F63</sup>“loan relationship” has the same meaning as it has for the purposes of Chapter II of Part IV of the Finance Act 1996;

“non-trading deficit”, in relation to a company’s loan relationships, shall be construed in accordance with section 82 of the Finance Act 1996;]

[<sup>F64</sup>“statutory insolvency arrangement” means—

- (a) a voluntary arrangement that has taken effect under or as a result of the Insolvency Act 1986, Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989,
- (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, or
- (c) any arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) above that has taken effect under or by virtue of the law of a country or territory outside the United Kingdom.]

- (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;

<sup>F65</sup> .....

- (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, [<sup>F66</sup>except in so far as Chapter III of Part XII makes other provision for dividends treated as paid by virtue of that Chapter].

- (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.

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### Textual Amendments

- F59** S. 834(1): words in definition of "accounting date" repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)
- F60** S. 834(1): definition of "chargeable profits" inserted (with effect in accordance with s. 149(6) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 149\(5\)](#)
- F61** S. 834(1): words in definition of "charges on income" substituted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 1\(4\)](#)
- F62** S. 834(1): definition of "derivative contract" inserted (with effect in accordance with s. 83(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 27 para. 13](#)
- F63** S. 834(1): definitions of "loan relationship" and "non-trading deficit" inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 49](#) (with [Sch. 15](#))
- F64** S. 834(1): definition of "statutory insolvency arrangement" inserted (with effect in accordance with s. 80(3)(4) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 8](#)
- F65** Words in s. 834(2) repealed (with effect in accordance with s. 579 of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 61](#), [Sch. 4](#)
- F66** Words in s. 834(3) substituted (with effect in accordance with [Sch. 14 para. 7](#) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [Sch. 14 para. 6](#)

### Modifications etc. (not altering text)

- C2** S. 834(1): definition of "allowable loss" excluded (with effect in accordance with s. 63(4) of the excluding Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 94\(4\)](#)

### Marginal Citations

- M19** Source—1970 s.527.

VALID FROM 01/04/2009

## <sup>F67</sup> 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

<i>Provisions of this Act</i>	<i>Description</i>
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

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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

<i>Provisions of CTA 2009</i>	<i>Description</i>
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

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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

<i>Other provisions</i>	<i>Description</i>
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
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

**F67** 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

#### [<sup>F68</sup>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.]

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#### Textual Amendments

**F68** 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

#### [<sup>F69</sup>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

**F69** 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)

### 835 “Total income” in the Income Tax Acts.

- <sup>M20</sup>(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) <sup>M21</sup>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) [<sup>F70</sup>, 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*<sup>F71</sup>.
- (6) <sup>M22</sup>In estimating the total income of any person—

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- (a) any income which is chargeable with income tax by way of deduction at the basic rate [<sup>F72</sup>or the lower rate] in force for any year or which for the purposes of [<sup>F73</sup>Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)] comprises an [<sup>F74</sup>amount which is equal to a tax credit calculated by reference to the tax credit fraction] 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
  - [<sup>F75</sup>(c) any allowance given effect under section 258 or 479 of the Capital Allowances Act;]

as it applies in relation to allowances or adjustments on the ground of diminution of income or loss.

#### Textual Amendments

- F70** 1988(F) s.35 Sch.3 para.22 for 1990-91 and subsequent years.
- F71** Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.
- F72** Words in s. 835(6)(a) inserted (with effect in accordance with s. Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 24**
- F73** Words in s. 835(6)(a) 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. 339** (with Sch. 2)
- F74** Words in s. 835(6)(a) substituted (with effect in accordance with Sch. 3 para. 40(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 40(2)**
- F75** S. 835(8)(c) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 62**

#### Marginal Citations

- M20** Source—1970 s.528(1), (2); 1971 Sch.6 78; 1972 Sch.24 32.
- M21** Source—1971 s.34; 1975 (No.2) s.31(4)
- M22** Source—1970 s.528(3)(5); 1972 Sch.11 8, Sch.24 32; 1971 Sch.6 78



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### 836 Returns of total income.

<sup>M23</sup>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

**M23** Source—1970 Sch.13

### [<sup>F76</sup>836A Generally accepted accounting practice

<sup>F77</sup>.....]

#### Textual Amendments

**F76** S. 836A inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), s. 103(2)

**F77** S. 836A repealed (with effect in accordance with s. 80(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 25, Sch. 11 Pt. 2(7), Note 2

### [<sup>F78</sup>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

<i>Provisions of this Act</i>	<i>Description</i>
Section 214(1)(ab)	Chargeable payments connected with exempt distributions
Section 571(1)	Cancellation of certificates: schemes for rationalising industry

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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
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

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## PART 2

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<b><i>Provisions of ITTOIA 2005</i></b>	<b><i>Description</i></b>
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
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

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## PART 3

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<b><i>Other provisions</i></b>	<b><i>Description</i></b>
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)

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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
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).]

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#### Textual Amendments

- F78** 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)

### 837 “Annual value” of land.

- <sup>M24</sup>(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 <sup>M25</sup>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)

- C3** See—s.26—and managed as one estate.s.145—living accommodation provided for employee.s.156—valuation of benefits in kind.
- C4** Reproduced in Part II Vol.5.

#### Marginal Citations

- M24** Source—1970 s.531
- M25** 1967 c. 9.

### [<sup>F79</sup>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 [<sup>F80</sup>generally accepted accounting practice].

This is subject to regulations under subsection (3) below.

- (3) The Treasury may by regulations provide—
- that such activities as may be prescribed are not “research and development” for the purposes of this section, and
  - that such other activities as may be prescribed are “research and development” for those purposes.
- (4) Regulations under subsection (3) above may—
- make provision by reference to guidelines issued (whether before or after the coming into force of this section) by the Secretary of State, and

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- (b) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (5) <sup>F81</sup> .....
- (6) Unless otherwise expressly provided, “research and development” does not include oil and gas exploration and appraisal.]

#### Textual Amendments

**F79** S. 837A inserted (28.7.2000) by Finance Act 2000 (c. 17), Sch. 19 para. 1

**F80** Words in s. 837A(2) substituted (24.7.2002) by Finance Act 2002 (c. 23), s. 103(4)(a)

**F81** S. 837A(5) repealed (24.7.2002) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(16)

#### [<sup>F82</sup> 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 <sup>M26</sup>Petroleum Act 1998.]

#### Textual Amendments

**F82** S. 837B inserted (28.7.2000) by Finance Act 2000 (c. 17), Sch. 19 para. 2

#### Marginal Citations

**M26** 1998 c. 17.

#### [<sup>F83</sup> 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—
- (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;

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- (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.]

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**Textual Amendments**

**F83** 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.**

- <sup>M27</sup>(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.
- (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.

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- (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—
  - (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;



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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)

- C5** 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)**
- C6** S. 838 modified (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 29 para. 50(7)**
- C7** 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))
- C8** 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)**
- C9** S. 838(4)-(10) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2**, Pt. I para. 31(11)

#### Marginal Citations

- M27** Source—1970 s.532.

### 839 Connected persons.

- <sup>M28</sup>(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 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).

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(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.

[<sup>F84</sup>(3) A person, in his capacity as trustee of a settlement, is connected with—

- (a) any individual who in relation to the settlement is a settlor,
- (b) any person who is connected with such an individual, and
- (c) any body corporate which is connected with that settlement.

In this subsection “settlement” and “settlor” have the same meaning as in [<sup>F85</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)].

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—

- (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators 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.]

(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 [<sup>F86</sup>(including an open-ended investment company)] 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

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meaning of the <sup>M29</sup>Prevention of Fraud (Investments) Act 1958 or the <sup>M30</sup>Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

#### Textual Amendments

- F84** S. 839(3)(3A) substituted for s. 839(3) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 20**
- F85** Words in s. 839(3) 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. 341** (with Sch. 2)
- F86** Words in s. 839(8) inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **reg. 15**

#### Modifications etc. (not altering text)

- C10** 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)**
- C11** S. 839 applied (with effect in accordance with s. 127(19) of the affecting Act) by Finance Act 1995 (c. 4), **s. 127(17)**
- C12** S. 839 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 15(7)**  
S. 839 applied (with effect in accordance with s. 105(1), Sch. 13 para. 8(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 8(3)** (with Sch. 13 para. 6)
- C13** S. 839 applied by Finance Act 1986 (c. 8), **s. 80B(1)** (as inserted by Finance Act 1997 (c. 16), **s. 97(1)(4)(6)**; S.I. 1997/2428, art. 2)  
S. 839 applied by Finance Act 1986 (c. 8), **s. 88B(1)** (as inserted by Finance Act 1997 (c. 16), **s. 102(1)(4)(6)**; S.I. 1997/2428, art. 2)
- C14** S. 839 applied by Finance Act 1994 (c. 9), **Sch. 6A para. 1(2)** (as inserted by Finance Act 1997 (c. 16), **ss. 22(3)**, 24, **Sch. 4**)
- C15** S. 839 applied by Value Added Tax Act 1994 (c. 23), **Sch. 9** Group 2 Note (6) (as substituted by Finance Act 1997 (c. 16), **s. 38**)  
S. 839 applied by Value Added Tax Act 1994 (c. 23), **Sch. 10 para. 3A(14)** (as inserted by Finance Act 1997 (c. 16), **s. 37(3)-(6)**)
- C16** S. 839 applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 12 para. 25(2)**
- C17** S. 839 applied (with effect in accordance with s. 48(11) of the affecting Act) by Finance (No. 2) Act 1997 (c. 58), **s. 48(10)**
- C18** S. 839 applied (31.7.1998) by Finance Act 1998 (c. 36), **s. 47(10)**  
S. 839 applied (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 11 para. 3(4)**
- C19** S. 839 applied (27.7.1999) by Finance Act 1999 (c. 16), **s. 97(2)(a)**
- C20** S. 839 applied (28.3.2000) by Finance Act 2000 (c. 17), **s. 119(9)(13)**  
S. 839 applied (with effect in accordance with s. 62 of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 14 para. 71(2)**  
S. 839 applied (with effect in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 102(3)**  
S. 839 applied (with effect in accordance with s. 69(1) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 25(2)** (with Sch. 20 para. 26)
- C21** S. 839 applied (with effect in accordance with s. 579 of the affecting Act) by Capital Allowances Act 2001 (c. 2), **s. 575(1)** (with s. 575(2))
- C22** S. 839 applied (with effect in accordance with s. 70(1) of the affecting Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 31(4)** (with Sch. 22 para. 32)
- C23** S. 839 applied (1.4.2002) by The Aggregates Levy (General) Regulations 2002 (S.I. 2002/761), **reg. 12(2)**

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- C24** S. 839 applied (1.6.2002) by The Beer Regulations 1993 (S.I. 1993/1228), **Sch. 1** (as amended by The Beer and Excise Warehousing (Amendment) Regulations 2002 (S.I. 2002/1265), **reg. 2(5)(b)**)
- C25** S. 839 applied (with effect in accordance with s. 55(7) of the affecting Act) by Finance Act 2002 (c. 23), **s. 55(5)**  
S. 839 applied by Finance Act 1996 (c. 8), **Sch. 13 para. 9A(5)** (as inserted (with effect in accordance with **s. 104(5)** of the amending Act) by Finance Act 2002 (c. 23), s. 104(3))  
S. 839 applied by Alcoholic Liquor Duties Act 1979 (c. 4), **s. 36B(8)** (as inserted (1.6.2002) Finance Act 2002 (c. 23), s. 4(1)(2), **Sch. 1 para. 2**)  
S. 839 applied (with effect in accordance with s. 53(1) of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 12 para. 19(2)** (with Sch. 12 para. 20)  
S. 839 applied (with effect in accordance with Sch. 13 para. 28 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 13 para. 27(2)**  
S. 839 applied (with effect in accordance with Sch. 37 para. 2(5) of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 37 para. 2(4)(b)**
- C26** S. 839 applied by The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004), **Sch. 4 para. 4A(3)** (as inserted (28.11.2002) by The Social Security (Contributions)(Amendment No. 5) Regulations 2002 (S.I. 2002/2929), reg. 5)
- C27** S. 839 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. 51(3)**; S.I. 2003/88, **art. 2**
- C28** S. 839 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), **s. 718** (with Sch. 7)
- C29** S. 839 applied (10.7.2003 with effect in accordance with Sch. 19 of the affecting Act) by Finance Act 2003 (c. 14), ss. 45(6), 53(2), 58(5), 108(1), Sch. 4 paras. 1(2), 10(4), **12(2)**; S.I. 2003/2899, **art. 2**
- C30** S. 839 applied (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 26 para. 7(3)**
- C31** S. 839 applied by Finance Act 2003 (c. 14), **Sch. 6A para. 10** (as inserted (1.12.2003) by The Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), reg. 1, **Sch. para. 3(2)** (replacing S.I. 2003/2760, reg. 1, **Sch. para. 3(2)**); and S.I. 2003/2816 is revoked and replaced by Finance Act 2004 (c. 12), Sch. 39 paras. 14, 17(2), **26**
- C32** S. 839 applied by The Value Added Tax Regulations 1995 (S.I. 1995/2518), **reg. 171(7)(8)** (as inserted (11.12.2003) by The Value Added Tax (Amendment) (No. 6) Regulations 2003 (S.I. 2003/3220), **regs. 1(1)(b)**, 23)
- C33** S. 839 applied (22.7.2004) by Finance Act 2004 (c. 12), **s. 278(4)** (with Sch. 36)
- C34** S. 839 applied (with modifications) (with effect in accordance with s. 84(2) of the affecting Act) by Finance Act 2004 (c. 12), **Sch. 15 para. 2**
- C35** S. 839 applied by Finance Act 2003 (c. 14), **s. 45A(10)** (as inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 5(5)**)
- C36** S. 839 applied by Finance Act 2003 (c. 14), **s. 44(11)** (as inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 15(4)**)
- C37** S. 839 applied by Finance Act 2003 (c. 14), **Sch. 6A para. 10** (as inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 17(2)**)
- C38** S. 839 applied (with modifications) by Finance Act 2003 (c. 14), **Sch. 15 para. 39** (as substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 41 para. 1**)
- C39** S. 839 applied (1.8.2004) by The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (S.I. 2004/1863), **reg. 1(1)(3)**
- C40** S. 839 applied (1.8.2004) by The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 2004/1865), **reg. 1(1)(3)**
- C41** S. 839 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(5)**, 883(3)(b)
- C42** S. 839 applied (with modifications) (7.4.2005) by Finance Act 2005 (c. 7), **s. 83(9)**
- C43** S. 839 applied (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), ss. 17(4)(n), 31(3), **Sch. 3 para. 12**
- C44** S. 839 applied by Finance Act 1996 (c. 8), **s. 91D(12)** (as inserted (with effect in accordance with Sch. 7 para. 10(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 10(4)**)

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**C45** S. 839 applied by Finance Act 2003 (c. 14), **Sch. 17A para. 18A(6)** (as inserted (with effect in accordance with Sch. 10 para. 16(5)-(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 10 para. 14**)

**C46** 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

**M28** Source—1970 s.533.

**M29** 1958 c. 45.

**M30** 1940 c. 9 (N.I.)

## 840 Meaning of “control” in certain contexts.

<sup>M31</sup>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)

**C47** 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**)

**C48** 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**

**C49** 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)

**C50** S. 840 applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **s. 65(3)**

**C51** 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

**M31** Source—1970 s.534

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VALID FROM 06/04/2007

### [<sup>F87</sup>840Z 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.
- (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

**F87** 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)

### [<sup>F88</sup>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;
  - [<sup>F89</sup>(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits other than—
    - (i) a building society within the meaning of the Building Societies Act 1986,
    - [<sup>F90</sup>(ii) a society registered within the meaning of the Friendly Societies Act 1974 <sup>M32</sup> or incorporated under the Friendly Societies Act 1992 <sup>M33</sup>]
    - (iii) a society registered as a credit union under the Industrial and Provident Societies Act 1965 <sup>M34</sup> or the Credit Unions (Northern Ireland) Order 1985 <sup>M35</sup>, or
    - (iv) an insurance company within the meaning of section 659B(1);
  - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits:] 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.



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(2) <sup>F91</sup> .....

(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

- F88** S. 840A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 1(1)**
- F89** S. 840A(1)(b)(c) 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. 46(2)**
- F90** S. 840A(1)(b)(ii) substituted (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2002 (S.I. 2002/1409), **art. 2(2)**
- F91** S. 840A(2) omitted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 46(3)**

#### Marginal Citations

- M32** 1974 c. 46.
- M33** 1992 c. 40.
- M34** 1965 c. 12.
- M35** S.I. 1985/1205 (N.I. 12).

### 841 Recognised stock exchange and recognised investment exchanges.

- <sup>M36</sup>(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 [<sup>F92</sup>Financial Services and Markets Act 2000]), or in relation to such of those exchanges as may be prescribed.

#### Textual Amendments

- F92** Words in s. 841(3) substituted (1.12.2001) by Financial Services and Markets Act 2000 (c. 8), s. 431(2), **Sch. 20 para. 4(6)**; S.I. 2001/3538, **art. 2(1)**

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### Marginal Citations

**M36** Source—1970 s.535; 1973 Sch.21 9; 1987 (No.2) s.73

## [<sup>F93</sup>841A Recognised clearing systems.

<sup>F94</sup> .....

### Textual Amendments

**F93** 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)

**F94** S. 841A repealed (28.7.2000) by Finance Act 2000 (c. 17), Sch. 40 Pt. 2(17)

## 842 Investment trusts.

<sup>M37</sup>(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—

- [<sup>F95</sup>(aa) that the company is resident in the United Kingdom; and]
  - (a) that the company’s income [<sup>F96</sup>(as determined in accordance with subsection (1AB) below)] [<sup>F97</sup>consists wholly or mainly of eligible investment income] [<sup>F98</sup>(as so determined)]; 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
- [<sup>F99</sup>(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 [<sup>F100</sup>listed in the Official List of] 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 [<sup>F101</sup>an amount which is greater than] 15 per cent. of [<sup>F102</sup>its eligible investment income] [<sup>F103</sup>(determined in accordance with subsection (1AB) below)].

[<sup>F104</sup>(1AA) Income is eligible investment income for the purposes of this section in so far as it is either—

- (a) income deriving from shares or securities, or
- (b) eligible rental income, within the meaning of section 508A.]

[<sup>F105</sup>(1AB) In determining for the purposes of paragraph (a) or (e) of subsection (1) above (and accordingly of subsection (2A)(b) below)—

- (a) the amount of a company’s income, or
- (b) the amount of income which a company derives from shares or securities,

the amounts to be brought into account under Chapter 2 of Part 4 of the Finance Act 1996 in respect of the company’s loan relationships shall be determined without reference to any debtor relationships of the company.]



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[<sup>F106</sup>(1AC) In determining the amount of a company's income for the purposes of subsection (1) (a) above, no account shall be taken of any amount that falls under section 75B(7)(b) to be regarded as income of the company chargeable under Case VI of Schedule D.]

[<sup>F107</sup>(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.

[<sup>F108</sup>(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
- (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

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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 <sup>F109</sup> . . . , 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 <sup>F110</sup>99 and 288 of <sup>F111</sup>the 1992 Act<sup>F112</sup> and “scheme of reconstruction” has the same meaning as in section 136 of that Act].

### Textual Amendments

- F95** 1988(F) s.117(1)(a) *for accounting periods ending after 5th April 1988.*
- F96** Words in s. 842(1)(a) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(2)(a)**
- F97** Words in s. 842(1)(a) substituted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by virtue of Finance Act 1996 (c. 8), **Sch. 30 para. 2(2)(a)**
- F98** Words in s. 842(1)(a) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(2)(b)**
- F99** 1988(F) s.117(1)(b) *for accounting periods ending after 5th April 1988. Previously “that the shares or securities of the company are quoted on the Stock Exchange and”.*
- F100** Words in s. 842(1)(c) substituted (with effect in accordance with Sch. 38 para. 7(3)(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 7(1)(2)(b)**
- F101** Words in s. 842(1)(e) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(3)(a)**
- F102** Words in s. 842(1)(e) substituted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 2(2)(b)**
- F103** Words in s. 842(1)(e) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(3)(b)**
- F104** S. 842(1AA) inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 2(3)**
- F105** S. 842(1AB) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(4)**
- F106** S. 842(1AC) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(4)**
- F107** 1988(F) s.117(1)(c) *for accounting periods ending after 5th April 1988.*
- F108** 1990 s.55 *in relation to accounting periods ending on or after 26 July 1990.*
- F109** Words in s. 842(3)(c) repealed (with effect in accordance with Sch. 9 paras. 7, 8 of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**, Note
- F110** 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))
- F111** Words in s. 842(4) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**
- F112** Words in s. 842(4) added (with effect in accordance with Sch. 9 paras. 7, 8(4) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(7)**

### Modifications etc. (not altering text)

- C52** S. 842(1A)(a) excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), **Sch. 2 para. 12(2)**

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#### Marginal Citations

M37 Source—1970 s.359; 1973 s.54; 1979(C) Sch.7.

### [<sup>F113</sup>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 [<sup>F114</sup>listed in the Official List of] the Stock Exchange; and
  - (f) that the company has not retained [<sup>F115</sup>an amount which is greater 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;
  - (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

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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.

[ For the purposes of subsection (2)(b) to (d) above where—

- <sup>F116</sup>(5AA) (a) any shares (“new shares”) are exchanged for other shares (“old shares”) under arrangements in relation to which paragraph 10C of Schedule 28B applies, and
- (b) those arrangements have not ceased by virtue of sub-paragraph (13) of that paragraph to be arrangements by reference to which requirements of that Schedule are deemed to be satisfied,

the value of the new shares, both at the time of their acquisition and immediately after any subsequent addition to a holding of the new shares that is made under those arrangements, shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the old shares for which they are exchanged.

(5AB) References in subsection (5AA) above to shares in a company include references to any securities of that company.

(5AC) For the purposes of subsection (2)(b) to (d) above, where—

- (a) shares (“new shares”) are issued to a company by virtue of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company (“convertibles”), and
- (b) paragraph 10D of Schedule 28B applies in relation to the issue of the new shares,

the value of the new shares at the time of their acquisition shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the convertibles for which they are exchanged.]

[ Regulations under paragraph 11B of Schedule 28B may make provision for the

- <sup>F117</sup>(5AD) purposes of subsection (2)(b) to (d) above for securing that where—
- (a) there is an exchange of shares to which regulations under that paragraph apply, and
  - (b) the new shares are treated by virtue of the regulations as meeting the requirements of that Schedule,

the value of the holding of new shares, and of any original shares that are retained under the exchange, shall be taken to be an amount such that the requirements of subsection (2)(b) to (d) above do not cease to be met by reason of the exchange.

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(5AE) In subsection (5AD) above—

- (a) “shares” includes securities; and
- (b) “exchange of shares”, “new shares” and “original shares” have the same meaning as in paragraph 11B of Schedule 28B.]

[ Subsection (5B) below applies [<sup>F119</sup>, subject to any regulations under paragraph 11 of <sup>F118</sup>(5A) Schedule 33 to the Finance Act 2002,] where—

- (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;

[ in a case where the use of any money falls to be disregarded for any accounting <sup>F120</sup>(ca) 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.

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- (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—
- [ subsection (1AB) of that section shall apply in relation to subsection (2)(a) <sup>F121</sup>(za) above as it applies in relation to subsection (1)(a) of that section;]
  - (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 [<sup>F122</sup>(1AB) and] (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 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

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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 <sup>F123</sup> . . . right to be redeemed.]

#### Textual Amendments

- F113** S. 842AA inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 70(1)
- F114** Words in s. 842AA(2)(e) substituted (with effect in accordance with Sch. 38 para. 7(3)(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 38 para. 7(1)(2)(c)
- F115** Words in s. 842AA(2)(f) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 57(2)
- F116** S. 842AA(5AA)-(5AC) inserted (16.6.1999 with effect in accordance with s. 69(5)(a) of the amending Act) by Finance Act 1999 (c. 16), s. 69(4)(5)
- F117** S. 842AA(5AD)(5AE) inserted (with effect in accordance with Sch. 18 para. 8(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 18 para. 8(2)
- F118** S. 842AA(5A)(5B) inserted (retrospectively) by Finance Act 1997 (c. 16), s. 75(1)
- F119** Words in s. 842AA(5A) inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 33 para. 13
- F120** S. 842AA(6)(ca) inserted (retrospectively) by Finance Act 1997 (c. 16), s. 75(2)
- F121** S. 842AA(11)(za) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 57(3)(a)
- F122** Words in s. 842AA(11)(b) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), Sch. 25 para. 57(3)(b)
- F123** Word in s. 842AA(14) repealed (with effect in accordance with s. 73(6) of the repealing Act) by Finance Act 1998 (c. 36), s. 73(1)(a), Sch. 27 Pt. 3(13), Note 1

#### Modifications etc. (not altering text)

- C53** S. 842AA: power to modify conferred (24.7.2002) by Finance Act 2002 (c. 23), Sch. 33 paras. 3-12
- C54** S. 842AA modified (17.9.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), regs. 1(1), 12(1), 13(7)(9), 14(1)

#### <sup>F124</sup>842A Local authorities.

- (1) Except so far as the context otherwise requires, in the Tax Acts “local authority” means—
- in relation to England and Wales, an authority of a description specified for the purposes of this paragraph <sup>F125F126</sup> . . . ],
  - in relation to Scotland, an authority of a description specified for the purposes of this paragraph <sup>F127F126</sup> . . . ], and
  - in relation to Northern Ireland, an authority of a description specified for the purposes of this paragraph <sup>F128F126</sup> . . . ].
- (2) The following are the descriptions of authority specified for the purposes of paragraph (a) of subsection (1) above—

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- [ 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 <sup>M38</sup>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;
- <sup>F130</sup>(e) . . . . .
- [<sup>F131</sup>(f) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;]
- (g) an authority having power to make or determine a rate;
- [ a residuary body established by order under section 22(1) of the <sup>M39</sup>Local Government Act 1992.]
- <sup>F132</sup>(h)
- (3) The following are the descriptions of authority specified for the purposes of paragraph (b) of subsection (1) above—
- [<sup>F133</sup>(a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];
- (d) a joint board or committee within the meaning of the <sup>M40</sup>Local Government (Scotland) Act 1973;
- (e) an authority having power to requisition any sum from an authority [<sup>F134</sup>such as is mentioned in paragraph (a) 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

- F124** S. 842A inserted (1.4.1990) by Finance Act 1990 (c. 29), s.127(1)(4)
- F125** Words in s. 842A(1)(a) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), Sch. 9 para. 53(a); S.I. 1998/354, art. 2(1)(2)(bb)
- F126** Words in s. 842A(1)(a)(b)(c) repealed (1.4.2002) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), Sch. 6 para. 71, Sch. 7 Pt. 5(1); S.I. 2002/344, art. 3(k)(m)
- F127** Words in s. 842A(1)(b) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), Sch. 9 para. 53(b); S.I. 1998/354, art. 2(1)(2)(bb)
- F128** Words in s. 842A(1)(c) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), Sch. 9 para. 53(c); S.I. 1998/354, art. 2(1)(2)(bb)
- F129** 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)
- F130** S. 842A(2)(e) repealed (1.4.1995) by Police and Magistrates' Courts Act 1994 (c. 29), s. 94(1), Sch. 9 Pt. 1; S.I. 1994/3262, art. 4, Sch.
- F131** S. 842A(2)(f) substituted (E.W.) (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), s. 61, Sch. 1 para. 64; S.I. 2004/2304, art. 2 (with art. 3); S.I. 2004/2917, art. 2
- F132** S. 842A(2)(h) inserted (retrospective to 29.11.1994) by Finance Act 1995 (c. 4), s. 144



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**F133** S. 842A(3)(a) substituted (1.4.1996) for s. 842A(3)(a)-(c) by Local Government etc. (Scotland) Act 1994 (c. 39), s. 184(2), **Sch. 13 para. 155(a)**; S.I. 1996/323, **art. 4(1)(c)**

**F134** Words in s. 842A(3)(e) substituted (1.4.1996) by Local Government etc. (Scotland) Act 1994 (c. 39), s. 184(2), **Sch. 13 para. 155(b)**; S.I. 1996/323, **art. 4(1)(c)**

**Marginal Citations**

**M38** 1988 c. 41.

**M39** 1992 c. 19.

**M40** 1973 c. 65.

[<sup>F135</sup>**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.

(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.

<sup>F136</sup> .....]

**Textual Amendments**

**F135** 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)**

**F136** Words in s. 842B(2) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

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