



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER VI

MISCELLANEOUS

Migration etc. of company

765 Migration etc. of companies

- (1) Subject to the provisions of this section, all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—
- (a) for a body corporate resident in the United Kingdom to cease to be so resident; or
 - (b) for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or
 - (c) for a body corporate so resident to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or
 - (d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.
- (2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any

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sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.

- (3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.
- (4) Any consent granted by the Treasury under this section—
- (a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and
 - (b) may, if given generally, be revoked by the Treasury; and
 - (c) may in any case be absolute or conditional; and
 - (d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

766 Offences under section 765

- (1) Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.
- (2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—
- (a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and
 - (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.
- (3) Any person who is guilty of an offence under this section shall be liable on conviction on indictment—
- (a) to imprisonment for not more than two years or to a fine, or to both; or
 - (b) where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;
- and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.
- (4) No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

767 Interpretation and commencement of sections 765 and 766

- (1) A body corporate shall be deemed for the purposes of sections 765 and 766 to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.
- (2) If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections 765 and 766 at the beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.
- (3) Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section and sections 765 and 766 to be a business carried on by the body corporate.
- (4) Notwithstanding anything in the preceding provisions of this section or in sections 765 and 766, in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections 765 and 766 as a transfer of part of its trade or business.
- (5) In this section and in sections 765 and 766—
 - “share”, “debenture” and “director” have, in relation to any body corporate, the meanings respectively assigned to them by Part XXVI of the Companies Act 1985 in relation to a company;
 - “control” (except in the expression “central management and control”) has, in relation to a body corporate, the meaning given by section 840;
 - “transfer”, in relation to shares or debentures, includes a transfer of any beneficial interest therein;
 - “insurance company” means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and
 - “funds” in relation to an insurance company means the funds held by it in connection with that business;and a body corporate shall not be deemed for the purposes of this section and sections 765 and 766 to cease to be resident in the United Kingdom by reason only that it ceases to exist.
- (6) This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

*Change in ownership of company***768 Change in ownership of company: disallowance of trading losses**

- (1) If—

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- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.
- (3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.
- (4) In subsection (1) above “major change in the nature or conduct of a trade” includes—
 - (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
 - (b) a major change in customers, outlets or markets of the trade;
 and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.
- (5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.
- (6) Where relief in respect of a company’s losses has been restricted under this section then, notwithstanding section 87(3) of the 1968 Act, in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company’s trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.
- (7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.
- (8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.
- (9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name

and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

769 Rules for ascertaining change in ownership of company

- (1) For the purposes of section 768 there is a change in the ownership of a company—
 - (a) if a single person acquires more than half the ordinary share capital of the company; or
 - (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
 - (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.
- (2) In applying subsection (1) above—
 - (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
 - (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
 - (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
 - (d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of section 768, any gift of shares, shall be left out of account.
- (3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.
- (4) Where section 768 has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.
- (5) A change in the ownership of a company shall be disregarded for the purposes of section 768 if—

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- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
 - (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.
- (6) If there is a change in the ownership of a company which has a 75 per cent. subsidiary (whether owned directly or indirectly) then, unless under subsection (5) above that change in ownership is to be disregarded, section 768 shall apply as if there had also been a change in the ownership of that 75 per cent. subsidiary.
- (7) For the purposes of this section—
- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
 - (b) a company shall be deemed to be a 75 per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
 - (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 838; and
 - (d) “shares” includes stock.
- (8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

Transactions between associated persons

770 Sales etc. at an undervalue or overvalue

- (1) Subject to the provisions of this section and section 771, where any property is sold and—
- (a) the buyer is a body of persons over whom the seller has control or the seller is a body of persons over whom the buyer has control or both the buyer and the seller are bodies of persons over whom the same person or persons has or have control; and
 - (b) the property is sold at a price (“the actual price”) which is either—
 - (i) less than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm’s length (“the arm’s length price”), or
 - (ii) greater than the arm’s length price,
 then, in computing for tax purposes the income, profits or losses of the seller where the actual price was less than the arm’s length price, and of the

buyer where the actual price was greater than the arm's length price, the like consequences shall ensue as would have ensued if the property had been sold for the arm's length price.

- (2) Subsection (1) above shall not apply—
- (a) in any case where—
 - (i) the actual price is less than the arm's length price, and
 - (ii) the buyer is resident in the United Kingdom and is carrying on a trade there, and
 - (iii) the price of the property falls to be taken into account as a deduction in computing the profits or gains or losses of that trade for tax purposes; or
 - (b) in any case where—
 - (i) the actual price is greater than the arm's length price, and
 - (ii) the seller is resident in the United Kingdom and is carrying on a trade there, and
 - (iii) the price of the property falls to be taken into account as a trading receipt in computing the profits or gains or losses of that trade for tax purposes; or
 - (c) in relation to any transaction in relation to which section 493(1) or (3) applies; or
 - (d) in relation to any other sale, unless the Board so direct.
- (3) Where a direction is given under subsection (2)(d) above all such adjustments shall be made, whether by assessment, repayment of tax or otherwise, as are necessary to give effect to the direction.

771 Transactions by petroleum companies

- (1) For the purposes of this section a company is a petroleum company if—
- (a) its activities include any relevant activities; or
 - (b) it is associated with a company whose activities include any relevant activities and its own activities include the ownership, operation or management of ships or pipelines (as defined in section 65 of the Pipelines Act 1962) used for transporting or conveying petroleum or petroleum products.
- (2) “Relevant activities” means any of the following—
- (a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum;
 - (b) the importation into or exportation from the United Kingdom of petroleum products or the acquisition or disposal of rights to such importation or exportation;
 - (c) the acquisition otherwise than for importation into the United Kingdom of petroleum products outside the United Kingdom or the disposal outside the United Kingdom of petroleum products not exported from the United Kingdom by the company making the disposal;
 - (d) the refining or processing of crude petroleum; and
 - (e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable.

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- (3) Section 770(2) shall have effect with the omission of paragraphs (a) and (b) in any case where—
- (a) either party to the transaction is a petroleum company or both are petroleum companies; and
 - (b) the activities of either or both are or include activities—
 - (i) the profits from which are or would be chargeable to overseas tax for which credit could be given under section 790 or in pursuance of arrangements having effect by virtue of section 788; or
 - (ii) which are exploration or exploitation activities within the meaning of section 830; and
 - (c) the transaction is part of such activities or is connected with them.
- (4) Where both the buyer and the seller are resident in the United Kingdom and the Board, in pursuance of this section, direct that section 770(1) is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under section 770(3) accordingly.
- (5) Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if—
- (a) the sale is part of a transaction or series of transactions (whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions; or
 - (b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent. of that company's ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say, the buyer and any companies associated with the buyer;
- section 770 shall apply in relation to the sale as if in subsection (1) of that section paragraph (a) were omitted.
- (6) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 770 what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm's length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed—
- (a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period; and
 - (b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed; and
 - (c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions; and
 - (d) in a case where the whole of the property sold is not delivered by the seller within 12 months after the date of the sale—
 - (i) that such part of the property as is delivered within that time would have fetched a price equal to that which it might have been expected

to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the date of the sale; and

- (ii) that such part of the property not so delivered as is delivered in any calendar month would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the material time in that month;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

In this subsection “calendar month” means a month of the calendar year and “material time”, in relation to a calendar month, means noon on the middle day of the month which, in the case of a month containing an even number of days, shall be taken to be the last day of the first half of the month.

- (7) In this section—

“petroleum” includes any mineral oil or relative hydrocarbon and, except in the expression “crude petroleum”, includes natural gas;

“petroleum products” means products derived from petroleum and wholly or substantially of a hydrocarbon nature.

- (8) For the purposes of this section—

- (a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons, and “control” has the meaning given by section 840;
- (b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 838;
- (c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies.

772 Information for purposes of section 770, and appeals

- (1) The Board may, by notice given to any body corporate, require it to give to the Board, within such time (not being less than 30 days) as may be specified in the notice, such particulars (which may include details of relevant documents) as may be so specified of any related transaction which appears to the Board—

- (a) to be, or to be connected with, a transaction with respect to which the Board might give a direction under section 770; or
- (b) to be relevant for determining whether such a direction could or should be given in any case; or
- (c) to be relevant for determining for the purposes of that section what price any property sold would have fetched had the sale been one between independent persons dealing at arm’s length.

- (2) For the purposes of a notice under subsection (1) above, a transaction is a related transaction if, but only if, it is one to which the body corporate to which the notice is given, or a body corporate associated with that body, was a party; and for the purposes of this subsection two bodies corporate are associated with one another if one is under the control of the other or both are under the control of the same person or persons.

- (3) Where, in the case of a transaction with respect to which it appears to the Board that a direction under section 770 might be given—

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- (a) one of the parties is a body corporate resident outside the United Kingdom and a 51 per cent. subsidiary of a body corporate (“the parent body”) resident in the United Kingdom; and
 - (b) the other party is, or is a 51 per cent. subsidiary of, the parent body,
- the Board may, by notice given to the parent body, require it to make available for inspection any books, accounts or other documents or records whatsoever of the parent body or, subject to subsection (4) below, of any body of persons over which it has control which relate to that transaction, to any other transaction (of whatever nature) in the same assets, or to transactions (of whatever nature) in assets similar to those to which the first-mentioned transaction related.
- (4) If, in a case in which under subsection (3) above the parent body is by notice required to make available for inspection any books, accounts, documents or records of a body of persons resident outside the United Kingdom over which the parent body has control, it appears to the Board, on the application of the parent body, that the circumstances are such that the requirement ought not to have effect, the Board shall direct that the parent body need not comply with the requirement.
- (5) If, on an application under subsection (4) above, the Board refuse to give a direction under that subsection, the parent body may, by notice given to the Board within 30 days after the refusal, appeal to the Special Commissioners who, if satisfied that the requirement in question ought in the circumstances not to have effect, may determine accordingly.
- (6) Where it appears to the Board that a body of persons may be a party to a transaction or transactions with respect to which a direction under section 770 might be given, then, for the purpose of assisting the Board to determine whether such a direction should be given, an inspector specifically authorised in that behalf by the Board may, at any reasonable time, on production if so required of his authority—
- (a) enter any premises used in connection with the relevant trade carried on by that body of persons (that is to say, the trade in the course of which the transaction or transactions were effected),
 - (b) inspect there any books, accounts or other documents or records whatsoever relating to that trade which he considers it necessary for him to inspect for that purpose, and
 - (c) require any such books, accounts or other documents or records to be produced to him there for inspection.
- (7) An inspector’s authority for entering any premises under subsection (6) above shall state the name of the inspector and the name of the body of persons carrying on the trade in connection with which the premises are used.
- (8) If and so far as the question in dispute on an appeal to the General Commissioners or, in Northern Ireland, to a county court against an assessment to tax arises from a direction of the Board under section 770 the question shall be referred to and determined by the Special Commissioners.

773 Interpretation of sections 770 and 771

- (1) Nothing in sections 770 and 771 shall be construed as affecting the operation of any of the provisions of the 1968 Act or of Chapter I of Part III of the Finance Act 1971.
- (2) In sections 770 and 772—

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“body of persons” includes a partnership, and

“control” has the meaning given by section 840;

and, for the purposes of this section, a sale shall be deemed to take place at the time of completion or when possession is given, whichever is the earlier.

- (3) In determining for the purposes of sections 770 and 771 whether any person (alone or with others) has control over a body of persons—
- (a) there shall be attributed to him any rights or powers of a nominee for him, that is to say, any rights or powers which another possesses on his behalf or may be required to exercise on his direction or behalf;
 - (b) there may also be attributed to him any rights or powers of a person with whom he is connected (within the meaning of section 839 but omitting subsections (5) to (7) and the exception in subsection (4)), including any rights or powers of a nominee for such a person, that is to say, any rights or powers which another possesses on behalf of such a person or may be required to exercise on his direction or behalf.
- (4) Sections 770, 771, except subsection (5)(b), and 772 and this section shall, with the necessary adaptations, have effect in relation to lettings and hirings of property, grants and transfers of rights, interests or licences and the giving of business facilities of whatever kind as they have effect in relation to sales, and the references in those sections to sales, sellers, buyers and prices shall be deemed to be extended accordingly.

774 Transactions between dealing company and associated company

- (1) Subject to the provisions of this section, where—
- (a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or
 - (b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;
- and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable in respect thereof under Case VI of Schedule D.
- (2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.
- (3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—
- (a) either—
 - (i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or
 - (ii) the payment to the company was made for meeting such expenditure, and

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- (b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,
 subsection (1) above shall not apply in so far as the expenditure proved abortive.
- (4) For the purposes of this section—
- (a) “company” includes any body corporate;
 - (b) “dealing company” means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;
 - (c) “non-dealing company” means any company which is not a dealing company;
 - (d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;
 - (e) references to a company (“the first company”) having control of another company (“the second company”) shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and “control” has the meaning given by section 840;
 - (f) “securities” includes shares and stock.
- (5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

Other provisions

775 Sale by individual of income derived from his personal activities

- (1) Subject to subsection (7) below, this section has effect where—
- (a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual’s activities in that occupation, or anything derived directly or indirectly from any such income or receipts; and
 - (b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person; and
 - (c) the main object or one of the main objects of the transactions was the avoidance or reduction of liability to income tax.
- (2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable, and which is chargeable to tax under Case VI of Schedule D.
- (3) In this section—
- (a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person; and

- (b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.
- (4) This section shall not apply to a capital amount obtained from the disposal—
- (a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or
 - (b) of shares in a company,
- in so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern.
- (5) If the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, subsection (4) above shall not exempt the part of the capital amount so derived.
- (6) In subsections (4) and (5) above references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.
- (7) Where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right, then—
- (a) tax under this section shall not be charged on any such occasion, but
 - (b) without prejudice to the generality of the provisions of this section or section 777, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.
- (8) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.
- (9) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.

776 Transactions in land: taxation of capital gains

- (1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.
- (2) This section applies wherever—
- (a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or
 - (b) land is held as trading stock; or

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- (c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;
- and any gain of a capital nature is obtained from the disposal of the land—
- (i) by the person acquiring, holding or developing the land, or by any connected person, or
 - (ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;
- and this subsection applies whether any such person obtains the gain for himself or for any other person.
- (3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—
- (a) as being income which arises when the gain is realised, and which constitutes profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the gain is realised; and
 - (b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.
- (4) For the purposes of this section—
- (a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and
 - (b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.
- (5) For those purposes—
- (a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person; and
 - (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.
- (6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—
- (a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case; or
 - (b) account may be taken of the adjustments to be made in computing such profits or gains under subsections (2) and (3) of section 99.

In the application of this subsection to Scotland, “freehold” means the estate or interest of the proprietor of the *dominium utile* or, in the case of property other than feudal property, of the owner, and “reversion” means the interest of the landlord in property subject to a lease.

- (7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.
- (8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.
- (9) This section shall not apply to a gain accruing to an individual which by virtue of sections 101 to 105 of the 1979 Act (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of section 103(3) of that Act (residences acquired partly with a view to making a gain).
- (10) Where—
- (a) there is a disposal of shares in—
 - (i) a company which holds land as trading stock; or
 - (ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and
 - (b) all the land so held is disposed of—
 - (i) in the normal course of its trade by the company which held it, and
 - (ii) so as to procure that all opportunity of profit in respect of the land arises to that company,then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).
- (11) Where a person who considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—
- (a) the inspector shall, within 30 days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section; and
 - (b) if the inspector notifies that person that he is so satisfied, the gain shall not be chargeable on that person under this section.
- (12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.
- (13) In this section—
- (a) references to the land include references to all or any part of the land, and “land” includes buildings, and any estate or interest in land or buildings;
 - (b) references to property deriving its value from land include—

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- (i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and
 - (ii) any option, consent or embargo affecting the disposition of land;
- and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.

- (14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

777 Provisions supplementary to sections 775 and 776

- (1) This section has effect to supplement sections 775 and 776, and those sections and this section are together referred to as the relevant provisions.
- (2) In applying the relevant provisions account shall be taken of any method, however indirect, by which—
- (a) any property or right is transferred or transmitted; or
 - (b) the value of any property or right is enhanced or diminished;
- and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under sections 775 and 776, tax becomes chargeable.
- (3) Subsection (2) above applies in particular—
- (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and
 - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and
 - (c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and
 - (d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.
- (4) In ascertaining for the purposes of the relevant provisions the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.
- (5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.
- (6) In applying the relevant provisions—
- (a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;
 - (b) all such valuations shall be made as are appropriate to give effect to sections 775 and 776.
- (7) For the purposes of the relevant provisions (and in particular for the purpose of the reference in section 775 to an individual putting some other person in a position to

enjoy income or receipts) partners, or the trustees of settled property, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.

- (8) Where a person is assessed to tax under the relevant provisions in respect of consideration receivable by another person—
- (a) he shall be entitled to recover from that other person any part of that tax which he has paid; and
 - (b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed;

and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.

For the purposes of this subsection any income which a person is treated as having by virtue of sections 775 and 776 shall, subject to section 833(3), be treated as the highest part of his income.

- (9) If it appears to the Board that any person entitled to any consideration or other amount taxable under sections 775 and 776 is not resident in the United Kingdom, the Board may direct that section 349(1) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.
- (10) Sections 775 and 776 have effect subject to Part XV and to any other provision of the Tax Acts deeming income to belong to a particular person.
- (11) Where under section 776(2)(c) any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of section 122 of the 1979 Act (property becoming or ceasing to be stock in trade).
- (12) Where under section 775(1)(b) or 776(8) the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of sections 31 and 33 of the 1979 Act (profits taxable as income excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.
- (13) For the purposes of the relevant provisions—

“capital amount” means any amount, in money or money’s worth, which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts, and other expressions including the word “capital” shall be construed accordingly;

“company” includes any body corporate; and

“share” includes stock;

and any amount in money or money’s worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

778 Power to obtain information

- (1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of sections 775 and 776.
- (2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—
 - (a) as to transactions or arrangements with respect to which he is or was acting on behalf of others;
 - (b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of sections 775 and 776 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections; and
 - (c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.
- (3) Notwithstanding anything in subsection (2) above, a solicitor—
 - (a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and
 - (b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

779 Sale and lease-back: limitation on tax reliefs

- (1) If land or any estate or interest in land is transferred from one person to another and—
 - (a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or
 - (b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.
- (2) If—
 - (a) land or any estate or interest in land is transferred from one person to another, and
 - (b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land,

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then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

- (a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;
- (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and
- (c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

- (a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and
- (b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction,

that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) above—

- (a) if more than one payment is made for the same period the payments shall be taken together;
- (b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
- (c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;
- (d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.

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- (7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (8) For the purpose of making a comparison under subsection (4) above between a payment consisting of rent under a lease (“the actual lease”), or such payments taken together, and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—
- (a) at a uniform rate, or
 - (b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.
- (9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, “commercial rent” shall mean the rent which might be expected to be paid under a tenant’s repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—
- (a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and
 - (b) where that period is less than 200 years, a lease which is of the same duration as that period.
- (10) In this section references to rent under a lease include references to rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 or under section 87 treated, for any purpose, as paying in respect of land comprised in the lease, and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due.
- (11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—
- (a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;
 - (b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;
 - (c) any persons who are associates as defined in section 783(10).
- (12) In this section—

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“asset” means any description of property or rights other than land or an interest in land;

“lease” includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;

“rent” includes any payment made under a lease; and

“tenant’s repairing lease” means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.

- (13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—
- (a) a deduction in computing profits or gains chargeable under Schedule A allowable by virtue of sections 25, 26 and 28 to 31 and Schedule 1;
 - (b) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;
 - (c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;
 - (d) allowance of a payment under section 75 or 76;
 - (e) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;
 - (f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

780 Sale and lease-back: taxation of consideration received

- (1) If, in any case where a person (“the lessee”) who is a lessee of land under a lease having not more than 50 years to run (“the original lease”) is entitled in respect of the rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—
- (a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and
 - (b) there is granted or assigned to the lessee another lease (“the new lease”) of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

- (2) For the purposes of this section—

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- (a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;
- (b) if under the terms of the new lease —
 - (i) the lessor or the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or
 - (ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

- (3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

15

where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

- (a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and
 - (b) in any other case, as a profit or gain chargeable under Case VI of Schedule D.
- (4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.
 - (5) Schedule 2 shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection (3) above, as an income receipt for a single year of assessment rather than as a series of such receipts

during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of “chargeable sum” and “relevant period” there shall be substituted the following definitions—

“chargeable sum” means the amount in respect of which, by virtue of subsection (3) above, the claimant is chargeable to income tax for the year of assessment;

“relevant period”, in relation to any chargeable sum, means the term of the new lease.

- (6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1) (a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—
- (a) as having surrendered the original lease for that consideration, and
 - (b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.
- (7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a partner of the lessee; and for the purposes of this section the expression “associate” shall be construed in accordance with 783(10).
- (8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above “rental period” means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.
- (9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part of the rent paid under the new lease shall be treated as a payment of capital, and the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

781 Assets leased to traders and others

- (1) Subject to section 782, where—
- (a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and
 - (b) before, at or after the time when the payment is made, either—
 - (i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee’s interest in the lease, or
 - (ii) the lessor’s interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,the person obtaining that sum shall be charged under Case VI of Schedule D for the chargeable period in which the sum is obtained with tax on an amount equal to the amount of the payment in respect of which tax relief is so allowed.

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- (2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.
- (3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.
- (4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—
- (a) a deduction in computing profits or gains or losses of a trade, profession or vocation for the purposes of tax;
 - (b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section 392 or 396;
 - (c) allowance of a payment under section 75 or 76;
 - (d) a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1) or allowable in computing losses in an employment for tax purposes;
 - (e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.
- (5) Where—
- (a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and
 - (b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the profits or gains of which income tax falls to be computed in respect of the trade, profession or vocation,
- for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.
- (6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.
- (8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time not more than six years from the end of the chargeable period in which the payment was made.
- (9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which

is required to be brought into account as the whole or part of the disposal value of the machinery or plant under section 45(2) of the Finance Act 1971.

782 Leased assets: special cases

- (1) This section shall apply, and section 781 shall not apply, to payments—
 - (a) which are allowable by way of deductions in computing the profits or gains or losses of a trade, and
 - (b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—
 - (i) of that trade; or
 - (ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;and when so used was owned by the person carrying on the trade in which it was being used.
- (2) Subject to the following provisions of this section, the deduction allowable in computing the profits or gains or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.
- (3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the profits or gains or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.
- (4) For the purposes of subsection (2) above—
 - (a) if more than one payment is made for the same period the payments shall be taken together;
 - (b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;
 - (c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.
- (5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).
- (6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, “commercial rent” shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which

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would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—

“anticipated normal working life” means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and

“the relevant time” means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.

- (7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.
- (8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.
- (9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of section 113 or 337(1) the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.
- (10) In this section references to a trade include references to a profession or vocation.

783 Leased assets: supplemental

- (1) References in section 781 to a sum obtained in respect of the lessee’s interest in a lease of an asset, or in respect of any other interest in an asset include—
 - (a) in the case of a lessee’s interest, references to sums representing the consideration in money or money’s worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and
 - (b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.
- (2) Such references also include references to sums representing money or money’s worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money’s worth so obtained is attributable to the rights of the lessee under the lease.
- (3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money’s worth so obtained in any transaction (including a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.
- (4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—
 - (a) the value of the interest in the open market; or

- (b) the value of the interest to the person to whom it is, in effect, transferred; whichever is the greater.
- (5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.
- (6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.
- (7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.
- (8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.
- (9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;
 - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and
 - (c) in any other case, by the Special Commissioners;
- and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.
- (10) For the purposes of this section and in construing the expressions “associate” and “associated” in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—
- (a) any individual and that individual’s husband or wife, and any relative, or husband or wife of a relative, of that individual or that individual’s husband or wife (“relative” meaning, for this purpose, brother, sister, ancestor or lineal descendant);
 - (b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual (“settlement” and “settlor” having, for this purpose, the meanings given by section 670(2));
 - (c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;
 - (d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;

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- (e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.
- (11) In subsection (10) above “body of persons” includes a partnership and “control” has the meaning given by section 840.

784 Leased assets subject to hire-purchase agreements

- (1) In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee’s interest in the lease constituting the hire-purchase agreement, be substituted references to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee’s interest.
- (2) In subsection (1) above “capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee’s interest” means—
 - (a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus
 - (b) where the lessee’s interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.
- (4) If the capital sum represents the consideration for part only of the lessee’s interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.
- (5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee’s interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.
- (6) In this section—
 - “hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—
 - (a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and
 - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

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- (i) the exercise of an option to purchase by that person;
- (ii) the doing of any other specified act by any party to the agreement;
- (iii) the happening of any other specified event; and

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

785 Meaning of “asset”, “capital sum” and “lease” for purposes of sections 781 to 784

In sections 781 to 784—

“asset” means any description of property or rights other than land or an interest in land;

“capital sum” means any sum of money, or any money’s worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the profits or gains or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable under Case VI of Schedule D; and

“lease”, in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

786 Transactions associated with loans or credit

- (1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.
- (2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.
- (3) If the transaction provides for the payment of any annuity or other annual payment, not being interest, being a payment chargeable to tax under Case III of Schedule D, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.
- (4) If the transaction is one by which the owner of any securities or other property carrying a right to income (“the owner”) agrees to sell or transfer the property (“the relevant property”), and by the same or any collateral agreement—
 - (a) the purchaser or transferee (“the buyer”), or a person connected with him, agrees that at a later date he will sell or transfer the same or any other property to the owner or a person connected with him; or

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- (b) the owner or a person connected with him acquires an option which he subsequently exercises, to buy or acquire the same or any other property from the buyer or a person connected with the buyer;
- then, without prejudice to the liability of any other person, the owner shall be chargeable to tax under Case VI of Schedule D on an amount equal to any income which arises from the relevant property at any time before the repayment of the loan or the termination of the credit.
- (5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, he shall be chargeable to tax under Case VI of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.
- (6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.
- (7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.
- (8) References in this section to connected persons shall be construed in accordance with section 839.

787 Restriction of relief for payments of interest

- (1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.
- (2) In this section "relief" means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.
- (3) Where the relief is claimed by virtue of section 403(7) any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.